



New South Wales

# Crimes Legislation Amendment Bill 2021

## Explanatory note

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 *Crimes Act 1900* to increase the time limit for commencing proceedings for an offence against the *Crimes Act 1900*, section 308H to 3 years from the date on which the offence was alleged to have been committed.
- (b) to amend the *Crimes (High Risk Offenders) Act 2006* to—
  - (i) provide that—
    - (A) the minutes or deliberations of the High Risk Offenders Assessment Committee and its sub-committees are not admissible in legal proceedings, and
    - (B) a person cannot be compelled in any proceedings to produce that material, and
  - (ii) classify certain offences under the *Criminal Code Act 1995* of the Commonwealth, relating to the following, as serious sex offences or offences of a sexual nature—
    - (A) grooming a person to make it easier to engage in sexual activity with, or procure, a child,
    - (B) the use of electronic services for child abuse material.
- (c) to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to—
  - (i) provide that an offence under the *Crimes Act 1900*, section 308H relating to the unauthorised access to or modification of restricted data held in a computer, or under section 308I relating to the unauthorised impairment of data held in a computer disk, credit card or other device, is a searchable offence in relation to a search warrant, and

- (ii) enable particular warrants to be applied for by email for a trial period of 2 years, and
- (iii) allow any police officer to take a person who has been arrested under the *Law Enforcement (Powers and Responsibilities) Act 2002*, section 99 before an authorised officer to be dealt with according to law,
- (d) to amend the *Surveillance Devices Act 2007* to clarify the requirements for applying for a surveillance device warrant,
- (e) to amend the *Terrorism (High Risk Offenders) Act 2017* to provide that—
  - (i) the minutes or deliberations of the High Risk Offenders Assessment Committee and its sub-committees are not admissible in legal proceedings, and
  - (ii) a person cannot be compelled in any proceedings to produce that material,
- (f) to amend the *Terrorism (Police Powers) Act 2002* to extend the operation of particular preventative detention orders and prohibited contact orders, and allow applications for preventative detention orders and prohibited contact orders, until 16 December 2023.

## 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 Amendments

**Schedule 1.1** amends the *Crimes Act 1900*, section 308H to increase the time limit for commencing proceedings for an offence relating to the unauthorised access to or modification of restricted data held in a computer from 12 months to 3 years from the date on which the offence was alleged to have been committed.

**Schedule 1.2[1]** amends the *Crimes (High Risk Offenders) Act 2006*, section 5(1)(b4) and (b5) to classify certain offences under the *Criminal Code Act 1995* of the Commonwealth, relating to the following, as serious sex offences—

- (a) grooming a person to make it easier to engage in sexual activity with, or procure, a child,
- (b) the use of electronic services for child abuse material.

**Schedule 1.2[2]** amends the *Crimes (High Risk Offenders) Act 2006*, section 5(2)(h3) and (h4) to classify certain offences under the *Criminal Code Act 1995* of the Commonwealth, relating to the possession or control of child abuse material, as offences of a sexual nature. The amendment also omits references to repealed provisions of the Commonwealth Criminal Code. **Schedule 1.2[4]** inserts a consequential savings provision.

**Schedule 1.2[3]** inserts proposed section 28B into the *Crimes (High Risk Offenders) Act 2006* to provide that—

- (a) the minutes or deliberations of the High Risk Offenders Assessment Committee and its sub-committees are not admissible in legal proceedings, and
- (b) a person cannot be compelled in any proceedings to produce that material.

**Schedule 1.3[1]–[3]** amend the definition of *searchable offence* under the *Law Enforcement (Powers and Responsibilities) Act 2002*, section 46A to include an offence under the *Crimes Act 1900*, section 308H relating to the unauthorised access to or modification of restricted data held in a computer or under section 308I relating to the unauthorised impairment of data held in a computer disk, credit card or other device.

**Schedule 1.3[4]** inserts proposed section 60A into the *Law Enforcement (Powers and Responsibilities) Act 2002* to enable applications for warrants to be made by email for a trial period of 2 years.

**Schedule 1.3[5]** amends the *Law Enforcement (Powers and Responsibilities) Act 2002*, section 99 to clarify that any police officer may take a person who has been arrested under that section before an authorised officer to be dealt with according to law. **Schedule 1.3[6]** makes a consequential amendment.

