

First print



New South Wales

# Crimes Legislation Amendment Bill 1998

## 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 the following Acts relating to criminal law and procedure:

*Bail Act 1978*

*Children (Criminal Proceedings) Act 1987*

*Crimes Act 1900*

*Criminal Appeal Act 1912*

*Criminal Procedure Act 1986*

*Justices Act 1902*

The amendments are explained in detail below in relation to each Act to be amended.

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## 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 *Bail Act 1978* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Children (Criminal Proceedings) Act 1987* set out in Schedule 2.

**Clause 5** is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 3.

**Clause 6** is a formal provision giving effect to the amendments to the *Criminal Appeal Act 1912* set out in Schedule 4.

**Clause 7** is a formal provision giving effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 5.

**Clause 8** is a formal provision giving effect to the amendments to the *Justices Act 1902* set out in Schedule 6.

## Schedule 1 Amendment of Bail Act 1978

### Point at which a person's entitlement to liberty under bail ends

Section 7 of the *Bail Act 1978* provides that, if an accused person who is granted bail in respect of a particular offence enters into the bail undertaking (and into any bail conditions), the person is entitled "to remain at liberty in respect of the offence until the person is required to appear before a court" in accordance with the bail undertaking. Section 11 uses the same language in relation to circumstances in which the requirement for bail is dispensed with. However, it is not clear precisely when the requirement "to appear before a court" takes effect (and, accordingly, the entitlement to liberty comes to an end).

**Schedule 1 [1]** inserts proposed section 16A to clarify the matter and **Schedule 1 [2]** makes a consequential amendment.

### **Transitional**

**Schedule 1 [3]** inserts a transitional provision relating to the proposed section in Schedule 1 (Savings and transitional provisions) to the Act.

### **Schedule 2      Amendment of Children (Criminal Proceedings) Act 1987**

#### **Powers of courts other than the Children's Court in relation to orders of recognizance and probation**

Under section 18 of the *Children (Criminal Proceedings) Act 1987*, a court exercising certain functions of the Children's Court may, among other things, make a recognizance or probation order in relation to a person who has pleaded guilty to an indictable offence (other than a *serious indictable offence*, as defined in that Act) in that court or has been found guilty or convicted of the offence by that court. However, the Act contains no express power for the court concerned to terminate, vary or enforce the order.

Section 40 provides that the Children's Court may terminate, reduce the period of, or vary any condition of, an order of recognizance or probation on application made by or on behalf of the person to whom the order relates (or by an *authorised officer*, as defined in section 39). **Schedule 2 [2]** inserts proposed section 40 (1A), which enables (but does not oblige) the Children's Court to refer any such application to the court that made the order (if the order was made by a court other than the Children's Court), to be dealt with by that court. **Schedule 2 [1]** confers on the court that made the order the requisite power to deal with the application.

Similarly, **Schedule 2 [3]** amends section 41 (Enforcement of conditions of recognizance or probation) so as to empower the Children's Court and the Local Court to order that a person brought before the court concerned in relation to a failure to comply with a condition of the person's recognizance or probation be brought, instead, before the court that made the relevant order, to be dealt with by that court. The proposed amendment also confers on the court that made the order the requisite power to deal with the person.

### **Transitional**

**Schedule 2 [4]** and **[5]** amend Schedule 2 (Savings and transitional provisions) to the Act to allow regulations of a savings and transitional nature to be made under that Act as a consequence of the enactment of Schedule 2 to the proposed Act. **Schedule 2 [6]** inserts a transitional provision relating to the proposed amendments to sections 18, 40 and 41.

### **Schedule 3      Amendment of Crimes Act 1900**

#### **Abolition of common law rule concerning wives as accessories after the fact**

**Schedule 3** inserts proposed section 347A in the *Crimes Act 1900*. The proposed section abolishes the common law rule granting immunity to a wife against prosecution as an accessory after the fact to a felony committed by her husband.

