

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 to create a presumption against bail in respect of certain offences under the Drug Misuse and Trafficking Act 1985 relating to the cultivation of commercial quantities of prohibited drugs or plants or the cultivation or manufacture of prohibited drugs or plants for a commercial purpose (including where a child is exposed to the cultivation or manufacturing process),

(b) to amend the Child Protection (Offenders Prohibition Orders) Act 2004 to omit a redundant requirement that a person arrested under that Act be brought before an authorised person,

(c) to amend the Child Protection (Offenders Registration) Act 2000 to update a cross-reference to the Crimes Act 1900,

(d) to amend the Children (Criminal Proceedings) Act 1987 to make it clear that enforcement actions in respect of a breach of a good behaviour bond may be taken after the bond has expired,

(e) to amend the Civil Liability Act 2002:

(i) to make it clear that the exclusion from the operation of that Act of civil liability in respect of an intentional act that is done with intent to cause injury or death or that is sexual assault or other sexual misconduct applies only in relation to the civil liability of the person who carried out the intentional act to a person who suffered from that act, and

(ii) to make it clear that the term “offender in custody” or “offender” where used in Part 2A of that Act includes persons who were “inmates”, “prisoners”, “periodic detainees”, “offenders for whom a home detention order was made” or “persons performing community service work under, or attending a place in compliance with the requirements of, a community service order” under legislation that preceded the Crimes (Administration of Sentences) Act 1999,

(f) to amend the Civil Procedure Act 2005 to extend the rule-making power to cover obtaining access to information, documents or things relating to court proceedings,

(g) to amend the Coroners Act 1980 to extend the powers of police and other persons to establish coronial investigation scenes, investigate a place and preserve evidence,

(h) to amend the Crimes (Local Courts Appeal and Review) Act 2001:

(i) to ensure that the revocation of a good behaviour bond, and orders made as a consequence of that revocation, are treated as part of an offender’s sentence under that Act, and

(ii) to extend the provisions of the Act that allow a person to apply for an annulment of a conviction or sentence, to allow a person to apply for an annulment of a finding of guilt (whether or not a conviction is made) and any order made as a consequence of that finding,

(i) to amend the Crimes (Sentencing Procedure) Act 1999:

(i) to allow a court that convicts a person of an offence to dispose of the proceedings without imposing any further penalty, and

(ii) to ensure that the setting of a non-parole period, and other functions of a sentencing court under Part 4 of that Act, are exercised in relation to a suspended sentence only if the good behaviour bond relating to that sentence is revoked by the court, and

(iii) to provide for additional members and functions of the New South

Wales Sentencing Council,

(j) to amend the Criminal Appeal Act 1912:

(i) to ensure that the revocation of a good behaviour bond, and orders made as a consequence of that revocation, are treated as part of an offender's sentence under that Act, and

(ii) to revise the system of appeals against sentences imposed by the Drug Court,

(k) to amend the Criminal Procedure Act 1986:

(i) to establish an evidentiary presumption in respect of persons acting in their official capacity as public officers, and

(ii) to make it clear that certain persons have sufficient authorisation under that Act to commence proceedings, and

(iii) to enable a court attendance notice issued by a police officer to be served by a prosecutor, and

(iv) to remove the requirement that an endorsement of service be filed with the court together with a court attendance notice, and

(v) to exempt children from having to endorse certain written statements provided as evidence in committal proceedings, and

(vi) to give a Magistrate discretion to admit prosecution evidence in committal proceedings despite a non-compliance with certain requirements relating to adducing such evidence, and

(vii) to clarify the circumstances in which a person who provides a written statement that is proposed to be tendered as part of prosecution evidence in committal proceedings may be directed to attend to give oral evidence, and

(viii) to extend the limitation period within which proceedings for summary offences that involve a coronial investigation must be commenced, and

(ix) to make provision for the expiration of arrest warrants issued under that Act,

(l) to amend the Director of Public Prosecutions Act 1986 to make it clear that the Director of Public Prosecutions may take over proceedings relating to the freezing of assets brought under the Confiscation of Proceeds of Crime Act 1989,

(m) to amend the District Court Act 1973:

(i) to ensure consultation between the Chief Judge and the Attorney General before substantial alterations are made to the Court's sitting calendar, and

(ii) to achieve consistency in respect of the procedures relating to subpoenas between jurisdictions,

(n) to amend the Drug Court Act 1998:

(i) to provide that when imposing an initial sentence on a Drug Court participant, the Drug Court is not obliged to fix a non-parole period or comply with certain formalities, and

(ii) to make further provision with respect to proceedings for breaches of conditions of good behaviour bonds, and

(iii) to modify the power of the Drug Court to deal with offences that have not been formally referred to the Court,

(o) to amend the Drug Misuse and Trafficking Act 1985:

(i) to create a new offence relating to the possession of a tablet press, and

(ii) to create new offences relating to the exposure of children to things done on drug premises, and

(iii) to extend the provisions of the Act that permit the pre-trial destruction of prohibited drugs so that they also apply to prohibited plants, and

(iv) to extend the regulation-making power in relation to the sale and storage

of precursors to include apparatus capable of being used in the manufacture or production of a prohibited drug,

- (p) to amend the Electronic Transactions Act 2000 to enable an electronic case management system to be established that provides for the exchange of information relating to court proceedings between bodies or persons prescribed by rules of court,
- (q) to amend the Evidence (Audio and Audio Visual Links) Act 1998 to enable persons required to attend bail proceedings occurring during a weekend or on a public holiday to do so by way of audio visual link,
- (r) to amend the Evidence (Children) Act 1997 to make it clear that a recording of an interview with a child is not required to be served on a party to proceedings,
- (s) to amend the Land and Environment Court Act 1979 to extend the preliminary conference provisions under section 34 of that Act to all Class 3 matters of the Court,
- (t) to amend the Local Courts Act 1982 to ensure consultation between the Chief Magistrate and the Attorney General before substantial alterations are made to the Court's sitting calendar,
- (u) to amend the Summary Offences Act 1988:
 - (i) to give lawful effect to any arrangements with respect to a public assembly that are agreed between the Commissioner of Police and the organiser, and
 - (ii) to update the method by which notices may be served under that Act,
- (v) to amend the Telecommunications (Interception) (New South Wales) Act 1987:
 - (i) to change the name of the Act so that it mirrors the name of the corresponding Commonwealth Act, and
 - (ii) to confer reporting functions on the Ombudsman that mirror the functions of the Commonwealth Ombudsman under the corresponding Commonwealth Act,
- (w) to amend the Witness Protection Act 1995 to allow arrangements relating to the establishment of a new identity under that Act to be extended to former participants in the witness protection program operated by police before that Act commenced,
- (x) to make other minor and consequential amendments to the above Acts, including for savings and transitional purposes.

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. The provisions of the Act commence on the date of assent, except as otherwise indicated in the amendments set out in Schedule 1.

Clause 3 is a formal provision that gives effect to the amendments to the Acts specified in Schedule 1.

Clause 4 makes it clear that the explanatory notes contained in Schedule 1 do not form part of the proposed Act.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 makes the amendments to the Acts described in the Overview. The amendments to each Act are explained in detail in the explanatory note relating to the Act concerned set out in the Schedule.