



New South Wales

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) 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.

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.



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New South Wales

Crimes Legislation Further Amendment Bill 2003

No. , 2003

A Bill for

An Act to amend certain Acts with respect to criminal offences and proceedings for criminal offences; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes Legislation Further Amendment Act 2003</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Acts	7
The Acts specified in Schedules 1–7 are amended as set out in those Schedules.	8 9

Schedule 1 Amendment of Crimes Act 1900 No 40 1
(Section 3) 2

Section 43 Exposing or abandoning child under 7 3

Omit “two years”. Insert instead “7 years”. 4

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

(Section 3)

[1] Section 58

Omit the section. Insert instead:

58 Limitation on consecutive sentences imposed by Local Courts

- (1) A Local Court may not impose a new sentence of imprisonment to be served consecutively (or partly concurrently and partly consecutively) with an existing sentence of imprisonment if the date on which the new sentence would end is more than 5 years after the date on which the existing sentence (or, if more than one, the first of them) began.
- (2) Any period for which an existing sentence has been extended under this or any other Act is to be disregarded for the purposes of this section.
- (3) This section does not apply if:
- (a) the new sentence relates to:
 - (i) an offence involving an escape from lawful custody, or
 - (ii) an offence involving an assault or other offence against the person, being an offence committed (while the offender was a convicted inmate) against a correctional officer or (while the offender was a person subject to control) against a juvenile justice officer, and
 - (b) either:
 - (i) the existing sentence (or, if more than one, any of them) was imposed by a court other than a Local Court or the Children's Court, or
 - (ii) the existing sentence (or, if more than one, each of them) was imposed by a Local Court or the Children's Court and the date on which the new sentence would end is not more than 5 years and 6 months after the date on which the existing sentence (or, if more than one, the first of them) began.

(4)	In this section:	1
	<i>existing sentence</i> means an unexpired sentence, and includes any expired sentence or unbroken sequence of expired sentences with which the unexpired sentence is being served consecutively (or partly concurrently and partly consecutively).	2 3 4 5 6
	<i>sentence of imprisonment</i> includes an order referred to in section 33 (1) (g) of the <i>Children (Criminal Proceedings) Act 1987</i> .	7 8 9
[2]	Schedule 2 Savings, transitional and other provisions	10
	Insert at the end of clause 1 (1):	11
	<i>Crimes Legislation Further Amendment Act 2003</i> (but only to the extent that it amends this Act)	12 13
[3]	Schedule 2	14
	Insert at the end of the Schedule, with appropriate Part and clause numbers:	15 16
Part	Provisions consequent on enactment of Crimes Legislation Further Amendment Act 2003	17 18 19
	Power of Local Court to impose further consecutive sentences	20
(1)	Section 58, as in force immediately before its substitution by the <i>Crimes Legislation Further Amendment Act 2003</i> , continues to apply to offences for which proceedings had commenced before its substitution.	21 22 23 24
(2)	Section 58, as substituted by the <i>Crimes Legislation Further Amendment Act 2003</i> , extends to offences committed before the commencement of that section, other than offences for which proceedings had commenced before its substitution.	25 26 27 28

Schedule 3	Amendment of Criminal Appeal Act 1912	1
	No 16	2
	(Section 3)	3
[1]	Section 5AA Appeal in criminal cases dealt with by Supreme Court in its summary jurisdiction	4
	Insert “, or whose application for an order for costs is dismissed” after “made” in section 5AA (1) (b).	5
		6
		7
[2]	Section 5AA (1) (c)	8
	Insert at the end of section 5AA (1) (b):	9
	or	10
	(c) in whose favour an order for costs is made,	11
[3]	Section 5AA (1A)	12
	Insert after section 5AA (1):	13
	(1A) An appeal against an order referred to in subsection (1) (c) may only be made with the leave of the Court of Criminal Appeal.	14
		15
		16
[4]	Section 5AB Appeal in criminal cases dealt with by Land and Environment Court in its summary jurisdiction	17
	Insert “, or whose application for an order for costs is dismissed” after “made” in section 5AB (b).	18
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[5]	Section 5AB (c)	21
	Insert after section 5AB (b):	22
	or	23
	(c) in whose favour an order for costs is made,	24
[6]	Section 5AC Appeal in criminal cases dealt with by Court of Coal Mines Regulation in its summary jurisdiction	25
	Insert “, or whose application for an order for costs is dismissed” after “made” in section 5AC (b).	26
		27
		28

