

FIRST PRINT

## CRIMES LEGISLATION (FURTHER AMENDMENT) BILL 1990

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend:

- (a) the Crimes Act 1900 - to state the procedures to be followed, and circumstances in which, samples may be taken, and other examinations made, to provide evidence (such as DNA fragment analysis) confirming or disproving the commission of an offence, and to make provision for miscellaneous other matters; and
- (b) the Summary Offences Act 1988 - to create offences relating to climbing on and jumping from buildings and other structures in a manner involving risk to the safety of others.

The proposed amendments to the Crimes Act 1900 will make provision for the following:

- \* to specify the circumstances and manner in which medical examinations of persons in custody may be conducted and to enable the medical examination of persons who are at liberty under the Bail Act 1978
- \* to enable applications to be made to the Supreme Court for directions that an inquiry subsequent to conviction be held where any doubt or question arises as to the guilt of the person convicted or as to mitigating circumstances of, or evidence in, a case
- \* to make it clear that such directions may be given in relation to convictions in any court
- \* to enable inquiries subsequent to conviction to be conducted by any judicial officer instead of only a Justice
- \* to enable the indictable offence of taking a conveyance without the consent of its owner (section 154A) to be dealt with summarily without the consent of the accused whatever the value of the conveyance

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- \* to repeal section 526A (taking a conveyance without the consent of the owner) which duplicates section 154A
- \* to rationalise provisions enabling certain indictable sexual assault offences to be dealt with summarily with or without the consent of the accused
- \* to expand the matters to be taken into account in deciding whether an apprehended violence order should be made.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the proposed Act to commence on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the Schedules of amendments to the Crimes Act 1900.

**Clause 4** is a formal provision that gives effect to the Schedule containing an amendment to the Summary Offences Act 1988.

**Clause 5** is a formal provision that gives effect to the Schedule of savings and transitional provisions.

**SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 RELATING TO  
MEDICAL EXAMINATIONS**

**Schedule 1** inserts a new Part 10A into the Principal Act and makes a consequential amendment to omit section 353A (2).

The provisions of the proposed Part (sections 358C-358Q) replace and expand the provisions of section 353A (2) relating to the medical examination of persons in lawful custody on a charge of committing an offence. In particular the proposed Part will:

- (a) describe more accurately than section 353A the categories of persons who may be examined by making it clear that they include persons in custody not only at police stations but also at other places; and
- (b) extend those categories to include persons at liberty under the Bail Act 1978; and
- (c) set out the procedures to be followed in relation to the making of examinations (including those for making examinations without consent); and
- (d) state the degree of force that may be applied in order to carry out an examination; and
- (e) give a person a right to have his or her own doctor present when certain examinations are carried out; and
- (f) describe the limited circumstances in which an inference may be drawn from an adult person's refusal to consent to be examined; and
- (g) protect a person carrying out an examination for the purposes of the Part from liability arising from the examination.



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The proposed Part includes the following provisions:

Section 358C defines various terms for the purposes of the Part. These include definitions of "appropriate consent", "intimate examination", "non-intimate examination", "intimate sample" and "non-intimate sample".

Section 358D describes the circumstances that must exist if an intimate examination is to be carried out. A person may be examined only if he or she has been charged with the commission of an offence and is in custody or at liberty under the Bail Act 1978. A member of the police force must believe on reasonable grounds that the examination will afford evidence of the offence.

Section 358E states that an intimate examination must not be carried out without the consent of the person concerned or, in the case of a child or other person lacking the capacity to give consent, of a parent or guardian or other person having care of the person. An intimate examination may, however, be made without consent if ordered by an authorised justice. Reasonable force may be used to enable the examination to be carried out. With the exception of the taking of urine samples given voluntarily and saliva samples and impressions of teeth or dental examinations, intimate examinations may be carried out only by a registered medical practitioner or a registered nurse. Dental examinations and the taking of dental impressions may be carried out only by a registered dentist or registered dental technician.

Section 358F sets out the procedure for the carrying out of intimate examinations.

Section 358G provides for the making of applications for orders to authorise the carrying out of intimate examinations without consent.

Section 358H states that a non-intimate examination must not be carried out without the consent of the person concerned or, in the case of a child or other person lacking the capacity to give consent, of a parent or guardian or other person having care of the person. A non-intimate examination may, however, be carried out without consent if authorised by an officer of police of or above the rank of sergeant. Reasonable force may be used to enable the examination to be carried out.

