



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

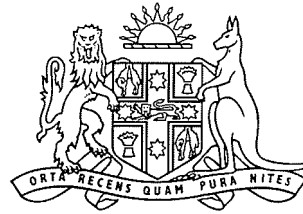
Schedule 3.5 [3] and [4] amend the *Young Offenders Act 1997* to authorise the disclosure of information relating to warnings, cautions and conferences under the Act to the Bureau of Crime Statistics and Research, subject to any regulations. **Schedule 3.5 [2]** provides that the requirement that records 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.

First print



New South Wales

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New South Wales

Crimes Legislation Amendment Bill 2012

No. , 2012

A Bill for

An Act to amend certain legislation with respect to criminal offences and procedure;
and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes Legislation Amendment Act 2012</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5

Schedule 1	Amendment of Crimes Act 1900 No 40	1
[1]	Section 66F Sexual offences—cognitive impairment	2
	Omit “an established de facto partner” from section 66F (7) (a) (ii).	3
	Insert instead “the de facto partner”.	4
[2]	Section 73 Sexual intercourse with child between 16 and 18 under special care	5
	Insert “or the de facto partner of a parent, guardian or foster parent of the victim” after “victim” in section 73 (3) (a).	6
		7
		8
[3]	Section 86 Kidnapping	9
	Insert after section 86 (1) (a):	10
	(a1) with the intention of committing a serious indictable offence, or	11
		12
[4]	Schedule 3 Abolished common law offences and rules	13
	Insert after clause 6:	14
	7 Person who fails to disclose crime committed by the person’s husband or wife or de facto partner	15
		16
	(1) Any 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 is abolished.	17
		18
		19
	(2) This clause applies only to or in respect of an offence involving failing to disclose such a crime if the offence is committed, or alleged to have been committed, on or after the commencement of this clause.	20
		21
		22
		23
[5]	Schedule 11 Savings and transitional provisions	24
	Insert at the end of the Schedule with appropriate Part and clause numbering:	25
	Part Crimes Legislation Amendment Act 2012	26
	Application of amendments	27
	An amendment to section 73 or 86 made by the <i>Crimes Legislation Amendment Act 2012</i> applies only in respect of an offence committed, or alleged to have been committed, on or after the commencement of the amendment.	28
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Schedule 2	Amendment of Criminal Procedure Act	1
	1986 No 209	2
[1]	Section 281B Sensitive evidence—meaning	3
	Insert after section 281B (1):	4
	(1A) For the purposes of this Part, an audio recording of a person committing an offence against another person (the <i>protected person</i>) is <i>sensitive evidence</i> if:	5
		6
		7
	(a) the contents of the audio recording are obscene or indecent, or	8
		9
	(b) providing a copy of the audio recording to another person without the protected person’s consent would interfere with the protected person’s privacy.	10
		11
		12
	(1B) The contents of an audio recording are not obscene or indecent merely because they include obscene or indecent language.	13
		14
[2]	Section 281B (2)	15
	Insert “or (1A)” after “subsection (1)”.	16
[3]	Section 281B (2) (b)	17
	Omit “a video, held or seized by a prosecuting authority, showing”.	18
	Insert instead “a video or audio recording, held or seized by a prosecuting authority, of”.	19
		20
[4]	Section 281D Procedures for giving access to sensitive evidence to accused person	21
		22
	Insert “or listen to” after “view” in section 281D (2) (d).	23
[5]	Section 281D (2) (e)	24
	Omit “such a viewing”.	25
	Insert instead “the viewing of, or listening to, the thing”.	26
[6]	Section 281D (4)	27
	Insert “or listen to” after “view”.	28
[7]	Schedule 2 Savings, transitional and other provisions	29
	Insert at the end of clause 1 (1):	30
	<i>Crimes Legislation Amendment Act 2012</i>	31

