



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.