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Update Summary

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CRIMINAL PROCEDURE (NSW)

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COMMENTARY

In this update, Bev Schurr incorporates new material and updates existing commentary relating to **Arrest; Charging; Bail; Detention and questioning – NSW; Detention and questioning (Cth); Search warrants (NSW); Search warrants (Cth), Telephone interception and surveillance; Pre-arrest and post-arrest directions and searches; Summary procedure in the Local Court; Committal procedure in the Local Court**

Key updates include:

Arrest

Arrest-related offences – Effect of acquittal on original charge on arrest-related charges – Unlawful arrest followed by lawful arrest

When multiple police are present at an arrest, some arrests may be unlawful, and some are lawful: *Kershaw v The King* [2024] NSWCCA 27. See [1.2125].

Use of force during arrests – Regulation of police tactics during an arrest – OC spray/capsicum spray – Use of dogs

Police force uses of OC spray and dogs during arrests have been reviewed. See [1.810], [1.830], [9.131].

Charging

Remedies – Quantum of damages for malicious prosecution

Exemplary damages may be awarded against police officers who have shown a “high-handed and contumelious” disregard for a person’s rights: *New South Wales v Madden* (2024) 113 NSWLR 509; [2024] NSWCA 40. See [2.867].

Detention and questioning – NSW

Detention and questioning – History, reports, papers

A conference paper by the Hon. Justice Yehia has outlined the process and evidentiary consequences of failure to follow detention and questioning legislation.

The failure of police to follow legislative guidelines when interviewing young people has been reviewed in detail by the NSW Law Enforcement Conduct Commission’s report *Operation Mantus*. See [4.10] and [4.400].

Bail

Where an adult accused must show cause why their detention is not justified

Under the *Bail Act 2013* (NSW), offences for which the burden on an adult charged with a serious indictable offence to show cause why detention not justified now include coercive control offences and serious domestic violence offences. See [3.40].

Juvenile bail limited unless “high degree of confidence” they will not commit a serious indictable offences while on bail

Under s 22C of the *Bail Act*, the court must not grant bail to a young person aged 14 to 17 who is charged with a "relevant offence" while already on bail for another "relevant offence," unless the court has a high degree of confidence that the young person will not commit a serious indictable offence while on bail: *R v RB* [2024] NSWSC 471. See [3.45].

Offences against the Bail Act – Breach of bail conditions – Arrest and other actions

Police powers to arrest for breach of bail have been restated in *Bugmy v Director of Public Prosecutions (NSW)* (2024) 113 NSWLR 567; [2024] NSWCA 70. See [3.1070].

Committal procedure in the Local Court

NSW indictable charges involving children

When a child is charged with an indictable offence that is not classified as a "serious children's indictable offence", either the prosecutor or the child can request the court to decide whether to handle the matter as indictable, as per the *Children (Criminal Proceedings) Act 1987* (NSW), s 31, and the *Children's Court of New South Wales Practice Note No. 12*. See [16.40].

