

Overview of Bill

The object of this Bill is:

(a) to amend the *Criminal Procedure Act 1986* and the *Criminal Procedure Regulation 2010*:

(i) to provide a uniform limit on the maximum term of imprisonment that may be imposed by the Local Court when dealing summarily with an indictable offence (other than in relation to certain offences under the *Drug Misuse and Trafficking Act 1985*), and

(ii) to increase the maximum amount of fine that may be imposed by the Local Court when dealing summarily with certain indictable offences under the *Crimes Act 1900*, and

(iii) to include certain indictable fraud offences under the *Conveyancers Licensing Act 2003* and the *Property, Stock and Business Agents Act 2002* as offences that may be dealt with summarily by the Local Court, and

(iv) to change the requirements for the use of random samples of child abuse material in proceedings for offences relating to use of children in the production of child abuse material and the production, dissemination and possession of such material, and

(v) to clarify certain matters in relation to the provisions dealing with the protection of communications made in confidence to counsellors by the victims of sexual assault and to alter the regulation-making powers in relation to certain subpoenas, and

(b) to amend the *Director of Public Prosecutions Act 1986* to ensure that a person who holds the office of the Director of Public Prosecutions and to whom the *Judges' Pensions Act 1953* applies is entitled to receive a pension under that Act if the person retires on account of ill-health and that the spouse of such a person who dies while holding that office is entitled to receive such a pension, and

(c) to amend the *Fines Act 1996* to make it clear that an automated computer system may be used to refer overdue court imposed fines to the State Debt Recovery Office for the making of a court fine enforcement order.

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 legislation

Schedule 1.1 Criminal Procedure Act 1986 No 209

Amendments relating to indictable offences dealt with summarily

Schedule 1.1 [1]–[4] provide for a uniform limit on the term of imprisonment that may be imposed in relation to an indictable offence that is dealt with summarily by the Local Court of 2 years or the maximum term provided by law for the offence, whichever is the shorter term (other than in relation to certain offences under the *Drug Misuse and Trafficking Act 1985*).

The maximum fine that may be imposed by the Local Court when dealing summarily with offences under sections 56, 61 and 61N of the *Crimes Act 1900* (being offences dealing with certain assaults and acts of indecency) is increased from 20 penalty units to 50 penalty units.

Schedule 1.1 [14] and [15] include offences under sections 152 and 153 of the *Conveyancers Licensing Act 2003* and sections 211 and 212 of the *Property, Stock and Business Agents Act 2002* (relating to certain fraudulent conduct) in the list of indictable offences that may be dealt with summarily before the Local Court unless the prosecutor or the person charged with the offence elects to have the offence dealt with on indictment, but only in circumstances where the offence involves an amount exceeding \$5,000.

Schedule 1.1 [16] includes offences under sections 152 and 153 of the *Conveyancers Licensing Act 2003* and sections 211 and 212 of the *Property, Stock and Business Agents Act 2002* in the list of indictable offences that may be dealt with summarily before the Local Court unless the prosecutor elects to have the offence dealt with on indictment, but only in circumstances where the offence does not involve an amount exceeding \$5,000.

Schedule 1.1 [17] and [18] contain provisions of a savings or transitional nature.

Amendments relating to use of random sample evidence in child abuse material proceedings

Schedule 1.1 [5] and [6] change the provisions relating to the examination of a random sample of material in proceedings relating to child abuse material offences (that is, certain offences under the *Crimes Act 1900* relating to the production, dissemination or possession of child abuse material). Those provisions are intended to facilitate proceedings where a large quantity of material is being considered by investigating police officers and allows for evidence of the classification of a random sample of that material to be presented to the court. Currently, an analyst authorised by the Attorney General or the Director of Public Prosecutions may examine a random sample of child abuse material in proceedings and the findings of the analyst as to the nature and content of the sample are admissible as evidence of the nature and content of the whole of the material from which the sample is taken. The amendments will instead allow a person prescribed by the regulations as an authorised classifier to conduct those examinations. **Schedule 1.2** makes a consequential amendment to the *Criminal Procedure Regulation 2010*.

Schedule 1.1 [6]–[10] remove the requirement that such a random sample must be taken from child abuse material that is the subject of the proceedings (which would require the child abuse material to be extracted firstly from all the material) to enable the sample to be taken from material in the possession of the police some of which is alleged child abuse material the subject of the proceedings. A random sample is only admissible as evidence if the accused person has been given an opportunity to view all of the material from which the sample was taken.

Amendments relating to protected counselling communications by victims of sexual assault

Schedule 1.1 [11] clarifies that the limitations imposed by sections 297 and 298 of the Act in relation to the production and disclosure of certain communications made to counsellors in confidence by victims or alleged victims of sexual assault do not affect the court's powers in circumstances where a question arises that requires the court's consideration of a document or evidence.

Schedule 1.1 [12] and [13] change the provision that enables regulations to be made in relation to subpoenas in specified sexual assault proceedings. Instead, regulations will be able to be made in relation to subpoenas in connection with any criminal proceedings, but only subpoenas that require the production of documents recording certain communications made to counsellors in confidence.

Schedule 1.2 Criminal Procedure Regulation 2010

Schedule 1.2 prescribes as authorised classifiers, for the purposes of the random sample evidence provisions of the *Criminal Procedure Act 1986* referred to above, members of the NSW Police Force who have undertaken training in the classification of child abuse material that is conducted or arranged by the NSW Police Force.

Schedule 1.3 Director of Public Prosecutions Act 1986 No 207

Schedule 1.3 [3] amends the provisions that apply the *Judges' Pensions Act 1953* to a person holding office as Director of Public Prosecutions so as to enable such a person to receive a pension under that Act on retirement on grounds of ill-health, or to enable the spouse of such a person to receive a pension under that Act if the person dies in office, even though the person could not have received a normal retirement pension under that Act because the person would have been too young to qualify when his or her 10 year fixed and non-renewable term of office as Director expired.

Schedule 1.3 [1] extends those amendments to the person holding the position of Director of Public Prosecutions immediately before the introduction of this Bill into Parliament.

Schedule 1.3 [2] and [4] make related amendments.

Schedule 1.4 Fines Act 1996 No 99

Schedule 1.4 removes the requirement for the registrar of a court to refer unpaid court imposed fines to the State Debt Recovery Office for the making of a court fine enforcement order in circumstances where the court uses an automated electronic system for such referrals.