### **Schedule 4      Amendment of Criminal Appeal Act 1912**

#### **Statement of point of law for determination by Court of Criminal Appeal**

**Schedule 4 [2]** repeals section 5A (1A) of the *Criminal Appeal Act 1912*. That subsection requires, in certain circumstances, a question of law submitted to the Court of Criminal Appeal for determination to be dealt with as if the submission were an appeal to that Court under section 5AA (1). **Schedule 4 [1]** re-enacts the subsection (without that requirement) as a stand-alone provision, and makes it clear that the Court of Criminal Appeal may make any such order or give any such direction as it thinks fit to the court from which the submission was made.

#### **Statute law revision**

**Schedule 4 [3]** corrects an incorrect reference.

#### **Transitional**

**Schedule 4 [4]** inserts a transitional provision relating to the proposed amendments in Schedule 1 (Savings and transitional provisions) to the Act.

### **Schedule 5      Amendment of Criminal Procedure Act 1986**

#### **Attempts, accessories and abettors**

Table 2 to Part 9A of the *Criminal Procedure Act 1986* sets out the indictable offences that a Local Court is required to deal with summarily unless the prosecuting authority elects otherwise. Certain clauses of the Table provide that an attempt to commit any of the offences specified in the clause concerned is also an offence that is to be dealt with summarily unless the prosecuting authority elects otherwise. As a consequence of Schedule 5 [2], **Schedule 5 [1]** repeals those references to attempts to commit an offence.

**Schedule 5 [2]** inserts proposed Part 7 in the Table. That Part provides that the offence of an attempt to commit *any* of the offences mentioned in a preceding Part of the Table is an offence that is to be dealt with summarily unless the prosecuting authority elects otherwise. It also makes similar provision in relation to the offence of being an accessory before or after the fact to any felony mentioned in a preceding Part of the Table and to the offences of aiding, abetting, counselling or procuring the commission of any misdemeanour mentioned in a preceding Part (other than Part 3) of the Table. (Part 3 deals with certain offences under the *Drug Misuse and Trafficking Act 1985*. That Act makes provision for the summary disposal of the offences of aiding, abetting, counselling, procuring, soliciting or inciting the commission of the offences to which Part 9A of the *Criminal Procedure Act 1986* applies.)

Schedule 5 [2] is not intended to create any new offences.

#### **“Back up offences” and “related offences”**

Part 10 of the *Criminal Procedure Act 1986* currently requires the Supreme Court and the District Court, at the end of a trial for an indictable offence, to dismiss any charges for *back up summary offences* as defined in that Part (unless the Court considers it inappropriate to do so), and gives the Court a discretion to deal with any back up summary offences not so dismissed and any *related summary offences* (as defined in Part 10).

To enable the Court to deal with a wider range of associated offences, **Schedule 5 [4]** repeals the definitions of *back up summary offence* and *related summary offence* and inserts, instead, definitions of *back up offence* and *related offence*. The new definitions include within their ambit indictable offences that are capable of being dealt with summarily by a Local Court in accordance with Part 9A of the Act.

**Schedule 5 [3]** and **[5]–[9]** make consequential amendments.

#### **Transitional**

**Schedule 5 [10]** amends Schedule 1 (Savings, transitional and other provisions) to the Act to allow regulations of a savings and transitional nature to be made under that Act as a consequence of the enactment of Schedule 5 to the proposed Act.

**Schedule 5 [11]** inserts transitional provisions relating to the proposed amendments to Table 2 to Part 9A and to Part 10.

## **Schedule 6      Amendment of Justices Act 1902**

### **Direction to witness to attend committal hearing**

At present, section 48E of the *Justices Act 1902* allows a Justice or Justice before whom committal proceedings are held to give a direction requiring the attendance at the proceedings of a person who has made a written statement for the purpose of the proceedings. The direction may be given only if the Justice or Justices are of the opinion that there are *substantial* reasons why, in the interests of justice, the witness should attend to give oral evidence. However, if the offence to which the proceedings relate is an *offence involving violence* (as defined in the section), and the witness is an alleged victim of the offence, the Justices must be satisfied that there are *special* reasons why the witness should attend.

