

**CRIMES (CHILD ASSAULT) AMENDMENT ACT 1985 No. 149**

*New South Wales*



ANNO TRICESIMO QUARTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 149, 1985**

An Act to amend the Crimes Act 1900 in relation to children who are sexually assaulted, and in other respects. [Assented to, 28th November, 1985.]

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See also Community Welfare (Child Assault) Amendment Act 1985; Oaths (Children) Amendment Act 1985; Evidence (Children) Amendment Act 1985; Pre-Trial Diversion of Offenders Act 1985.

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

**Short title**

1. This Act may be cited as the "Crimes (Child Assault) Amendment Act 1985".

**Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

**Principal Act**

3. The Crimes Act 1900 is referred to in this Act as the Principal Act.

**Schedules**

4. This Act contains the following Schedules:

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT IN  
RELATION TO PROCEDURE IN CASES OF CHILD  
ASSAULT

SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT IN  
RELATION TO OFFENCES

**Amendment of Act No. 40, 1900**

5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

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## SCHEDULE 1

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO  
PROCEDURE IN CASES OF CHILD ASSAULT(1) Section 77A (**Proceedings in camera in certain cases**)—

At the end of section 77A, insert:

(3) Where, under this section, the Court directs that proceedings or a part of any proceedings be held in camera, it may, either absolutely or subject to conditions, exempt any person from that direction to the extent necessary to allow that person to be present as a support for a person giving evidence or for any other purpose which the Court thinks fit.

(4) A Court may make a direction under this section on its own motion or at the request of any party and, in determining whether to make such a direction in proceedings in respect of an offence alleged to have been committed upon a child under the age of 18 years, the Court shall consider—

- (a) the need of the child to have any person excluded from those proceedings;
- (b) the need of the child to have any person present in those proceedings;
- (c) the interests of justice; and
- (d) any other matter which the Court thinks relevant.

(2) Section 333 (**False evidence by child not on oath**)—

Omit the section.

(3) Section 405B (**Warning to be given by Judge in relation to lack of complaint in certain sexual offence proceedings**)—

Omit subsection (1), insert instead:

(1) In this section—

“prescribed sexual offence” means—

- (a) an offence under section 61B, 61C, 61D, 61E, 66A, 66B, 66C or 66D; or

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO  
PROCEDURE IN CASES OF CHILD ASSAULT—*continued*

- (b) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a).
- (4) Section 405C (**Judge not required to warn jury against convicting person of certain sexual offences**)—
- (a) At the end of subsection (3) (a), insert “or”.
- (b) From subsection (3) (b), omit “or”.
- (c) Omit subsection (3) (c).
- (5) Section 407AA (**Compellability of spouses to give evidence in certain proceedings**)—
- (a) From subsection (1) (a), omit “and”.
- (b) At the end of subsection (1) (b), insert:
- ; and
- (c) a reference to a child assault offence is a reference to—
- (i) an offence under, or mentioned in, section 19, 24, 27, 28, 29, 30, 33, 33A, 35, 39, 41, 42, 43, 44, 46, 47, 48, 49, 58, 59, 61, 61B, 61C, 61D, 61E, 66A, 66B, 66C, 66D, 493 or 494 committed upon a child under the age of 18 years; or
- (ii) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in subparagraph (i).
- (c) After subsection (2), insert:
- (2A) Except as provided in subsection (3), the husband or wife of an accused person in a criminal proceeding shall, where the offence charged is a child assault offence (other than an offence constituted by a negligent act or omission) committed upon—
- (a) a child living in the household of the accused person; or

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO  
PROCEDURE IN CASES OF CHILD ASSAULT—*continued*

(b) a child who, although not living in the household of the accused person, is a child of the accused person and that husband or wife,

be compellable to give evidence in the proceeding in every Court, either for the prosecution or for the defence, and without the consent of the accused person.

(d) In subsection (3), after “(2)”, insert “or (2A)”.

(e) Omit subsection (4), insert instead:

(4) A Judge or Justice may excuse the husband or wife of an accused person from giving evidence for the prosecution as referred to in subsection (2) or (2A) if satisfied that the application to be excused is made by that husband or wife freely and independently of threat or any other improper influence by any person and that—

(a) it is relatively unimportant to the case to establish the facts in relation to which it appears that that husband or wife is to be asked to give evidence or there is other evidence available to establish those facts; and

(b) the offence with which the accused person is charged is of a minor nature.

(6) Section 418 (On hearing of a charge for certain offences, evidence not on oath may be received in case of children of tender years, but such evidence must be corroborated)—

Omit the section.

*Crimes (Child Assault) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO  
PROCEDURE IN CASES OF CHILD ASSAULT—*continued*(7) Section 578 (**Publication of evidence may be forbidden in certain cases**)—

After subsection (2), insert:

(3) The provisions of this section are subject to any Act or law under which evidence relating to a child under the age of 18 years, or a report or account of that evidence, may not be published.

