



New South Wales

# Justice Legislation Amendment Bill 2017

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to make minor amendments to the following Acts within, or with provisions relating to matters within, the Justice portfolio:

- (a) the *Bail Act 2013*,
- (b) the *Children (Criminal Proceedings) Act 1987*,
- (c) the *Confiscation of Proceeds of Crime Act 1989*,
- (d) the *Court Security Act 2005*,
- (e) the *Crimes Act 1900*,
- (f) the *Crimes (Sentencing Procedure) Act 1999*,
- (g) the *Criminal Appeal Act 1912*,
- (h) the *Criminal Assets Recovery Act 1990*,
- (i) the *Criminal Procedure Act 1986*,
- (j) the *Mental Health (Forensic Provisions) Act 1990*,
- (k) the *Surveillance Devices Act 2007*,
- (l) the *Terrorism (Police Powers) Act 2002*.

## 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 the date of assent to the proposed Act, except the amendments to the *Mental Health (Forensic Provisions) Act 1990* which will commence on a day or days to be appointed by proclamation.

## **Schedule 1      Amendment of Acts**

**Schedule 1.1** amends the *Bail Act 2013* to provide that the show cause requirement under that Act, which currently applies to a serious indictable offence under the *Firearms Act 1996* that involves acquiring, supplying or manufacturing a pistol or prohibited firearm, will also apply to a serious indictable offence under that Act that involves:

- (a) giving possession of such a weapon, or
- (b) acquiring, supplying, manufacturing or giving possession of a firearm part that relates solely to a prohibited firearm.

**Schedule 1.2** amends the *Children (Criminal Proceedings) Act 1987* to enable the Children's Court, when committing to another court a person who is charged with an indictable offence or serious children's indictable offence for trial or sentence, to also transfer any back up offence or related offence with which the person has been charged. In such circumstances, the prosecutor must produce to the Children's Court a certificate specifying each back up or related offence.

**Schedule 1.3** amends the *Confiscation of Proceeds of Crime Act 1989*:

- (a) to provide that, if a person has been convicted, whether summarily or on indictment, of an offence by a court, an application for a forfeiture order or pecuniary penalty order under that Act is to be made within 6 months from the day on which the person was sentenced rather than the day on which the person was convicted, and
- (b) to provide for a savings and transitional provision consequential on the proposed amendment described in paragraph (a), and
- (c) to insert explanatory notes to assist in the interpretation of provisions relating to determining the value or benefit that a person derives from a serious offence, including a drug trafficking offence, and
- (d) to update references to a Commonwealth Act.

**Schedule 1.4** amends the *Court Security Act 2005* to provide that the maximum penalty for a person possessing a knife, without reasonable excuse, in court premises is the same maximum penalty for a person having custody, without reasonable excuse, of a knife in a public place or school under the *Summary Offences Act 1988*. The maximum penalty for such an offence is 20 penalty units (\$2,200) or imprisonment for 2 years (or both).

**Schedule 1.5** amends the *Crimes Act 1900*:

- (a) to clarify that petrol is a destructive or explosive substance for the purpose of the offence under section 47 of that Act that relates to putting or laying at any place, or casting or throwing at, or upon, or otherwise applying to, any person under such substance, and
- (b) to allow an offence under section 193C (2) of the *Crimes Act 1900* (dealing with property suspected of being proceeds of crime with a value less than \$100,000) to be the subject of an alternative verdict in a trial for an offence under section 193C (1) of that Act (dealing with property suspected of being proceeds of crime with a value of \$100,000 or more).

**Schedule 1.6** amends the *Crimes (Sentencing Procedure) Act 1999* to provide that in proceedings relating to prescribed sexual offences:

- (a) a victim, or a member of the immediate family, or other representative, of the victim, is entitled to read out a victim impact statement in camera, unless the court otherwise directs, and
- (b) a victim to whom the statement relates is entitled to have a person chosen by the victim, such as a parent, guardian, relative, friend or other support person, to be present near the victim when the statement is read out.