The section defines *offence involving violence* so as to exclude from its ambit “an offence to the extent that it is listed in Table 1 to Part 9A of the *Criminal Procedure Act 1986*”—that is, an indictable offence that is to be dealt with summarily unless the prosecuting authority or person charged elects otherwise. The effect is that witnesses who are alleged victims of some alleged violent offences can be compelled to attend the committal proceedings and give oral evidence on the “substantial reasons” test, while others can be compelled only on the “special reasons” test.

**Schedule 6 [1]** amends that definition so as to remove this anomaly.

### **Transitional**

**Schedule 6 [2]** inserts a transitional provision in the Second Schedule (Savings, transitional and other provisions) in relation to the proposed amendment.

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# Crimes Legislation Amendment Bill 1998

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New South Wales

# Crimes Legislation Amendment Bill 1998

No. , 1998

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## **A Bill for**

An Act to amend the *Crimes Act 1900* and certain other Acts to make miscellaneous amendments relating to criminal law and procedure; and for other purposes.

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

**1 Name of Act**

This Act is the *Crimes Legislation Amendment Act 1998*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendment of Bail Act 1978 No 161**

The *Bail Act 1978* is amended as set out in Schedule 1.

**4 Amendment of Children (Criminal Proceedings) Act 1987 No 55**

The *Children (Criminal Proceedings) Act 1987* is amended as set out in Schedule 2. 10

**5 Amendment of Crimes Act 1900 No 40**

The *Crimes Act 1900* is amended as set out in Schedule 3.

**6 Amendment of Criminal Appeal Act 1912 No 16**

The *Criminal Appeal Act 1912* is amended as set out in Schedule 4. 15

**7 Amendment of Criminal Procedure Act 1986 No 209**

The *Criminal Procedure Act 1986* is amended as set out in Schedule 5.

**8 Amendment of Justices Act 1902 No 27**

The *Justices Act 1902* is amended as set out in Schedule 6. 20

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## Schedule 1 Amendment of Bail Act 1978

(Section 3)

### [1] Section 16A

Insert after section 16:

#### 16A Requirement to appear before a court

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(1) For the purposes of sections 7 and 11, the time at which a person is *required to appear* before a court is the time at which the matter relating to the relevant offence is called at the court premises (whether or not the matter is dealt with at that time).

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(2) If the person is present in the courtroom or other part of the court premises at that time, the person is in the custody of the court (except during such additional periods of bail as may be granted under this Act) on and from the calling of the matter concerned until:

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(a) bail is dispensed with, or

(b) bail is continued under section 43, or

(c) the court completes its dealing with the matter.

### [2] Section 42 Discharge of liability of other persons

Omit "is not then in custody or before the court" from section 42 (2).

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Insert instead "is not then before the court or otherwise in custody".

### [3] Schedule 1 Savings and transitional provisions

Insert in Schedule 1 (with appropriate Part and clause numbers)

#### Part Crimes Legislation Amendment Act 1998

25

##### Requirement to appear before a court

Section 16A extends to apply to a person who, on the commencement of that section, is at liberty on bail granted before that commencement.

**Schedule 2 Amendment of Children (Criminal Proceedings) Act 1987**

(Section 4)

**[1] Section 18 Other indictable offences**

Insert after section 18 (2): 5

(3) If a court, in exercising the functions of the Children's Court under subsection (2), makes:

(a) an order of recognizance under section 33 (1) (b) or (d), or

(b) an order of probation under section 33 (1) (e), 10

the court may, on referral from the Children's Court under section 40 (1A), deal with the order in the same way as the Children's Court may deal with it under section 40.

