

Criminal Legislation Amendment Bill 2009

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to legislation relating to crimes, criminal procedure and other matters.

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 Amendment of Acts

Schedule 1.1 [1] and [2] amend the *Child Protection (Offenders Registration) Act 2000* to specify 7 days as the period within which an initial report of the person's relevant personal information must be made to the Commissioner of Police, regardless of whether the person has previously been required to report. Currently the period is 7 days in the case of a person who becomes a registrable person for the first time and 14 or 28 days in the case of a person whose reporting obligations have expired or are suspended and who is then required to report because of a new offence or because the suspension is revoked. **Schedule 1.1 [3]** provides for transitional arrangements with respect to the proposed amendments.

Schedule 1.2 amends the *Confiscation of Proceeds of Crime Act 1989* to provide that an 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*, involving more than a small quantity of a prohibited plant within the meaning of that Act, is a drug trafficking offence for the purposes of the *Confiscation of Proceeds of Crime Act 1989*.

Schedule 1.3 [1] amends the *Crimes Act 1900* to include an additional circumstance of aggravation in respect of the offences of sexual intercourse with a child under the age of 10 and sexual intercourse with a child aged between 10 and 16 years. The additional circumstance of aggravation occurs if the alleged offender breaks and enters into any dwelling-house or other building with the intention of committing the offence or any other serious indictable offence.

Schedule 1.3 [2] provides for transitional arrangements with respect to the proposed amendments.

Schedule 1.4 [1] and [4] amend the *Crimes (Domestic and Personal Violence) Act 2007* to make it an offence to attempt to commit an offence under section 13 (1) or 14 (1) of that Act. Those sections create offences of stalking or intimidating another person with the intention of causing the other person to fear physical or mental harm (maximum penalty, imprisonment for 5 years or a fine of \$5,500, or both) and knowingly contravening a prohibition or restriction specified in an apprehended violence order (maximum penalty, imprisonment for 2 years or a fine of \$5,500, or both). A person who attempts to commit such an offence is liable to the same penalty as if the person had committed the offence itself. **Schedule 1.4 [2] and [3]** make consequential amendments.

Schedule 1.5 [1] removes an incorrect reference to a child under 10 from item 9B of the Table to Division 1A of Part 4 of the *Crimes (Sentencing Procedure) Act 1999*. That item provides for a standard non-parole period in relation to an offence against section 61M (2) of the *Crimes Act 1900*. That subsection, which deals with aggravated indecent assault, was recently amended by the *Crimes Amendment (Sexual Offences) Act 2008* so that the subsection now applies to persons under 16 years rather than to persons under 10 years of age.

Schedule 1.5 [2]–[5] amend the *Crimes (Sentencing Procedure) Act 1999* to increase the membership of the New South Wales Sentencing Council from 13 to 15 members. The two additional members are to be appointed by the Attorney General. One of the new members is to have expertise or experience in criminal law or sentencing and the other is to have academic or research expertise or experience of relevance to the functions of the Sentencing Council.

Schedule 1.6 amends the *Criminal Procedure Act 1986* to provide that the Ombudsman's report under section 344A of that Act is to be provided to the Attorney General and the Minister for Police by 31 August 2009 rather than 31 May 2009 as is currently the case. The report relates to the impact of penalty notices on Aboriginal and Torres Strait Islander communities.

Schedule 1.7 [1] amends the *Inclosed Lands Protection Act 1901* to omit a redundant provision.

Schedule 1.7 [2] amends the *Inclosed Lands Protection Act 1901* to remove the 2 month time limit for the commencement of criminal proceedings under that Act. Section 179 of the *Criminal Procedure Act 1986* will now apply in respect of any such proceedings requiring them to be commenced within 6 months after the offence is alleged to have been committed.

Schedule 1.7 [3] amends the *Inclosed Lands Protection Act 1901* to provide for particulars to be furnished to a defendant who is charged with an offence under that Act.

Schedule 1.7 [4] amends the *Inclosed Lands Protection Act 1901* to omit a redundant Schedule, to permit regulations of a savings and transitional nature to be made and to provide for transitional arrangements with respect to the amendments proposed to be made by Schedule 1.7 [2] and [3].

Schedule 1.8 [1] amends the *Law Enforcement (Powers and Responsibilities) Act 2002* to update a cross-reference to a renumbered provision.

Schedule 1.8 [2]–[4] and [6] make consequential amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* as a result of the repeal of the *Liquor Act 1982* and its replacement by the *Liquor Act 2007*.

Schedule 1.8 [5] amends section 198 of the *Law Enforcement (Powers and Responsibilities) Act 2002*. That section provides police officers with a power to give directions relating to the dispersal of groups of intoxicated persons in public places. The proposed amendment replaces the definition of **intoxicated person** (a person who appears to be seriously affected by alcohol or any drug) with a definition of **intoxicated** (a person is intoxicated if the person's speech, balance, co-ordination or behaviour is noticeably affected and it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of alcohol or any drug).

Schedule 1.9 makes an amendment to section 37 (b) of the *Mental Health (Forensic Provisions) Act 1990* as a consequence of amendments to that Act by the *Mental Health Act 2007*. Section 43 of the *Mental Health (Forensic Provisions) Act 1990* (which was inserted by the *Mental Health Legislation Amendment (Forensic Provisions) Act 2008*) provides that the Mental Health Review Tribunal must not make an order for the release of a forensic patient unless it is satisfied, on the evidence available to it, that the safety of the patient or any member of the public will not be seriously endangered by the patient's release.