



New South Wales

Justice Legislation Amendment Bill (No 2) 2018

Explanatory note

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

Overview of Bill

The object of this Bill is to amend legislation relating to courts and crimes and related matters, including as follows:

- (a) to amend the *Criminal Procedure Act 1986*, including:
 - (i) to restrict an accused person's access to terrorism evidence in criminal proceedings, and
 - (ii) to make a child or parent of an accused person compellable to give evidence in proceedings for a domestic violence or child assault offence (except where the accused person is under the age of 18 years), and
 - (iii) to prevent a complainant in proceedings for a sexual assault offence being subpoenaed or otherwise compelled to disclose the identity of the complainant's counsellor, and
 - (iv) to provide for the use of the NSW Police Force exhibits management system in relation to exhibits used as evidence in criminal proceedings,
- (b) to amend the *Law Enforcement (Powers and Responsibilities) Act 2002*, including:
 - (i) to allow a police officer who reasonably suspects that a person in a public place or school has a knife or other dangerous implement unlawfully in the person's possession to stop, search and detain the person, rather than requiring the person to submit to a search, and
 - (ii) to allow a police officer to seize any knife or other dangerous implement found during such a search, rather than requiring the person to produce the knife or implement, and

- (iii) to clarify that a police officer is not required to repeat a warning relating to a move on direction to each person in a group in a public place if the warning and direction are given to the whole group, and
 - (iv) to provide that any time taken for a person arrested for the offence of assault causing death to undertake a breath test or breath analysis or to provide a blood or urine sample is not to be included in the 6-hour investigation period during which the person can be detained by police,
- (c) to amend the *Mental Health (Forensic Provisions) Act 1990*, including:
 - (i) to provide that correctional officers and juvenile justice officers may exercise the same functions as they have in respect of inmates and detainees when transporting a defendant to a mental health facility for a mental health assessment, including by using reasonable force, and
 - (ii) to enable a defendant who has been detained for a mental health assessment to be taken to a police station after the assessment for a police officer to decide whether or not to grant the defendant bail, instead of being taken before a Magistrate,
- (d) to amend the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* (an Act that, on its commencement, will abolish certain sentencing options and establish new ones), including:
 - (i) to specify when an assessment report (being a report about an offender prepared by a community corrections officer or juvenile justice officer) is required or may be requested by a sentencing court, and
 - (ii) to enable the regulations to prescribe the maximum number of hours of community service work that may be imposed as a condition of an intensive correction order or community correction order, and
 - (iii) to enable the regulations to prescribe the minimum period that a community service work condition can be in force in relation to the number of hours of community service work specified in the condition, and
 - (iv) to prevent an intensive correction order being made, or a supervision or community service work condition being imposed, in respect of an offender who resides outside New South Wales, unless the offender resides in an approved State or Territory, and
 - (v) to provide that, subject to arrangements between Juvenile Justice NSW and Corrective Services NSW, the supervision of an offender in the community may be carried out by a community corrections officer or a juvenile justice officer without an application being made to the sentencing court to vary the order,
- (e) to amend the *Terrorism (High Risk Offenders) Act 2017*, including:
 - (i) to make further provision for dealing with information that is terrorism intelligence in Supreme Court proceedings under the Act, and
 - (ii) to allow information or documents to be withdrawn from consideration by the Court if the Court is not satisfied that they are terrorism intelligence or subject to public interest immunity, and
 - (iii) to make it clear that terrorism intelligence includes information that may adversely affect the operations of intelligence agencies, and
 - (iv) to make it clear that the Act does not abrogate public interest immunity,
- (f) to amend the *Government Information (Public Access) Act 2009* to provide for a conclusive presumption under the Act that there is an overriding public interest against disclosure of information contained in any document prepared for the High Risk Offenders Assessment Committee established by the *Crimes (High Risk Offenders) Act 2006*,
- (g) to amend the *Crimes Act 1900*, in relation to offences relating to child abuse material, voyeurism and recording or distributing intimate images, to clarify that the private parts of a female person, or a transgender or intersex person identifying as female, include the breasts whether or not the breasts are sexually developed,

