

**PRE-TRIAL DIVERSION OF OFFENDERS (AMENDMENT)
ACT 1993 No. 7**

NEW SOUTH WALES



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**PRE-TRIAL DIVERSION OF OFFENDERS (AMENDMENT)
ACT 1993 No. 7**

NEW SOUTH WALES



Act No. 7, 1993

An Act to amend the Pre-Trial Diversion of Offenders Act 1985 in relation to the application of that Act and procedures under that Act; and for other purposes. [Assented to 14 April 1993]

Pre-Trial Diversion of Offenders (Amendment) Act 1993 No. 7

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Pre-Trial Diversion of Offenders (Amendment) Act 1993.

Commencement

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

Amendment of Pre-Trial Diversion of Offenders Act 1985 No. 153

3. The Pre-Trial Diversion of Offenders Act 1985 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Long title:

Omit “programme”, insert instead “program”.

(2) Section 2A:

After section 2, insert:

Purpose of Act

2A. The purpose of this Act is to provide for the protection of children who have been victims of sexual assault by a parent or a parent’s spouse or de facto partner. The Act provides for the establishment of a program administered by the Department of Health. In the implementation of the Act, it is intended that the interests of a child victim are to prevail over those of a person pleading guilty to a charge of sexual assault in relation to the child.

(3) Section 3 (**Definitions**):

(a) Omit the definition of “child sexual assault offence”, insert instead:

“**child sexual assault offence**” means an offence under section 61D, 61E, 63, 65, 66A, 66B, 66C, 66D, 67, 68, 71, 72, 73, 74, 76, 76A, 78A, 78B, 78H, 78I, 78K or 78L of the Crimes Act 1900;

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) Omit the definition of “Director”, insert instead:
“Director” means the person nominated by the Director-General of the Department of Health to be Director of the Program;
- (c) In alphabetical order, insert:
“Program” means the Pre-Trial Diversion of Offenders Program approved in accordance with Part 3A;
- (d) Omit the definition of “special programme”.
- (e) At the end of section 3, insert:
 (2) A reference in the definition of “child sexual assault offence” in subsection (1) to an offence under a specified provision of the Crimes Act 1900 that has been amended or repealed is, or includes, a reference to an offence mentioned in the provision as in force before the amendment or repeal.
- (4) Section 3A:
 After section 3, insert:
Persons to whom Act applies
 3A. This Act applies to a person who is charged with a child sexual assault offence committed with or upon the person’s child or the child of the person’s spouse or de facto partner.
- (5) Section 6 (**Information relating to the Program etc. to be given to person charged**):
 After “person”, insert “to whom this Act applies”.
- (6) Sections 9, 11, 12, 13, 15, 16, 17, 20, 23, 28, 30 and 34:
 Omit “a special programme” wherever occurring, insert instead “the Program”.
- (7) Section 10:
 Omit the section, insert instead:
Matters to be considered by prosecutor in deciding whether to refer person for assessment
 10. In determining whether a person charged with a child sexual assault offence is to be referred for assessment in relation to the person’s suitability for participation in the Program, the prosecutor must:

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SCHEDULE 1—AMENDMENTS—*continued*

- (a) consider the guidelines set out in the regulations; and
- (b) ascertain from the Director or a person to whom the Director delegates the function whether a place in the Program would be available for the person if the person were to give an undertaking to participate in the Program.

(8) Section 11 (**Prosecutor to notify Justice of decision**):

At the end of the section, insert:

(2) The prosecutor is to inform the Justice that the person is not to be referred for assessment if the prosecutor has ascertained under section 10 that a place in the Program would not be available for the person if the person were to give an undertaking to participate in the Program.

(9) Section 14:

Omit the section, insert instead:

Assessment

14. (1) A person who is to be referred for assessment in relation to the person's suitability for participation in the Program must be referred for assessment, and be assessed, in accordance with the regulations.

