

Passed by both Houses



New South Wales

Crimes Legislation Amendment Bill 2000

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2000*



New South Wales

Crimes Legislation Amendment Bill 2000

Act No , 2000

An Act to make miscellaneous amendments to the *Crimes Act 1900* and other crimes legislation.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Legislation Amendment Act 2000*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Crimes Act 1900 and other Acts

Each Act specified in a Schedule to this Act is amended as set out in that Schedule.

Schedule 1 Amendment of Crimes Act 1900 No 40

(Section 3)

[1] Section 3A Territorial application of the criminal law of the State

Omit the section and the heading before the section.

[2] Section 3B Misuse of public property by public officials outside the State

Omit the section and the heading before the section.

[3] Part 1A

Insert after Part 1:

Part 1A Geographical jurisdiction

10A Application and effect of Part

- (1) This Part applies to all offences.
- (2) This Part extends, beyond the territorial limits of the State, the application of a law of the State that creates an offence if there is the nexus required by this Part between the State and the offence.
- (3) If the law that creates an offence makes provision with respect to any geographical consideration concerning the offence, that provision prevails over any inconsistent provision of this Part.
- (4) This Part is in addition to and does not derogate from any other basis on which the courts of the State may exercise criminal jurisdiction.

10B Interpretation

- (1) For the purposes of this Part, the necessary geographical nexus is the geographical nexus required by section 10C.
- (2) For the purposes of this Part, the place in which an offence is committed is the place in which the physical elements of the offence occur.

- (3) For the purposes of this Part, the place in which an offence has an effect includes:
 - (a) any place whose peace, order or good government is threatened by the offence, and
 - (b) any place in which the offence would have an effect (or would cause such a threat) if the criminal activity concerned were carried out.
- (4) A reference in this Part to the State includes a reference to the coastal waters of the State in which the criminal law of the State applies (including in any part of the adjacent area of the State in which the substantive criminal law of the State applies by force of the law of the State or of the Commonwealth in accordance with the *Crimes at Sea Act 1998*).

10C Extension of offences if there is a geographical nexus

- (1) If:
 - (a) all elements necessary to constitute an offence against a law of the State exist (disregarding geographical considerations), and
 - (b) a geographical nexus exists between the State and the offence,the person alleged to have committed the offence is guilty of an offence against that law.
- (2) A geographical nexus exists between the State and an offence if:
 - (a) the offence is committed wholly or partly in the State (whether or not the offence has any effect in the State), or
 - (b) the offence is committed wholly outside the State, but the offence has an effect in the State.

10D Provisions relating to double criminality

- (1) This Part applies to an offence that is committed partly in the State and partly in another place outside the State, irrespective of whether it is also an offence in that other place.

- (2) This Part applies to an offence that is committed wholly in a place outside the State only if:
 - (a) it is also an offence in that place, or
 - (b) it is not also an offence in that place, but the trier of fact is satisfied that the offence constitutes such a threat to the peace, order or good government of the State that the offence warrants criminal punishment in the State.

10E Procedural and other provisions

- (1) The existence of the necessary geographical nexus for an offence is to be presumed and the presumption is conclusive unless rebutted under subsection (2).
- (2) If a person charged with an offence disputes the existence of the necessary geographical nexus, the court is to proceed with the trial of the offence in the usual way. If, at the conclusion of the trial, the trier of fact is satisfied on the balance of probabilities that the necessary geographical nexus does not exist, it must (subject to subsection (3)) make or return a finding to that effect and the charge is to be dismissed.
- (3) If the trier of fact would, disregarding any geographical considerations, find the person not guilty of the offence, it must make or return a finding of not guilty. The trier of fact must make or return a finding of not guilty on the grounds of mental illness in any such case if they were the only grounds on which the trier of fact would have found the person not guilty of the offence.
- (4) This section also applies to any alternative verdict available by law to the trier of fact in respect of another offence with which the person was not charged. A finding of guilt may be made or returned in any such case, unless the trier of fact is satisfied on the balance of probabilities that the necessary geographical nexus for that other offence does not exist.
- (5) The issue of whether the necessary geographical nexus exists must, if raised before the trial, be reserved for consideration at the trial.

