

## Crimes and Courts Legislation Amendment Bill 2005

### 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 amend the *Bail Act 1978* as a consequence of the omission of various drug offences from the *Customs Act 1901* of the Commonwealth and the insertion of a wider range of drug offences in the *Criminal Code* of the Commonwealth (the relevant provisions of the *Bail Act 1978* deal with presumptions against or in favour of bail in respect of Commonwealth drug offences),

(b) to amend the *Drug Court Act 1998* to make further provision with respect to the referral of persons to the Drug Court,

(c) to amend the *Electronic Transactions Act 2000* to provide for the extension of the kinds of hearings that may be conducted by electronic communication,

(d) to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* as follows:

(i) to clarify that general drug detection warrants and domestic violence entry warrants are generally subject to the same conditions as search warrants in relation to expiry and extension,

(ii) to modify the grounds on which a general drug detection warrant may be issued or extended for more than 72 hours,

(iii) to provide that an application for the extension of a warrant is not required to be in writing and made in person if it is impractical for the applicant to appear before an authorised officer before the warrant expires,

(iv) to make further provision with respect to the powers that may be exercised at a crime scene including by ensuring that the crime scene powers set out in section 95 of that Act may be exercised by any police officer provided that a crime scene has been established, whether or not the police officer established the crime scene,

(v) to provide that certain crime scene powers set out in section 95 of that Act may be exercised by a police officer with the aid of any member of NSW Police responsible for examining or maintaining a crime scene,

(vi) to provide that a police officer can apply for a crime scene warrant that authorises any police officer to enter premises and exercise crime scene powers,

(vii) to provide that the regulations are to prescribe the information that is to be recorded in relation to detained intoxicated persons,

(viii) to change the meaning of ***person of non-English speaking background***,

(ix) to make various consequential amendments and amendments by way of statute law revision,

(e) to amend the *Listening Devices Act 1984* to update a definition as a consequence of the omission of various drug offences from the *Customs Act 1901* of the Commonwealth and the insertion of a wider range of drug offences in the *Criminal Code* of the Commonwealth,

(f) to amend the *Independent Commission Against Corruption Act 1988* as a consequence of the amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002*,

(g) to make various other consequential amendments and amendments by way of statute law revision.

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, with specified exceptions, on the date of assent to the proposed Act.

**Clause 3** is a formal provision that gives effect to the amendments to the Acts and regulation specified in Schedules 1–6 as set out in those Schedules.

**Schedule 1 Amendment of Bail Act 1978 No 161**

**Schedule 1 [1] and [2]** amend sections 8A and 9 of the *Bail Act 1978* as a consequence of the omission of various drug offences from the *Customs Act 1901* of the Commonwealth and the insertion of a wider range of drug offences in the *Criminal Code* of the Commonwealth. The sections amended provide for the application of the presumption against bail, or in favour of bail, to drug offences under the *Criminal Code* of the Commonwealth.

**Schedule 1 [3]** provides that section 8A of the *Bail Act 1978* continues to apply in respect of the various drug offences omitted from the *Customs Act 1901* of the Commonwealth and that those offences continue to be excluded from the operation of section 9 of the *Bail Act 1978*.

**Schedule 2 Consequential amendment of Bail Regulation 1999**

**Schedule 2** amends a form as a consequence of the amendment in Schedule 1 [2].

**Schedule 3 Amendment of Drug Court Act 1998 No 150**

**Schedule 3 [1]** amends section 18B of the *Drug Court Act 1998* to provide that the duty imposed by section 18B of that Act on a court (to consider whether a person should be referred to the Drug Court when sentencing a person to imprisonment or confirming a sentence of imprisonment on appeal) does not apply to an appeal court if the person whose sentence is confirmed in the appeal is already the subject of a compulsory drug treatment order as a consequence of a referral made to the Drug Court. However, the duty imposed by section 18B applies to an appeal court if the person whose sentence is confirmed by the appeal court is not already the subject of a compulsory drug treatment order.