**Schedule 1.7** amends the *Criminal Appeal Act 1912* to provide that the Court of Criminal Appeal may vacate a determination made by the Supreme Court in its summary jurisdiction and order a new trial in such manner as the Court of Criminal Appeal thinks fit.

**Schedule 1.8** amends the *Criminal Assets Recovery Act 1990*:

- (a) to include the offence under section 23A (Offences with respect to enhanced indoor cultivation of prohibited plants in presence of children) of the *Drug Misuse and Trafficking Act 1985* as a drug trafficking offence for the purposes of the *Criminal Assets Recovery Act 1990*, and
- (b) to enable the Supreme Court, at any time when a restraining order is in force under Part 2 of that Act, to order the NSW Trustee and Guardian to take control of some or all of the interests in property that are interests to which the restraining order applies.

**Schedule 1.9** amends the *Criminal Procedure Act 1986* to provide that, under the child sexual offence evidence pilot scheme, evidence is to be given, subject to any contrary order of the District Court, at a pre-recorded evidence hearing if the witness is less than 16 years of age when the accused person was committed for trial or sentence rather than when the evidence was given, as is currently the case.

**Schedule 1.10** amends the *Mental Health (Forensic Provisions) Act 1990* to allow a Magistrate, in the case of a defendant who has a cognitive impairment, to dismiss the charge and discharge the defendant on the condition that the defendant receives assessment or treatment of, or support for, the defendant's cognitive impairment. **Cognitive impairment** is defined to mean ongoing impairment of a person's comprehension, reasoning, adaptive functioning, judgment, learning or memory that materially affects the person's ability to function in daily life and is the result of damage to, or dysfunction, developmental delay or deterioration of, the person's brain or mind, and includes (without limitation) any of the following:

- (a) intellectual disability,
- (b) borderline intellectual functioning,
- (c) dementia,
- (d) acquired brain injury,
- (e) drug or alcohol related brain damage, including foetal alcohol spectrum disorder,
- (f) autism spectrum disorder.

**Schedule 1.11** amends the *Surveillance Devices Act 2007* to update provisions relating to the service of documents and notices under that Act.

**Schedule 1.12** amends the *Terrorism (Police Powers) Act 2002* to update provisions relating to the conduct of personal searches by a police officer authorised to search a person under that Act in order to align those provisions with similar provisions under Part 4 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.



New South Wales

# Justice Legislation Amendment Bill 2017

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New South Wales

# Justice Legislation Amendment Bill 2017

No. , 2017

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## **A Bill for**

An Act to amend various Acts relating to courts and crimes and other related matters.

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

**1 Name of Act**

This Act is the *Justice Legislation Amendment Act 2017*.

**2 Commencement**

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1.10 commences on a day or days to be appointed by proclamation.