- (h) to amend the *Crimes (Sentencing Procedure) Act 1999* to include a person working at a hospital as an example of a victim who is vulnerable because of the victim's occupation. A vulnerable victim is an aggravating factor to be taken into account in sentencing,
- (i) to amend the *Children (Criminal Proceedings) Act 1987* to provide that, subject to arrangements between Juvenile Justice NSW and Corrective Services NSW, the supervision of a child or young person who is on a good behaviour bond or probation may be carried out by a juvenile justice officer or a community corrections officer without an application being made to the Children's Court to vary the bond or probation,
- (j) to amend the *Succession Act 2006* to enable the Supreme Court:
 - (i) to grant interim administration of an estate, while an application for a family provision order or notional estate order is pending, to any person the Supreme Court considers appropriate, rather than only to the person applying for the order, and
 - (ii) to decide the appropriate level of representation for interested parties in proceedings relating to an application to make, alter or revoke a will of a person who lacks testamentary capacity,
- (k) to amend the *Supreme Court Act 1970* to clarify the powers of the Court of Appeal, when quashing a determination of a lower court, to make an order finally disposing of a matter rather than remitting the matter to the lower court,
- (l) to amend the *Criminal Assets Recovery Act 1990* to enable the Supreme Court to make a restraining order in respect of property belonging to a defendant that the defendant should have disclosed during proceedings relating to an assets forfeiture order, proceeds assessment order or unexplained wealth order against the defendant's property,
- (m) to amend the *Court Suppression and Non-publication Orders Act 2010* to provide that a court may make a suppression order or non-publication order to avoid causing undue distress or embarrassment to a defendant in criminal proceedings involving an offence of a sexual nature only if there are exceptional circumstances,
- (n) to amend the *Crimes (Domestic and Personal Violence) Act 2007* to provide that proceedings relating to an apprehended violence order against a child are to be held in closed court,
- (o) to amend the *Guardianship Act 1987* to provide that the Public Guardian and the NSW Trustee and Guardian are parties to proceedings in the NSW Civil and Administrative Tribunal (*NCAT*) relating to a review of an appointment of an enduring guardian and that the Public Guardian is a party to *NCAT* proceedings relating to a review of a guardianship order,
- (p) to amend the *Powers of Attorney Act 2003* to provide that the NSW Trustee and Guardian is a party to proceedings in the Supreme Court or *NCAT* relating to a review of an enduring power of attorney,
- (q) to amend the *Young Offenders Act 1997* to allow statistical information about warnings, cautions and conferences given to children under the Act to be disclosed to the Attorney General and certain persons employed in the Department of Justice and to be included in reports to Parliament,
- (r) to make other minor, consequential and law revision amendments.

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.

Clause 3 makes it clear that the explanatory notes contained in Schedules 1 and 2 do not form part of the proposed Act.

Schedule 1 Principal amendments

Schedule 1 makes amendments to the following Acts:

- (a) *Children (Criminal Proceedings) Act 1987*,
- (b) *Children (Detention Centres) Act 1987*,
- (c) *Court Suppression and Non-publication Orders Act 2010*,
- (d) *Crimes Act 1900*,
- (e) *Crimes (Administration of Sentences) Act 1999*,
- (f) *Crimes (Domestic and Personal Violence) Act 2007*,
- (g) *Crimes (Sentencing Procedure) Act 1999*,
- (h) *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017*,
- (i) *Criminal Assets Recovery Act 1990*,
- (j) *Criminal Procedure Act 1986*,
- (k) *Criminal Records Act 1991*,
- (l) *Drug Misuse and Trafficking Act 1985*,
- (m) *Government Information (Public Access) Act 2009*,
- (n) *Guardianship Act 1987*,
- (o) *Industrial Relations Act 1996*,
- (p) *Land and Environment Court Act 1979*,
- (q) *Law Enforcement (Powers and Responsibilities) Act 2002*,
- (r) *Mental Health (Forensic Provisions) Act 1990*,
- (s) *Powers of Attorney Act 2003*,
- (t) *Succession Act 2006*,
- (u) *Supreme Court Act 1970*,
- (v) *Terrorism (High Risk Offenders) Act 2017*,
- (w) *Young Offenders Act 1997*.

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

Schedule 2 Consequential and statute law revision amendments

Schedule 2 makes consequential and statute law revision amendments to the following Acts and Regulations:

- (a) *Children (Community Service Orders) Act 1987*,
- (b) *Court Security Act 2005*,
- (c) *Crimes Act 1900*,
- (d) *Crimes (Domestic and Personal Violence) Act 2007*,
- (e) *Crimes (Forensic Procedures) Act 2000*,
- (f) *Criminal Procedure Act 1986*,
- (g) *Criminal Procedure Regulation 2017*,
- (h) *Evidence Act 1995*,
- (i) *Gaming and Liquor Administration Act 2007*,

- (j) *Law Enforcement (Powers and Responsibilities) Act 2002,*
- (k) *Law Enforcement (Powers and Responsibilities) Regulation 2016,*
- (l) *Local Government Act 1993,*
- (m) *Mental Health (Forensic Provisions) Regulation 2017.*

The amendments to each Act and Regulation are explained in detail in the explanatory note relating to the Act or Regulation concerned set out in Schedule 2.