



New South Wales

# Courts Legislation Amendment Bill 1995

## 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 amend the *Supreme Court Act 1970* and *District Court Act 1973* to provide that (in the absence of special circumstances) interest cannot be awarded for the period after a settlement offer has been made unless the amount of the judgment (including interest up to and including the date of the offer) exceeds the sum offered by more than 10 per cent,
  - (b) to amend the *District Court Act 1973* and *Compensation Court Act 1984* to provide that the Chief Judges of the District Court and Compensation Court are entitled to the same remuneration and to a like style and title as that to which a Judge of the Supreme Court is entitled,
  - (c) to amend the *Compensation Court Act 1984* to provide that an Acting Chief Judge of the Compensation Court may be appointed in the absence of the Chief Judge and to provide expressly for the appointment of a deputy registrar of the court,
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- (d) to amend the *Local Courts Act 1982* to include provisions presently contained in the *Local Courts Regulation 1994* relating to the seniority of, and robing and taking of oaths by, Magistrates and to repeal that regulation,
- (e) to amend the *Dust Diseases Tribunal Act 1989* to provide for the award of provisional damages, appointment of a Senior Member of the Tribunal, establishment of a Rule Committee, reference of matters for mediation or neutral evaluation and to make various changes in relation to the hearing of proceedings before the Tribunal,
- (f) to make consequential amendments to the *Statutory and Other Offices Remuneration Act 1975*.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

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

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

**Clause 4** repeals the *Local Courts Regulation 1994*.

**Clause 5** repeals rule 4 of the *Dust Diseases Tribunal Rules*. The provision is to be incorporated in the *Dust Diseases Tribunal Act 1989* (see Schedule 4 (19)).

**Clause 6** provides that explanatory notes contained in the amending Schedules do not form part of the proposed Act.

**Schedule 1** makes the amendments described above relating to awards of interest.

**Schedule 2** makes the amendments described above relating to the Chief Judges of the District Court and Compensation Court.

**Schedule 3** makes the amendments described above relating to Magistrates.

**Schedule 4** makes the amendments described above relating to the Dust Diseases Tribunal.

**Schedule 5** makes the amendments described above relating to appointment of a deputy registrar of the Compensation Court.

Further explanation of the amendments is made in the explanatory notes relating to the amendments concerned.



New South Wales

# Courts Legislation Amendment Bill 1995

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendments	2
4 Consequential repeal of Local Courts Regulation 1994	2
5 Consequential amendment of Dust Diseases Tribunal Rules	2
6 Explanatory notes	2

---

## Schedules

1 Amendments relating to interest awards	3
2 Amendments relating to Chief Judges of District Court and Compensation Court	5
3 Amendments relating to Magistrates	8
4 Amendments relating to Dust Diseases Tribunal	11
5 Amendments relating to Deputy Registrar of Compensation Court	28

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## Summary of provisions affected

### Compensation Court Act 1984

<i>Provision affected</i>	<i>Amending Schedule</i>
s 3	Sch 5 (1), (2)
s 9	Sch 2.1 (1)–(5)
s 11	Sch 2.1 (6)
s 11A	Sch 2.1 (7)
s 14	Sch 5 (3)–(6)

### District Court Act 1973

<i>Provision affected</i>	<i>Amending Schedule</i>
s 15	Sch 2.2 (1)
s 15A	Sch 2.2 (2)
s 83A	Sch 1.1

### Dust Diseases Tribunal Act 1989

<i>Provision affected</i>	<i>Amending Schedule</i>
s 3	Sch 4 (1), (6), (10)
s 7	Sch 4 (7)
ss 7A, 7B	Sch 4 (8)
s 11A	Sch 4 (2)
s 13	Sch 4 (9), (20)
s 18	Sch 4 (4)
s 25	Sch 4 (19)
s 28	Sch 4 (5)
ss 32A–32F	Sch 4 (11)
ss 32G–32R	Sch 4 (17)
s 33	Sch 4 (3), (12)–(14), (18), (21)
s 37	Sch 4 (15)
Sch 3	Sch 4 (16)

### Local Courts Act 1982

<i>Provision affected</i>	<i>Amending Schedule</i>
s 4	Sch 3 (1)
s 16	Sch 3 (2)
ss 18–19A	Sch 3 (3)
s 28	Sch 3 (4)

Courts Legislation Amendment Bill 1995

Contents

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**Statutory and Other Offices Remuneration Act 1975**

<i>Provision affected</i>	<i>Amending Schedule</i>
Sch 1	Sch 2.3 (1)
Sch 4	Sch 2.3 (2)

**Supreme Court Act 1970**

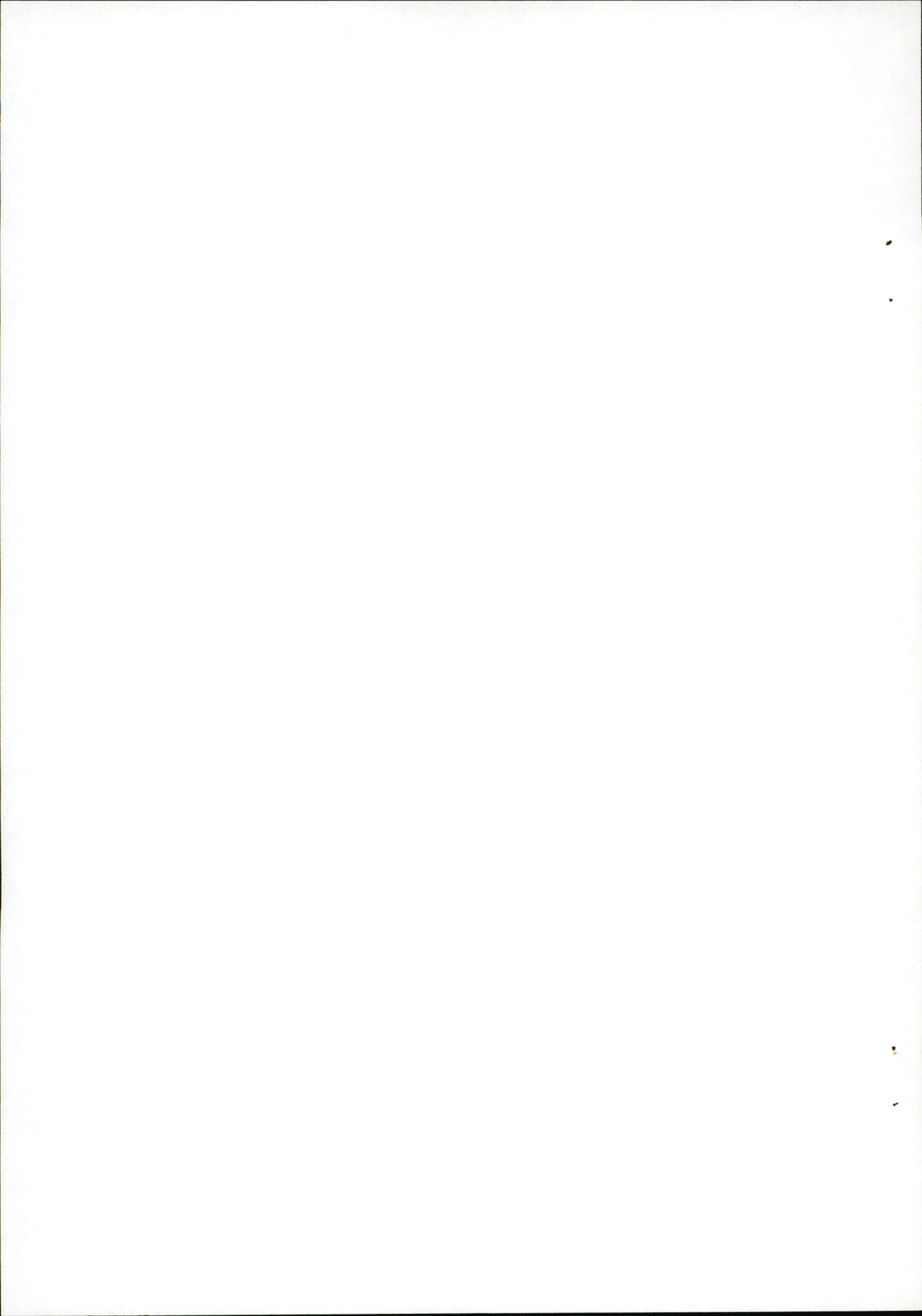
<i>Provision affected</i>	<i>Amending Schedule</i>
s 94	Sch 1.2

**Local Courts Regulation 1994**

<i>Provision affected</i>	<i>Amending Provision</i>
The whole Regulation	s 4

**Dust Diseases Tribunal Rules**

<i>Provision affected</i>	<i>Amending Provision</i>
r 4	s 5





New South Wales

## Courts Legislation Amendment Bill 1995

No , 1995

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### **A Bill for**

An Act to amend the *Supreme Court Act 1970* and the *District Court Act 1973* in relation to the award of interest; to amend the *District Court Act 1973* and the *Compensation Court Act 1984* in relation to the remuneration, style and title of the Chief Judges; to amend the *Compensation Court Act 1984* to provide for the appointment of an Acting Chief Judge and a deputy registrar; to make miscellaneous amendments to the *Local Courts Act 1982* and the *Dust Diseases Tribunal Act 1989*; to make consequential amendments to the *Statutory and Other Offices Remuneration Act 1975*; and for other purposes.

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

**1 Name of Act**

This Act is the *Courts Legislation Amendment Act 1995*.

**2 Commencement**

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

**3 Amendments**

The Acts specified in Schedules 1, 2, 3, 4 and 5 are amended as set out in those Schedules.

**4 Consequential repeal of Local Courts Regulation 1994** 10

- (1) The *Local Courts Regulation 1994* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Local Courts Regulation 1994*, had effect under that Regulation is taken to have effect under the *Local Courts Act 1982* as amended by this Act. 15

**5 Consequential amendment of Dust Diseases Tribunal Rules**

The *Dust Diseases Tribunal Rules* are amended by omitting rule 4.