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<b>Schedule 1</b>	<b>Amendment of Acts</b>	1
<b>1.1</b>	<b>Bail Act 2013 No 26</b>	2
<b>[1]</b>	<b>Section 16B Offences to which the show cause requirement applies</b>	3
	Omit section 16B (1) (d) (iii). Insert instead:	4
	(iii) a serious indictable offence under the <i>Firearms Act 1996</i> that involves acquiring, supplying, manufacturing or giving possession of a pistol or prohibited firearm or a firearm part that relates solely to a prohibited firearm,	5 6 7 8
<b>[2]</b>	<b>Section 16B (3)</b>	9
	Omit “ <i>firearm, prohibited firearm and pistol, and use, acquire, supply or possession</i> of a firearm, have the same meanings as in the <i>Firearms Act 1996</i> ”.	10 11
	Insert instead “ <i>firearm, firearm part, prohibited firearm and pistol, and use, acquire, supply or possession</i> of a firearm or firearm part, have the same meanings as in the <i>Firearms Act 1996</i> ”.	12 13 14
<b>1.2</b>	<b>Children (Criminal Proceedings) Act 1987 No 55</b>	15
	<b>Section 31 Hearing of charges in the Children’s Court</b>	16
	Insert after section 31 (5):	17
	(6) Notwithstanding subsection (1), when the Children’s Court commits to another court for trial or sentence a person who is charged with an indictable offence or a serious children’s indictable offence (the <i>principal indictable offence</i> ):	18 19 20 21
	(a) the prosecutor must, if the person has been charged with any back up or related offence to the principal indictable offence, produce to the Children’s Court a certificate specifying the back up or related offence, and	22 23 24 25
	(b) the Children’s Court may transfer to the other court proceedings for any such back up or related offence.	26 27
	(7) If a back up or related offence is transferred to another court under subsection (6), the proceedings for such an offence are to be dealt with in accordance with sections 167–169 of the <i>Criminal Procedure Act 1986</i> . For that purpose, a reference in those sections to the Local Court is to be construed as a reference to the Children’s Court.	28 29 30 31 32
	(8) In this section:	33
	<i>back up offence</i> , in relation to a principal indictable offence, means an offence:	34 35
	(a) that is a summary offence or an indictable offence that is capable of being dealt with summarily by the Children’s Court, and	36 37
	(b) all the elements of which are elements that are necessary to constitute the principal indictable offence, and	38 39
	(c) that is to be prosecuted on the same facts as the principal indictable offence.	40 41
	<i>related offence</i> , in relation to a principal indictable offence, means an offence:	42
	(a) that is a summary offence or an indictable offence that is capable of being dealt with summarily by the Children’s Court, and	43 44

(b)	that arises from substantially the same circumstances as those from which the principal indictable offence has arisen, but does not include a back up offence.	1 2 3
<b>1.3</b>	<b>Confiscation of Proceeds of Crime Act 1989 No 90</b>	4
<b>[1]</b>	<b>Section 4 Definitions</b>	5
	Omit “the day on which the person was convicted of the offence” from paragraph (a) of the definition of <i>relevant period</i> in section 4 (1).	6 7
	Insert instead “the day on which the person was sentenced for the offence”.	8
<b>[2]</b>	<b>Section 4 (10)</b>	9
	Insert after section 4 (9):	10
	(10) Notes included in this Act do not form part of this Act.	11
<b>[3]</b>	<b>Section 25 Assessment of pecuniary penalty</b>	12
	Insert at the end of section 25 (5):	13
	<b>Note.</b> For example, in the case of an illegal activity involving the trafficking of drugs, in determining the value of benefits derived by the defendant from the trafficking of drugs there is to be no reduction on account of any expenditure by the defendant in acquiring the drugs.	14 15 16 17
<b>[4]</b>	<b>Sections 26 (2) and 83 (1) (d)</b>	18
	Omit “ <i>Service and Execution of Process Act 1901</i> ” wherever occurring.	19
	Insert instead “ <i>Service and Execution of Process Act 1992</i> ”.	20
<b>[5]</b>	<b>Section 30 Assessment of proceeds of drug trafficking</b>	21
	Insert after section 30 (6):	22
	<b>Note.</b> For example, in the case of an illegal activity involving the trafficking of drugs, in determining the value of the proceeds derived by the defendant from the trafficking of drugs there is to be no reduction on account of any expenditure by the defendant in acquiring the drugs.	23 24 25 26
<b>[6]</b>	<b>Schedule 1 Savings, transitional and other provisions</b>	27
	Insert at the end of the Schedule, with appropriate Part and clause numbering:	28
<b>Part</b>	<b>Provision consequent on the enactment of Justice Legislation Amendment Act 2017</b>	29 30
	<b>Application of amendment</b>	31
	Section 4, as amended by the <i>Justice Legislation Amendment Act 2017</i> , extends to a person:	32 33
	(a) who has been convicted of, but not sentenced for, a serious offence before the commencement of that amendment, or	34 35
	(b) who was sentenced for a serious offence within the period of 6 months before the commencement of that amendment.	36 37