## SCHEDULE 2

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO  
OFFENCES(1) Section 61A (**Definition of sexual intercourse, etc.**)—

- (a) From subsection (1), omit “this section and sections 61B, 61C and 61D”, insert instead “sections 61A–66E”.
- (b) From subsection (2), omit “61B, 61C and 61D”, insert instead “61B–66E”.
- (c) After subsection (4), insert:

(5) For the purposes of sections 61D–66E, a person is under the authority of another person if the person is in the care, or under the supervision or authority, of the other person.

(2) Section 61D (**Sexual assault category 3—sexual intercourse without consent**)—

- (a) After subsection (1), insert:
  - (1A) Any person who has sexual intercourse with another person who—
    - (a) is under the age of 16 years; and

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SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO  
OFFENCES—*continued*

- (b) is (whether generally or at the time of the sexual intercourse only) under the authority of the person,  
without the consent of the other person and who knows that the other person does not consent to the sexual intercourse shall be liable to penal servitude for 12 years.
- (b) From subsections (2) and (3), omit “subsection (1)” wherever occurring, insert instead “subsections (1) and (1A)”.
- (3) Section 61E (Sexual assault category 4—indecent assault and act of indecency)—
- (a) From subsection (1), omit “or, if the other person is under the age of 16 years, to penal servitude for 6 years”.
- (b) After subsection (1), insert:
- (1A) Any person who assaults another person who—
- (a) is under the age of 16 years; and
- (b) is (whether generally or at the time of the assault only) under the authority of the person,  
and, at the time of, or immediately before or after, the assault, commits an act of indecency upon or in the presence of the other person, shall be liable to penal servitude for 6 years.
- (c) After subsection (2), insert:
- (2A) Any person who commits an act of indecency with or towards a person who—
- (a) is under the age of 16 years; and
- (b) is (whether generally or at the time the act is committed only) under the authority of the firstmentioned person,

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO  
OFFENCES—*continued*

or who incites any such person to an act of indecency with that or another person shall be liable to imprisonment for 4 years.

(4) Section 61G (Alternative verdicts)—

(a) In subsection (2), after “section 61D”, insert “committed before the commencement of Schedule 2 to the Crimes (Child Assault) Amendment Act 1985”.

(b) After subsection (2), insert:

(2A) Where on the trial of a person for an offence under section 61D (1) committed on or after the commencement of Schedule 2 to the Crimes (Child Assault) Amendment Act 1985 the jury is satisfied that the person upon whom the offence was alleged to have been committed was under the age of 16 years, but above the age of 10 years, and that the accused had sexual intercourse with the person but is not satisfied that the sexual intercourse was had without the person’s consent, it may find the accused not guilty of the offence charged but guilty of an offence under section 66C (1), and the accused shall be liable to punishment accordingly.

(2B) Where on the trial of a person for an offence under section 61D (1A) the jury is not satisfied that the accused had sexual intercourse without the consent of the other person but is satisfied that the accused is guilty of an offence under section 66C (2), it may find the accused not guilty of the offence charged but guilty of an offence under section 66C (2), and the accused shall be liable to punishment accordingly.

(2C) Where on the trial of a person for an offence under section 61D (1A) or 61E (1A) or (2A) 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 61D (1) or 61E (1) or (2), as the case may require, it may find the accused not guilty of the offence charged but guilty of an offence under section 61D (1) or 61E (1) or (2), as the case may be, and the accused shall be liable to punishment accordingly.



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SCHEDULE 2—*continued*  
AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO  
OFFENCES—*continued*

(5) Sections 66A–66E—

After section 66, insert:

**Sexual intercourse—child under 10**

66A. Any person who has sexual intercourse with another person who is under the age of 10 years shall be liable to penal servitude for 20 years.

**Attempting, or assaulting with intent, to have sexual intercourse with child under 10**

66B. Any person who attempts to have sexual intercourse with another person who is under the age of 10 years, or assaults any such person with intent to have sexual intercourse, shall be liable to penal servitude for 20 years.

**Sexual intercourse—child between 10 and 16**

66C. (1) Any person who has sexual intercourse with another person who is of or above the age of 10 years, and under the age of 16 years, shall be liable to penal servitude for 8 years.

(2) Any person who has sexual intercourse with another person who—

- (a) is of or above the age of 10 years, and under the age of 16 years; and
- (b) is (whether generally or at the time of the sexual intercourse only) under the authority of the person,

shall be liable to penal servitude for 10 years.

**Attempting, or assaulting with intent, to have sexual intercourse with child between 10 and 16**

66D. Any person who attempts to commit an offence under section 66C upon another person who is of or above the age of 10 years, and under the age of 16 years, or assaults any such person with intent to commit such an offence, shall be liable to the penalty provided for the commission of the offence.

*Crimes (Child Assault) Amendment 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO  
OFFENCES—*continued***Alternative verdicts**

66E. (1) Where on the trial of a person for an offence under section 66A the jury is not satisfied that the other person upon whom the offence was alleged to have been committed was under the age of 10 years, but is satisfied that—

- (a) the other person was under the age of 16 years; and
- (b) the accused had sexual intercourse with the other person,

it may find the accused not guilty of the offence charged but guilty of an offence under section 66C (1), and the accused shall be liable to punishment accordingly.