**6 Explanatory notes**

Matter appearing under the heading "Explanatory note" in this Act does not form part of this Act. 20



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## Schedule 1 Amendments relating to interest awards

(Section 3)

### 1.1 District Court Act 1973 No 9

#### Section 83A Interest up to judgment

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Omit section 83A (3). Insert instead:

- (3) In any action for damages, the Court may not order the payment of interest under subsection (1) in respect of the period after the date on which an appropriate settlement sum (or the first appropriate settlement sum) has been offered unless the special circumstances of the case warrant the making of such an order. 10
- (4) For the purposes of subsection (3), *appropriate settlement sum* is a sum offered by a defendant on or after the commencement of subsection (3) (as inserted by the *Courts Legislation Amendment Act 1995*) in settlement of an action where the amount for which judgment is given (including interest accrued up to and including the date of the offer) does not exceed the sum offered by more than 10 per cent. This subsection extends to such a settlement offer whether the action commenced before, on or after the commencement of this subsection. 15  
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- (5) Subsection (3) does not prevent an award of interest for the period before the settlement offer is made. 25

### 1.2 Supreme Court Act 1970 No 52

#### Section 94 Interest up to judgment

Omit section 94 (3). Insert instead:

Courts Legislation Amendment Bill 1995

Schedule 1 Amendments relating to interest awards

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(3) In any proceedings for damages, the Court may not order the payment of interest under subsection (1) in respect of the period after the date on which an appropriate settlement sum (or the first appropriate settlement sum) has been offered unless the special circumstances of the case warrant the making of such an order. 5

(4) For the purposes of subsection (3), *appropriate settlement sum* is a sum offered by a defendant on or after the commencement of subsection (3) (as inserted by the *Courts Legislation Amendment Act 1995*) in settlement of proceedings where the sum for which judgment is given (including interest accrued up to and including the date of the offer) does not exceed the sum offered by more than 10 per cent. This subsection extends to such a settlement offer whether the proceedings commenced before, on or after the commencement of this subsection. 10  
15

(5) Subsection (3) does not prevent an award of interest for the period before the settlement offer is made.

**Explanatory note** 20

Under section 94 of the *Supreme Court Act 1970* and section 83A of the *District Court Act 1973*, as currently in force, a plaintiff is not entitled to *any* interest if the defendant has made an offer of settlement (which is not accepted by the plaintiff) and the offer matches or nearly matches the amount ultimately awarded by the Court. 25

The object of the amendments to these sections is to make it clear that in proceedings or an action for damages interest cannot (in the absence of special circumstances) be awarded for the period *after* the date on which a settlement offer is made unless the amount of the judgment (including interest accruing before the settlement offer) exceeds the offer by more than 10 per cent. 30

These amendments will apply to a settlement offer made on or after the commencement of the amendments, but will not affect judgments given before that commencement. The amendments will also not prevent an award of interest for the period before the settlement offer was made. 35

## **Schedule 2 Amendments relating to Chief Judges of District Court and Compensation Court**

(Section 3)

- 2.1 Compensation Court Act 1984 No 89** 5
- [1] Section 9 Tenure etc**  
Omit “and the same remuneration and other rights” from section 9 (4).
- [2] Section 9**  
Insert after section 9 (4): 10
- (4A) The Chief Judge is also entitled to a like style and title as that to which a Judge of the Supreme Court (other than the Chief Justice and the President of the Court of Appeal) is entitled.
- (4B) The Chief Judge is entitled to the same remuneration as that to which a Judge of the Supreme Court (other than the Chief Justice and the President of the Court of Appeal) is entitled. 15
- [3] Section 9**  
Insert “or (4B)” after “subsection (4)” in section 9 (5). 20
- [4] Section 9**  
Omit section 9 (6). Insert instead:
- (6) A Judge (other than the Chief Judge) is entitled to a like style and title as that to which a Judge of the District Court is entitled. 25

Courts Legislation Amendment Bill 1995

Schedule 2 Amendments relating to Chief Judges of District Court and Compensation Court

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**[5] Section 9**

Omit section 9 (7).

**[6] Section 11 Acting Judges**

Insert "unless an appointment has been made under section 11A" after "senior Judge" in section 11 (1).

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**[7] Section 11A**

Insert after section 11:

**11A Absence of Chief Judge**

- (1) The Governor may, by commission under the public seal of the State, appoint a Judge to be Acting Chief Judge during such period as the Chief Judge may be absent from his or her duties. 10
- (2) While holding office, the Acting Chief Judge:
  - (a) has the powers and authorities of the Chief Judge, and 15
  - (b) is to fulfil the duties of the Chief Judge, and
  - (c) is entitled to the same remuneration as that to which the Chief Judge is entitled.

**2.2 District Court Act 1973 No 9**

**[1] Section 15 Remuneration**

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Insert "(other than the Chief Judge)" after "The Judges" in section 15 (1).

**[2] Section 15A**

Insert after section 15:

**15A The Chief Judge**

- (1) The Chief Judge is entitled to a like style and title as that to which a Judge of the Supreme Court (other than the Chief Justice and the President of the Court of Appeal) is entitled. 5
- (2) The Chief Judge is entitled to the same remuneration as that to which a Judge of the Supreme Court (other than the Chief Justice and the President of the Court of Appeal) is entitled. 10

**2.3 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)**

**[1] Schedule 1 Public Offices**

Omit "Chief Judge of the District Court." 15

**[2] Schedule 4 Excluded Offices**

Insert after "Judge of the Industrial Court other than the Chief Judge and the Deputy Chief Judge.":

Chief Judge of the District Court.

**Explanatory note** 20

The objects of these amendments are:

- to ensure that the Chief Judges of the District Court and the Compensation Court are remunerated at the same rate as a Judge of the Supreme Court (other than the Chief Justice or the President of the Court of Appeal), and 25
- to provide for the Chief Judges to have a like style and title to that of a Judge of the Supreme Court, (as applicable, "the Honourable Mr. Justice ..." or "the Honourable Justice ..."), and
- to provide that an Acting Chief Judge of the Compensation Court may be appointed in the absence of the Chief Judge, and 30
- to make consequential amendments to the *Statutory and Other Offices Remuneration Act 1975*.

## Schedule 3 Amendments relating to Magistrates

(Section 3)

### Local Courts Act 1982 No 164

#### [1] Section 4 Definitions

Insert in alphabetical order in section 4 (1): 5

*Designated Magistrate* means any of the following:

- (a) the State Coroner,
- (b) the Chairman of the Licensing Court,
- (c) the Chief Industrial Magistrate,
- (d) the Senior Children's Magistrate. 10

#### [2] Section 16 Oaths to be taken by Magistrates

Omit section 16 (1) (a). Insert instead:

- (a) taken and subscribed under the Oaths Act 1900 both the oath of allegiance and the judicial oath, or

#### [3] Sections 18, 19, 19A 15

Insert after section 17:

##### 18 Seniority of Magistrates generally

- (1) The order of seniority of Magistrates is as follows:
  - Chief Magistrate
  - Deputy Chief Magistrate 20
  - Designated Magistrate
  - Magistrate
- (2) A Magistrate who has limited tenure is not entitled to seniority over any other Magistrate.

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**19 Seniority of Magistrates within the same class**

- (1) A Magistrate is senior to another Magistrate if the appointment of the Magistrate took effect before the appointment of the other Magistrate.
- (2) If the appointment of two or more Magistrates took effect on the same day, the various Magistrates have seniority: 5
  - (a) according to their instruments of appointment, or
  - (b) if their instruments of appointment do not provide for seniority between them, according to the order in which they took and subscribed the oaths, or made and subscribed the affirmations, referred to in section 16 (1). 10
- (3) A Designated Magistrate is senior to another Designated Magistrate: 15
  - (a) if the salary of the Designated Magistrate is greater than that of the other Designated Magistrate, or
  - (b) where the salaries are equal, if the appointment of the Designated Magistrate (as a Designated Magistrate) took effect before the appointment of the other Designated Magistrate (as a Designated Magistrate). 20
- (4) A Deputy Chief Magistrate is senior to another Deputy Chief Magistrate if the appointment of the Deputy Chief Magistrate (as a Deputy Chief Magistrate) took effect before the appointment of the other Deputy Chief Magistrate (as a Deputy Chief Magistrate). 25
- (5) This section does not affect the order of seniority set out in section 18. 30

**19A Court dress**

No Magistrate may robe at any sitting of a Local Court.

**[4] Section 28**

Omit the section. Insert instead:

**28 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 5

**Explanatory note**

The proposed amendments: 10

- (a) incorporate in the *Local Courts Act 1982* the provisions of the *Local Courts Regulation 1994*:
- to require newly appointed Magistrates, as a prerequisite for taking office, to take the oath of allegiance and the judicial oath (or to make affirmations to that effect) in the terms provided by the *Oaths Act 1900*, and 15
  - to provide for seniority among Magistrates, and
  - to prohibit Magistrates robing, and
- (b) omit superfluous provisions of the general regulation-making power relating to those matters and to the establishment of committees. 20



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## Schedule 4 Amendments relating to Dust Diseases Tribunal

(Section 3)

### Dust Diseases Tribunal Act 1989 No 63

#### Amendments—provisional damages

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#### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

*damages* includes further damages awarded under section 11A.

#### [2] Section 11A

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Insert after section 11:

#### 11A Award of provisional damages

- (1) This section applies to proceedings of the kind referred to in section 11 (1) that are brought after the commencement of this section and in which there is proved or admitted to be a chance that at some definite or indefinite time in the future the person who is suffering from the dust-related condition in respect of which the proceedings are brought (“the injured person”) will, as a result or partly as a result of the breach of duty giving rise to the cause of action, develop another dust-related condition. 15
- (2) The Tribunal may, in accordance with the rules:
  - (a) award damages assessed on the assumption that the injured person will not develop another dust-related condition, and 25
  - (b) award further damages at a future date if the injured person does develop another dust-related condition.