Section 358I states the matters that must be taken into account in authorising the carrying out of examinations without consent. These include consideration of the type of, and necessity for, the examination, the age of the person and the reasons for refusing consent.

Section 358J sets out the circumstances in which a court or jury may draw inferences from a person who is capable of consenting to the examination of his or her body refusing to consent (or withdrawing consent) to the carrying out of an examination. Inferences may be drawn only if the appropriate procedures have been followed. The examination must have been ordered by an authorised justice or authorised by a senior police officer and the person must have had notice of the inferences that might be drawn.

Section 358K provides for the person from whom a sample is taken to be provided with a portion of the sample in certain cases.

Section 358L provides for the destruction of samples and records where a person is acquitted of the offence in respect of which they were taken or made.

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Section 358M exempts a person carrying out an examination under the proposed Part from liability for anything properly or necessarily done if the person believed on reasonable grounds that the correct procedures had been followed to authorise the examination or was informed by a member of the police force that this was the case.

Section 358N makes it clear that section 21 of the Children (Care and Protection) Act 1987 which provides for the special medical examination (defined to include, for example, a vaginal or anal examination) of children does not prevent the carrying out of an examination under the proposed Part.

Section 358O makes it clear that the proposed Part does not affect provisions in other Acts relating to the carrying out of examinations (for example, section 4F of the Traffic Act 1909 which relates to the taking of blood samples).

Section 358P specifies the places where examinations under the proposed Part are to be carried out.

Section 358Q requires an examination for which consent is withdrawn to be treated as an examination without appropriate consent subsequent to the withdrawal.

**SCHEDULE 2 - AMENDMENT OF CRIMES ACT 1900 RELATING TO INQUIRIES SUBSEQUENT TO CONVICTION**

Schedule 2 amends section 475 (Governor or Judge may direct inquiry etc.). In its present form, section 475 enables the Governor on petition or the Supreme Court on its own motion to direct a Justice to inquire into any doubt or question arising as to the guilt of a convicted person, or any mitigating circumstances or evidence in the case.

The proposed amendments will:

- (a) enable the Supreme Court to give such a direction on application by or on behalf of any person; and
- (b) make it clear that such a direction may be given in respect of a conviction in any court; and
- (c) enable such a direction to be given to any judicial officer.

**SCHEDULE 3 - AMENDMENT OF CRIMES ACT 1900 RELATING TO TAKING OF VEHICLES OR BOATS WITHOUT CONSENT AND OTHER INDICTABLE OFFENCES**

**Taking conveyance without consent**

Schedule 3 (3) inserts a new section 496B so that offences under section 154A (taking a conveyance without consent of owner) may be dealt with summarily without the consent of the accused whatever the value of the conveyance. The penalty that may be imposed under the proposed section is imprisonment for a maximum period of 2 years, or a fine not exceeding 50 penalty units (currently \$5,000), or both.

Schedule 3 (2) (a) and (c) contain consequential amendments to section 476 (indictable offences punishable summarily with consent of accused).



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Schedule 3 (4) repeals section 526A (taking a conveyance without the consent of the owner) as this section duplicates section 154A.

**Sexual assault offences**

On the commencement of Schedules 1 (10) and (11) to the Crimes (Amendment) Act 1989, sections 476 and 495 of the Principal Act will both contain provisions enabling indictable offences under section 61L (indecent assault) and 61N (act of indecency) to be dealt with summarily.

Schedule 3 (2) (b) amends section 476 (6) (ba) to remove this unnecessary duality.

**SCHEDULE 4 - AMENDMENT OF CRIMES ACT 1900 RELATING TO  
APPREHENDED VIOLENCE ORDERS**

Schedule 4 substitutes section 562D (2) to include within the matters a court must take into consideration in deciding whether or not to make an apprehended violence order restricting access to a defendant's residence the consequences for the person for whose protection the order would be made and for children living or ordinarily living at the residence if the order is not made.