- (6) A power or authority exercisable on reasonable suspicion or belief that an offence has been committed may be exercised in the State if the person in whom the power or authority is vested suspects on reasonable grounds or believes that the elements necessary to constitute the offence exist (whether or not the person suspects or believes or has any ground to suspect or believe that the necessary geographical nexus with the State exists).

[4] Section 78F Sanction of Attorney-General

Omit section 78F (2).

[5] Section 93IG Special provisions relating to geographical application of this Part

Omit “territorial nexus” from section 93IG (3).

Insert instead “geographical nexus”.

[6] Section 178BA Obtaining money etc by deception

Insert at the end of the section:

- (3) For the purposes of and without limiting Part 1A, the necessary geographical nexus exists between the State and an offence against this section if the offence is committed by a public official (within the meaning of the *Independent Commission Against Corruption Act 1988*) and involves public money of the State or other property held by the public official for or on behalf of the State.

[7] Section 178BB Obtaining money etc by false or misleading statements

Insert at the end of the section:

- (2) For the purposes of and without limiting Part 1A, the necessary geographical nexus exists between the State and an offence against this section if the offence is committed by a public official (within the meaning of the *Independent Commission Against Corruption Act 1988*) and involves public money of the State or other property held by the public official for or on behalf of the State.

[8] Part 4, Division 2, Subdivision 4

Insert after Subdivision 3 of Division 2 of Part 4:

Subdivision 4 Sabotage

203A Definitions

In this Subdivision:

economic loss includes the disruption of government functions or the disruption of the use of public facilities.

public facility means any of the following (whether publicly or privately owned):

- (a) a government facility, including premises used by government employees in connection with official duties,
- (b) a public infrastructure facility, including a facility providing water, sewerage, energy or other services to the public,
- (c) a public transport facility, including a conveyance used to transport people or goods,
- (d) a public place, including any premises, land or water open to the public.

203B Sabotage

A person:

- (a) whose conduct causes damage to a public facility, and
- (b) who intended to cause that damage, and
- (c) who intended by that conduct to cause:
 - (i) extensive destruction of property, or
 - (ii) major economic loss,

is guilty of an offence.

Maximum penalty: Imprisonment for 25 years.

203C Threaten sabotage

- (1) A person who:
- (a) makes to another person a threat to damage a public facility, and
 - (b) intends that person to fear that the threat will be carried out and will cause:
 - (i) extensive destruction of property, or
 - (ii) major economic loss,

is guilty of an offence.

Maximum penalty: Imprisonment for 14 years.

- (2) In the prosecution of an offence under this section it is not necessary to prove that the person threatened actually feared that the threat would be carried out.
- (3) For the purposes of this section:
- (a) a threat may be made by any conduct, and may be explicit or implicit and conditional or unconditional, and
 - (b) a threat to a person includes a threat to a group of persons, and
 - (c) fear that a threat will be carried out includes apprehension that it will be carried out.

[9] Section 353 Persons offering stolen property

Omit the section.

[10] Second Schedule

Insert after "Part 1":

Part 1A

[11] Eleventh Schedule Savings and transitional provisions

Insert the following Part at the end of the Schedule (with appropriate Part and clause numbers):

Part Crimes Legislation Amendment Act 2000

Application of amendments relating to geographical jurisdiction

Part 1A and sections 178BA (3) and 178BB (2), as inserted by the *Crimes Legislation Amendment Act 2000*, do not apply in respect of any act or omission occurring before their commencement. Sections 3A and 3B (as in force before their repeal by that Act) continue to apply to any such act or omission.

Schedule 2 Amendment of Children (Criminal Proceedings) Act 1987 No 55

(Section 3)

[1] The whole Act

Omit “serious indictable offence” wherever occurring.
Insert instead “serious children’s indictable offence”.