**[2] Section 40 Variation of recognizance or probation**

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Insert after section 40 (1):

(1A) Alternatively, if the order was made by a court exercising the functions of the Children's Court under section 18 (2), the Children's Court may (but is not obliged to) refer the application to the court concerned to be dealt with by that court. 20

**[3] Section 41 Enforcement of conditions of recognizance or probation**

Insert after section 41 (5):

(6) Despite subsections (3), (4) and (5), if the order under section 33 (1) that released the person on probation, or on condition that the person enter into recognizance, was made by a court other than the Children's Court or the 25

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Local Court, the Children's Court or the Local Court before which the person is brought under this section may (but is not obliged to) order that the person is to be brought before the court concerned to be dealt with by that court instead of the Children's Court or the Local Court. 5

(7) If a person is brought before a court other than the Children's Court or the Local Court pursuant to an order under subsection (6), the court concerned may deal with the person in any manner in which the person could have been dealt with by that court in relation to the offence for which the person entered the recognizance or was released on probation, as the case may be. 10

**[4] Schedule 2 Savings and transitional provisions**

Insert "or provisions of Acts" after "Acts" in clause 1 (1). 15

**[5] Schedule 2, clause 1**

Insert at the end of clause 1 (1):

Schedule 2 to the *Crimes Legislation Amendment Act 1998*.

**[6] Schedule 2, Part 3**

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Insert after clause 5:

**Part 3 Crimes Legislation Amendment Act 1998**

**6 Orders of recognizance and probation made before commencement of amendments**

Sections 18, 40 and 41, as amended by the *Crimes Legislation Amendment Act 1998*, extend to: 25

(a) an order of recognizance under section 33 (1) (b) or (d), and

(b) an order of probation under section 33 (1) (e), made, by a court exercising the functions of the Children's Court under section 18 (2), before the commencement of those amendments. 30

**Schedule 3 Amendment of Crimes Act 1900**

(Section 5)

**Section 347A**

Insert after section 347:

- 347A Wife may be accessory after fact to husband's felony** 5
- (1) The common law rule granting immunity to a wife against prosecution as an accessory after the fact to a felony committed by her husband is abolished.
  - (2) This section does not apply in respect of any act of, or omission by, a wife if the act or omission occurred before the commencement of this section. 10

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## Schedule 4 Amendment of Criminal Appeal Act 1912

(Section 6)

### [1] Section 5AE

Insert after section 5AD:

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#### 5AE Point of law stated during summary proceedings

- (1) At any time before the completion of proceedings before the Supreme Court in its summary jurisdiction, the Land and Environment Court in its summary jurisdiction or a Court of Coal Mines Regulation in its summary jurisdiction, the judge hearing the proceedings may, or if requested by the Crown must, submit any question of law arising at or in reference to the proceedings to the Court of Criminal Appeal for determination. 10
- (2) The Court of Criminal Appeal may make any such order or give any such direction to the court concerned as it thinks fit. 15

### [2] Section 5A Point of law stated by judge

Omit section 5A (1A).

### [3] Section 5A (2) (f) and (g)

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Omit "this section" wherever occurring.  
Insert instead "this subsection".

### [4] Schedule 1 Savings and transitional provisions

Insert in Schedule 1 (with the appropriate clause number):

#### Crimes Legislation Amendment Act 1998

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- (1) In this clause, *amending Act* means the *Crimes Legislation Amendment Act 1998*.

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Schedule 4      Amendment of Criminal Appeal Act 1912

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- (2) Section 5AE, as inserted by the amending Act, extends to proceedings commenced but not completed before the commencement of that section.
- (3) However, section 5A, as in force immediately before the repeal of section 5A (1A) by the amending Act, applies to any question of law submitted, under that section before that repeal, to the court for determination. 5



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**Schedule 5 Amendment of Criminal Procedure Act 1986**

(Section 7)

- [1] **Part 9A, Table 2—Indictable offences that are to be dealt with summarily unless prosecuting authority elects otherwise** 5

Omit “or an attempt to commit any such offence” from clauses 1, 3, 4 and 6 wherever occurring.

- [2] **Part 9A, Table 2, clauses 11–13**

Insert after clause 10:

**Part 7 Attempts, accessories and abettors** 10

**11 Attempts**

Attempting to commit any offence mentioned in a preceding Part of this Table.

