



New South Wales

# Crimes Legislation Amendment Bill 1999

## 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 make it clear that certain offences relating to corruptly receiving commissions and other corrupt practices extend to members of local government councils,
- (b) to allow certain court officials to make an interim apprehended violence order when the complainant and the defendant both consent to the order being made, and to make it clear that courts may also make interim apprehended violence orders with consent,
- (c) to enable an authorised justice to issue a summons or warrant for a person who has been released by the Children's Court on condition that the person complies with an outcome plan and who has failed to comply with the outcome plan,

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Explanatory note

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- (d) to ensure that a record of an official warning given to a child cannot be tendered in criminal proceedings as part of the child's criminal history,
- (e) to make other minor miscellaneous 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 on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Children (Criminal Proceedings) Act 1987* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 2.

**Clause 5** is a formal provision giving effect to the amendments to the *Justices Act 1902* set out in Schedule 3.

**Clause 6** is a formal provision giving effect to the amendments to the *Young Offenders Act 1997* set out in Schedule 4.

## **Schedule 1 Amendment of Children (Criminal Proceedings) Act 1987**

At present an authorised justice may, on being given information on oath by a police officer or an authorised officer that a person has failed to comply with a condition of the person's recognizance or probation, issue a summons or warrant for the arrest of the person. The amendments ensure that any authorised justice may issue such a summons or warrant, whether or not the information concerned was sworn before that authorised justice. (See Schedule 1 [2])

The amendments also enable an authorised justice to issue a summons or warrant for the arrest of a person who has been released by the Children's Court on condition that the person complies with an outcome plan determined at conference under the *Young Offenders Act 1997* and who has failed to comply with the outcome plan. (See Schedule 1 [1], [3], [4], [5], [6] and [7]) A consequential amendment is made to the *Young Offenders Act 1997*. (See Schedule 4 [1])

## **Schedule 2 Amendment of Crimes Act 1900**

### **Corruptly receiving commissions and other corrupt practices**

Part 4A of the *Crimes Act 1900* sets out various offences relating to corrupt practices by agents, such as the offence of corruptly receiving a benefit as an inducement for doing or not doing something in relation to the affairs or business of the agent's principal. The amendments make it clear that a councillor (which means any person elected or appointed to civic office, including a mayor) is considered to be an agent in relation to the council to which he or she was elected or appointed. Accordingly, those offences will apply to councillors. (See Schedule 2 [3])

### **Apprehended violence orders made with consent**

At present a court may, on complaint, make an apprehended violence order without conducting a hearing into the matters alleged in the complaint if the court is satisfied that the parties concerned consent to the order being made. The amendments make it clear that a court may also make an interim apprehended violence order with the consent of the parties. The court is not to conduct a hearing in relation to the complaint if the order proposed to be made is an interim order and is consented to by the parties. (See Schedule 2 [5] and [6])

The amendments will also enable the clerk of a Local Court or the registrar of the Children's Court (referred to here as a clerk of a court) to make an interim apprehended violence order with the consent of the parties. (At present a clerk of a court can, with the consent of the parties, extend the period during which an interim apprehended violence order remains in force, but cannot make an interim apprehended violence order.) An interim apprehended violence order made by a clerk of a court will have the same effect as an interim apprehended violence order made by a court, and remains in force only until it is confirmed or revoked by a court. It will also be appealable in the same way as an order made by a Local Court or the Children's Court. (See Schedule 2 [7], [8], [9] and [10])

The registrar of the District Court will not be able to make an interim apprehended violence order or extend an interim apprehended violence order. (See Schedule 2 [4], [7] and [8]) At present the District Court may make an apprehended violence order only if a complaint for an apprehended violence order has been dismissed by a Local Court or the Children's Court.

### **Other amendments**

Section 77 of the *Crimes Act 1900* provides that consent is not a defence to certain sexual offences committed against children, except in limited circumstances. Consent is a defence if the child was over the age of 14 years at the time of the alleged offence and the person charged had reasonable cause to believe and did in fact believe that the child was of or above the age of 16 years. The amendment makes it clear that a child is considered to be over the age of 14 years when the child is of or above the age of 14 years. (See Schedule 2 [2])

Amendments are made to section 61O of the *Crimes Act 1900* (Aggravated act of indecency) so that the language used is consistent with that used in section 61N (Act of indecency). At present it is an offence for a person to commit an act of indecency with or towards a person or to incite a person to an act of indecency with or towards that or another person. The amendment makes it clear that the offence of aggravated act of indecency applies if a person incites another person to an act of indecency with *or towards* the person or another person in circumstances of aggravation (at present the offence refers only to acts of indecency with the person or another person). (See Schedule 2 [1])

### **Schedule 3 Amendment of Justices Act 1902**

The amendment makes it clear that the requirements relating to service of a brief of evidence under the *Justices Act 1902* apply to indictable offences dealt with summarily under Part 3 of the *Children (Criminal Proceedings) Act 1987*.