[8] Schedule 2	1
Insert at the end of the Schedule with appropriate Part and clause numbering:	2
Part Provision consequent on enactment of Crimes Legislation Amendment Act 2012	3 4
Sensitive evidence—audio recordings	5
The amendments made to Part 2A of Chapter 6 by the <i>Crimes Legislation Amendment Act 2012</i> extend to a criminal investigation instituted, or criminal proceedings instituted or partly heard, before the commencement of Schedule 2 to that Act.	6 7 8 9

Schedule 3	Amendment of other legislation	1
3.1	Crimes (Domestic and Personal Violence) Act 2007 No 80	2
[1]	Section 48 Making of application for an order	3
	Insert after section 48 (2) (a):	4
	(a1) the guardian of the person for whose protection the order would be made, in the case of a person in respect of whom a guardianship order within the meaning of the <i>Guardianship Act 1987</i> is in force, or	5 6 7 8
[2]	Section 48 (7)	9
	Insert after section 48 (6):	10
	(7) A reference in sections 52, 55 (2), 73 (4), 77 (7), 78 (1) and 84 (6) to a protected person includes a reference to the guardian of the person in the case of an application for an order made by the guardian of a person on the person's behalf (as referred to in subsection (2) (a1)).	11 12 13 14 15
[3]	Section 72 Application for variation or revocation of final apprehended violence orders	16 17
	Insert after section 72 (2) (a):	18
	(a1) the guardian of the protected person, in the case of a protected person in respect of whom a guardianship order within the meaning of the <i>Guardianship Act 1987</i> is in force, or	19 20 21 22
3.2	Crimes (Sentencing Procedure) Act 1999 No 92	23
[1]	Sections 32 (4) (c) and 35A (3)	24
	Insert "or by a person, or a person belonging to a class of persons, prescribed by the regulations" after "Prosecutions" wherever occurring.	25 26
[2]	Section 32 (5)	27
	Omit the subsection. Insert instead:	28
	(5) A list of additional charges is taken to be signed on behalf of the Director of Public Prosecutions if it is signed by a person who is authorised to do so by means of a written order signed by the Director of Public Prosecutions or who belongs to a class of persons so authorised.	29 30 31 32 33

[3] Section 35A (4)	1
Omit the subsection. Insert instead:	2
(4) A certificate is taken to be signed on behalf of the Director of Public Prosecutions if it is signed by a person who is authorised to do so by means of a written order signed by the Director of Public Prosecutions or who belongs to a class of persons so authorised.	3 4 5 6 7
3.3 Crimes (Sentencing Procedure) Regulation 2010	8
[1] Clause 4 Lists of additional charges	9
Omit “section 32 (5) (b)” from clause 4 (2). Insert instead “section 32 (4) (c)”.	10
[2] Clause 4 (2) (k)	11
Insert after clause 4 (2) (j):	12
(k) the Chief Executive Officer of the Food Authority.	13
[3] Clause 7A Consultation with victim and police in relation to charge negotiations	14 15
Omit “section 35A (4) (b)”. Insert instead “section 35A (3)”.	16
3.4 Crimes (Serious Sex Offenders) Act 2006 No 7	17
[1] Section 5 Definitions of “serious sex offence” and “offence of a sexual nature”	18 19
Omit “111, 112 or 113” from section 5 (1) (b).	20
Insert instead “86 (1) (a1), 111, 112, 113 or 114 (1) (a), (c) or (d)”.	21
[2] Schedule 2 Savings, transitional and other provisions	22
Omit clause 1 (1). Insert instead:	23
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	24 25 26