**[3] Section 33 Rules**

Insert after section 33 (4) (b):

- (b1) the manner in which, time at which and persons by whom further damages to be awarded under section 11A (and any interest on those damages awarded under section 15) may be claimed, and 5

**Explanatory note—items (1)–(3)**

At present the Tribunal may assess damages only on a once-and-for-all basis even where there is a chance of a further dust-related condition developing eg asbestosis may progress to mesothelioma. The proposed amendments will enable the Tribunal to award compensation for an injury without removing the right to proceed later for compensation for a different injury arising from the same dust exposure, so avoiding the necessity to include in the award a component for the possibility of a different injury developing. 10

**Amendment—notice and conduct of proceedings 15**

**[4] Section 18 Notice and conduct of proceedings**

Omit the section.

**Explanatory note—item (4)**

The proposed amendment omits an unnecessary provision requiring the Tribunal to fix a time and place for the hearing of proceedings and for the registrar to serve notice on each party to the proceedings. 20

**Amendment—reasons**

**[5] Section 28 Tribunal to provide reasons for its decisions**

Omit the section.

**Explanatory note—item (5) 25**

At common law, judges have an obligation to give reasons for decisions (as explained in cases such as *Pettitt v Dunkley* [1971] 1 NSWLR 376 and *Soulemezis v Dudley (Holdings) Pty Ltd* [1987] 10 NSWLR 247). The proposed amendment removes an unnecessary provision so that the Tribunal will be bound by the common law requirements that are applicable to other courts. 30

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**Amendments—Senior Member**

**[6] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*Senior Member* means the Senior Member of the Tribunal.

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**[7] Section 7 Members of the Tribunal**

Insert after section 7 (3):

(3A) The Governor may, by the commission of a person's appointment as a member or by a subsequent commission under the public seal of the State, appoint a member to be Senior Member of the Tribunal.

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(3B) Subject to subsection (3C), the Senior Member is to hold office as Senior Member so long as he or she holds office as a member.

(3C) With the approval of the Governor, the Senior Member may resign his or her office as Senior Member without resigning his or her office as a member.

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**[8] Sections 7A and 7B**

Insert after section 7:

**7A Vacancy in office of or absence of Senior Member**

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(1) If there is a vacancy in the office of the Senior Member, or the Senior Member is absent from his or her duties, the senior of the other members willing to act as Senior Member is, if there is no Acting Senior Member appointed under section 7B, to act as Senior Member, and is, while so acting, to have all the functions of the Senior Member.

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- (2) For the purposes only of subsection (1):
- (a) the members are to have seniority between themselves according to the dates of their commission as members, a member whose commission is dated earlier than that of another member being senior to that other member, and 5
  - (b) if the commissions of two or more members bear the same date, those members are to have seniority between themselves according to the seniority assigned to them by their commission or, failing any such assignment, according to the order of their being sworn. 10

**7B Acting Senior Member**

- (1) The Governor may, by commission under the public seal of the State, appoint a member to be Acting Senior Member during such period as the Senior Member may be absent from his or her duties. 15
- (2) While holding office, the Acting Senior Member is to have the same functions as the Senior Member.

**[9] Section 13 Proceedings before the Tribunal** 20

Omit section 13 (2). Insert instead:

- (2) The Senior Member is to fix the times and places for the holding of proceedings before the Tribunal and is to nominate the member before whom proceedings are to be held. 25

**Explanatory note—items (6)–(9)**

The proposed amendments provide for the appointment of a member of the Tribunal as Senior Member, for appointment of an Acting Senior Member and for casual vacancies in the office of Senior Member. The Senior Member is to be responsible for fixing the times and places for holding proceedings and is to chair the Rule Committee (see Schedule 4 (11)). 30

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**Amendments—Rule Committee**

**[10] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*barrister* means a legal practitioner who holds a current practising certificate as a barrister. 5

*Rule Committee* means the Dust Diseases Tribunal Rule Committee established under section 32A.

*solicitor* means a legal practitioner who holds a current practising certificate as a solicitor.

**[11] Part 3A** 10

Insert after section 32:

**Part 3A Rule Committee**

**32A Establishment of the Rule Committee**

There is to be a Dust Diseases Tribunal Rule Committee.

**32B Composition of the Rule Committee** 15

(1) The Rule Committee is to be composed of no more than 6 members.

(2) Of the members of the Rule Committee:

(a) one is to be the Senior Member of the Tribunal, and 20

(b) no more than 3 are to be members of the Tribunal other than the Senior Member, and

(c) one is to be a barrister, and

(d) one is to be a solicitor.

(3) A member of the Rule Committee referred to in subsection (2) (b), (c) or (d) is to be appointed by the Senior Member in writing. 25

- (4) Subject to this section, a member of the Rule Committee referred to in subsection (2) (b), (c) or (d) holds office for such period as may be specified in the member's instrument of appointment and, if otherwise qualified, is eligible for re-appointment or, as the case may be, for further re-appointment. 5
- (5) A member of the Rule Committee ceases to hold office as such:
- (a) when the member ceases to hold the qualification by virtue of which the member was appointed, or 10
  - (b) in the case of a member referred to in subsection (2) (b), (c) or (d), if the member resigns as such in writing addressed to the Senior Member.
- (6) In the event of the office of any member of the Rule Committee becoming vacant, a suitably qualified person must, in the case of a member referred to in subsection (2) (b), (c) or (d) and subject to this section, be appointed to fill the vacancy. 15

**32C Deputies for barrister and solicitor members**

- (1) The Senior Member may, from time to time, appoint to the Rule Committee: 20
- (a) a barrister to be the deputy of the member appointed under section 32B (2) (c), and
  - (b) a solicitor to be the deputy of the member appointed under section 32B (2) (d), 25
- and the Senior Member may revoke any such appointment.
- (2) In the absence of a member appointed under section 32B (2) (c) or (d), the member's deputy:
- (a) may, if available, act in the place of the member, and 30
  - (b) while so acting, has the functions of the member and is taken to be the member.

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**32D Chairperson and deputy chairperson of the Rule Committee**

- (1) The Senior Member is to be the chairperson of the Rule Committee.
- (2) The Senior Member is to appoint another member to be the deputy chairperson of the Rule Committee. 5

**32E Meetings of the Rule Committee**

- (1) The procedure for calling meetings of the Rule Committee and for the conduct of business at those meetings is, subject to any procedure that is prescribed by or under this Act, to be as determined by the Rule Committee. 10
- (2) Three members of the Rule Committee are to form a quorum and any duly convened meeting of the Rule Committee at which a quorum is present is competent to transact any business of the Rule Committee and has all the functions of the Rule Committee. 15
- (3) The chairperson of the Rule Committee or, in the absence of the chairperson, the deputy chairperson of that Committee is to preside at a meeting of that Committee. 20
- (4) In the absence from a meeting of the Rule Committee of both the chairperson and the deputy chairperson another member of the Rule Committee elected by the members present is to preside at the meeting. 25
- (5) The person presiding at a meeting of the Rule Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (6) A decision supported by a majority of the votes cast at a meeting of the Rule Committee at which a quorum is present is the decision of that Committee. 30
- (7) The Senior Member is to call the first meeting of the Rule Committee in such manner as the Senior Member thinks fit and, subject to any decision of that Committee under subsection (1), may call other meetings of that Committee as and when the Senior Member thinks necessary. 35

- (8) The Rule Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Rule Committee for the time being, and a resolution in writing approved in writing by a majority of those members is to be taken to be a decision of the Rule Committee. 5

**32F Secretary to the Rule Committee**

- (1) Subject to and in accordance with Part 2 of the *Public Sector Management Act 1988*, a person is to be appointed to hold office as the Secretary to the Rule Committee. 10
- (2) The appointment of a person under subsection (1) is subject to the prior approval of the Senior Member.
- (3) A person may hold office under subsection (1) in conjunction with some other office or position in the Public Service. 15
- (4) The Secretary to the Rule Committee has and may exercise and discharge such functions as may be specified in the rules or as the Rule Committee may determine. 20

**[12] Section 33 Rules**

Omit section 33 (1) and (2).

**[13] Section 33**

Omit "Governor" from section 33 (3).  
Insert instead "Rule Committee". 25

**[14] Section 33**

Insert after section 33 (4):

- (5) The rules may, with any adaptations specified in the rules, adopt by reference any rules made under the *Supreme Court Act 1970*. 30



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**[15] Section 37**

Insert after section 36:

**37 Savings, transitional and other provisions**

Schedule 3 has effect.

**[16] Schedule 3**

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Insert after Schedule 2:

**Schedule 3 Savings, transitional and other provisions**

(Section 37)

**1 Regulations**

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- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Courts Legislation Amendment Act 1995

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.

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- (3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate:

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- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person existing before the date of publication, or

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- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of publication.

## 2 Rules

The Rules made under this Act (other than rule 4 of the *Dust Diseases Tribunal Rules*) and in force immediately before the commencement of Schedule 4 (13) to the *Courts Legislation Amendment Act 1995* are taken to be rules made by the Rule Committee. 5

### Explanatory note—items (10)–(16)

The proposed amendments establish a Rule Committee so that the Tribunal will have the same ability as other civil courts to control its own procedure.

## Amendments—mediation and neutral evaluation 10

### [17] Part 3B

Insert before Part 4:

### Part 3B Mediation and neutral evaluation

#### 32G Purpose of Part

- (1) The purpose of this Part is to enable the Tribunal to refer matters for mediation or neutral evaluation if the parties to the proceedings concerned have agreed to that course of action. 15
- (2) This Part does not prevent:
  - (a) the parties to proceedings from agreeing to and arranging for mediation or neutral evaluation of any matter otherwise than as referred to in this Part, or 20
  - (b) a matter arising in proceedings from being dealt with under the provisions of the *Community Justice Centres Act 1983*. 25

#### 32H Meaning of *mediation* and *neutral evaluation*

- (1) For the purposes of this Part, *mediation* means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute. 30

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- (2) For the purposes of this Part, *neutral evaluation* means a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law that are in dispute. The evaluator's role includes assessing the relative strengths and weaknesses of each party's case and offering an opinion as to the likely outcome of the proceedings, including any likely findings of liability or the award of compensation. 5

**32I Other definitions**

In this Part: 10

*evaluator* means a person to whom the Tribunal refers a matter for neutral evaluation under this Part.

