

Passed by both Houses



New South Wales

Courts and Crimes Legislation Amendment Bill 2012

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2012*



New South Wales

Courts and Crimes Legislation Amendment Bill 2012

Act No , 2012

An Act to make miscellaneous amendments to legislation relating to crimes and court proceedings, the Director of Public Prosecutions and fine enforcement.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts and Crimes Legislation Amendment Act 2012*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of legislation

1.1 Criminal Procedure Act 1986 No 209

[1] Section 267 Maximum penalties for Table 1 offences

Insert “, subject to this section,” after “offence is” in section 267 (3).

[2] Section 267 (4)

Omit the subsection.

[3] Section 267 (4A)

Omit “12 months”. Insert instead “2 years”.

[4] Section 268 Maximum penalties for Table 2 offences

Omit section 268 (2). Insert instead:

- (2) The maximum fine that the Local Court may impose for the following offences is:
 - (a) for an offence under section 35A (2), 49A, 56, 58, 59, 59A, 60 (1), 60A (1), 60B, 60C, 60E (1) and (4), 61, 61L, 61N or 61O (1) or (1A) of the *Crimes Act 1900*—50 penalty units,
 - (b) for an offence listed in Part 2 or 3 of Table 2 to Schedule 1 (other than an offence under section 154A of the *Crimes Act 1900*):
 - (i) 50 penalty units, or
 - (ii) if the value of any property, amount of money or reward concerned does not exceed \$2,000—20 penalty units,
 - (c) for an offence under section 154A of the *Crimes Act 1900*—50 penalty units,
 - (d) for an offence under section 93G, 93H or 93I of the *Crimes Act 1900*—50 penalty units,
 - (e) for an offence under section 7, 7A, 36, 43, 44A, 50, 50AA, 50A (1), 51 (1) or (2), 51A, 51BA, 51D (1), 51E, 58 (2), 62, 63, 64, 66, 70, 71A, 72 (1) or 74 of the *Firearms Act 1996*—50 penalty units,
 - (f) for an offence under section 7, 20, 23 (1), 23A (1), 25A (1), 31 or 34 of the *Weapons Prohibition Act 1998*—100 penalty units,

- (g) for an offence under section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* or section 545AB or 562AB of the *Crimes Act 1900*—50 penalty units,
 - (h) for an offence under section 100 (1) of the *Rural Fires Act 1997*—100 penalty units,
 - (i) for an offence under section 578C (2A) of the *Crimes Act 1900*—in the case of an individual, 100 penalty units or, in the case of a corporation, 200 penalty units,
 - (j) for an offence under section 10 or 20 of the *Liens on Crops and Wool and Stock Mortgages Act 1898*—50 penalty units,
 - (k) for an offence under Part 2 or 5 (other than section 40 (2)) of the *Surveillance Devices Act 2007*—in the case of an individual, 100 penalty units or, in the case of a corporation, 200 penalty units,
 - (l) for an offence under section 17 or 18 of the *Child Protection (Offenders Registration) Act 2000*—100 penalty units,
 - (m) for an offence under section 65 of the *Electricity Supply Act 1995*—100 penalty units,
 - (n) for an offence under section 66 of the *Gas Supply Act 1996*—100 penalty units.
- (2AA) A fine may be imposed as referred to in subsection (2) for an offence in addition to or instead of any term of imprisonment that may be imposed by law for the offence.

[5] Section 289A Definitions

Omit the definition of *authorised analyst*.

[6] Section 289A

Insert in alphabetical order:

authorised classifier means any person, or person of a class, prescribed by the regulations for the purposes of this definition.

seized material, in relation to proceedings for a child abuse material offence, means material:

- (a) that came into the possession of a police officer in the course of the exercise of functions as a police officer, and
- (b) some of which is alleged child abuse material that is the subject of the proceedings.

[7] Section 289B Use of random sample evidence in child abuse material cases

Omit section 289B (1). Insert instead:

- (1) An authorised classifier may, in connection with any proceedings for a child abuse material offence, conduct an examination of a random sample of seized material.

[8] Section 289B (2), (3), (5) and (8)

Omit “authorised analyst” wherever occurring.

Insert instead “authorised classifier”.

[9] Section 289B (4)

Omit the subsection. Insert instead:

- (4) A certificate of an authorised classifier, that certifies any of the following matters, is admissible in proceedings for a child abuse material offence as evidence of the matters certified:
 - (a) that the authorised classifier conducted an examination of a random sample of seized material,
 - (b) the findings of the authorised classifier as to the nature and content of the random sample.

[10] Section 289B (6)

Omit “child abuse material or alleged child abuse material the subject of the proceedings concerned”.

Insert instead “seized material”.

[11] Section 299B Determining if there is a protected confidence

Insert after section 299B (4):

- (5) This section has effect despite sections 297 and 298.

[12] Section 305A Subpoenas for production of counselling communications

Insert “requiring the production of a document recording a counselling communication (within the meaning of section 296)” after “service of subpoenas”.