**12 Accessories**

Being an accessory before or after the fact to any offence mentioned in a preceding Part of this Table (if the offence is a felony). 15

**13 Abettors**

Aiding, abetting, counselling or procuring the commission of any offence mentioned in a preceding Part (other than Part 3) of this Table (if the offence is a misdemeanour). 20

**[3] Part 10, heading**

Omit the heading to the Part. Insert instead:

**Part 10 Supreme Court or District Court may deal with certain offences related to indictable offences**

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**[4] Section 34 Definitions and application**

Omit the definitions of *back up summary offence* and *related summary offence* from section 34 (1).

Insert instead:

*back up offence*, in relation to an indictable offence, means an offence: 10

(a) that is:

(i) a summary offence, or

(ii) an indictable offence that is capable of being dealt with summarily by a Local Court in accordance with the provisions of Part 9A, and 15

(b) all the elements of which are elements that are necessary to constitute the first indictable offence, and 20

(c) that is to be prosecuted on the same facts as the first indictable offence.

*related offence*, in relation to an indictable offence, means an offence:

(a) that is: 25

(i) a summary offence, or

(ii) an indictable offence that is capable of being dealt with summarily by a Local Court in accordance with the provisions of Part 9A, and 30

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(b) that arises from substantially the same circumstances as those from which the first indictable offence has arisen,

but does not include a back up offence.

- [5] **Section 34A Certification of back up and related offences** 5  
Omit "summary" wherever occurring.
- [6] **Section 35 Manner of dealing with certain offences related to indictable offences**  
Omit "summary" wherever occurring.
- [7] **Section 36 Procedures for dealing with certain offences related to indictable offences** 10  
Omit "summary" wherever occurring.
- [8] **Section 36 (1)**  
Omit "any indictable offence".  
Insert instead "the relevant indictable offence". 15
- [9] **Section 37 Remission of certain offences related to indictable offences to Local Courts**  
Omit "summary" wherever occurring.
- [10] **Schedule 1 Savings, transitional and other provisions**  
Insert at the end of clause 1 (1): 20  
Schedule 5 to the *Crimes Legislation Amendment Act 1998*

**[11] Schedule 1**

Insert in Schedule 1 (with appropriate Part and clause numbers)

**Part Provisions consequent on Schedule 5 to  
Crimes Legislation Amendment Act 1998**

**Application of amendments to Table 2 to Part 9A** 5

Table 2 to Part 9A, as amended by Schedule 5 [1] and [2] to the *Crimes Legislation Amendment Act 1998*, applies to proceedings for an offence with which a person is charged after (but not before) the commencement of those amendments, irrespective of when the offence was alleged to have been committed. 10

**Application of amendments to Part 10**

The amendments to this Act made by Schedule 5 [3]–[9] to the *Crimes Legislation Amendment Act 1998* do not apply in respect of a back up offence or a related offence if the person charged with the indictable offence to which the back up offence or the related offence is related is committed for trial for the indictable offence before the commencement of the amendments. 15

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**Schedule 6 Amendment of Justices Act 1902**

(Section 8)

**[1] Section 48E Direction to witness to attend**

Omit “(except an offence to the extent that it is listed in Table 1 to Part 9A of the *Criminal Procedure Act 1986*)” from the definition of *offence involving violence* in section 48E (9). 5

**[2] Second Schedule Savings, transitional and other provisions**

Insert in the Second Schedule (with appropriate Part and clause numbers):

**Part Provisions consequent on enactment of Crimes Legislation Amendment Act 1998** 10

**Direction to witness to attend**

Section 48E, as in force immediately before the amendment to that section made by the *Crimes Legislation Amendment Act 1998*, applies to and in respect of a person who has made a written statement for the purposes of Subdivision 7A of Division 1 of Part 4 in relation to any committal proceedings that are pending, or that have been commenced but not completed, on the commencement of that amendment. 15  
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