



New South Wales

Criminal Legislation Amendment Act 1995 No 23

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New South Wales

Criminal Legislation Amendment Act 1995 No 23

Act No 23, 1995

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. [Assented to 19 June 1995]

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.

3 Amendment of Acts

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

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

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.

[3] Section 48 Provisions respecting review of bail decisions

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.

[4] Schedule 1 Savings and transitional provisions

Insert after Part 2:

Part 3 Criminal Legislation Amendment Act 1995

6 Application of amendments

- (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.

- (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.

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.

[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.

[3] Section 61O Aggravated act of indecency

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.

[4] Section 77 Consent no defence in certain cases

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

[5] Section 77

Omit “610” wherever occurring from section 77 (1) and (2).
Insert instead “610 (1) or (2)”.

[6] Section 105A Definitions

Insert after paragraph (e) of the definition of *circumstances of aggravation* in section [REDACTED] (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.

[7] Section 105A (2A)

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.

[8] Section 249A Definitions

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).

[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.

[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.
- (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).

[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.
- (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.
- (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.
- (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).

[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

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 (IA)” after “610 (1)” in section 495 (1).

[16] Section 495 (3)

Insert “or (1A)” after “610 (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.

[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.

[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

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.

[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.

[22] Section 577A

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:

- (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.
- (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.
- (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.
- (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.
- (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.
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

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.

[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.

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.

**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.

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.

**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.

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.

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

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*.

[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.

[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.

[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.
- (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

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.

[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.

[6] Section 33AA

Insert after section 33:

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

- (1) This section applies if
- (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
 - (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
 - (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).

- (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
 - (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.
- (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

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

[Minister’s second reading speech made in—
Legislative Council on 1 June 1995
Legislative Assembly on 9 June 1995 a.m.]