[13] Section 305A

Omit “involving a prescribed sexual offence”.

[14] Schedule 1 Indictable offences triable summarily

Insert after clause 18 in Table 1:

18AA Conveyancers Licensing Act 2003

An offence under section 152 of the *Conveyancers Licensing Act 2003* where the amount of money in respect of which the offence is charged exceeds \$5,000 or an offence under section 153 of that Act where the account in respect of which the offence is charged relates to an amount that exceeds \$5,000.

[15] Schedule 1, Table 1

Insert after clause 23A:

23AAA Property, Stock and Business Agents Act 2002

An offence under section 211 of the *Property, Stock and Business Agents Act 2002* where the amount of money in respect of which the offence is charged exceeds \$5,000 or an offence under section 212 of that Act where the account in respect of which the offence is charged relates to an amount that exceeds \$5,000.

[16] Schedule 1, Table 2

Insert after clause 10C:

10D Conveyancers Licensing Act 2003

An offence under section 152 of the *Conveyancers Licensing Act 2003* where the amount of money in respect of which the offence is charged does not exceed \$5,000 or an offence under section 153 of that Act where the account in respect of which the offence is charged relates to an amount that does not exceed \$5,000.

10E Property, Stock and Business Agents Act 2002

An offence under section 211 of the *Property, Stock and Business Agents Act 2002* where the amount of money in respect of which the offence is charged does not exceed \$5,000 or an offence under section 212 of that Act where the account in respect of which the offence is charged relates to an amount that does not exceed \$5,000.

[17] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts and Crimes Legislation Amendment Act 2012

[18] Schedule 2

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of
Schedule 1.1 to Courts and Crimes
Legislation Amendment Act 2012**

Changes in respect of Schedule 1 offences

- (1) An amendment made to section 267 or 268 by the *Courts and Crimes Legislation Amendment Act 2012* applies only in respect of an offence that is committed, or alleged to have been committed, on or after the commencement of the amendment.
- (2) An amendment made to Schedule 1 by the *Courts and Crimes Legislation Amendment Act 2012* extends to an offence that was committed, or alleged to have been committed, before the commencement of the amendment unless the accused person has been committed for trial or sentence before that commencement.

Use of random sample evidence

- (1) The amendments made to Part 4A of Chapter 6 by the *Courts and Crimes Legislation Amendment Act 2012* extend to proceedings instituted or partly heard before the commencement of the amendments, which were not finally disposed of before that commencement.
- (2) Accordingly, that Part as so amended extends to offences under Division 15A of Part 3 of the *Crimes Act 1900* alleged to have been committed before the commencement of the amendments to Part 4A of Chapter 6.

1.2 Criminal Procedure Regulation 2010

Clause 27A

Insert after clause 27:

27A Authorised classifiers

For the purposes of the definition of *authorised classifier* in section 289A of the Act, 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 are prescribed as authorised classifiers.

1.3 Director of Public Prosecutions Act 1986 No 207

[1] Section 36 Savings and transitional provisions

Insert after section 36 (8):

- (9) The amendments made to this Act by the *Courts and Crimes Legislation Amendment Act 2012*:
- (a) extend to the person holding the office of Director immediately before the day on which the Bill for the *Courts and Crimes Legislation Amendment Act 2012* was first introduced into Parliament, and
 - (b) do not apply to or in respect of any person who ceased to hold office as Director before that day.

[2] Section 37 Regulations

Insert at the end of section 37 (3):

Courts and Crimes Legislation Amendment Act 2012

[3] Schedule 1 Provisions relating to Senior Officers

Omit clause 10 (1) (a) and (b). Insert instead:

- (a) section 3 of that Act applies to a person who vacated the office of Director under clause 4 (1) (c) after serving as Director for not less than 5 years, and
- (b) section 4 of that Act applies to a person who ceased to hold office as Director after having attained the age of 60 years and serving as Director for not less than 10 years as if a reference to having attained the age of 72 years and retired were a reference to having vacated office under clause 4 (1) (c), and
- (c) section 5 of that Act applies to a person who held office as Director as if a reference in section 5 (2) to having attained the age of 72 years and then retired were a reference to having vacated office under clause 4 (1) (c) (regardless of whether the person's term of office would have expired before the person could have attained the age of 72 years), and
- (d) section 6 of that Act applies to a person who died while holding office as Director as if a reference in section 6 (5) to having attained the age of 72 years and then retired and died were a reference to having vacated office under clause 4 (1) (c) and died (regardless of whether the

person's term of office would have expired before the person could have attained the age of 72 years).

[4] Schedule 1, clause 10 (6), definition of "superannuation scheme"

Insert in alphabetical order:

superannuation scheme has the same meaning as *STC fund* or *STC scheme* has in the *Superannuation Administration Act 1996*.

1.4 Fines Act 1996 No 99

Section 13 Referral for a court fine enforcement order

Insert after section 13 (2):

- (3) Subsection (1) (a) does not apply to a court that uses an automated electronic system for the referral of unpaid court imposed fines to the State Debt Recovery Office.