**SCHEDULE 5 - AMENDMENT OF SUMMARY OFFENCES ACT 1988**

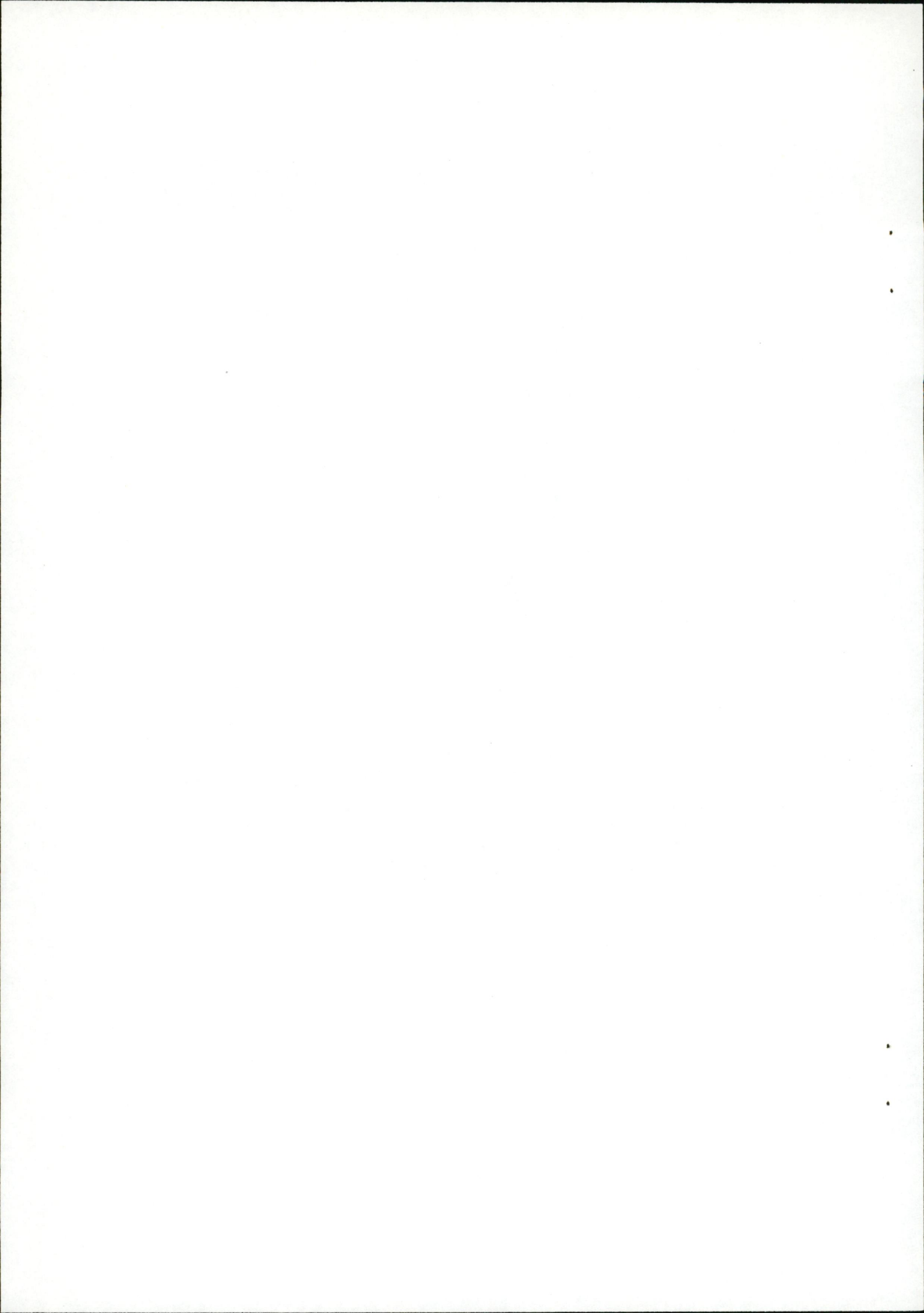
Schedule 5 amends the Summary Offences Act 1988 in the manner described above.

**SCHEDULE 6 - SAVINGS AND TRANSITIONAL PROVISIONS**

Clause 1 makes it clear that proposed Part 10A applies to the examination of persons whether or not they are charged with the offences concerned before or after the commencement of the Part and whether or not they are in custody or at liberty under the Bail Act 1978 at that commencement. However, a person at liberty may be taken into custody for such an examination only if ordered by a Local Court or the Children's Court. The clause also ensures that the proposed repeal of section 353A (2) will not affect the value of any evidence obtained under the subsection before its repeal.