### **Schedule 4 Amendment of Young Offenders Act 1997**

The *Young Offenders Act 1997* allows a child who has committed or is alleged to have committed a summary offence covered by that Act to be dealt with by warning. An investigating official must make a record of the warning. The amendment provides that such a record is inadmissible in any proceedings before the Children's Court. (See Schedule 4 [2])





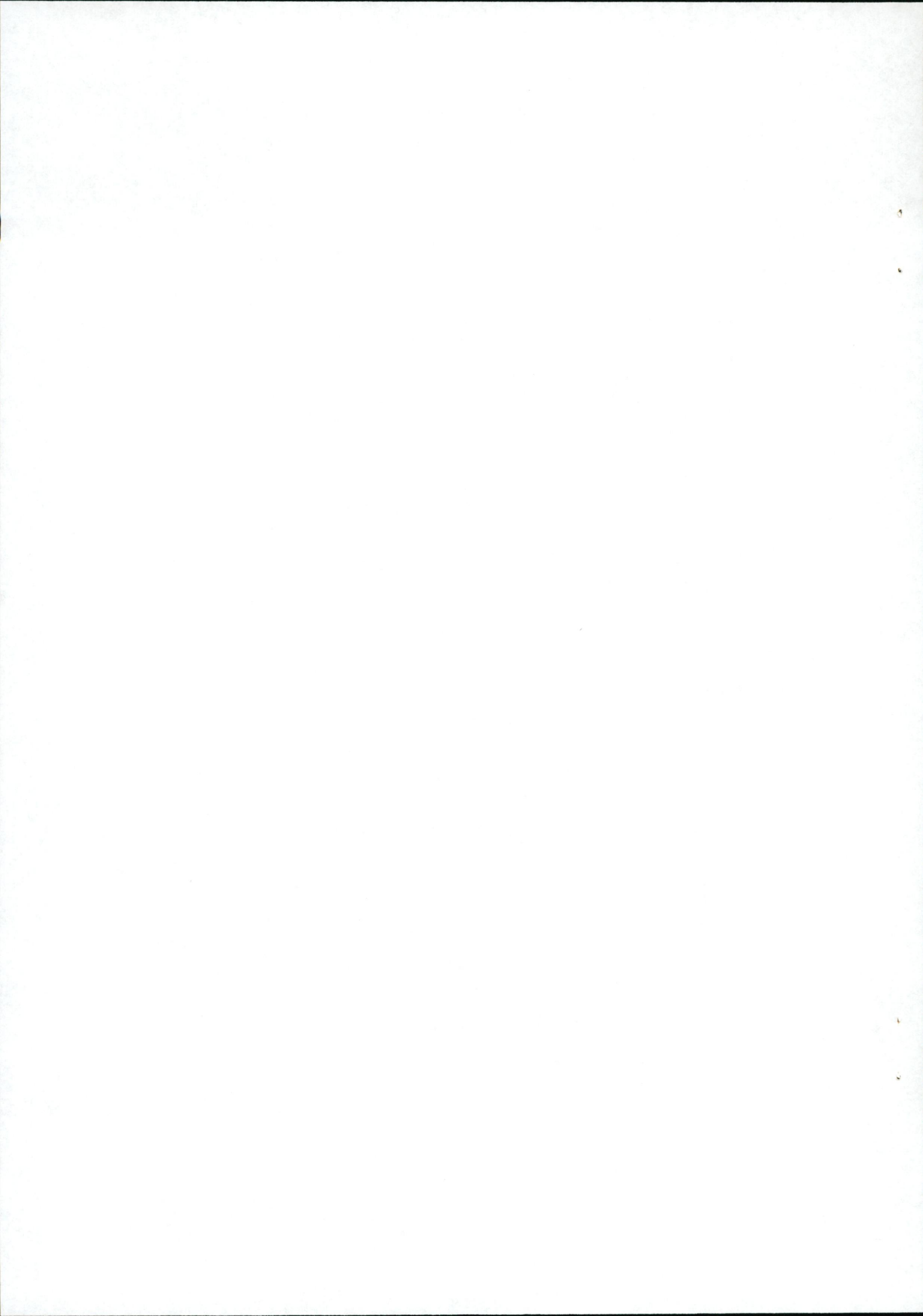
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First print