**Schedule 1.4[2]** amends the *Surveillance Devices Act 2007*, section 17 to provide that an application for a surveillance device warrant must be in the form of an affidavit, and clarifies the information that must be included in the affidavit. The amendment also provides that an urgent application may be made in a form other than an affidavit, and clarifies the information that must be included in an urgent application. **Schedule 1.4[1]**, **[3]** and **[4]** make consequential amendments.

**Schedule 1.5** inserts proposed section 71B into the *Terrorism (High Risk Offenders) Act 2017* to provide that—

- (a) the minutes or deliberations of the High Risk Offenders Assessment Committee and its sub-committees are not admissible in legal proceedings, and
- (b) a person cannot be compelled in any proceedings to produce that material.

**Schedule 1.6** amends the *Terrorism (Police Powers) Act 2002*, section 26ZS to—

- (a) extend the operation of particular preventative detention orders and prohibited contact orders until 16 December 2023, and
- (b) allow applications for preventative detention orders and prohibited contact orders until 16 December 2023.



New South Wales

# Crimes Legislation Amendment Bill 2021

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New South Wales

# Crimes Legislation Amendment Bill 2021

No. , 2021

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## **A Bill for**

An Act to amend the *Crimes Act 1900*, the *Crimes (High Risk Offenders) Act 2006*, the *Law Enforcement (Powers and Responsibilities) Act 2002*, the *Surveillance Devices Act 2007*, the *Terrorism (High Risk Offenders) Act 2017* and the *Terrorism (Police Powers) Act 2002* for particular purposes.

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**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Crimes Legislation Amendment Act 2021*.

3

**2 Commencement**

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

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<b>Schedule 1</b>	<b>Amendments</b>	1
<b>1.1</b>	<b>Crimes Act 1900 No 40</b>	2
	<b>Section 308H Unauthorised access to or modification of restricted data held in computer (summary offence)</b>	3
	Omit “not later than 12 months from when” from section 308H(4).	4
	Insert instead “within 3 years of the date on which”.	5
<b>1.2</b>	<b>Crimes (High Risk Offenders) Act 2006 No 7</b>	7
<b>[1]</b>	<b>Section 5 Definitions of “serious sex offence” and “offence of a sexual nature”</b>	8
	Omit section 5(1)(b4) and (b5). Insert instead—	9
	(b4) an offence against the Commonwealth Criminal Code, section 272.8, 272.10, 272.11, 272.12, 272.13, 272.14, 272.15, 272.15A, 272.19 or 273.7,	10
		11
		12
	(b5) an offence against the Commonwealth Criminal Code, section 471.22, 471.24, 471.25, 471.25A, 474.23A, 474.24A, 474.25B, 474.26, 474.27 or 474.27AA,	13
		14
		15
<b>[2]</b>	<b>Section 5(2)(h3) and (h4)</b>	16
	Omit the paragraphs. Insert instead—	17
	(h3) an offence against the Commonwealth Criminal Code, section 272.9, 272.18, 272.20, 273.6 or 273A.1,	18
		19
	(h4) an offence against the Commonwealth Criminal Code, section 471.19, 471.20, 471.26, 474.22, 474.22A, 474.23, 474.25A or 474.27A,	20
		21
<b>[3]</b>	<b>Section 28B</b>	22
	Insert after section 28A—	23
<b>28B</b>	<b>Protected records inadmissible</b>	24
(1)	A protected record, or evidence of the contents of a protected record, is not admissible in proceedings before a court, tribunal, authority or other body or person.	25
		26
		27
(2)	A person cannot be compelled in the proceedings to—	28
(a)	produce a protected record, or a copy of or extract from a protected record, or	29
		30
(b)	disclose or give evidence of the contents of a protected record.	31
(3)	In this section—	32
	<i>protected record</i> means any of the following—	33
(a)	the minutes of a meeting of the Assessment Committee or a sub-committee, or a copy of or extract from the minutes,	34
		35
(b)	another record of the deliberations of the Assessment Committee or a sub-committee, or a copy of or extract from the record.	36
		37
	<i>sub-committee</i> means a sub-committee formed by the Assessment Committee under section 24AD.	38
		39