*mediation session* means a meeting arranged for the mediation of a matter under this Part.

*mediator* means a person to whom the Tribunal refers a matter for mediation under this Part. 15

*neutral evaluation session* means a meeting arranged for the neutral evaluation of a matter under this Part.

**32J Referral by Tribunal**

- (1) The Tribunal may, by order, refer a matter arising in proceedings before it for mediation or neutral evaluation if: 20

(a) the Tribunal considers the circumstances appropriate, and

(b) the parties to the proceedings consent to the referral, and 25

(c) the parties to the proceedings agree as to who is to be the mediator or evaluator for the matter.

- (2) The mediator or evaluator may, but need not be, a person whose name is on a list compiled under this Part. 30

**32K Mediation and neutral evaluation to be voluntary**

- (1) Attendance at and participation in mediation sessions or neutral evaluation sessions are voluntary.

- (2) A party to a mediation session or neutral evaluation session may withdraw from the session at any time.

**32L Costs of mediation and neutral evaluation**

The costs of mediation or neutral evaluation, including the costs payable to the mediator or evaluator, are to be borne by the parties to the proceedings in such proportions as they may agree among themselves or, failing agreement, in equal shares. 5

**32M Agreements and arrangements arising from mediation sessions** 10

- (1) The Tribunal may make orders to give effect to any agreement or arrangement arising out of a mediation session.
- (2) This Part does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session, in relation to the matters the subject of a mediation session. 15

**32N Mediators and evaluators**

- (1) The Senior Member may compile a list or lists of persons considered by the Senior Member to be suitable to be mediators for the purposes of this Part. 20
- (2) The Senior Member may compile a list or lists of persons considered by the Senior Member to be suitable to be evaluators for the purposes of this Part.
- (3) Different lists may be compiled for different types of matters or to take account of any other factors. 25
- (4) A person may be included in a list under this section only if:
- (a) the person consents to being included in the list, and 30
  - (b) the person agrees to comply with the provisions of this Part and of any regulations or rules made for the purposes of this Part.

- 
- (5) The Senior Member may amend or revoke any list compiled under this section for any reason that the Senior Member considers appropriate.
  - (6) The Senior Member is to review at least annually any list compiled under this section. 5

**320 Privilege**

- (1) In this section, *mediation session* or *neutral evaluation session* includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session. 10
- (2) Subject to subsection (3), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:
  - (a) a mediation session or neutral evaluation session, or 15
  - (b) a document or other material sent to or produced to a mediator or evaluator, or sent to or produced at the Tribunal or the office of the registrar, for the purpose of enabling a mediation session or neutral evaluation session to be arranged. 20
- (3) The privilege conferred by subsection (2) only extends to a publication made:
  - (a) at a mediation session or neutral evaluation session, or 25
  - (b) as provided by subsection (2) (b), or
  - (c) as provided by section 32P.
- (4) Evidence of any thing said or of any admission made in a mediation session or neutral evaluation session is not admissible in any proceedings before any court, tribunal or body. 30
- (5) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session or neutral evaluation session, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body. 35

- (6) Subsections (4) and (5) do not apply with respect to any evidence or document:
- (a) if the persons in attendance at, or identified during, the mediation session or neutral evaluation session and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document, or 5
  - (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 32P (c). 10

**32P Secrecy**

A mediator or evaluator may disclose information obtained in connection with the administration or execution of this Part only in any one or more of the following circumstances: 15

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the administration or execution of this Part,
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property, 20
- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session or neutral evaluation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session or neutral evaluation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner, 25 30
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth. 35

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**32Q Exoneration from liability for listed mediators and evaluators**

No matter or thing done or omitted to be done by a mediator or evaluator subjects the mediator or evaluator to any action, liability, claim or demand if:

5

- (a) the matter or thing was done in good faith for the purposes of a mediation session or neutral evaluation session under this Part, and
- (b) when the subject-matter of the mediation or neutral evaluation was referred for mediation or neutral evaluation, the mediator's or evaluator's name was included in a list compiled under this Part.

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**32R Regulations for the purposes of this Part**

The Governor may make regulations for the purposes of this Part.

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**[18] Section 33 Rules**

Insert after section 33 (4) (a):

- (a1) regulating and prescribing the practice and procedure to be followed in the mediation or neutral evaluation of any matter under Part 3B, and

20

**Explanatory note—items (17) and (18)**

The proposed amendments enable the Tribunal to refer matters in proceedings before it for mediation and neutral evaluation if the parties concerned agree to it.

25

The amendments make it clear that attendance at and participation in mediation sessions and neutral evaluation sessions are voluntary. A party can withdraw from a session at any time.

The amendments enable the Senior Member of the Tribunal to compile lists of persons suitable to be mediators or evaluators for the purposes of the new provisions. Provisions providing protection from liability for mediators and evaluators are included as well as provisions specifying limited circumstances in which information obtained by mediators and evaluators may be disclosed.

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(Items (6)–(9) contain provisions relating to the Senior Member of the Tribunal.)

**Amendment—historical evidence and general medical evidence**

**[19] Section 25 Evidence in proceedings before the Tribunal**

Insert after section 25 (2):

- (3) Historical evidence and general medical evidence concerning dust exposure and dust diseases which has been admitted in any proceedings before the Tribunal may, with the leave of the Tribunal, be received as evidence in any other proceedings before the Tribunal, whether or not the proceedings are between the same parties. 5 10

**Explanatory note—item (19)**

The proposed amendment incorporates rule 4 of the *Dust Diseases Tribunal Rules* (which is to be repealed by this Act) in the amended Act.

The proposed subsection permits certain evidence of a general nature that has been admitted in previous proceedings before the Tribunal to be admitted as evidence in later proceedings, whether or not the same parties are involved. This is designed to avoid unnecessary repetition of evidence and to assist in expediting proceedings. 15

**Amendment—proceedings outside NSW 20**

**[20] Section 13 Proceedings before the Tribunal**

Insert after section 13 (6):

- (7) If the Senior Member is of the opinion that the balance of cost and convenience in the proceedings so requires, the Senior Member may direct that the hearing of the proceedings, or any part of the proceedings, take place outside New South Wales. 25

**Explanatory note—item (20)**

The proposed amendment will enable the Tribunal to hear a matter outside the State if, for example, a witness is too ill to travel to the State or the matter involves a multiplicity of witnesses. 30



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**Amendment—video link evidence**

**[21] Section 33 Rules**

Insert at the end of section 33 (4) (j):

, and

- (k) regulating the mode in which evidence may be given, including the taking of evidence by video link or any other form of telecommunication from persons not present before the Tribunal. 5

**Explanatory note—item (21)**

The proposed amendment will enable rules to be made for the taking of evidence by video link and other forms of telecommunication. 10

## **Schedule 5 Amendments relating to Deputy Registrar of Compensation Court**

(Section 3)

### **Compensation Court Act 1984 No 89**

- [1] Section 3 Definitions** 5
- Insert “, the deputy registrar” after “the registrar” in the definition of *a registrar* in section 3 (1).
- [2] Section 3**
- Insert in alphabetical order in section 3 (1):
- deputy registrar* means the deputy registrar of the Court. 10
- [3] Section 14 Appointment of officers**
- Insert “a deputy registrar,” after “registrar,” in section 14 (1).
- [4] Section 14**
- Insert “deputy registrar,” after “registrar,” in section 14 (2).
- [5] Section 14** 15
- Omit “An assistant registrar” from section 14 (3).  
Insert instead “The deputy registrar and an assistant registrar”.

**[6] Section 14**

Insert “the deputy registrar or” after “omitted by” in section 14 (3).

**Explanatory note**

The proposed amendments provide for the appointment of a deputy registrar.