New South Wales

# Crimes Legislation Amendment Bill 1999

No. , 1999

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## A Bill for

An Act to make miscellaneous amendments to the *Children (Criminal Proceedings) Act 1987*, the *Crimes Act 1900*, the *Justices Act 1902* and the *Young Offenders Act 1997*.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Crimes Legislation Amendment Act 1999</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5 6
<b>3 Amendment of Children (Criminal Proceedings) Act 1987 No 55</b>	7
The <i>Children (Criminal Proceedings) Act 1987</i> is amended as set out in Schedule 1.	8 9
<b>4 Amendment of Crimes Act 1900 No 40</b>	10
The <i>Crimes Act 1900</i> is amended as set out in Schedule 2.	11
<b>5 Amendment of Justices Act 1902 No 27</b>	12
The <i>Justices Act 1902</i> is amended as set out in Schedule 3.	13
<b>6 Amendment of Young Offenders Act 1997 No 54</b>	14
The <i>Young Offenders Act 1997</i> is amended as set out in Schedule 4.	15

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**Schedule 1 Amendment of Children (Criminal Proceedings) Act 1987**

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(Section 3)	4
<b>[1] Section 41 Enforcement of conditions of recognizance or probation or of compliance with outcome plan</b>	5
	6
Omit section 41 (1) (a) and (b). Insert instead:	7
	8
(a) has entered into a recognizance, or been released on probation, under section 33 (1), or been released under section 33 (1) (c1) on condition that the person complies with an outcome plan determined at a conference held under the <i>Young Offenders Act 1997</i> (referred to in this section as the <b>outcome plan</b> ), and	9
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(b) has failed to comply with a condition of the person's recognizance or probation, or has failed to comply with the outcome plan,	15
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	17
<b>[2] Section 41 (1)</b>	18
Insert "or another authorised justice" after "the authorised justice" where firstly occurring.	19
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	21
<b>[3] Section 41 (4) and (5)</b>	22
Insert "or has failed to comply with the outcome plan" after "or probation" wherever occurring.	23
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<b>[4] Section 41 (4), (5) and (7)</b>	26
Insert "or on condition that the person comply with the outcome plan" after "on probation" wherever occurring.	27
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<b>[5] Section 41 (6)</b>	30
Insert "or on condition that the person comply with the outcome plan," after "recognizance,".	31
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Schedule 1      Amendment of Children (Criminal Proceedings) Act 1987

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<b>[6] Schedule 2 Savings and transitional provisions</b>	1
Insert at the end of clause 1 (1):	2
Schedule 1 to the <i>Crimes Legislation Amendment Act 1999</i>	3
	4
<b>[7] Schedule 2</b>	5
Insert in Schedule 2, with appropriate Part and clause numbers:	6
	7
<b>Part Crimes Legislation Amendment Act 1999</b>	8
<b>Outcome plans made before commencement of amendments</b>	9
Section 41, as amended by the <i>Crimes Legislation Amendment Act 1999</i> , extends to any failure by a person, after the commencement of Schedule 1 [1] to that Act, to comply with an outcome plan that was determined at conference before that commencement.	10
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## Schedule 2 Amendment of Crimes Act 1900