(2) The Director, or a person to whom the Director delegates the duty, is to assess a person's suitability for the purposes of subsection (1) and in doing so may take into account any or all of the following matters which appear to be relevant and any other matter which he or she considers to be relevant:

- (a) any statement made to a police officer in relation to the alleged offence (including statements of the person charged with the offence, the child concerned, a parent of the child or any other person with relevant information);
- (b) relevant information held by other government agencies which are or have been involved in the treatment of the person charged with the offence or of a member of that person's family or household;

SCHEDULE 1—AMENDMENT—*continued*

- (c) interviews conducted by the Director or officer making the assessment with the person, the person's spouse or de facto spouse and the child concerned;
 - (d) whether the person accepts responsibility for the sexual assault of the child;
 - (e) whether the person demonstrates some understanding of the impact of the offence on the child and on other members of the child's family or household;
 - (f) whether the person's spouse or de facto partner is prepared to participate in the Program as required by the Director;
 - (g) whether the person and the person's spouse or de facto partner have sufficient interactive skills to be able to participate in any group therapy aspects of the Program;
 - (h) whether the person and the person's spouse or de facto partner agree to participate in all aspects of the Program;
 - (i) whether participation in the Program by the person, the person's spouse or de facto partner and the child concerned is in the best interests of the child.
- (3) The prosecutor is, in accordance with the regulations, to be notified as to the result of the assessment and to be provided with written reasons if the assessment made is that the person is not suitable for participation in the Program.
- (10) **Section 17 (Act ceases to apply if person does not plead guilty before Justice):**
From section 17 (2) (b), omit "the special programme", insert instead "the Program".
- (11) Part 3, heading:
Omit "PROGRAMME", insert instead "PROGRAM".
- (12) Section 24:
Omit the section, insert instead:
Procedure following giving of undertaking
24. If a person gives an undertaking at the request of a court under section 23, the court is (subject to sections 25

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SCHEDULE 1—AMENDMENTS—*continued*

and 28) to proceed to conviction of the person for the offence concerned but is not to sentence or otherwise deal with the person in respect of the offence.

(13) Section 25 (**Person may be released from undertaking**):

From section 25 (2), omit “convict and”.

(14) Section 26 (**Breach of undertaking etc.**):

In section 26 (2), after “notified”, insert “by the Director, or a person to whom the Director delegates the duty,”.

(15) Section 28 (**Powers of court on breach**):

From section 28 (a), omit “convict and”.

(16) Part 3A:

After Part 3, insert:

**PART 3A—PRE-TRIAL DIVERSION OF
OFFENDERS PROGRAM**

The Program

30A. (1) The Pre-Trial Diversion of Offenders Program is a program for the treatment of a person who commits a child sexual assault offence with or upon the person’s child or the child of the person’s spouse or de facto partner.

(2) The Program is one which is approved for the time being by the Minister for Health after consultation with the Attorney General and the Minister for Community Services.

Administration of the Program

30B. (1) The Department of Health is to administer the Program.

(2) The Director-General of that Department is to prepare an annual report on the operation and effectiveness of the Program being administered by the Department and is to forward the report to the Attorney General, the Minister for Health and the Minister for Community Services.

(17) Section 31 (**Police record to be kept**):

Omit the section.

SCHEDULE 1—AMENDMENTS—*continued*

(18) Section 35:

After section 34, insert:

Savings and transitional provisions

35. Schedule 1 has effect.

(19) Schedule 1:

At the end of the Act, insert:

SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 35)

Application of amendments made by Pre-Trial Diversion of Offenders (Amendment) Act 1993

1. (1) Section 3A does not apply to proceedings pending at the commencement of that section if the person charged with the offence concerned was assessed under section 14 before that commencement.

(2) Section 24 (as substituted by the Pre-Trial Diversion of Offenders (Amendment) Act 1993) does not apply to proceedings pending at the commencement of Schedule 1 (10) to that Act in which the person charged with the offence concerned pleaded guilty or not guilty before that commencement.

*[Minister's second reading speech made in—
Legislative Council on 18 November 1992
Legislative Assembly on 11 March 1993]*