CTA

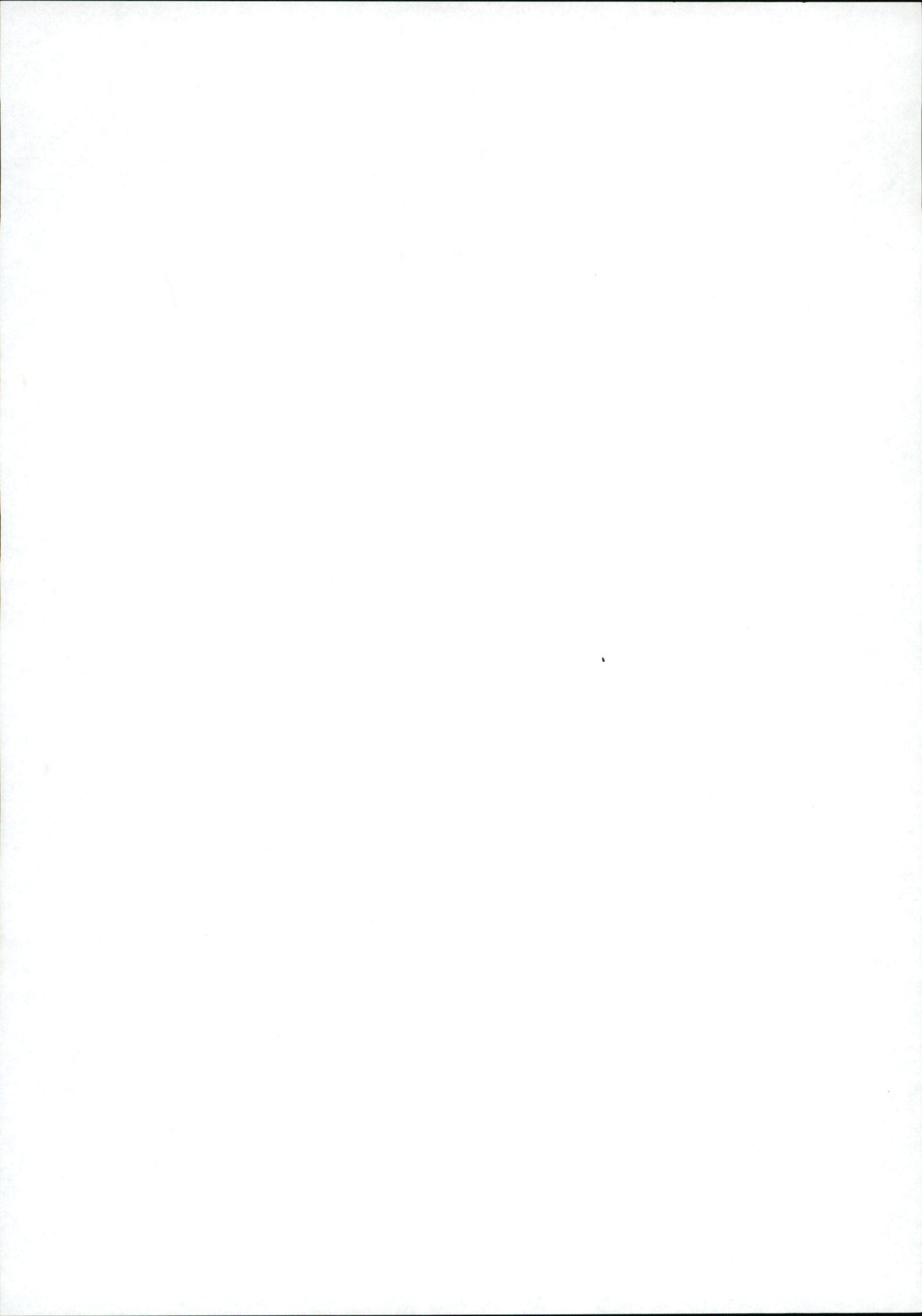
**LEGISLATIVE COUNCIL**

**Criminal Legislation Amendment Bill**

**First Print**

Amendments to be moved in Committee

- No. 1      Page 12, Schedule 1.5 [2] line 15. Omit "(other than cannabis leaf)".
- No. 2      Page 12, Schedule 1.5 [3] line 21. Omit "(other than cannabis leaf)".



First print



New South Wales

# **Criminal Legislation Amendment Bill 1995**

## **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

Crimes Act 1900

Criminal Appeal Act 1912

Criminal Procedure Act 1986

Drug Misuse and Trafficking Act 1985

Traffic Act 1909.

The amendments are explained below in detail in relation to each Act 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** gives effect to Schedule 1 which contains amendments to the Acts listed above.

## Schedule 1 Amendment of Acts

### Bail Act 1978

#### Presumption in favour of bail

Section 9 of the *Bail Act 1978* lists various exceptions to the presumption that bail ought generally to be available to a person who is in custody as a consequence of having been charged with an offence. The presumption in favour of the grant of bail is to be removed where the accused is charged with conspiring to murder, attempted murder or sending a document threatening to kill or inflict bodily harm on a person. Accordingly, section 9 of the *Bail Act 1978* is to be amended to exclude the application of the presumption to sections 26–31, inclusive, of the *Crimes Act 1900*. (Schedule 1.1 (1))

#### Review of bail conditions

Section 48A of the *Bail Act 1978* was inserted by the *Bail (Amendment) Act 1989* and commenced on 25 March 1990. The object of the section was to confer a right of review of bail conditions by a court (in addition to the right to a general review of bail) if the accused was in custody because the accused could not satisfy or had breached a bail condition. Applications to review bail were encouraged to reduce the jail remand population. The original decision to set bail at a particular level could be reviewed if the accused was unable to raise bail. The special limited right to the review of a bail condition was to be exercised by the court that imposed the bail condition, principally Local Courts. It was not intended that the special right to review bail conditions would replace or affect the general right to apply for a review of the bail decision. Section 48A (6) sought to make that clear. Because section 45 of the *Bail Act 1978* authorises the Supreme Court to



review the bail decisions of any other court and because of the availability of other avenues of review and the minor nature of the limited review of a bail condition, section 48A (5) was inserted to ensure that the Supreme Court was not required to conduct a limited review of bail set by another court.

In two unreported decisions of the Supreme Court, *R v McCullough* (6 July 1993) and *R v Gunton* (15 September 1993), doubt has been expressed as to the relationship between subsections (5) and (6) of section 48A. The amendments are intended to make it clear that the Supreme Court is not required to undertake the review of a bail condition imposed by another court.

The amendments extend to applications and requests made to the Supreme Court but not determined by it before the commencement of the amendments. (Schedule 1.1 (2) and (3))

### **Savings and transitional provisions**

The Schedule of savings and transitional provisions to the *Bail Act 1978* is amended as a consequence of the amendments described above. (Schedule 1.1 (4))

### **Crimes Act 1900**

#### **Act of indecency**

Section 61N of the *Crimes Act 1900* provides that:

Any person who commits an act of indecency with or towards a person under the age of 16 years, or incites a person under that age to an act of indecency with or towards that or another person, is liable to imprisonment for 2 years.

An act of indecency is one that right-minded persons would consider to be contrary to community standards of decency. An example is indecent exposure. The age restriction contained in section 61N prevents the prosecution of a person who acts indecently towards an adult. The section is to be amended to provide that where the act of indecency involves a victim of or above the age of 16 years the offender will be liable to a maximum penalty of 18 months' imprisonment. (Schedule 1.2 (2))

A corresponding amendment is made to section 61O which deals with acts of indecency committed in circumstances of aggravation. The maximum penalty in that case will be imprisonment for 3 years. (Schedule 1.2 (3))

Section 77 of the *Crimes Act 1900* is also to be amended to allow the defence of consent to apply if the victim (in either a section 61N or a section 61O case) is of or above the age of 16 years. (Schedule 1.2 (4) and (5))

Schedule 1.2 (1), (15) and (16) and Schedule 1.4 (3) and (4) make consequential amendments.

### **Extension of circumstances of aggravation for the offence of burglary**

Section 105A of the *Crimes Act 1900* lists circumstances of aggravation in the commission of offences of sacrilege and housebreaking. The penalty for the offence is greater if it is committed in circumstances of aggravation. Those circumstances are extended to include circumstances where the offender knew or was reckless as to whether persons were present in the premises in the commission of the offence. (Schedule 1.2 (6) and (7))

### **Corrupt practices—police officers**

Part 4A of the *Crimes Act 1900* deals with corruptly receiving commissions and other corrupt practices. Section 249A is being amended to avoid doubt that the Part applies to police officers. (Schedule 1.2 (8))

### **Harm to witnesses and jurors**

It is an offence under Chapter 3 of Part 7 of the *Crimes Act 1900* (Interference with judicial officers, witnesses, jurors etc), sections 320–326, to harm a witness or juror or a potential witness or juror. In a recent incident outside the Downing Centre Local Court, a person was attacked outside the courtroom following the close of a case when no further witnesses could be called. It appeared that the assailant was seeking to punish the person for having been willing to attend as a witness. At the time the attack occurred, the victim had not been a witness and had ceased to be a potential witness. Subsequently, the Court of Criminal Appeal decided on 22 May 1995, in the case of *R v Lansdell*, that a person need not be a witness or be called as a witness in order to come within the provisions. It also recognised that the test as to a person's status might relate solely to the understanding and intention of the accused. Sections 325 and 326 of the *Crimes Act 1900* are to be amended to extend the provisions of Chapter 3 of Part 7 to protect persons who may have been but were not called as witnesses if the accused believed they may have been called as witnesses. (Schedule 1.2 (9), (10))

### **Forensic samples**

Section 353A of the *Crimes Act 1900* sets out the circumstances in which a person in lawful custody upon a charge of committing a crime or offence may be subjected to medical examination.

The section is amended to provide that

- samples of the person's blood, saliva and hair may be taken
- evidence from the samples may only be used in proceedings concerning the crime or offence for which the samples were taken
- the samples must be destroyed as soon as practicable after the conclusion of those proceedings
- the place of custody is not restricted to a police station
- samples may be taken without the consent of the person in lawful custody. (Schedule 1.2 (11))

The amendments extend to a person who is in lawful custody when the amendments commence. (Schedule 1.2 (24), clause 15)

### **Use of depositions by the prosecution**

Section 409 of the *Crimes Act 1900* enables the deposition of a witness given in committal proceedings and certain statements of witnesses given under the *Justices Act 1902* to be read as evidence for the prosecution at the trial of the accused upon proof on oath "that the witness is dead, or *so ill as not to be able to travel or to give evidence*, or is absent from Australia...". In *R v Brotherton* (1993) NSWLR 95, the Court of Criminal Appeal held that section 409 did not allow the evidence of a witness to be admitted where the evidence could not be given without a risk of endangering his or her life. That is, the risk faced in giving evidence was not a relevant factor to be taken into consideration. Section 409 is being amended to enable this factor to be taken into account. (Schedule 1.2 (12) and (13))

### **Inspection of red light cameras**

Section 4DA (3) (b) of the *Traffic Act 1909* and section 414A (6) (b) of the *Crimes Act 1900* provide for the acceptance of photographs taken by a red light camera as prima facie evidence of an offence, provided that an inspection of the camera was carried out within 48 hours of the time recorded on the photographs. The effect of the sections is to require inspection of each red light camera every 48 hours. The inspection period is being increased to 84 hours. (Schedule 1.2 (14) and Schedule 1.6)

### **Time for commencing prosecutions relating to unlawful custody of motor vehicles**

Section 527C of the *Crimes Act 1900* makes it an offence to give custody of property to a person who is not entitled to it. Under section 56 of the *Justices Act 1902*, a prosecution for the offence must be commenced within 6 months after the date of disposal of the property. The 6-month period is being extended to 2 years in the case of stolen motor vehicles in order to enable the police adequate time in which to complete their investigations. (Schedule 1.2 (17))

### **Apprehended violence orders—validation of orders**

Part 15A of the *Crimes Act 1900* deals with apprehended violence orders. The Part is to be amended to provide that if an apprehended violence order is mistakenly made against juveniles in the Local Court and if an interstate restraint order is mistakenly registered in the wrong court, the orders will not be rendered invalid on that account. Although the Local Court has no jurisdiction to make an apprehended violence order against a defendant who is under 18 years of age, such an order might be made in the Local Court if the Local Court is under the mistaken belief that a person is 18 years or over. The apprehended violence order would then be void. Furthermore, restraint orders made interstate can be enforced in New South Wales upon registration with the "appropriate court". The appropriate court is a Local Court if the defendant is 18 years of age or over and the Children's Court if the defendant is less than 18 years of age. It is conceivable that mistakes could also be made as to age in these circumstances, thus invalidating the registration of the apprehended violence order.