[2] Section 33 Penalties

Insert after section 33 (1) (c1):

- (c2) it may make an order adjourning proceedings against the person to a specified date (being an adjournment for a maximum period of 12 months from the date of the finding of guilt), and granting bail to the person in accordance with the *Bail Act 1978*:
 - (i) for the purpose of assessing the person’s capacity and prospects for rehabilitation, or
 - (ii) for the purpose of allowing the person to demonstrate that rehabilitation has taken place, or
 - (iii) for any other purpose the Children’s Court considers appropriate in the circumstances,

[3] Section 33 (1B)

Insert after section 33 (1A):

- (1B) If the Children’s Court deals with a person under subsection (1) (g), it may make an order:
 - (a) suspending the execution of its order under subsection (1) (g) for a specified period (not exceeding the term of that order), and
 - (b) releasing the person on condition that the person enters into a good behaviour bond under subsection (1) (b) for such a specified period,

but only if the person is not subject to any other order under subsection (1) (g) or to any sentence of imprisonment. Part 4 of the *Crimes (Sentencing Procedure) Act 1999* does not apply to an order under subsection (1) (g) whose execution is suspended under this subsection except to the extent to which it deals with setting the term of the order.

[4] Section 41A

Insert after section 41:

41A Provisions applicable where control order suspended subject to good behaviour bond

- (1) This section applies where the Children's Court has, under section 33 (1B), suspended the execution of an order under section 33 (1) (g) and the person concerned has entered into a good behaviour bond.
- (2) Action with respect to a failure to comply with any such good behaviour bond may be taken under section 41. The good behaviour bond is to be terminated unless the court is satisfied that:
 - (a) the person's failure to comply with the conditions of the bond was trivial in nature, or
 - (b) there are good reasons for excusing the person's failure to comply with the conditions of the bond.
- (3) If any such good behaviour bond is terminated:
 - (a) the suspension of the execution of the order under section 33 (1) (g) ceases to have effect, and
 - (b) Part 4 of the *Crimes (Sentencing Procedure) Act 1999* applies to that order, except to the extent to which it has already been applied in relation to setting the term of the order, and
 - (c) subject to the requirements of Part 4 of that Act having been complied with, that order takes effect.
- (4) The conditions of any such good behaviour bond may be varied under section 40 or in proceedings taken under section 41.

[5] Section 50B

Insert after section 50A:

50B Special provision relating to drug rehabilitation programs

- (1) This section applies to any program for the rehabilitation of persons affected by alcohol or other drugs in which a child is required to participate as a result of an order or a condition of an order of the Children's Court in connection with criminal proceedings against the child.
- (2) The Children's Court may, as a condition of any such order, require the provision of information about the child's participation in any such program to be given to a member or officer of the Children's Court by a person who is involved in the administration of, or who provides services in connection with, the program.
- (3) The following provisions apply to and in respect of any information provided for the purposes of this section (*protected information*):
 - (a) the provision of the information does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct,
 - (b) no liability for defamation is incurred because of the provision of the information,
 - (c) the provision of the information does not constitute grounds for civil proceedings for malicious prosecution or conspiracy,
 - (d) the information is not admissible in evidence in any proceedings before a court, tribunal or committee,
 - (e) a person is not compellable in any proceedings before a court, tribunal or committee to disclose the information or to produce any document that contains the information.
- (4) The provisions of subsection (3) (d) and (e) do not apply to or in respect of the provision of protected information in proceedings before the Children's Court or any court hearing an appeal from a decision of that court.

- (5) The child participating in any such program is taken to have authorised the communication of protected information between anyone referred to in subsection (2).
- (6) A provision of any Act or law that prohibits or restricts the disclosure of information does not operate to prevent the provision of information for the purposes of this section.

[6] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

Schedule 2 to the *Crimes Legislation Amendment Act 2000*

[7] Schedule 2

Insert at the end of the Schedule:

Part 6 Crimes Legislation Amendment Act 2000

9 New sentencing options in pending proceedings

Section 33 (1) (c2) and (1B), as inserted by the *Crimes Legislation Amendment Act 2000*, extend to proceedings pending at the commencement of those provisions.

Schedule 3 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

(Section 3)

[1] Section 4 Penalties generally

Omit section 4 (1) and (2). Insert instead:

- (1) The penalty to be imposed for an offence is to be the penalty provided by or under this or any other Act or law.
- (2) The penalty to be imposed for a statutory offence for which no penalty is so provided is imprisonment for 5 years.

[2] Section 10 Dismissal of charges and conditional discharge of offender

Insert “for a term not exceeding 2 years” after “good behaviour bond” in section 10 (1) (b).