(2) Where on the trial of a person for an offence under section 66A the jury is not satisfied that the other person upon whom the offence was alleged to have been committed was under the age of 10 years or that the accused had sexual intercourse with the other person, but is satisfied that—

- (a) the other person was under the age of 16 years; and
- (b) the accused is guilty of an offence under section 66D,

it may find the accused not guilty of the offence charged but guilty of an offence under section 66D, and the accused shall be liable to punishment accordingly.

**(6) Section 67 (Carnally knowing girl under 10)—**

Omit the section.

**(7) Section 68 (Attempting, or assaulting with intent, to carnally know girl under 10)—**

Omit the section.

**(8) Section 69 (Trial for carnal knowledge—girl in fact over 10)—**

- (a) Omit “carnally knowing a girl under the age of ten years”, insert instead “an offence under section 67”.
- (b) Omit “she was of or above that age”, insert instead “the girl was of or above the age of ten years”.

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OFFENCES—*continued*

- (9) Section 70 (**Trial for carnal knowledge—verdict of assault with intent**)—
- (a) Omit “carnally knowing a girl under the age of ten years”, insert instead “an offence under section 67”.
  - (b) Omit “she was of or above that age”, insert instead “the girl was of or above the age of ten years”.
- (10) Section 71 (**Carnally knowing girl between 10 and 16**)—  
Omit the section.
- (11) Section 72 (**Attempts**)—  
Omit the section.
- (12) Section 73 (**Carnal knowledge by teacher, etc.**)—
- (a) Omit “of or above the age of ten years, and under the age of seventeen years”, insert instead “of the age of 16 years”.
  - (b) Omit “fourteen years”, insert instead “8 years”.
- (13) Section 74 (**Attempts**)—
- (a) Omit “of or above the age of ten years, and under the age of seventeen years”, insert instead “of the age of 16 years”.
  - (b) Omit “seven years”, insert instead “8 years”.
- (14) Section 75 (**Alternative charge**)—  
After “section 74”, insert “as respectively in force before the commencement of Schedule 2 to the Crimes (Child Assault) Amendment Act 1985”.
- (15) Section 77—  
Omit the section, insert instead:

**Consent no defence in certain cases**

77. (1) Except as provided by subsection (2), the consent of the child or other person to whom the charge relates shall be no defence to a charge under section 61E (1A), (2) or (2A), 66A, 66B, 66C, 66D, 67, 68, 71, 72, 72A, 73, 74 or 76A or, if the child to whom the charge relates was under the age of 16 years at the time the offence is alleged to have been committed, to a charge under section 61E (1) or 76.

*Crimes (Child Assault) Amendment 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO  
OFFENCES—*continued*

(2) It shall be a sufficient defence to a charge which renders a person liable to be found guilty of an offence under section 61E (1A), (2) or (2A), 66C, 66D, 71, 72 or 76A or, if the child to whom the charge relates was under the age of 16 years at the time the offence is alleged to have been committed, to a charge under section 61E (1) or 76 if the person charged and the child to whom the charge relates are not both male and it is made to appear to the court or to the jury before whom the charge is brought that—

- (a) the child to whom the charge relates was over the age of 14 years at the time the offence is alleged to have been committed;
- (b) the child to whom the charge relates consented to the commission of the offence; and
- (c) the person so charged had, at the time the offence is alleged to have been committed, reasonable cause to believe, and did in fact believe, that the child to whom the charge relates was of or above the age of 16 years.

(16) Section 77A (**Proceedings in camera in certain cases**)—

- (a) From subsection (1), omit “66,”, insert instead “63, 65, 66, 66A, 66B, 66C, 66D,”.
- (b) From subsection (1), omit “73 or 74”, insert instead “73, 74, 76 or 76A”.
- (c) Omit subsection (2).

(17) Section 78 (**Limitation**)—

Omit “71 or 72, or under section 76 as in force at any time before the commencement of Schedule 1 to the Crimes (Sexual Assault) Amendment Act, 1981,”, insert instead “66C (1), 66D, 71, 72 or 76”.

(18) Section 78A (**Incest**)—

Before “his mother”, insert “a female of or above the age of 16 years who is”.

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO  
OFFENCES—*continued*(19) Section 78E (**Rape or attempt—verdict of incest or attempt**)—

Omit “as in force at any time before the commencement of Schedule 1 to the Crimes (Sexual Assault) Amendment Act, 1981, or section 65 as so in force,” insert instead “or 65”.

(20) Section 476 (**Indictable offences punishable summarily with consent of accused**)—

Omit subsection (6) (b), insert instead:

- (b) any offence mentioned in section 61E, 66C (1), 66D, 71, 72, 76 or 76A, where the person upon whom the offence was committed was at the time of the commission of the offence of or above the age of 14 years;

(21) Section 578 (**Publication of evidence may be forbidden in certain cases**)—

- (a) From subsection (1), omit “66,” insert instead “63, 65, 66, 66A, 66B, 66C, 66D,”.
- (b) In subsection (1), after “74,” insert “76, 76A,”.
- (c) Omit subsection (1A).
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