

Crimes Legislation Further Amendment Bill 2003

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Crimes Act 1900* so as to increase, from 2 years to 7 years, the age limit that applies to the offence of exposing or abandoning a child, and
- (b) to amend the *Crimes (Sentencing Procedure) Act 1999* so as to modify the limits placed by that Act on the power of a Local Court to impose consecutive sentences of imprisonment, and
- (c) to amend the *Criminal Appeal Act 1912* so as:
 - (i) to enable appeals to be made against certain decisions as to costs in summary proceedings before the Supreme Court, the Land and Environment Court or a Court of Coal Mines Regulation, and
 - (ii) to allow the prosecution to appeal against a decision or ruling on the admissibility of evidence if the decision or ruling has the effect of eliminating or substantially weakening the prosecution's case in certain criminal proceedings before the Supreme Court, the Land and Environment Court or the District Court, and
 - (iii) to allow the Court of Criminal Appeal to dispense with the requirement for the giving of notice of intention to appeal and notice of intention to apply for leave to appeal, and
- (d) to amend the *Criminal Procedure Act 1986* so as:
 - (i) to clarify the rights of media representatives to inspect documents relating to criminal proceedings, and
 - (ii) (ii) to effect minor law revision to Table 1 of the Schedule of indictable offences triable summarily, and
 - (iii) to effect amendments consequent on the amendments referred to in paragraph (d), and
- (e) to amend the *Firearms Act 1996* so as to clarify the operation of the offences under that Act with respect to the unlawful possession and use of firearms, and
- (f) to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* so as:
 - (i) to allow the expiry time for telephone crime scene warrants to be extended beyond their current expiry time of 24 hours, and
 - (ii) to simplify the requirements as to when police officers must give certain information and warnings with respect to the powers they exercise, and
- (g) to amend the *Mental Health (Criminal Procedure) Act 1990* so as to allow the regulations under that Act to prescribe the form of an order under section 32 of that Act.

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 that gives effect to the amendments to the Acts set out in Schedules 1–7.

Schedule 1 Amendment of Crimes Act 1900 No 40

Section 43 currently makes it an offence (punishable by imprisonment for up to 5 years) to expose or abandon a child under 2 years of age if to do so would endanger the child's life or health.

Schedule 1 amends section 43 so as to increase the age limit from 2 years to 7 years.

Schedule 2 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

Section 58 currently prohibits a Local Court from imposing a sentence of imprisonment on a person who is currently serving two or more consecutive sentences of imprisonment or who is serving a sentence which, together with the proposed sentence, would last for more than 3 years. There is an exception to this prohibition in relation to offences involving assaults on custodial officers, where the offender's current sentence was imposed by a superior court or where the proposed sentence would result in the 3-year period being extended by no more than 6 months.

Schedule 2 [1] replaces section 58 with a new section which differs from the former section in various respects. Firstly, it removes the prohibition with respect to offenders currently subject to consecutive sentences of imprisonment. Secondly, it extends the 3-year period referred to above to 5 years, so that a Local Court will now be prohibited from imposing a sentence of imprisonment on a person so as to result in his or her being subject to consecutive sentences of imprisonment totalling more than 5 years. Thirdly, it extends the exception referred to above to offences involving escape from lawful custody.

Schedule 2 [2] amends clause 1 of Schedule 2 so as to enable savings and transitional regulations to be made in relation to the proposed Act. **Schedule 2 [3]** inserts a new Part into Schedule 2, containing a clause that continues the former section 58 in relation to existing proceedings and extends the new section 58 to new proceedings for existing offences.

Schedule 3 Amendment of Criminal Appeal Act 1912 No 16

Appeals with respect to decisions as to costs

Sections 5AA, 5AB and 5AC currently entitle a person to appeal to the Court of Criminal Appeal against a conviction or order for costs made against the person in summary proceedings before the Supreme Court, the Land and Environment Court or a Court of Coal Mines Regulation.

Schedule 3 [1]–[7] amend sections 5AA, 5AB and 5AC so as to extend the right of appeal to any person whose application for an order for costs is dismissed, or in whose favour an (inadequate) order for costs is made. An appeal with respect to an inadequate order for costs will require the leave of the Court of Criminal Appeal.

Schedule 3 [11] amends Schedule 1 so as to insert a transitional provision (proposed clause 8 (1)) that applies the amended sections 5AA, 5AB and 5AC to existing orders and applications.

Appeals against decisions and rulings as to admissibility of evidence

Schedule 3 [8] amends section 5F so as to allow the Attorney General or the Director of Public Prosecutions to appeal against a decision or ruling on the admissibility of evidence if the decision or ruling has the effect of eliminating or substantially weakening the prosecution's case in certain criminal proceedings before the Supreme Court, the Land and Environment Court or the District

Court. **Schedule 3 [9]** makes a consequential amendment.

Schedule 3 [11] amends Schedule 1 so as to insert a transitional provision (proposed clause 8 (2)) that applies the amended section 5F to existing decisions and rulings.

Notice of intention to appeal

Section 10 currently requires a person who wishes to appeal, or apply for leave to appeal, to the Court of Criminal Appeal against a conviction or sentence to give the Court notice of intention to appeal or notice

of intention to apply for leave to appeal, as the case requires, within 28 days after the conviction or sentence, but allows the Court to extend the period within which such a notice must be given.