Clause 2 provides that the amendments to be made by Schedule 3 to the proposed Act apply only in respect of proceedings for offences committed after the amendments commence.

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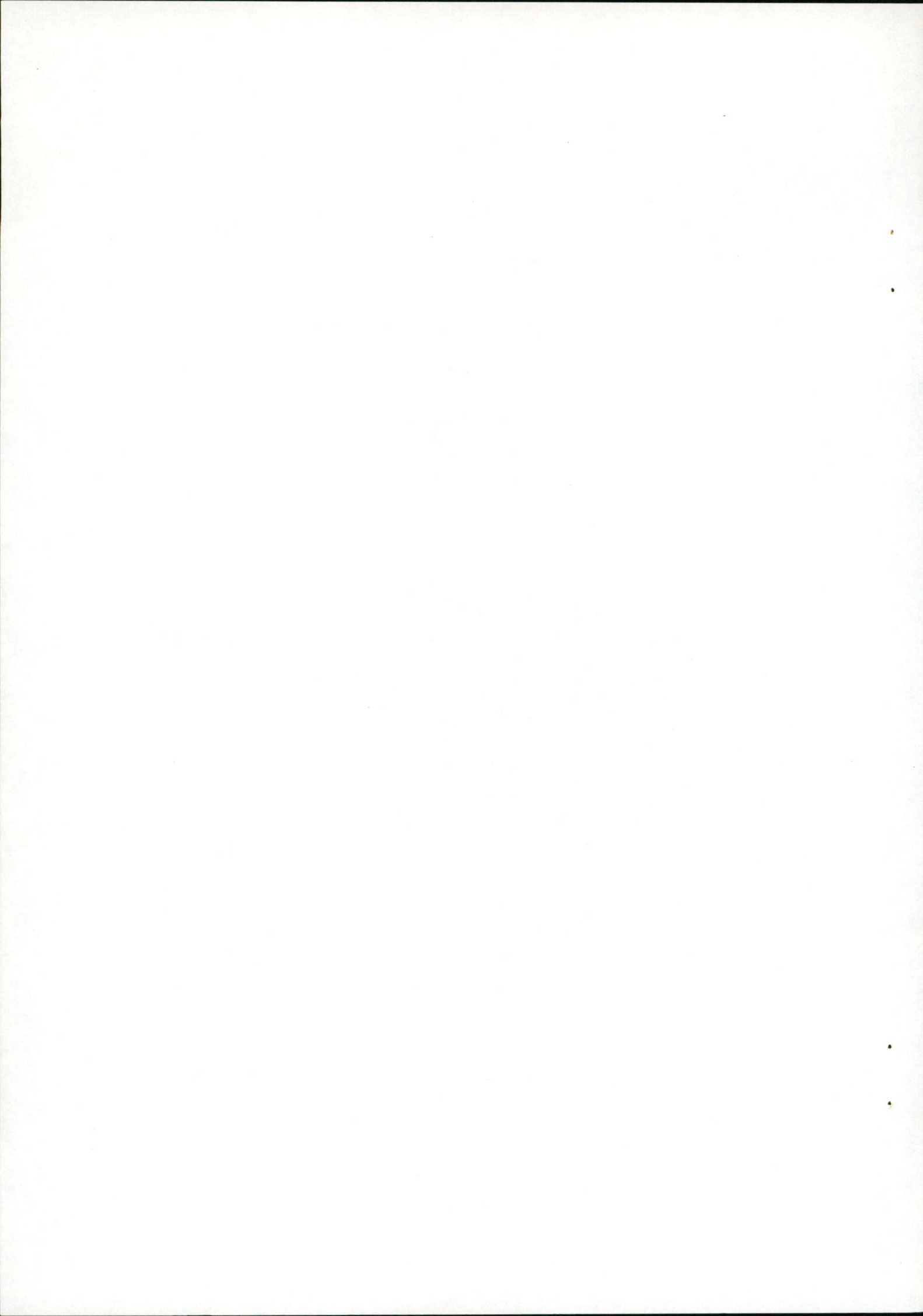
SCHEDULE 3 - AMENDMENT OF CRIMES ACT 1900 RELATING TO  
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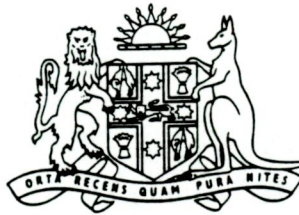
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**CRIMES LEGISLATION (FURTHER AMENDMENT) BILL 1990**

NEW SOUTH WALES



No. , 1990

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**A BILL FOR**

An Act to amend the Crimes Act 1900 to make further provision with respect to medical examinations, inquiries subsequent to conviction, the taking of a conveyance without the consent of the owner and apprehended violence orders, and for other purposes; and to amend the Summary Offences Act 1988 to regulate climbing on and jumping from buildings and other structures.