<b>1.4 Court Security Act 2005 No 1</b>	1
<b>Section 8 Possession of restricted items in court premises</b>	2
Omit paragraph (b) of the maximum penalty to section 8 (1). Insert instead:	3
(b) in the case of a knife that is not a prohibited weapon within the meaning of the <i>Weapons Prohibition Act 1998</i> —20 penalty units or imprisonment for 2 years (or both).	4 5 6
<b>1.5 Crimes Act 1900 No 40</b>	7
<b>[1] Section 47 Using etc explosive substance or corrosive fluid etc</b>	8
Insert “(including petrol)” after “any destructive or explosive substance”.	9
<b>[2] Section 193E Alternative verdicts</b>	10
Insert after section 193E (2A):	11
(2B) If on the trial of a person for an offence under section 193C (1), the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied that the accused is guilty of an offence under section 193C (2), it may find the accused not guilty of the offence charged but guilty of the other offence, and the accused is liable to punishment accordingly.	12 13 14 15 16
<b>1.6 Crimes (Sentencing Procedure) Act 1999 No 92</b>	17
<b>Section 30A Reading out victim impact statements in court</b>	18
Insert after section 30A (3):	19
(3A) If the proceedings are for a prescribed sexual offence, the part of the proceedings in which the statement is read out is to be held in camera unless:	20 21
(a) the court directs (subject to subsection (3)), at the request of a party to the proceedings, that the proceedings are to be held in open court, and	22 23
(b) the court is satisfied that:	24
(i) special reasons in the interests of justice require the part of the proceedings to be held in open court, or	25 26
(ii) the victim to whom the statement relates consents to the statement being read out in open court.	27 28
(3B) The principle that proceedings for an offence should generally be open or public in nature, or that justice should be seen to be done, does not of itself constitute special reasons in the interests of justice requiring the part of the proceedings to be held in open court.	29 30 31 32
(3C) If the proceedings are for a prescribed sexual offence, the victim to whom the statement relates is entitled to have a person or persons chosen by the victim to be present near the victim, and within the victim’s sight, when the statement is read out, whether the statement is read in open court, in camera or in accordance with any closed-circuit television arrangements. Any such person or persons chosen by the victim may include a parent, guardian, relative, friend or support person of the victim or a person assisting the victim in a professional capacity.	33 34 35 36 37 38 39 40