<b>[4] Schedule 2 Savings, transitional and other provisions</b>	1
Insert at the end of the Schedule—	2
<b>Part 11 Provisions consequent on enactment of Crimes Legislation Amendment Act 2021</b>	3
	4
<b>20 Definition</b>	5
In this Part—	6
<i>amending Act</i> means the <i>Crimes Legislation Amendment Act 2021</i> .	7
<b>21 Extension of scheme</b>	8
The amendments made to this Act by the amending Act extend—	9
(a) to offences committed before the date of commencement of the amendments, and	10
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(b) to persons serving a sentence of imprisonment that commenced before the date of commencement of the amendments, and	12
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(c) to persons subject to an extended supervision order, interim supervision order, continuing detention order or interim detention order immediately before the date of commencement of the amendments.	14
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	16
<b>1.3 Law Enforcement (Powers and Responsibilities) Act 2002 No 103</b>	17
<b>[1] Section 46A Searchable offences</b>	18
Omit “and” from the end of section 46A(1)(a)(v).	19
<b>[2] Section 46A(1)(a)(vi)</b>	20
Insert after section 46A(1)(a)(v)—	21
(vi) a computer offence, and	22
<b>[3] Section 46A(2)</b>	23
Insert in alphabetical order—	24
<i>computer offence</i> means an offence under the <i>Crimes Act 1900</i> , Part 6.	25
<b>[4] Section 60A</b>	26
Insert after section 60—	27
<b>60A Applications for warrants by email</b>	28
(1) Despite the requirement under section 60(1) that an application for a warrant be made in person, a person may apply for a warrant—	29
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(a) by email, or	31
(b) in another way prescribed by the regulations for the purposes of this section.	32
	33
(2) The eligible issuing officer must not issue the warrant unless the information given by the applicant in, or in relation to, the application is verified—	34
	35
(a) before the eligible issuing officer on oath or affirmation, or	36
(b) by affidavit.	37
(3) The requirement under subsection (2) for information to be verified before an eligible issuing officer is taken to be satisfied if—	38
	39



(a)	the applicant appears before the issuing officer by audio visual link or telephone, and	1 2
(b)	the issuing officer administers the oath or affirmation by the same means.	3 4
(4)	If the eligible issuing officer issues the warrant on an application made by email, the issuing officer may—	5 6
(a)	email the signed warrant to the applicant, and	7
(b)	email the signed occupier’s notice to the applicant.	8
(5)	If the eligible issuing officer emails the signed warrant or signed occupier’s notice to the applicant, a person executing the warrant may—	9 10
(a)	for the purposes of section 67—serve a copy of the signed occupier’s notice produced by the email transmission, and	11 12
(b)	for the purposes of section 69—produce a copy of the signed warrant produced by the email transmission.	13 14
(6)	This section does not apply to telephone warrants.	15
(7)	Despite section 59(2) and (3)—	16
(a)	this section does not apply to notices to produce documents issued under Division 3, and	17 18
(b)	subsections (4) and (5), to the extent that the subsections require or provide for occupier’s notices, do not apply to warrants issued under Part 6 or Part 11, Division 2.	19 20 21
(8)	Subsections (2)–(5) apply to detention warrants issued under Part 9.	22
(9)	This section is repealed at the beginning of the day that is 2 years after it commences.	23 24
<b>[5]</b>	<b>Section 99 Power of police officers to arrest without warrant</b>	25
	Omit section 99(3). Insert instead—	26
(3)	The arresting police officer or another police officer must, as soon as is reasonably practicable, take the person who has been arrested under this section before an authorised officer to be dealt with according to law.	27 28 29
	<b>Note—</b> A police officer may discontinue the arrest of a person at any time and without taking the arrested person before an authorised officer—see section 105.	30 31
<b>[6]</b>	<b>Section 99(7)</b>	32
	Insert after section 99(6)—	33
(7)	In this section—	34
	<i>arresting police officer</i> means the police officer arresting a person under this section.	35 36
<b>1.4</b>	<b>Surveillance Devices Act 2007 No 64</b>	37
<b>[1]</b>	<b>Section 4 Definitions</b>	38
	Insert in alphabetical order in section 4(1)—	39
	<i>surveillance device warrant particulars</i> —see section 20(1).	40
<b>[2]</b>	<b>Section 17 Application for a surveillance device warrant</b>	41
	Omit section 17(3)–(5). Insert instead—	42