The proposed amendments to section 562G and 562U will ensure that where an apprehended violence order is made or registered in the Local Court upon the assumption that the defendant had or had not reached a particular age, the order will not be rendered invalid for that reason. (Schedule 1.2 (18) and (21))

The amendments are to apply to orders whenever made. (Schedule 1.2 (24), clauses 16 and 18)

### **Assessment of offenders who have contravened an apprehended violence order**

Section 562I of the *Crimes Act 1900* provides for the offence of contravening an apprehended violence order. Subsection (2B) of that section provides for a Local Court to consider a "full psychiatric assessment"

before imposing a sentence of imprisonment on persons convicted under section 562I where the act constituting the offence was an act of violence. The subsection is being amended to provide that a "full psychological assessment" may be considered by the court as an alternative to a "full psychiatric assessment". (Schedule 1.2 (19))

### **Apprehended violence orders—expiry of arrest warrants**

Section 562K of the *Crimes Act 1900* allows an authorised justice to issue a warrant for the arrest of the defendant where a complaint is made for an apprehended violence order. As first instance warrants remain current for several years, a defendant may be arrested despite the earlier resolution of the domestic situation. To avoid the unnecessary deprivation of the defendant's liberty and the waste of police and court time in such a situation, first instance warrants are to automatically expire after 12 months. A fresh complaint for an apprehended violence order may be made if necessary. (Schedule 1.2 (20))

The amendments are to apply to warrants whenever issued. (Schedule 1.2 (24), clause 17)

### **Disclosure of addresses and telephone numbers of witnesses**

The *Crimes Act 1900* is to be amended by the insertion of proposed section 577A to provide that a witness in criminal proceedings is not required to disclose his or her address or telephone number unless it is a materially relevant part of the evidence or the court makes an order requiring the disclosure. Such an order can only be made if the court is satisfied that the disclosure is not likely to present a reasonably ascertainable risk to the welfare or protection of any person or that the interests of justice outweigh any such risk. (Schedule 1.2 (22))

### **Abolition of common law offences of eavesdropping and being a common scold**

The common law is the unwritten law as distinct from the written or statute law. Included among common law offences are the offences of eavesdropping and being a common scold. "Eavesdropping" involves the act of listening through walls or under windows (within the eaves' drop) to private conversations for the purpose of spreading scandals. A "common scold" is a troublesome woman who, by brawling and wrangling with her

neighbours, breaks the public peace, increases discord and becomes a public nuisance to the neighbourhood. These offences have become obsolete. There is no record of them having been prosecuted in New South Wales this century.

Proposed section 580B abolishes these offences but not so as to affect any offences that may have been committed before the commencement of the proposed section. (Schedule 1.2 (23) and (24), clause 19)

### **Criminal Appeal Act 1912**

Decisions of the Court of Criminal Appeal in *R v Puena* (15 August 1992) and *R v Hallocoglu* (1 September 1992) have drawn attention to the difficulty of sentencing respondents to Crown appeals in their absence. The *Criminal Appeal Act 1912* is to be amended by the insertion of proposed section 14A to enable the Court of Criminal Appeal to deal with Crown appeals in the absence of the respondent as long as the Court is satisfied that the respondent has been given notice of the appeal and that it would not be unjust to deal with the appeal in the absence of the respondent. (Schedule 1.3)

### **Criminal Procedure Act 1986**

Section 32 of the *Criminal Procedure Act 1986* permits an accused person in criminal proceedings in the Supreme Court or District Court to dispense with a jury and elect instead to be tried by a judge alone. An election may only be made with the consent of the prosecutor. As administrative problems have been encountered in contacting the particular prosecutor in order to obtain his or her consent, section 32 is to be amended to enable the Director of Public Prosecutions (or the Director's delegate) to consent to the election. (Schedule 1.4 (1))

The amendment made to section 33J of the *Criminal Procedure Act 1986* is consequential on the insertion of section 33AA into the *Drug Misuse and Trafficking Act 1985*. (Schedule 1.4 (2))

The amendments made to section 33K and Table 2 to Part 9A of the *Criminal Procedure Act 1986* are consequential on the amendments to the *Crimes Act 1900* concerning acts of indecency. (Schedule 1.4 (3) and (4))

### **Drug Misuse and Trafficking Act 1985**

#### **Equipment for use in administration of a prohibited drug**

Section 11 of the *Drug Misuse and Trafficking Act 1985* makes it an offence to have possession of an item of equipment for use in the administration of a

prohibited drug. In order that no one, including a health worker, is exposed to the risk of prosecution, the section does not apply to hypodermic syringes or hypodermic needles. The section is being amended to provide that it will not apply to "any item of equipment that is required to minimise health risks associated with the intravenous administration of a prohibited drug" such as alcohol swabs, spoons and infusion sets if the equipment is in the possession of persons identified in regulations to be made under the Act. It is proposed that the regulations will identify only health workers. (Schedule 1.5 (1))

A consequential amendment to the *Criminal Procedure Act 1986* is made by Schedule 1.4 (2).

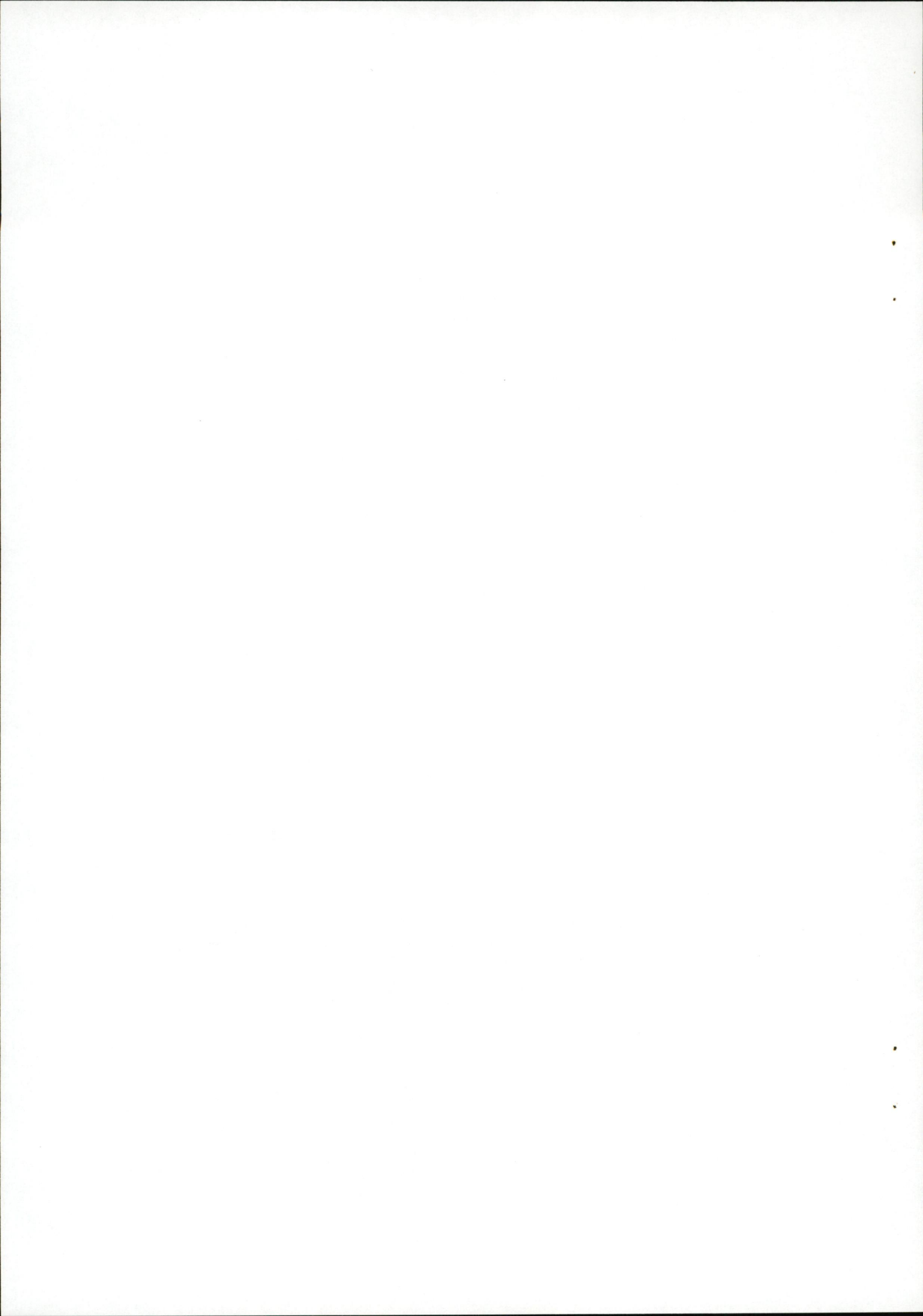
### **Penalties for offences involving supply to persons under 16 years**

Section 25 of the *Drug Misuse and Trafficking Act 1985* is being amended to make it an offence for a person who is 18 years of age or older to supply prohibited drugs (other than cannabis leaf) to a person who is under 16 years of age. This amendment is made so as to enable an increased penalty to be applied for these offences. The increased penalty is provided for in proposed section 33AA. The increased penalty, whether imprisonment or a fine, is generally one-fifth higher than the penalty that would otherwise apply. (Schedule 1.5 (2), (3) and (6))

Schedule 1.5 (4) and (5) make consequential amendments.