<b>1.7 Criminal Appeal Act 1912 No 16</b>	1
<b>Section 5AA Appeal in criminal cases dealt with by courts in their summary jurisdictions</b>	2
Omit section 5AA (4). Insert instead:	3
(4) The Court of Criminal Appeal in proceedings before it on an appeal under this section may:	4
(a) confirm the determination made by the Supreme Court in its summary jurisdiction, or	5
(b) order that the determination made by the Supreme Court in its summary jurisdiction be vacated and:	6
(i) make any determination that the Supreme Court in its summary jurisdiction could have made on the evidence heard on appeal, or	7
(ii) order a new trial in such manner as the Court of Criminal Appeal thinks fit.	8
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<b>1.8 Criminal Assets Recovery Act 1990 No 23</b>	15
<b>[1] Section 6 Meaning of “serious crime related activity”</b>	16
Insert after paragraph (a) of the definition of <i>drug trafficking offence</i> in section 6 (3):	17
(a1) section 23A (Offences with respect to enhanced indoor cultivation of prohibited plants in presence of children),	18
	19
<b>[2] Section 10B Contents and effect of restraining orders</b>	20
Insert “(or during the time that it is in force)” after “a restraining order” in section 10B (2).	21
<b>1.9 Criminal Procedure Act 1986 No 209</b>	22
<b>[1] Schedule 2 Savings, transitional and other provisions</b>	23
Omit “evidence is given” from clause 84 (1).	24
Insert instead “accused person was committed for trial or sentence”.	25
<b>[2] Schedule 2, clause 84 (2)</b>	26
Omit “order is made”. Insert instead “accused person was committed for trial or sentence”.	27
<b>1.10 Mental Health (Forensic Provisions) Act 1990 No 10</b>	28
<b>[1] Section 32 Persons suffering from mental illness or condition or cognitive impairment</b>	29
Omit section 32 (1) (a) (i). Insert instead:	30
(i) cognitively impaired, or	31
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<b>[2] Section 32 (3) (b)</b>	33
Omit the paragraph. Insert instead:	34
(b) on the condition that the defendant attend on a person or at a place specified by the Magistrate:	35
(i) for assessment or treatment (or both) of the defendant’s mental condition or cognitive impairment, or	36
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(ii)	to enable the provision of support in relation to the defendant's cognitive impairment, or	1 2
<b>[3]</b>	<b>Section 32 (6)</b>	3
	Insert after section 32 (5):	4
(6)	In this section:	5
	<i>cognitive impairment</i> means ongoing impairment of a person's comprehension, reasoning, adaptive functioning, judgment, learning or memory that materially affects the person's ability to function in daily life and is the result of damage to, or dysfunction, developmental delay or deterioration of, the person's brain or mind, and includes (without limitation) any of the following:	6 7 8 9 10 11
(a)	intellectual disability,	12
(b)	borderline intellectual functioning,	13
(c)	dementia,	14
(d)	acquired brain injury,	15
(e)	drug or alcohol related brain damage, including foetal alcohol spectrum disorder,	16 17
(f)	autism spectrum disorder.	18
<b>1.11</b>	<b>Surveillance Devices Act 2007 No 64</b>	19
<b>[1]</b>	<b>Section 51 Particulars of warrants sought under Part 3 to be notified to Attorney General</b>	20 21
	Omit section 51 (3).	22
<b>[2]</b>	<b>Section 54</b>	23
	Omit the section. Insert instead:	24
<b>54</b>	<b>Service of documents</b>	25
(1)	A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:	26 27
(a)	in the case of an individual—by personal delivery to the person,	28
(b)	by post to the address specified by the person for the service of documents of that kind,	29 30
(c)	in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,	31 32 33
(d)	in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,	34 35 36
(e)	by fax to a fax number specified by the person for the service of documents of that kind,	37 38
(f)	by email to an email address specified by the person for the service of documents of that kind,	39 40
(g)	by any other method authorised by the regulations for the service of documents of that kind.	41 42

(2)	Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.	1 2 3
(3)	In this section, <i>serve</i> includes give or send.	4
<b>1.12</b>	<b>Terrorism (Police Powers) Act 2002 No 115</b>	5
<b>[1]</b>	<b>Section 17 Power to search persons</b>	6
	Omit the note to section 17 (2).	7
<b>[2]</b>	<b>Section 26V Power to search persons for seizable items</b>	8
	Omit the note to section 26V (5).	9
<b>[3]</b>	<b>Schedule 1 Conduct of personal searches</b>	10
	Omit “(Section 17)”. Insert instead “(Sections 17 and 26V)”.	11
<b>[4]</b>	<b>Schedule 1, clause 2</b>	12
	Omit the definitions of <i>frisk search</i> and <i>ordinary search</i> .	13
<b>[5]</b>	<b>Schedule 1, clause 3</b>	14
	Omit the clause. Insert instead:	15
<b>3</b>	<b>Searches generally</b>	16
	A police officer who is authorised to search a person may, in conducting the search:	17 18
(a)	quickly run his or her hands over the person’s outer clothing, and	19
(b)	require the person to remove his or her coat or jacket or similar article of clothing and any gloves, shoes, socks and hat (but not, except in the case of a strip search, all of the person’s clothes), and	20 21 22
(c)	examine anything in the possession of the person, and	23
(d)	pass an electronic metal detection device over or in close proximity to the person’s outer clothing or anything removed from the person, and	24 25
(e)	do any other thing authorised by this Act for the purposes of the search.	26