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(Section 4)	3
<b>[1] Section 61O Aggravated act of indecency</b>	4
Omit "act of indecency with that or another person" wherever occurring from section 61O.	5
Insert instead "act of indecency with or towards that or another person".	6
	7
	8
<b>[2] Section 77 Consent no defence in certain cases</b>	9
Omit "over the age of 14 years" from section 77 (2) (a).	10
Insert instead "of or above the age of 14 years".	11
	12
<b>[3] Section 249A Definitions</b>	13
Insert after paragraph (d) of the definition of <i>agent</i> :	14
	15
, and	16
(e) a councillor within the meaning of the <i>Local Government Act 1993</i> (and in this case a reference in this Part to the agent's principal is a reference to the local council of which the person is a councillor).	17
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<b>[4] Section 562A Definitions</b>	21
Omit the definition of <i>registrar of a court</i> from section 562A.	22
	23
<b>[5] Section 562BA Orders made by court with consent of parties</b>	24
Omit section 562BA (1). Insert instead:	25
	26
(1) A court may make an apprehended violence order under section 562B, or an interim apprehended violence order under section 562BB, without being satisfied as to the matters referred to in section 562B or 562BB (as appropriate) if the complainant and the defendant consent to the making of the order.	27
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<b>[6] Section 562BA (3)</b>	1
Omit the subsection. Insert instead:	2
	3
(3) Before making such an order, the court may conduct a hearing in relation to the particulars of the complaint only if:	4
	5
(a) the order to be made by the court is final (that is, the order is not an interim apprehended violence order), and	6
	7
(b) the court is of the opinion that the interests of justice require it to conduct the hearing.	8
	9
<b>[7] Section 562BB Interim court orders</b>	10
Omit section 562BB (7) and (8).	11
	12
<b>[8] Sections 562BBA and 562BBB</b>	13
Insert after section 562BB:	14
	15
<b>562BBA Interim orders made by clerk of court with consent</b>	16
(1) The clerk of a Local Court or the Children's Court may, on complaint being made for an apprehended violence order, make an interim apprehended violence order if the clerk is satisfied that the complainant and the defendant consent to the making of the order.	17
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	21
(2) Section 562BA applies in relation to the making of an order by the clerk of a court under this section in the same way as it applies to the making of an interim apprehended violence order by a court.	22
	23
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	25
(3) If an interim apprehended violence order is made by a clerk:	26
(a) the clerk is to summon the defendant to appear at a further hearing of the matter before a court as soon as practicable after the order is made, and	27
	28
	29
(b) the court may, at the further hearing or an adjourned hearing, confirm the order (with or without variation) or revoke the order.	30
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	32
(4) An interim apprehended violence order made by a clerk is confirmed by the making of an order by a court under section 562B against the defendant (with or without variation). The interim order ceases to have effect when the court order is	33
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	made (in the case of a defendant who is then present in court)	1
	or when the defendant is served under section 562J with a copy	2
	of the record of the court order under section 562B (in any	3
	other case).	4
	(5) An interim apprehended violence order made by the clerk of a	5
	Local Court or the Children's Court under this section is taken	6
	to have been made by a Local Court or the Children's Court (as	7
	appropriate) and has effect accordingly.	8
	(6) Section 562GC applies to a clerk who makes an interim	9
	apprehended violence order under this section.	10
	(7) In this section, a reference to the clerk of the Children's Court	11
	is a reference to the registrar of the Children's Court.	12
<b>562BBB</b>	<b>Extension of interim order by clerk of court with consent</b>	13
	(1) The clerk of a Local Court or the Children's Court may vary an	14
	interim apprehended violence order made by the court (or by a	15
	clerk of the court) by extending the period during which the	16
	order is to remain in force, but only if the clerk is satisfied that	17
	the complainant and the defendant consent to the extension.	18
	(2) Such a variation has effect as if it had been made by a Local	19
	Court or the Children's Court (as appropriate) and section	20
	562GC applies in respect of the clerk accordingly.	21
	(3) In this section, a reference to the clerk of the Children's Court	22
	is a reference to the registrar of the Children's Court.	23
<b>[9]</b>	<b>Section 562H Telephone interim orders</b>	24
	Omit "for the purposes of section 562B" from section 562H (5A).	25
	Insert instead "for the purposes of this Part".	26
		27
<b>[10]</b>	<b>Section 562M Appeal to District Court by defendant against order made</b>	28
	<b>by Local Court or Children's Court</b>	29
	Insert after subsection (2):	30
		31
	(2A) An order made by the clerk of a Local Court or the registrar of	32
	the Children's Court under this Part is taken, for the purposes	33
	of Part 5A of the <i>Justices Act 1902</i> , to have been made by a	34
	Magistrate.	35

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Schedule 3      Amendment of Justices Act 1902

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**Schedule 3      Amendment of Justices Act 1902**

1

2

(Section 5)

3

**Section 66H Indictable offences dealt with summarily**

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Insert "or Part 3 of the *Children (Criminal Proceedings) Act 1987*" after  
"the *Criminal Procedure Act 1986*" in section 66H (1).

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**Schedule 4 Amendment of Young Offenders Act 1997**

	1
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(Section 6)	3
<b>[1] Section 57 Additional provisions relating to completion and non-completion of outcome plans</b>	4
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Omit the note at the end of section 57 (1). Insert instead:	6
	7
<b>Note.</b> If the Children's Court releases a child on condition that the child complies with an outcome plan, and the child fails to comply with the outcome plan, an authorised justice may issue a summons or warrant for the arrest of the child (see section 41 of the <i>Children (Criminal Proceedings) Act 1987</i> ). A person or body may continue or commence proceedings against a child if the child fails to satisfactorily complete an outcome plan (see section 64 of this Act).	8
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	14
<b>[2] Section 68 Interventions not to be disclosed as criminal history</b>	15
Insert after section 68 (2):	16
	17
(3) Despite subsection (2) (c), the record of any warning is inadmissible in any proceedings before the Children's Court.	18
	19