[7] Section 5AC (c)	1
Insert at the end of section 5AC (b):	2
or	3
(c) in whose favour an order for costs is made,	4
[8] Section 5F Appeal against interlocutory judgment or order	5
Insert after section 5F (3):	6
(3A) The Attorney General or the Director of Public Prosecutions	7
may appeal to the Court of Criminal Appeal against any	8
decision or ruling on the admissibility of evidence, but only if	9
the decision or ruling eliminates or substantially weakens the	10
prosecution's case.	11
[9] Section 5F (5)	12
Omit the subsection. Insert instead:	13
(5) The Court of Criminal Appeal:	14
(a) may affirm or vacate the judgment, order, decision or	15
ruling appealed against, and	16
(b) if it vacates the judgment, order, decision or ruling, may	17
give or make some other judgment, order, decision or	18
ruling instead of the judgment, order, decision or ruling	19
appealed against.	20
[10] Section 10 Method and time for making appeal	21
Insert "or, if the rules of court so permit, dispense with the requirement for	22
such a notice" after "to the court" in section 10 (1) (b).	23
[11] Schedule 1 Savings and transitional provisions	24
Insert after clause 7:	25
8 Crimes Legislation Further Amendment Act 2003	26
(1) Sections 5AA, 5AB and 5AC, as amended by the <i>Crimes</i>	27
<i>Legislation Further Amendment Act 2003</i> , extend to orders	28
for costs, and orders dismissing applications for orders for	29
costs, made before the commencement of the amendments to	30
those sections made by that Act.	31

Crimes Legislation Further Amendment Bill 2003

Schedule 3 Amendment of Criminal Appeal Act 1912 No 16

- (2) Section 5F, as amended by the *Crimes Legislation Further Amendment Act 2003*, extends to decisions and rulings made in proceedings that had been commenced, but not finally disposed of, before the commencement of the amendments to that section made by that Act.

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Schedule 4 Amendment of Criminal Procedure Act 1986 No 209

(Section 3)

[1] Section 268 Maximum penalties for Table 2 offences

Insert “7A,” after “section 7,” in section 268 (2) (e1) (as substituted by the *Firearms and Crimes Legislation Amendment (Public Safety) Act 2003*).

[2] Section 314 Media access to court documents

Omit section 314 (1). Insert instead:

- (1) On application to the registrar, a media representative is entitled to inspect any document relating to criminal proceedings, at any time from when the proceedings commence until the expiry of 2 working days after they are finally disposed of, for the purpose of compiling a fair report of the proceedings for publication.

[3] Section 314 (2)

Insert “that a media representative is entitled to inspect under this section” after “The documents”.

[4] Section 314 (4A)

Insert after section 314 (4):

- (4A) This section does not limit the operation of any other Act or law under which a person may be permitted to inspect documents relating to criminal proceedings.

[5] Section 314 (5)

Omit the subsection.

[6] Schedule 1 Indictable offences triable summarily

Insert “(as in force before the commencement of Schedule 1 [9] to the *Crimes Amendment (Sexual Offences) Act 2003*), 66C (3) (as in force after the commencement of Schedule 1 [9] to the *Crimes Amendment (Sexual Offences) Act 2003*)” after “66C (1)” in clause 1 of Table 1.

[7] Schedule 1, Table 2

Insert “7A,” after “section 7,” in clause 7 (as substituted by the *Firearms and Crimes Legislation (Public Safety) Act 2003*).