**Schedule 3 [2]** amends section 18B of the *Drug Court Act 1998* to provide that a court's decision to refer or not refer a person to the Drug Court is not appealable.

**Schedule 3 [3]** allows savings and transitional regulations to be made as a consequence of the amendments.

**Schedule 4 Amendment of Electronic Transactions Act 2000 No 8**

**Schedule 4** amends section 14I of the *Electronic Transactions Act 2000*, which authorises the conduct of hearings before an ECM court (a court in respect of which the use of an electronic case management system is authorised) by electronic communication under the CourtLink or other authorised system (subject to rules of court). The section is currently limited to hearings authorised or required to be conducted in private. The amendment will extend the section to all ECM court hearings other than those conducted for the purpose of receiving oral evidence.

**Schedule 5 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

**Schedule 5 [4]** substitutes section 73 of the *Law Enforcement (Powers and Responsibilities) Act 2002* and inserts proposed section 73A into that Act so that it is clear that general drug detection warrants and domestic violence entry warrants are generally subject to the same conditions as search warrants in relation to expiry and extension. However, the test for the issue or extension of a general drug detection warrant for more than 72 hours is modified so that the authorised officer who issues the warrant must be satisfied that the purposes for which the warrant was issued

cannot be satisfied within 72 hours (rather than being satisfied that the warrant cannot be executed within 72 hours). Proposed section 73A also provides that an application for the extension of a warrant need not be made in writing by application in person if it is impractical for the applicant to appear before an authorised officer before the warrant expires.

**Schedule 5 [2] and [3]** make amendments consequential on the amendments in Schedule 5 [4].

**Schedule 5 [5]** substitutes section 92 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to ensure that the powers set out in section 95 (1) (a)–(f) (powers that may be exercised at a crime scene) may, in accordance with section 92, be exercised by any police officer provided that the police officer or another police officer has established a crime scene and the police officer suspects that it is necessary to exercise the power in order to preserve evidence. Section 92 also ensures that the other crime scene powers set out in section 95 may, in accordance with section 92, be exercised by any police officer provided that the police officer or another police officer has established a crime scene and applied for a crime scene warrant and the police officer suspects that it is necessary to immediately exercise the power in order to preserve evidence. Section 92 (5) provides that those other crime scene powers may be exercised by a police officer with the aid of any member of NSW Police responsible for examining or maintaining a crime scene.

**Schedule 5 [6]** substitutes section 94 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to provide that a police officer can apply for a crime scene warrant that authorises any police officer to enter premises and exercise crime scene powers.

**Schedule 5 [8]** substitutes section 209 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to provide that the regulations are to prescribe the information that is to be recorded in relation to detained intoxicated persons.

**Schedule 5 [1]** changes the meaning of ***person of non-English speaking background*** so that only persons who are born outside Australia can be considered to be of non-English speaking background for the purposes of the Act.

**Schedule 5 [7]** makes an amendment by way of statute law revision.

#### **Schedule 6 Consequential amendment of Listening**

##### **Devices Act 1984 No 69**

**Schedule 6 [1]** amends the definition of ***serious narcotics offence*** in the *Listening Devices Act 1984* as a consequence of the omission of various drug offences from the *Customs Act 1901* of the Commonwealth and the insertion of a wider range of drug offences in the *Criminal Code* of the Commonwealth.

**Schedule 6 [2]** provides that an offence punishable as provided by section 235 of the *Customs Act 1901* of the Commonwealth continues to be a serious narcotics offence for the purposes of the *Listening Devices Act 1984* despite the amendment of the definition of ***serious narcotics offence***.

#### **Schedule 7 Consequential amendment of Independent Commission Against**

##### **Corruption Act 1988 No 35**

**Schedule 7** amends a reference in the *Independent Commission Against Corruption Act 1988* to certain provisions of the *Law Enforcement (Powers and Responsibilities) Act 2002* as a consequence of the amendments in Schedule 5 [4].