### **Traffic Act 1909**

The same amendment is being made to section 4DA of the *Traffic Act 1909* as that made to section 414A of the *Crimes Act 1900* to enable the inspection of red light cameras to be carried out within 84 hours instead of 48 hours. (Schedule 1.6)







New South Wales

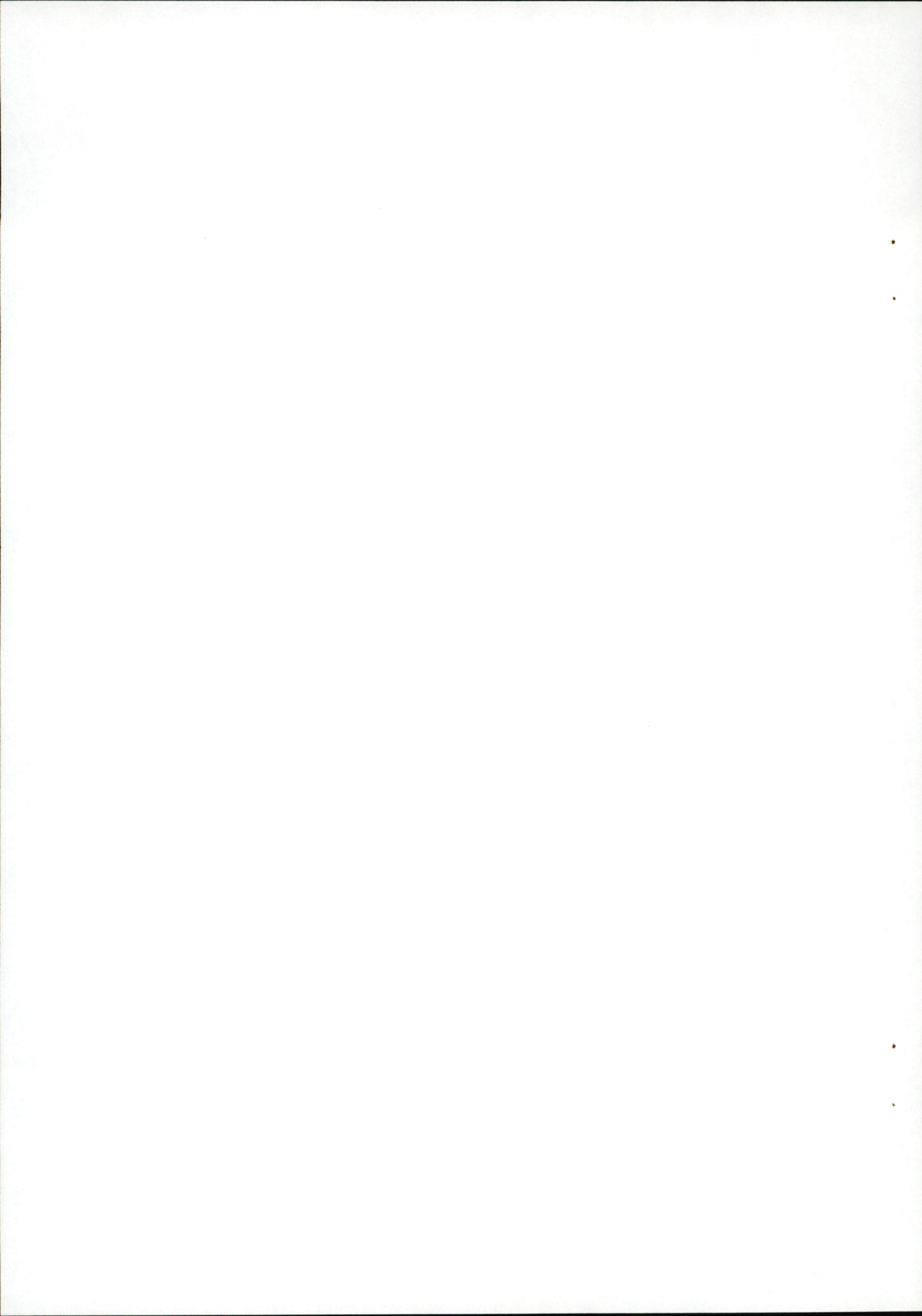
# Criminal Legislation Amendment Bill 1995

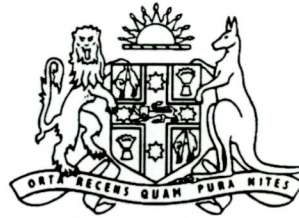
## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Acts	2
 Schedule 1 Amendment of Acts	 3
Bail Act 1978 No 161	3
Crimes Act 1900 No 40	4
Criminal Appeal Act 1912 No 16	11
Criminal Procedure Act 1986 No 209	11
Drug Misuse and Trafficking Act 1985 No 226	12
Traffic Act 1909 No 5	14

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New South Wales

# **Criminal Legislation Amendment Bill 1995**

No. , 1995

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## **A Bill for**

An Act to amend the *Crimes Act 1900* and certain other Acts to make miscellaneous amendments concerning 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 *Criminal Legislation Amendment Act 1995*.

**2 Commencement**

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

**3 Amendment of Acts**

Each Act specified in Schedule 1 is amended as set out in that Schedule.

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## Schedule 1 Amendment of Acts

(Section 3)

### 1.1 Bail Act 1978 No 161

[1] **Section 9 Presumption in favour of bail for certain offences—exceptions** 5

Insert “26, 27, 28, 29, 30, 31,” after “section” in section 9 (1) (c).

[2] **Section 22A Special power of Supreme Court to refuse to entertain bail application**

Insert at the end of section 22A:

- (2) Despite section 22 (1) and (2), the Supreme Court may refuse to entertain an application in relation to bail if the bail application comprises a bail condition review that could be dealt with under section 48A by a magistrate or justice or the District Court. 10

[3] **Section 48 Provisions respecting review of bail decisions** 15

Insert after section 48 (7):

- (7A) The Supreme Court may refuse to entertain a request to review a decision pursuant to this Part if the Court is satisfied that the request comprises a bail condition review that could be dealt with under section 48A by a magistrate or justice or the District Court. 20

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

Insert after Part 2:

### **Part 3 Criminal Legislation Amendment Act 1995**

#### **6 Application of amendments** 25

- (1) Section 22A, as amended by the *Criminal Legislation Amendment Act 1995*, extends to bail granted and to applications made to the Supreme Court but not determined by it before the commencement of the amendment made to section 22A by that Act. 30

Criminal Legislation Amendment Bill 1995

Schedule 1 Amendment of Acts

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- (2) Section 48, as amended by the *Criminal Legislation Amendment Act 1995*, extends to bail granted and to requests made to the Supreme Court but not determined by it before the commencement of the amendment made to section 48 by that Act.

5

**1.2 Crimes Act 1900 No 40**

**[1] Section 61H Definition of sexual intercourse etc**

Omit section 61H (3). Insert instead:

- (3) For the purposes of this Act, a person who incites another person to an act of indecency, as referred to in section 61N or 61O, is taken to commit an offence on the other person.

10

**[2] Section 61N Act of indecency**

Insert at the end of the section:

- (2) Any person who commits an act of indecency with or towards a person of the age of 16 years or above, or incites a person of the age of 16 years or above to an act of indecency with or towards that or another person, is liable to imprisonment for 18 months.

15

**[3] Section 61O Aggravated act of indecency**

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Insert after section 61O (1):

- (1A) Any person who commits an act of indecency with or towards a person of the age of 16 years or above, or incites a person of the age of 16 years or above to an act of indecency with or towards that or another person, in either case in circumstances of aggravation, is liable to imprisonment for 3 years.

25

**[4] Section 77 Consent no defence in certain cases**

Omit "61N" wherever occurring from section 77 (1) and (2).  
Insert instead "61N (1)".

30

- 
- [5] **Section 77**  
Omit "61O" wherever occurring from section 77 (1) and (2).  
Insert instead "61O (1) or (2)".
- [6] **Section 105A Definitions**  
Insert after paragraph (e) of the definition of *circumstances of aggravation* in section 105A (1):  
(f) the alleged offender knows that there is a person, or that there are persons, in the place where the offence is alleged to be committed. 5
- [7] **Section 105A (2A)** 10  
Insert after section 105A (2):  
(2A) For the purposes of paragraph (f) of the definition of *circumstances of aggravation*, if there was a person, or there were persons, in the place in relation to which an offence is alleged to have been committed at the time it was committed, the defendant is presumed to have known that fact unless the defendant satisfies the court that he or she had reasonable grounds for believing that there was no one in the place. 15
- [8] **Section 249A Definitions** 20  
Insert after paragraph (c) of the definition of *agent* in section 249A:  
and  
(d) a police officer (and in this case a reference in this Part to the agent's principal is a reference to the Crown). 25
- [9] **Section 325 Preventing, obstructing or dissuading witness or juror from attending etc**  
Insert after section 325 (1):  
(1A) A person who without lawful excuse wilfully prevents, obstructs or dissuades another person who the person believes may be called as a witness in any judicial proceeding from attending the proceeding is liable to imprisonment for 5 years. 30

**[10] Section 326 Reprisals against judges, witnesses, jurors etc**

Insert at the end of section 326:

- (2) A person who threatens to do or cause, or who does or causes, any injury or detriment to another person because the person believes the other person will or may be or may have been called as a witness, or will or may serve or may have served as a juror, in any judicial proceeding is liable to penal servitude for 10 years. 5
- (3) For the purposes of this section, it is immaterial whether the accused acted wholly or partly for a reason specified in subsection (1) or (2). 10

**[11] Section 353A Power to search person, make medical examination, take photograph, finger-prints etc**

Insert after section 353A (3):

- (3A) A person authorised by subsection (2) to make a medical examination of a person in lawful custody may take samples of the person's blood, saliva and hair. 15
- (3B) Evidence concerning the samples may be given only in proceedings concerning the crime or offence in relation to which the samples were taken and the samples must be destroyed as soon as practicable after the conclusion of the proceedings and the exhaustion of any right of appeal concerning the crime or offence. 20
- (3C) A reference in this section to lawful custody is a reference to lawful custody of the police or any other authority. If a person is in lawful custody in a place other than a police station, the powers under this section of a constable or an officer of police may be exercised by the person in charge of the place or by another person who is normally supervised by that person. 25 30
- (3D) The consent of the person in lawful custody is not required for the doing of any thing under this section.