Schedule 5 Amendment of Firearms Act 1996 No 46	1
(Section 3)	2
[1] Sections 6 (3), 26, 27 (4), 82A (1) and clause 21 of Schedule 3, and section 84 (2) (as substituted by the Firearms and Crimes Legislation (Public Safety) Act 2003)	3
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Insert “or 7A” after “section 7” wherever occurring.	6
[2] Section 7 Offence of unauthorised possession or use of prohibited firearms or pistols	7
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Omit section 7 (1). Insert instead:	9
(1) A person must not possess or use a prohibited firearm or pistol unless the person is authorised to do so by a licence or permit.	10
	11
Maximum penalty: imprisonment for 14 years.	12
[3] Section 7 (2) (a)	13
Omit “a firearm”. Insert instead “a prohibited firearm or pistol”.	14
[4] Section 7 (2) (a)	15
Omit “the firearm”. Insert instead “the prohibited firearm or pistol”.	16
[5] Section 7 (3)	17
Insert after section 7 (2):	18
(3) If, on the trial for an offence under this section, the jury is not satisfied that the accused is guilty of the offence but is satisfied on the evidence that the person is guilty of an offence under section 7A, it may find the person not guilty of the offence but guilty of an offence under section 7A, and the accused is liable to punishment accordingly.	19
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[6] Section 7A	25
Insert after section 7:	26
7A Offence of unauthorised possession or use of firearms generally	27
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(1) A person must not possess or use a firearm unless the person is authorised to do so by a licence or permit.	29
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Maximum penalty: imprisonment for 5 years.	31

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- (2) Without limiting the operation of subsection (1), a person who is the holder of a licence is guilty of an offence under this section if the person:
- (a) uses a firearm for any purpose otherwise than in connection with the purpose established by the person as being the genuine reason for possessing or using the firearm, or
 - (b) contravenes any condition of the licence.
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Schedule 6 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

(Section 3)

[1] Section 73 Expiry of warrant

Omit section 73 (1). Insert instead:

- (1) Unless it is sooner withdrawn or extended:
 - (a) a search warrant (other than a telephone search warrant) ceases to have effect:
 - (i) when it has been executed, or
 - (ii) at the time specified in it for its expiry,whichever first occurs, and
 - (b) a telephone search warrant ceases to have effect:
 - (i) when it has been executed, or
 - (ii) at the expiry of 24 hours after the time of its issue,whichever first occurs, and
 - (c) a crime scene warrant (other than a telephone crime scene warrant) ceases to have effect at the time specified in it for its expiry, and
 - (d) a telephone crime scene warrant ceases to have effect at the expiry of 24 hours after the time of its issue.

[2] Section 73 (4)

Insert “(other than a telephone warrant)” after “A warrant”.

[3] Section 73 (5A), (5B) and (5C)

Insert after section 73 (5):

- (5A) A telephone crime scene warrant may be extended, for up to 60 hours at a time, by the authorised officer who issued the warrant.
- (5B) The time for expiry of a telephone crime scene warrant may be extended twice.
- (5C) A telephone search warrant may not be extended.

[4] Section 73 (6) (b)	1
Omit “on the application of”.	2
Insert instead “on the written application of, and made in person by,”.	3
[5] Section 201 Supplying police officer’s details and giving warnings	4
Omit “, before or at the time of exercising a power referred to in subsection (3) (other than subsection (3) (g), (i) or (j)), or as soon as is reasonably practicable after exercising the power,” from section 201 (1).	5 6 7
[6] Section 201 (2) and (2A)	8
Omit section 201 (2). Insert instead:	9
(2) A police officer must comply with subsection (1) in relation to a power referred to in subsection (3) (other than subsection (3) (g), (i) or (j)):	10 11 12
(a) if it is practicable to do so, before or at the time of exercising the power, or	13 14
(b) if it is not practicable to do so, as soon as is reasonably practicable after exercising the power.	15 16
(2A) A police officer must comply with subsection (1) in relation to a power referred to in subsection (3) (g), (i) or (j) before exercising the power.	17 18 19
[7] Sections 202 and 203	20
Omit the sections.	21
[8] Schedule 5 Savings and transitional provisions	22
Insert at the end of clause 1 (1):	23
<i>Crimes Legislation Further Amendment Act 2003</i> (but only to the extent that it amends this Act)	24 25

Crimes Legislation Further Amendment Bill 2003

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

[9] Schedule 5	1
Insert at the end of the Schedule, with appropriate Part and clause numbers:	2 3
Part Provisions consequent on enactment of Crimes Legislation Further Amendment Act 2003	4 5 6
Extension of telephone crime scene warrants	7
Section 73, as amended by the <i>Crimes Legislation Further Amendment Act 2003</i> , extends to telephone crime scene warrants issued before the commencement of the amendments to that section made by that Act.	8 9 10 11

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

(Section 3)

Section 32 Persons suffering from mental illness or condition

Insert after section 32 (4):

- (5) The regulations may prescribe the form of an order under this section.

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