



New South Wales

Justice Legislation Amendment Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make minor amendments to the following Acts within, or with provisions relating to matters within, the Justice portfolio:

- (a) the *Bail Act 2013*,
- (b) the *Children (Criminal Proceedings) Act 1987*,
- (c) the *Confiscation of Proceeds of Crime Act 1989*,
- (d) the *Court Security Act 2005*,
- (e) the *Crimes Act 1900*,
- (f) the *Crimes (Sentencing Procedure) Act 1999*,
- (g) the *Criminal Appeal Act 1912*,
- (h) the *Criminal Assets Recovery Act 1990*,
- (i) the *Criminal Procedure Act 1986*,
- (j) the *Mental Health (Forensic Provisions) Act 1990*,
- (k) the *Surveillance Devices Act 2007*,
- (l) the *Terrorism (Police Powers) Act 2002*.

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, except the amendments to the *Mental Health (Forensic Provisions) Act 1990* which will commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Acts

Schedule 1.1 amends the *Bail Act 2013* to provide that the show cause requirement under that Act, which currently applies to a serious indictable offence under the *Firearms Act 1996* that involves acquiring, supplying or manufacturing a pistol or prohibited firearm, will also apply to a serious indictable offence under that Act that involves:

- (a) giving possession of such a weapon, or
- (b) acquiring, supplying, manufacturing or giving possession of a firearm part that relates solely to a prohibited firearm.

Schedule 1.2 amends the *Children (Criminal Proceedings) Act 1987* to enable the Children's Court, when committing to another court a person who is charged with an indictable offence or serious children's indictable offence for trial or sentence, to also transfer any back up offence or related offence with which the person has been charged. In such circumstances, the prosecutor must produce to the Children's Court a certificate specifying each back up or related offence.

Schedule 1.3 amends the *Confiscation of Proceeds of Crime Act 1989*:

- (a) to provide that, if a person has been convicted, whether summarily or on indictment, of an offence by a court, an application for a forfeiture order or pecuniary penalty order under that Act is to be made within 6 months from the day on which the person was sentenced rather than the day on which the person was convicted, and
- (b) to provide for a savings and transitional provision consequential on the proposed amendment described in paragraph (a), and
- (c) to insert explanatory notes to assist in the interpretation of provisions relating to determining the value or benefit that a person derives from a serious offence, including a drug trafficking offence, and
- (d) to update references to a Commonwealth Act.

Schedule 1.4 amends the *Court Security Act 2005* to provide that the maximum penalty for a person possessing a knife, without reasonable excuse, in court premises is the same maximum penalty for a person having custody, without reasonable excuse, of a knife in a public place or school under the *Summary Offences Act 1988*. The maximum penalty for such an offence is 20 penalty units (\$2,200) or imprisonment for 2 years (or both).

Schedule 1.5 amends the *Crimes Act 1900*:

- (a) to clarify that petrol is a destructive or explosive substance for the purpose of the offence under section 47 of that Act that relates to putting or laying at any place, or casting or throwing at, or upon, or otherwise applying to, any person under such substance, and
- (b) to allow an offence under section 193C (2) of the *Crimes Act 1900* (dealing with property suspected of being proceeds of crime with a value less than \$100,000) to be the subject of an alternative verdict in a trial for an offence under section 193C (1) of that Act (dealing with property suspected of being proceeds of crime with a value of \$100,000 or more).

Schedule 1.6 amends the *Crimes (Sentencing Procedure) Act 1999* to provide that in proceedings relating to prescribed sexual offences:

- (a) a victim, or a member of the immediate family, or other representative, of the victim, is entitled to read out a victim impact statement in camera, unless the court otherwise directs, and
- (b) a victim to whom the statement relates is entitled to have a person chosen by the victim, such as a parent, guardian, relative, friend or other support person, to be present near the victim when the statement is read out.

Schedule 1.7 amends the *Criminal Appeal Act 1912* to provide that the Court of Criminal Appeal may vacate a determination made by the Supreme Court in its summary jurisdiction and order a new trial in such manner as the Court of Criminal Appeal thinks fit.

Schedule 1.8 amends the *Criminal Assets Recovery Act 1990*:

- (a) to include the offence under section 23A (Offences with respect to enhanced indoor cultivation of prohibited plants in presence of children) of the *Drug Misuse and Trafficking Act 1985* as a drug trafficking offence for the purposes of the *Criminal Assets Recovery Act 1990*, and
- (b) to enable the Supreme Court, at any time when a restraining order is in force under Part 2 of that Act, to order the NSW Trustee and Guardian to take control of some or all of the interests in property that are interests to which the restraining order applies.

Schedule 1.9 amends the *Criminal Procedure Act 1986* to provide that, under the child sexual offence evidence pilot scheme, evidence is to be given, subject to any contrary order of the District Court, at a pre-recorded evidence hearing if the witness is less than 16 years of age when the accused person was committed for trial or sentence rather than when the evidence was given, as is currently the case.

Schedule 1.10 amends the *Mental Health (Forensic Provisions) Act 1990* to allow a Magistrate, in the case of a defendant who has a cognitive impairment, to dismiss the charge and discharge the defendant on the condition that the defendant receives assessment or treatment of, or support for, the defendant's cognitive impairment. **Cognitive impairment** is defined to mean ongoing impairment of a person's comprehension, reasoning, adaptive functioning, judgment, learning or memory that materially affects the person's ability to function in daily life and is the result of damage to, or dysfunction, developmental delay or deterioration of, the person's brain or mind, and includes (without limitation) any of the following:

- (a) intellectual disability,
- (b) borderline intellectual functioning,
- (c) dementia,
- (d) acquired brain injury,
- (e) drug or alcohol related brain damage, including foetal alcohol spectrum disorder,
- (f) autism spectrum disorder.

Schedule 1.11 amends the *Surveillance Devices Act 2007* to update provisions relating to the service of documents and notices under that Act.

Schedule 1.12 amends the *Terrorism (Police Powers) Act 2002* to update provisions relating to the conduct of personal searches by a police officer authorised to search a person under that Act in order to align those provisions with similar provisions under Part 4 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.