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*Crimes Legislation (Further Amendment) 1990*

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

**Short title**

1. This Act may be cited as the Crimes Legislation (Further Amendment) Act 1990.

**Commencement**

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

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

3. The Crimes Act 1900 is amended as set out in Schedules 1-4.

**Amendment of Summary Offences Act 1988 No. 25**

4. The Summary Offences Act 1988 is amended as set out in Schedule 5.

**Savings and transitional provisions**

5. Schedule 6 has effect.

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**SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900  
RELATING TO MEDICAL EXAMINATIONS**

(Sec. 3)

(1) Section 1 (**Short title and contents**):

After the matter relating to Part 10, insert:

PART 10A - MEDICAL EXAMINATIONS - ss.  
358C-358Q

(2) Section 353A (**Power to search person, take photograph, fingerprints etc.**):

Omit section 353A (2).



SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900  
RELATING TO MEDICAL EXAMINATIONS - *continued*

(3) Part 10A:

After Part 10, insert:

**PART 10A - MEDICAL EXAMINATIONS**

**Definitions**

358C. (1) In this Part:

**"appropriate consent"** means:

- (a) in relation to a person of or above the age of 16 years who has capacity to give consent, the consent of that person; or
- (b) in relation to any other person, the consent of a parent or guardian or of a person responsible for the care of the person;

**"authorised justice"** means:

- (a) a Magistrate; or
- (b) a Justice employed in the Attorney General's Department;

**"examination"** means an intimate examination or a non-intimate examination;

**"intimate examination"** means:

- (a) a vaginal, anal or penile examination; or
- (b) a dental examination; or
- (c) the taking of an intimate sample;

**"intimate sample"** means:

- (a) a sample of blood, semen, urine, saliva or any other tissue or fluid or of pubic hair (not being a sample referred to in paragraph (b) or (c) of the definition of "non-intimate sample"); or
- (b) a sample taken by a swab from a person's genitals, buttock or body orifice; or
- (c) a sample taken by a swab from a female's breast; or

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900  
RELATING TO MEDICAL EXAMINATIONS - *continued*

(d) an impression of the teeth of a person;

**"non-intimate examination"** means:

(a) a medical examination other than a vaginal, anal or penile examination; or

(b) the taking of a non-intimate sample;

**"non-intimate sample"** means:

(a) a sample of hair other than pubic hair; or

(b) a sample taken from a nail or under a nail; or

(c) a sample taken by a swab from any part of a person's body other than the person's genitals or a buttock or body orifice or, in the case of a female, a breast; or

(d) a footprint or a similar impression of a person's body,

but does not include a finger-print or a palm print;

**"sample"** means an intimate sample or a non-intimate sample.

(2) In this Part, a reference to a sample taken from a person includes a reference to a sample taken from the person that consists of matter from another person's body.

**Application of Part**

358D. (1) If a member of the police force is investigating an offence of such a nature, or alleged to have been committed under such circumstances, that the member has reasonable grounds to believe that the examination of a person will afford evidence as to the commission of the offence, the person may be examined in accordance with this Part.

(2) The person may be examined only if he or she is a person:

(a) who is charged with the commission of the offence; and

**SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900  
RELATING TO MEDICAL EXAMINATIONS - *continued***

- (b) who is in lawful custody of a member of the police force or other person having proper authority or who is at liberty under the Bail Act 1978.
- (3) This Part does not apply in other circumstances.

**Intimate examinations**

358E. (1) An intimate examination of a person may be carried out:

- (a) with the appropriate consent in writing; or
- (b) without the appropriate consent if, on the application of a member of the police force of or above the rank of sergeant, an authorised justice orders that it be carried out.

(2) An intimate examination (other than the taking of a sample of urine given voluntarily or of saliva or an impression of teeth or a dental examination) may be carried out only by a registered medical practitioner or, with the appropriate consent, a registered nurse.

