



New South Wales

# Crimes Legislation Amendment Act 1999 No 40

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New South Wales

# Crimes Legislation Amendment Act 1999 No 40

Act No 40, 1999

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An Act to make miscellaneous amendments to the *Children (Criminal Proceedings) Act 1987*, the *Crimes Act 1900*, the *Justices Act 1902* and the *Young Offenders Act 1997*. [Assented to 8 July 1999]

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

**1 Name of Act**

This Act is the *Crimes Legislation Amendment Act 1999*.

**2 Commencement**

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

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

The *Children (Criminal Proceedings) Act 1987* is amended as set out in Schedule 1.

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

The *Crimes Act 1900* is amended as set out in Schedule 2.

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

The *Justices Act 1902* is amended as set out in Schedule 3.

**6 Amendment of Young Offenders Act 1997 No 54**

The *Young Offenders Act 1997* is amended as set out in Schedule 4.

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

(Section 3)

**[1] Section 41 Enforcement of conditions of recognizance or probation or of compliance with outcome plan**

Omit section 41 (1) (a) and (b). Insert instead:

- (a) has entered into a recognizance, or been released on probation, under section 33 (1), or been released under section 33 (1) (c1) on condition that the person complies with an outcome plan determined at a conference held under the *Young Offenders Act 1997* (referred to in this section as the *outcome plan*), and
- (b) has failed to comply with a condition of the person's recognizance or probation, or has failed to comply with the outcome plan,

**[2] Section 41 (1)**

Insert "or another authorised justice" after "the authorised justice" where firstly occurring.

**[3] Section 41 (4) and (5)**

Insert "or has failed to comply with the outcome plan" after "or probation" wherever occurring.

**[4] Section 41 (4), (5) and (7)**

Insert "or on condition that the person comply with the outcome plan" after "on probation" wherever occurring.

**[5] Section 41 (6)**

Insert "or on condition that the person comply with the outcome plan," after "recognizance,".

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Schedule 1      Amendment of Children (Criminal Proceedings) Act 1987

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

Insert at the end of clause 1 (1):

Schedule 1 to the *Crimes Legislation Amendment Act 1999*

**[7] Schedule 2**

Insert in Schedule 2, with appropriate Part and clause numbers:

**Part Crimes Legislation Amendment Act 1999**

**Outcome plans made before commencement of amendments**

Section 41, as amended by the *Crimes Legislation Amendment Act 1999*, extends to any failure by a person, after the commencement of Schedule 1 [1] to that Act, to comply with an outcome plan that was determined at conference before that commencement.

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## Schedule 2 Amendment of Crimes Act 1900

(Section 4)

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

Omit “act of indecency with that or another person” wherever occurring from section 61O.

Insert instead “act of indecency with or towards that or another person”.

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

Omit “over the age of 14 years” from section 77 (2) (a).

Insert instead “of or above the age of 14 years”.

**[3] Section 249A Definitions**

Insert after paragraph (d) of the definition of *agent*:

, and

- (e) a councillor within the meaning of the *Local Government Act 1993* (and in this case a reference in this Part to the agent’s principal is a reference to the local council of which the person is a councillor).

**[4] Section 562A Definitions**

Omit the definition of *registrar of a court* from section 562A.

**[5] Section 562BA Orders made by court with consent of parties**

Omit section 562BA (1). Insert instead:

- (1) A court may make an apprehended violence order under section 562B, or an interim apprehended violence order under section 562BB, without being satisfied as to the matters referred to in section 562B or 562BB (as appropriate) if the complainant and the defendant consent to the making of the order.

**[6] Section 562BA (3)**

Omit the subsection. Insert instead:

- (3) Before making such an order, the court may conduct a hearing in relation to the particulars of the complaint only if:
  - (a) the order to be made by the court is final (that is, the order is not an interim apprehended violence order), and
  - (b) the court is of the opinion that the interests of justice require it to conduct the hearing.

**[7] Section 562BB Interim court orders**

Omit section 562BB (7) and (8).

**[8] Sections 562BBA and 562BBB**

Insert after section 562BB:

**562BBA Interim orders made by clerk of court with consent**

- (1) The clerk of a Local Court or the Children's Court may, on complaint being made for an apprehended violence order, make an interim apprehended violence order if the clerk is satisfied that the complainant and the defendant consent to the making of the order.
- (2) Section 562BA applies in relation to the making of an order by the clerk of a court under this section in the same way as it applies to the making of an interim apprehended violence order by a court.
- (3) If an interim apprehended violence order is made by a clerk:
  - (a) the clerk is to summon the defendant to appear at a further hearing of the matter before a court as soon as practicable after the order is made, and
  - (b) the court may, at the further hearing or an adjourned hearing, confirm the order (with or without variation) or revoke the order.
- (4) An interim apprehended violence order made by a clerk is confirmed by the making of an order by a court under section 562B against the defendant (with or without variation). The interim order ceases to have effect when the court order is

made (in the case of a defendant who is then present in court) or when the defendant is served under section 562J with a copy of the record of the court order under section 562B (in any other case).

- (5) An interim apprehended violence order made by the clerk of a Local Court or the Children's Court under this section is taken to have been made by a Local Court or the Children's Court (as appropriate) and has effect accordingly.
- (6) Section 562GC applies to a clerk who makes an interim apprehended violence order under this section.
- (7) In this section, a reference to the clerk of the Children's Court is a reference to the registrar of the Children's Court.

**562BBB Extension of interim order by clerk of court with consent**

- (1) The clerk of a Local Court or the Children's Court may vary an interim apprehended violence order made by the court (or by a clerk of the court) by extending the period during which the order is to remain in force, but only if the clerk is satisfied that the complainant and the defendant consent to the extension.
- (2) Such a variation has effect as if it had been made by a Local Court or the Children's Court (as appropriate) and section 562GC applies in respect of the clerk accordingly.
- (3) In this section, a reference to the clerk of the Children's Court is a reference to the registrar of the Children's Court.

**[9] Section 562H Telephone interim orders**

Omit "for the purposes of section 562B" from section 562H (5A).

Insert instead "for the purposes of this Part".

**[10] Section 562M Appeal to District Court by defendant against order made by Local Court or Children's Court**

Insert after subsection (2):

- (2A) An order made by the clerk of a Local Court or the registrar of the Children's Court under this Part is taken, for the purposes of Part 5A of the *Justices Act 1902*, to have been made by a Magistrate.

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

(Section 5)

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

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

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## Schedule 4 Amendment of Young Offenders Act 1997

(Section 6)

**[1] Section 57 Additional provisions relating to completion and non-completion of outcome plans**

Omit the note at the end of section 57 (1). Insert instead:

**Note.** If the Children's Court releases a child on condition that the child complies with an outcome plan, and the child fails to comply with the outcome plan, an authorised justice may issue a summons or warrant for the arrest of the child (see section 41 of the *Children (Criminal Proceedings) Act 1987*). A person or body may continue or commence proceedings against a child if the child fails to satisfactorily complete an outcome plan (see section 64 of this Act).

**[2] Section 68 Interventions not to be disclosed as criminal history**

Omit "Subsection (1)" from section 68 (2).

Insert instead "In so far as a caution or conference is concerned, subsection (1)".

[Minister's second reading speech made in—  
Legislative Council on 23 June 1999  
Legislative Assembly on 1 July 1999 pm]