[3] Section 11 Deferral of sentencing for rehabilitation and other purposes

Omit “A court that convicts an offender” from section 11 (1).

Insert instead “A court that finds a person guilty of an offence (whether or not it proceeds to conviction)”.

[4] Section 11 (2)

Omit “the date of conviction”.

Insert instead “the date of the finding of guilt”.

[5] Section 12 Suspended sentences

Insert after section 12 (3):

- (4) An order under this section may be made after a court has decided not to make a home detention order in relation to the sentence of imprisonment. In that case, any non-parole period set for the sentence ceases to have effect when the order under this section is made.

[6] Section 25 Local Court not to impose certain penalties if offender is absent

Omit the definition of *absent offender* from section 25 (4).

Insert instead:

absent offender means an offender who is being dealt with in his or her absence.

[7] Section 51 Court may impose conditions on parole order

Insert after section 51 (1):

- (1A) The conditions of a parole order may include conditions requiring that the offender to whom the order relates be subject to supervision prescribed by the regulations under the *Crimes (Administration of Sentences) Act 1999* during the period specified by or under the order or those regulations.

**Schedule 4 Amendment of Criminal Appeal Act
1912 No 16**

(Section 3)

Section 2 Definitions

Insert after section 2 (1):

- (2) For the purposes of this Act, a sentence is imposed or passed on a person on conviction or on a finding of guilt even if it is imposed or passed after the conviction or finding of guilt or as a result of re-sentencing.

**Schedule 5 Amendment of Criminal Procedure Act
1986 No 209**

(Section 3)

[1] Section 118 Proceedings in camera in certain cases

Insert after section 118 (1):

- (1A) The court must direct that any proceedings in respect of an offence under section 78A or 78B of the *Crimes Act 1900* be held in camera.

[2] Schedule 1 Indictable offences triable summarily

Omit “or 203” from clause 9 of Part 2 of Table 1.

Insert instead “, 203 or 203C”.

Schedule 6 Amendment of Listening Devices Act 1984 No 69

(Section 3)

[1] Section 3 Definitions

Insert after section 3 (1):

- (1A) A thing is not precluded from being a listening device within the meaning of this Act merely because it is also capable of:
- (a) recording or transmitting visual images (for example a video camera), or
 - (b) recording or transmitting its own position.

[2] Schedule 1 Savings and transitional provisions

Insert after clause 7:

8 Application of section 3 (1A) inserted by Crimes Legislation Amendment Act 2000

- (1) In this clause:

amending Act means Schedule 6 to the *Crimes Legislation Amendment Act 2000*.

relevant device means a device that was not a listening device within the meaning of this Act before the commencement of section 3 (1A), as inserted by the amending Act, but that becomes such a listening device because of the enactment of section 3 (1A).

- (2) A warrant authorising the use of a listening device that was granted under Part 4 before the commencement of the amending Act is taken to authorise the use, on and after that commencement, of a relevant device.
- (3) Section 6 extends to and in respect of the communication or publication, after the commencement of the amending Act, of a private conversation, or of a report of a private conversation, that has come to a person's knowledge as a result of the use of a relevant device before that commencement.

- (4) Section 7 extends to and in respect of the communication or publication, after the commencement of the amending Act, of a record of a private conversation made by the use of a relevant device before that commencement.
- (5) Section 8 extends to and in respect of the possession, after the commencement of the amending Act, of a record of a private conversation obtained by the use of a relevant device before that commencement.
- (6) Section 14 extends to and in respect of the admissibility of evidence arising from the use of a relevant device before the commencement of the amending Act in proceedings instituted after that commencement.

**Schedule 7 Amendment of Search Warrants Act
1985 No 37**

(Section 3)

**Section 5 Application for warrant in respect of certain offences,
stolen property etc**

Insert at the end of the section:

- (3) To avoid doubt, an application may be made under subsection (1) with respect to an act or omission that is an indictable offence (within the meaning of subsection (2)) even though the act or omission occurred outside New South Wales and was not an offence against the law of New South Wales.

**Schedule 8 Amendment of Victims Rights Act
1996 No 114**

(Section 3)

Section 10 Functions of Victims of Crime Bureau

Insert at the end of the section:

- (2) In this section, *victim of crime* includes a member of the immediate family of a missing person.