(3) A dental examination or the taking of an impression of the teeth of a person may be carried out only by a registered dentist or registered dental technician.

(4) A member of the police force may use reasonable force to enable the examination to be carried out.

(5) A member of the police force may take into temporary custody a person at liberty under the Bail Act 1978 to enable the examination to be carried out.

**Procedure for intimate examinations**

358F. (1) A person to be examined under section 358E (2) may request that a registered medical practitioner of his or her choice be present during the examination.

(2) The registered medical practitioner nominated by the person (or an alternative registered medical practitioner so nominated) is to be present at the examination unless he or she:



**SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900  
RELATING TO MEDICAL EXAMINATIONS - *continued***

- (a) is unable, or does not wish, to attend; or
- (b) cannot be contacted,

within the time within which the person who is to carry out the examination considers the examination should be carried out if it is to be effective in affording evidence of the alleged offence.

(3) Every member of the police force present during an examination under section 358E (2) is to be of the same sex as the person examined unless:

- (a) it would not be practicable to make the examination without the presence of a member of the other sex; or
- (b) no member of the same sex is available at the time the examination is carried out.

**Applications for orders to make intimate examinations**

358G. (1) A member of the police force of or above the rank of sergeant may apply to an authorised justice for an order authorising the carrying out of an intimate examination of a person without the appropriate consent.

(2) An application for an order may be made personally or, if it is not practicable for the application to be made in person, by telephone.

(3) The authorised justice must, at the time of, or as soon as practicable after, making the order, make a record of the order, the date and time at which it was made and the reasons for making it and give, or forward, it to the member of the police force who made the application.

(4) In this section:

"telephone" includes radio, telex and any other communication device.

**Non-intimate examinations**

358H. (1) A non-intimate examination of a person may be carried out:

**SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900  
RELATING TO MEDICAL EXAMINATIONS - *continued***

- (a) with the appropriate consent in writing; or
- (b) without the appropriate consent if a member of the police force of or above the rank of sergeant authorises it to be made without consent.

(2) The member must, at the time of, or as soon as practicable after, giving the authorisation make a record of the authorisation, the date and time at which it was made and the reasons for making it.

(3) A member of the police force may use reasonable force to enable the examination to be carried out.

(4) A member of the police force may take into temporary custody a person at liberty under the Bail Act 1978 to enable the examination to be carried out.

**Matters to be taken into account in making orders and giving authorisations**

358I. In deciding whether to make an order or to give an authorisation to carry out an examination, the authorised justice or member of the police force is to take the following matters into account:

- (a) the nature of the examination;
- (b) the nature of the offence concerned and the relevance of the examination in confirming or disproving the commission of the offence;
- (c) whether evidence of the commission of the offence could be obtained in some other manner;
- (d) the age of the person;
- (e) the reasons, if any, given by the person, or the other person by whom consent to the examination was required to be given, in refusing to give consent.

**Inferences to be drawn from personal refusal to consent to examination**

358J. (1) In any proceedings for an offence against a person of or above the age of 16 years who has capacity to



**SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900  
RELATING TO MEDICAL EXAMINATIONS - *continued***

give consent and who has refused to consent to the carrying out of an examination of his or her body under this Part, the court or jury may draw such inferences from the person's refusal to consent to the examination as appear proper. The refusal may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence against the person in relation to which the refusal is material.

(2) In any proceedings in which a jury might draw such an inference, the Judge is to warn the jury that there may be good reasons for the person's refusal to consent to the carrying out of the examination.

(3) Inferences may be drawn from a person's refusal to consent to the carrying out of an intimate examination of his or her body only if the examination has not been carried out before the time when the court or jury is to make its determination and:

- (a) the carrying out of the examination without consent was authorised by an order made by an authorised justice; and
- (b) the person was shown a copy of the order or, if the order was obtained by telephone under section 358G, informed as to the making of the order, the name of the authorised justice by whom it was made and the date and time at which it was made; and
- (c) an examination was attempted but it could not be carried out within the time within which it should have been carried out if it was to be effective in affording evidence of the alleged offence without the use of more force than was reasonably necessary to enable the examination; and
- (d) before the refusal, the person was given written notice of the inferences that might be drawn from the refusal.