Schedule 3 [10] amends section 10 so as to permit the Court of Criminal Appeal to dispense with the requirements for such a notice, but only if the rules of court so permit.

Schedule 4 Amendment of Criminal Procedure Act 1986 No 209

Inspection of court documents by media representatives

Section 314 entitles media representatives to inspect certain documents relating to criminal proceedings if they apply to the court registrar not later than 2 working days after the proceedings are finally disposed of. Explanatory note page 5

Schedule 4 [2] amends section 314 to make it clear that the right to inspect exists from the time the proceedings commence until 2 working days after they are finally disposed of. **Schedule 4 [3]** makes a consequential amendment.

Schedule 4 [4] makes it clear that the right of inspection given by section 314 is in addition to, and does not limit, any other Act or law under which a person may be permitted to inspect such documents. Section 314 (5) currently prohibits the disclosure of a witness's name or address when documents are made available for inspection. **Schedule 4 [5]** omits section 314 (5), on the basis that the prohibition merely replicates a similar prohibition in other legislation.

Minor amendments

The *Crimes Amendment (Sexual Offences) Act 2003* substituted section 66C of the *Crimes Act 1900*. What was previously section 66C (1) became section 66C (3). **Schedule 4 [6]** amends clause 1 of Table 1 of Schedule 1 to the *Criminal Procedure Act 1986* so as to reflect that fact.

Schedule 4 [1] and [7] amend section 268 and Schedule 1 as a consequence of the amendments referred to in Schedule 5 to the proposed Act. These amendments provide that an offence under proposed section 7A of the *Firearms Act 1996* (an indictable offence punishable by imprisonment for up to 5 years) must be dealt with summarily unless the prosecution elects to have it dealt with on indictment and that, if dealt with summarily, will be punishable by imprisonment for up to 2 years or a fine of 50 penalty units, or both.

Schedule 5 Amendment of Firearms Act 1996 No 46

Section 7 currently prohibits a person from possessing or using a firearm unless the person is authorised to do so by a licence or permit under the Act. The penalty for such an offence is imprisonment for 14 years (if the firearm concerned is a prohibited firearm or pistol) or imprisonment for 5 years (in any other case).

Schedule 5 [2] amends section 7 so as to recast the offence so that it will only relate to the unauthorised possession or use of a prohibited firearm or pistol. The maximum penalty will be the same as the existing penalty that applies in relation to prohibited firearms or pistols. **Schedule 5 [6]** inserts new section 7A which creates a separate offence of possessing or using a firearm without a licence or permit. The maximum penalty for this offence will be imprisonment for 5 years.

Schedule 5 [1] and [3]–[5] are consequential amendments. The effect of these amendments will not change the substantive law in this regard (except to the extent that the amended section 7 allows a jury to find the accused guilty of an alternative offence under new section 7A), but will ensure that the accused is aware, when charged with an offence, what maximum penalty he or she faces if convicted of the offence.

Schedule 6 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Telephone crime scene warrants

The *Law Enforcement (Powers and Responsibilities) Act 2002* makes provision for search warrants and crime scene warrants. Both forms of warrant can be granted either by means of a written application made in person (a **standard warrant**) or by means of a telephone application (a **telephone warrant**). A standard warrant can have effect for up to 72 hours, and may be extended for up to another 72 hours. A telephone warrant has effect for 24 hours, and cannot be extended.

Schedule 6 [1]–[4] amend section 73 so as to allow a telephone crime scene warrant to be extended (on a written application made in person) for up to 60 hours at a time, but on no more than two occasions. The maximum period for which such a warrant will be able to have effect will be 144 hours (24 plus 60 plus 60), which is the same as the maximum period for which a standard warrant can have effect (72 plus 72).

Schedule 6 [8] amends clause 1 of Schedule 5 so as to enable savings and transitional regulations to be made in relation to the proposed Act.

Schedule 6 [9] inserts a new Part into Schedule 5, containing a clause that extends the amended section 73 to existing telephone crime scene warrants.

Provision of information and warnings

Section 201 requires police officers to provide persons with certain information and warnings in relation to the police officer's exercise of certain powers, and specifies when those requirements must be complied with. Sections 202 and 203 provide that those requirements need not be complied with in relation to a power of arrest or a power to search premises if compliance is impracticable or would frustrate the purpose for which the power is to be exercised. Those sections are predicated on the fact that, generally speaking, the requirements must be complied with before the powers are exercised.

Schedule 6 [5] and [6] amend section 201 so as to simplify those requirements, without altering their substance. As a consequence, it becomes apparent that those requirements can, if necessary, be complied with after a power of arrest or power to search premises is exercised.

Schedule 6 [7] therefore omits sections 202 and 203.

Schedule 7 Amendment of Mental Health (Criminal Procedure) Act 1990 No 10

Section 32 allows a Magistrate to make a variety of orders with respect to a person who, in any proceedings, appears to be developmentally disabled or suffering from mental illness. Such an order affects the way in which other persons may have to deal with the person.

Schedule 7 amends section 32 so as to enable the regulations under the Act to prescribe the form of an order under that section, and so to standardise the way in which such an order can be expressed.