(3)	The application must be in the form of an affidavit that—	1
(a)	includes the information required to complete the surveillance device warrant particulars, and	2 3
(b)	sets out the grounds on which the warrant is sought, and	4
(c)	sets out the details of any alternative means of obtaining the evidence or information sought under the warrant and the extent to which those means may assist or prejudice the investigation, and	5 6 7
(d)	states whether any attempts have been made to use an alternative means and, if so, the result of the attempts, and	8 9
(e)	sets out the details of any previous warrant or emergency authorisation sought or issued under this Act in relation to the relevant offence, and	10 11
(f)	as far as reasonably practicable, identifies persons who may be incidentally recorded by the surveillance device, and	12 13
(g)	includes any information known to the applicant that may be adverse to the warrant application or, if no adverse information is known, a statement to that effect.	14 15 16
(4)	The application may be made in a form other than an affidavit if the law enforcement officer believes that—	17 18
(a)	the immediate use of a surveillance device is necessary for a purpose referred to in subsection (1)(c) or (1A)(c), and	19 20
(b)	it is impracticable for the application to be prepared and sworn in the form of an affidavit for the purpose of making the application as required by subsection (3).	21 22 23
(5)	If subsection (4) applies, the applicant must—	24
(a)	provide the eligible Judge or eligible Magistrate with any information the eligible Judge or eligible Magistrate considers is reasonably practicable in the circumstances, and	25 26 27
(b)	within 72 hours after making the application, send a duly sworn affidavit that includes the information required under subsection (3) to the eligible Judge or eligible Magistrate, whether or not a warrant has been issued.	28 29 30 31
<b>[3]</b>	<b>Section 17(5A)</b>	32
	Omit “in subsections (3) and (3A)”. Insert instead “required under subsection (3)”.	33
<b>[4]</b>	<b>Schedule 1 Savings, transitional and other provisions</b>	34
	Insert at the end of the Schedule—	35
<b>Part 5</b>	<b>Provisions consequent on enactment of Crimes Legislation Amendment Act 2021</b>	36 37
<b>11</b>	<b>Definitions</b>	38
	In this Part—	39
	<i>amended</i> , in relation to a provision, means the provision as in force on and from the date this clause commences.	40 41
	<i>amending Act</i> means the <i>Crimes Legislation Amendment Act 2021</i> .	42
	<i>previous</i> , in relation to a provision, means the provision as in force before the date this clause commenced.	43 44

<b>12 Applications for surveillance device warrants made before commencement of Crimes Legislation Amendment Act 2021</b>	1 2
(1) This clause applies to an application for a surveillance device warrant made under section 17, but not decided, before the date this clause commenced.	3 4
(2) Despite the amending Act—	5
(a) amended section 17 does not apply in relation to the application, and	6
(b) previous section 17 continues to apply in relation to the application.	7
<b>1.5 Terrorism (High Risk Offenders) Act 2017 No 68</b>	8
<b>Section 71B</b>	9
Insert after section 71A—	10
<b>71B Protected records of HRO Assessment Committee inadmissible</b>	11
(1) A protected record, or evidence of the contents of a protected record, is not admissible in proceedings before a court, tribunal, authority or other body or person.	12 13 14
(2) A person cannot be compelled in the proceedings to—	15
(a) produce a protected record, or a copy of or extract from a protected record, or	16 17
(b) disclose or give evidence of the contents of a protected record.	18
(3) In this section—	19
<i>protected record</i> means any of the following—	20
(a) the minutes of a meeting of the HRO Assessment Committee or an HRO sub-committee, or a copy of or extract from the minutes,	21 22
(b) another record of the deliberations of the HRO Assessment Committee or an HRO sub-committee, or a copy of or extract from the record.	23 24
<i>HRO sub-committee</i> means a sub-committee formed by the HRO Assessment Committee under the <i>Crimes (High Risk Offenders) Act 2006</i> , section 24AD.	25 26
<b>1.6 Terrorism (Police Powers) Act 2002 No 115</b>	27
<b>Section 26ZS Sunset provision</b>	28
Omit “16 December 2021” wherever occurring. Insert instead “16 December 2023”.	29