(4) Inferences may be drawn from a person's refusal to consent to the carrying out of a non-intimate examination



**SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900  
RELATING TO MEDICAL EXAMINATIONS - *continued***

of his or her body only if the examination has not been carried out before the time when the court or jury is to make its determination and:

- (a) the carrying out of the examination without consent was authorised by a member of the police force of or above the rank of sergeant; and
- (b) the person was advised of the authorisation and of the name of the member who gave it; and
- (c) an examination was attempted but could not be carried out within the time within which it should have been made if it was to be effective in affording evidence of the alleged offence without the use of more force than was reasonably necessary to enable the examination; and
- (d) before the refusal, the person was given written notice of the inferences that might be drawn from the refusal.

(5) A refusal to be examined by a registered nurse because the person wishes to be examined by a registered medical practitioner does not, on the basis of that refusal alone, amount to a refusal to be examined.

(6) The withdrawal of consent to the carrying out of an examination is to be treated as a refusal to consent to the carrying out of the examination.

**Samples**

358K. If a sample is taken from a person under this Part, the person carrying out the examination must, in the case of a sample of blood or urine, and should (if practicable) in the case of a sample of any other matter, divide the sample into 2 approximately equal parts and enclose each part in a suitable sealed container and:

- (a) hand one to the person from whom it was taken or to the registered medical practitioner (if any) attending the examination at his or her request; and

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900  
RELATING TO MEDICAL EXAMINATIONS - *continued*

- (b) hand the other to the member of the police force who requested the examination to be made.

**Destruction of samples and records**

358L. (1) A copy of any record made in relation to the examination of a sample taken under this Part is, as soon as practicable after it is made, to be given to the person from whom the sample was taken.

(2) The record and any part of a sample taken from a person in connection with an alleged offence which is retained by a member of the police force may be kept for as long as the Commissioner of Police determines.

(3) If a person is acquitted of the offence, the record and sample must be destroyed as soon as practicable.

**Liability for examination**

358M. No civil or criminal liability is incurred by a person in respect of anything properly and necessarily done by the person in the course of carrying out an examination under this Part if:

- (a) the person believed on reasonable grounds that the appropriate consent had been given to the carrying out of the examination or that the carrying out of the examination without consent had been duly ordered by an authorised justice or authorised by a member of the police force under this Part; or
- (b) the person was informed by a member of the police force that consent or authorisation had been given or an order made.

**Medical examinations of children**

358N. Nothing in section 21 (Special medical examinations) of the Children (Care and Protection) Act 1987 prevents the carrying out of an examination in accordance with this Part.



**SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900  
RELATING TO MEDICAL EXAMINATIONS - *continued***

**Application of other Acts**

358O. Nothing in this Act prevents the carrying out of an examination under another Act in accordance with the provisions of that Act.

**Place at which examination to be made**

358P. The examination of a person under this Part is to be made:

- (a) at a police station or other place of detention; or
- (b) at a hospital or similar place; or
- (c) at premises used by a registered medical practitioner in connection with his or her professional practice; or
- (d) at any other place with the appropriate consent; or
- (e) if the examination is ordered by an authorised justice, at a place nominated by the authorised justice.

**Withdrawal of consent**

358Q. If consent to the carrying out of an examination under this Part is withdrawn before the examination is, or while the examination is being, carried out, the examination is, after that withdrawal, to be treated as an examination for which appropriate consent has not been given and is not to proceed unless ordered by an authorised justice, or authorised by a member of the police force, in accordance with this Part.

**SCHEDULE 2 - AMENDMENT OF CRIMES ACT 1900  
RELATING TO INQUIRIES SUBSEQUENT TO CONVICTION**

(Sec. 3)

**Section 475 (Governor or Judge may direct inquiry etc.):**

- (a) After "conviction" in section 475 (1), insert "in any court".
- (b) After "Supreme Court" in section 475 (1), insert "on application by or on behalf of the person or".



**SCHEDULE 2 - AMENDMENT OF CRIMES ACT 1900  
RELATING TO INQUIRIES SUBSEQUENT TO  
CONVICTION - *continued***

- (c) Omit "Justice" wherever occurring, insert instead "prescribed person".
- (d) After section 475 (4), insert:
  - (5) In this section:  
"prescribed person" means a Justice or a judicial officer within the meaning of the Judicial Officers Act 1986.