[3] Schedule 2, Part 6	1
Insert after Part 5:	2
Part 6 Provision consequent on enactment of Crimes Legislation Amendment Act 2012	3
	4
9 Application of amendment	5
The amendment made to section 5 by the <i>Crimes Legislation Amendment Act 2012</i> applies only to and in respect of an offence committed on or after the commencement of Schedule 3.4 to that Act.	6
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	9
3.5 Young Offenders Act 1997 No 54	10
[1] Sections 4 (definition of “Director-General”), 46 (1), 47 (2) (e), 62A and 66 (2) (e) and (4) (definition of “authorised officer of the Department of Human Services”)	11
	12
	13
Omit “Department of Human Services” wherever occurring.	14
Insert instead “Department of Attorney General and Justice”.	15
[2] Section 17 Records of warnings	16
Insert after section 17 (3) and the note:	17
(4) This section does not require a record made under this section and held by the Bureau of Crime Statistics and Research to be destroyed or expunged if the record was divulged to the Bureau in accordance with section 66.	18
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[3] Section 66 Disclosure of records	22
Insert after section 66 (2) (e):	23
(f) records of, or relating to, warnings, cautions and conferences under this Act may (subject to any regulations made for the purposes of subsection (3)) be divulged to a person employed in the Bureau of Crime Statistics and Research.	24
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[4] Section 66 (3)	29
Insert “or (f)” after “subsection 2 (e)”.	30

[5] Schedule 3 Savings and transitional provisions	1
Omit clause 1 (1). Insert instead:	2
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	3 4 5
[6] Schedule 3, Part 4	6
Insert after Part 3:	7
 Part 4 Provision consequent on enactment of Crimes Legislation Amendment Act 2012	 8 9
7 Destruction and disclosure of records	10
(1) Anything done or omitted to be done before the commencement of Schedule 3.5 to the <i>Crimes Legislation Amendment Act 2012</i> in relation to the destruction of records of warnings or the disclosure of records of, or relating to, warnings, cautions and conferences to the Bureau of Crime Statistics and Research that could have been validly done or omitted to be done if the amendments made to this Act by that Subschedule had been in force when it was done or omitted to be done, is taken to have been validly done or omitted to be done.	11 12 13 14 15 16 17 18 19
(2) Section 17 (4), as inserted by Schedule 3.5 to the <i>Crimes Legislation Amendment Act 2012</i> , extends to records of warnings divulged to the Bureau of Crime Statistics and Research before the commencement of that Subschedule.	20 21 22 23
 3.6 Young Offenders Regulation 2010	 24
[1] Clauses 14 and 16	25
Omit “Department of Human Services” wherever occurring.	26
Insert instead “Department of Attorney General and Justice”.	27
[2] Clause 15 Disclosure of records relating to cautions and conferences to Department of Attorney General and Justice	28 29
Omit “Department of Human Services” wherever occurring.	30
Insert instead “Department of Attorney General and Justice”.	31

[3] Clause 15A	1
Insert after clause 15:	2
15A Disclosure of records relating to warnings, cautions and conferences to Bureau of Crime Statistics and Research	3
	4
For the purposes of section 66 (2) (f) of the Act, a record of, or relating to, a warning, caution or conference under the Act may be divulged to a person employed in the Bureau of Crime Statistics and Research if:	5
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(a) the information contained in the record will only be used in research by that Bureau, the production of statistics by that Bureau and the publication of those statistics and of reports relating to that research, and	9
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(b) any such publication does not name or otherwise identify the child to whom the record relates.	13
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[4] Clause 16 Authorised officers	15
Insert after clause 16 (b):	16
(b1) an Assistant Regional Director,	17

Schedule 4	Repeal of legislation and consequential amendments	1
		2
4.1	Crimes (Appeal and Review) Act 2001 No 120	3
	Section 3 Definitions	4
	Omit paragraph (f) from the definition of <i>sentence</i> in section 3 (1).	5
4.2	Criminal Appeal Act 1912 No 16	6
	Section 2 Definitions	7
	Omit paragraph (j) from the definition of <i>Sentence</i> in section 2 (1).	8
4.3	Law Enforcement (Powers and Responsibilities) Amendment (Detained Person's Property) Act 2008 No 88	9
	The Act is repealed.	10
4.4	Sporting Venues (Offenders Banning Orders) Act 2005 No 67	11
	The Act is repealed.	12
		13