**[12] Section 409 Depositions may be read as evidence for prosecution etc**

Insert "or so ill as not to be able to travel or to give evidence without a risk of endangering the life of the witness," after "evidence," wherever occurring in section 409 (1) (a) and (2) (a).

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**[13] Section 409**

Insert "or so ill as not to be able to travel or to give evidence without a risk of endangering the life of the person," after "evidence," wherever occurring in section 409 (7) and (8) (a).

**[14] Section 414A Certificates to be evidence**

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Omit "48 hours" from section 414A (6) (b).  
Insert instead "84 hours".

**[15] Section 495 Indictable offences punishable summarily without consent of accused: assaults etc**

Insert "or (1A)" after "61O (1)" in section 495 (1).

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**[16] Section 495 (3)**

Insert "or (1A)" after "61O (1)".

**[17] Section 527C Persons unlawfully in possession of property**

Insert after section 527C (1):

(1A) A prosecution for an offence under subsection (1) involving the giving of custody of a motor vehicle to a person who is not lawfully entitled to possession of the motor vehicle may be commenced at any time within 2 years after the date of commission of the offence.

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- [18] Section 562G Courts authorised to make orders etc**
- Insert after section 562G (4):
- (5) An order made by a Local Court for the purposes of this Part is not invalid on the ground that it was made in the mistaken belief that the defendant was of or above 18 years of age at the time the complaint was made. 5
- [19] Section 562I Offence of contravening order**
- Insert "or a full psychological assessment" after "assessment" in section 562I (2B).
- [20] Section 562K Summons for appearance or arrest of defendant** 10
- Insert after section 562K (3):
- (3A) A warrant may not be executed more than 12 months after the date on which it is issued, unless the court, before the end of the 12-month period, otherwise orders. 15
- [21] Section 562U Effect of registration of interstate restraint order**
- Insert after section 562U (2):
- (3) An interstate restraint order which has been registered under section 562T (and anything done to effect the registration of the order) is not invalid on the ground that the order has, due to the age of the defendant at the time the complaint was made, been registered in the wrong court. 20
- [22] Section 577A** 25
- Insert after section 577:
- 577A Disclosure of address or telephone number of witness**
- (1) A witness in criminal proceedings, or a person who makes a written statement that is likely to be produced in criminal proceedings, is not required to disclose his or her address or telephone number, unless: 30

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- (a) the address or telephone number is a materially relevant part of the evidence, or
- (b) the court makes an order requiring the disclosure.
- (2) An application for such an order may be made by the prosecution or the defence. 5
- (3) The court may only make such an order if it is satisfied that disclosure is not likely to present a reasonably ascertainable risk to the welfare or protection of any person or that the interests of justice outweigh any such risk. 10
- (4) An address or telephone number that is not required to be disclosed and that is contained in a written statement may, without reference to the person who made the written statement, be deleted from the statement, or rendered illegible, before the statement is produced in court or given to the defendant. 15
- (5) A written statement is not inadmissible as evidence on the ground that it either does or does not disclose any such address or telephone number as is mentioned in this section. 20
- (6) This section does not prevent the disclosure of an address in a written statement if the statement does not identify it as a particular person's address.
- (5) In this section:
- address* includes a private, business or official address. 25
- telephone number* includes a private, business or official telephone number.
- (6) This section does not affect section 48BA of the *Justices Act 1902*.
- [23] Section 580B** 30
- Insert after section 580A:
- 580B Abolition of offences of eavesdropping and being a common scold**
- The common law offences of eavesdropping and being a common scold are abolished. 35

**[24] Eleventh Schedule Savings and transitional provisions**

Insert at the end of the Eleventh Schedule:

**Part 7 Criminal Legislation Amendment Act 1995**

**15 Forensic samples**

Section 353A, as amended by the *Criminal Legislation Amendment Act 1995*, extends to a person in lawful custody on the commencement of the amendment to section 353A made by that Act. 5

**16 Apprehended violence orders—s 562G**

Section 562G, as amended by the *Criminal Legislation Amendment Act 1995*, extends to orders made by Local Courts before the commencement of the amendment to section 562G made by that Act. 10

**17 Summons for appearance or arrest of defendant—s 562K**

Section 562K, as amended by the *Criminal Legislation Amendment Act 1995*, extends to warrants issued before the commencement of the amendment to section 562K made by that Act. 15

**18 Registration of interstate restraint orders—s 562U**

Section 562U, as amended by the *Criminal Legislation Amendment Act 1995*, extends to orders registered before the commencement of the amendment to section 562U made by that Act. 20

**19 Abolition of offences of eavesdropping and being a common scold—s 580B**

Section 580B does not apply to an offence committed before the commencement of that section. 25

**1.3 Criminal Appeal Act 1912 No 16**

**Section 14A**

Insert after section 14:

**14A Crown appeals—absence of respondent**

An appeal under section 5C, 5D or 5DA may be dealt with in the absence of the respondent if the court is satisfied that the respondent has been given notice of the appeal in accordance with the rules of court and that it would not be unjust to deal with the appeal in the absence of the respondent.

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**1.4 Criminal Procedure Act 1986 No 209**

**[1] Section 32 Trial by Judge in criminal proceedings**

Omit “prosecutor” from section 32 (3).  
Insert instead “Director of Public Prosecutions”.

**[2] Section 33J Maximum penalties for Table 1 offences**

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Insert after section 33J (7):

(7A) Nothing in this section prevents a Local Court from imposing the maximum term of imprisonment that may be imposed under section 33AA (2) (a) of the *Drug Misuse and Trafficking Act 1985*.

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**[3] Section 33K Maximum penalties for Table 2 offences**

Insert “or (1A)” after “61O (1)” in section 33K (2) (a) .

**[4] Table 2 to Part 9A**

Insert “or (1A)” after “61O (1)” in Part 1 of Table 2.

**1.5 Drug Misuse and Trafficking Act 1985 No 226**

**[1] Section 11 Possession of equipment for administration of prohibited drugs**

Insert after section 11 (1A):

- (1B) Subsection (1) does not apply to or in respect of a person prescribed by the regulations, or a person who is of a class of persons prescribed by the regulations, who has in his or her possession any item of equipment that is required to minimise health risks associated with the intravenous administration of a prohibited drug. 5  
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**[2] Section 25 Supply of prohibited drugs**

Insert after section 25 (1):

- (1A) A person of or above the age of 18 years who supplies, or who knowingly takes part in the supply of, a prohibited drug (other than cannabis leaf) to a person under the age of 16 years is guilty of an offence. 15

**[3] Section 25 (2A), (2B)**

Insert after section 25 (2):

- (2A) A person of or above the age of 18 years who supplies, or who knowingly takes part in the supply of, an amount of a prohibited drug (other than cannabis leaf) which is not less than the commercial quantity applicable to the prohibited drug to a person under the age of 16 years is guilty of an offence. 20
- (2B) Where, on the trial of a person for an offence under subsection (1A) or (2A), the jury are satisfied that the person charged had, at the time the offence is alleged to have been committed, reasonable cause to believe, and did in fact believe, that the person to whom the 25

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prohibited drug was supplied was of or above the age of 16 years, they may acquit the person of the offence charged and find the person guilty of an offence under subsection (1) or (2), respectively, and the person is liable to punishment accordingly.

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**[4] Sections 30, 31 and 32**

Insert "or (1A)" after "25 (1)" wherever occurring.

**[5] Section 33 Penalties for offences involving commercial quantities**

Insert "or (2A)" after "25 (2)" wherever occurring.

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**[6] Section 33AA**

Insert after section 33:

**33AA Penalties for offences involving supply to persons under 16 years**

(1) This section applies if:

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(a) a person is found guilty of an offence under section 25 (1A) or (2A), or

(b) a person is found guilty of:

(i) an offence under section 26 of conspiring to commit an offence referred to in paragraph (a), or

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(ii) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a), or

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(iii) an offence under section 28 of conspiring to commit, or of aiding, abetting, counselling or procuring the commission of, an offence under a law in force outside New South Wales which corresponds to section 25 (1A) or (2A).

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Criminal Legislation Amendment Bill 1995

Schedule 1 Amendment of Acts

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- (2) The penalty for the offence is the penalty that would otherwise be imposed by this Act but increased:
- (a) in the case of a penalty for imprisonment for 2 years—to a penalty of imprisonment for 2 years and 6 months, and 5
  - (b) in the case of the penalty for an offence under section 25 (2A)—to a penalty of a fine of 4,200 penalty units or imprisonment for 25 years, or both, and
  - (c) in the case of any other penalty, whether a pecuniary penalty or imprisonment—by one-fifth. 10
- (3) This section has effect despite any other provision of this Act.

**1.6 Traffic Act 1909 No 5**

**Section 4DA Photographic evidence of traffic light offences 15**

Omit "48 hours" from section 4DA (3) (b).  
Insert instead "84 hours".