**SCHEDULE 3 - AMENDMENT OF CRIMES ACT 1900  
RELATING TO TAKING OF VEHICLES OR BOATS WITHOUT  
CONSENT AND OTHER INDICTABLE OFFENCES**

(Sec. 3)

- (1) Section 1 (**Short title and contents**):  
From the matter relating to Part 14, omit "(4A) *Unlawfully using vehicle or boat - s. 526A*".
- (2) Section 476 (**Indictable offences punishable summarily with consent of accused**):
  - (a) After "offence" in section 476 (6) (a) (i), insert "(other than an offence mentioned in section 154A)".
  - (b) Omit section 476 (6) (ba), insert instead:
    - (ba) any offence mentioned in section 61M or 61O (2);
  - (c) From section 476 (6) (d), omit "154A".
- (3) Section 496B:  
Before section 497, insert:  
**Indictable offences punishable summarily without consent of accused: taking conveyance**  
496B. (1) Proceedings for an offence under section 154A may be disposed of in a summary manner before a Local Court constituted by a Magistrate sitting alone.

**SCHEDULE 3 - AMENDMENT OF CRIMES ACT 1900  
RELATING TO TAKING OF VEHICLES OR BOATS WITHOUT  
CONSENT AND OTHER INDICTABLE OFFENCES - *continued***

(2) The penalty that a Local Court may impose for any such offence disposed of under this section is imprisonment for a maximum period of 2 years, or a fine not exceeding 50 penalty units, or both.

(3) The provisions of section 56 of the Justices Act 1902 do not apply to proceedings under this section.

- (4) Section 526A (Taking a conveyance without the consent of the owner):

Omit the section and the short heading.

**SCHEDULE 4 - AMENDMENT OF CRIMES ACT 1900  
RELATING TO APPREHENDED VIOLENCE ORDERS**

(Sec. 3)

Section 562D (Prohibitions and restrictions imposed by orders):

Omit section 562D (2), insert instead:

(2) In deciding whether or not to make an order which prohibits or restricts access to the defendant's residence, the court is to consider:

- (a) the accommodation needs of all relevant parties; and
- (b) the effect of making an order on any children living or ordinarily living at the residence; and
- (c) the consequences for the person for whose protection the order would be made and any children living or ordinarily living at the residence if an order restricting access by the defendant to the residence is not made.

**SCHEDULE 5 - AMENDMENT OF SUMMARY OFFENCES  
ACT 1988**

(Sec. 4)

**Section 8A:**

After section 8, insert:

**Climbing on or jumping from buildings and other structures**

8A. (1) A person who risks the safety of any other person as a consequence of:

- (a) climbing up or on or otherwise ascending any part of a building or other structure; or
- (b) climbing down or abseiling, jumping, parachuting or otherwise descending from any part of a building or other structure,

except by use of the stairs, lifts or other means provided for ascent or descent of it is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

(2) A person is not guilty of an offence under this section for doing anything if the person establishes that he or she had some reasonable excuse for doing it or did it for a lawful purpose.

(3) In this section:

"structure" includes a bridge, crane (whether mobile or not) and tower, but does not include a structure provided for climbing or jumping for recreational purposes.



**SCHEDULE 6 - SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 5)

**Operation of Schedule 1**

1. (1) Part 10A of the Crimes Act 1900 applies to the examination of a person after the commencement of the Part:

- (a) whether the person is charged with the offence concerned before or after that commencement; and
- (b) whether the person is in custody, or at liberty under the Bail Act 1978, at that commencement.

(2) The provisions of Part 10A do not authorise an examination under that Part of a person at liberty under the Bail Act 1978 at the commencement of Part 10A without the appropriate consent unless the examination is ordered by a Local Court or, in the case of a person brought before the Children's Court, the Children's Court, after taking into account the matters set out in section 358I of the Crimes Act 1900.

(3) Any evidence afforded under section 353A (2) of the Crimes Act 1900, as in force before the commencement of Schedule 1, may be used in proceedings after that commencement in the same way that it would have been used if that subsection were still in force.

**Operation of Schedule 3**

2. (1) An amendment to the Crimes Act 1900 made by Schedule 3 applies only in respect of proceedings for offences committed after the commencement of the amendment.

(2) The Crimes Act 1900 applies in respect of proceedings for offences committed before the commencement of an amendment made by Schedule 3 as if the amendment had not been made.

