



New South Wales

Crimes Legislation Amendment Act 2004 No 11

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New South Wales

Crimes Legislation Amendment Act 2004 No 11

Act No 11, 2004

An Act to amend certain Acts with respect to criminal offences and proceedings for criminal offences; and for other purposes. [Assented to 24 March 2004]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Legislation Amendment Act 2004*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Acts

The Acts specified in Schedules 1–8 are amended as set out in those Schedules.

4 Explanatory notes

Matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of this Act.

Schedule 1 Amendment of Child Protection (Offenders Registration) Act 2000 No 42

(Section 3)

Section 3 Definitions

Insert after paragraph (d) of the definition of *Class 2 offence* in section 3 (1):

- (d1) an offence under section 21G of the *Summary Offences Act 1988*, where the person who was being filmed as referred to in that section was then a child, or

Explanatory note

This amendment provides that the offence of filming a child for indecent purposes (part of a new offence arising from the amendment to the *Summary Offences Act 1988* set out in Schedule 8) is to be a **Class 2 offence** for the purposes of the *Child Protection (Offenders Registration) Act 2000*. Consequently, the registration procedures and reporting obligations under that Act will apply to persons found guilty of such an offence.

Schedule 2 Amendment of Children (Criminal Proceedings) Act 1987 No 55

(Section 3)

[1] Section 11 Publication and broadcasting of names

Insert after section 11 (1) (c):

- (d) any person who is a brother or sister of a victim of the offence to which the proceedings relate, where that person and the victim were both children when the offence was committed.

[2] Section 11 (1A) (b)

Insert “, or is deceased,” after “child”.

[3] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

Crimes Legislation Amendment Act 2004, to the extent to which it amends this Act

[4] Schedule 2

Insert at the end of the Schedule, with appropriate Part and clause numbers:

Part Provision consequent on enactment of Crimes Legislation Amendment Act 2004

Publication and broadcasting of names

Section 11, as amended by the *Crimes Legislation Amendment Act 2004*, extends to proceedings commenced before the commencement of those amendments.

Explanatory note

Item [1] extends the class of persons whose names are not to be published or broadcast in respect of criminal proceedings involving a child.

Item [2] extends the prohibition on publishing or broadcasting the name of a child who has been involved in criminal proceedings to a child who is deceased.

Items [3] and [4] deal with savings and transitional matters.

Schedule 3 Amendment of Costs in Criminal Cases Act 1967 No 13

(Section 3)

Section 2 Certificate may be granted

Insert “a special hearing conducted under section 19 of the *Mental Health (Criminal Procedure) Act 1990* and also includes” after “includes” in section 2 (3).

Explanatory note

This amendment ensures that a certificate for the payment of a defendant's costs can be given in relation to the defendant in a special hearing conducted under section 19 of the *Mental Health (Criminal Procedure) Act 1990* in the same way as it can be given in relation to the defendant in a trial being conducted with respect to criminal proceedings generally.

Schedule 4 Amendment of Crimes Act 1900 No 40

(Section 3)

[1] Section 52A Dangerous driving: substantive matters

Insert after section 52A (5) (f):

- (g) the person falling from the vehicle, or being thrown or ejected from the vehicle, while being conveyed in or on the vehicle (whether as a passenger or otherwise),
- (h) an impact between any object (including the ground) and the person, as a consequence of the person (or any part of the person) being or protruding outside the vehicle, while the person is being conveyed in or on the vehicle (whether as a passenger or otherwise).

[2] Section 52B Dangerous navigation: substantive matters

Insert after section 52B (5) (f):

- (g) the person falling from the vessel, or being thrown or ejected from the vessel, while being conveyed in or on the vessel (whether as a passenger or otherwise),
- (h) an impact between any object (including the water and the ground) and the person, as a consequence of the person (or any part of the person) being or protruding outside the vessel, while the person is being conveyed in or on the vessel (whether as a passenger or otherwise).

[3] Section 80A Sexual assault by forced self-manipulation

Insert in alphabetical order in section 80A (1):

circumstances of aggravation means circumstances in which:

- (a) at the time of, or immediately before or after, the commission of the offence, the alleged offender maliciously inflicts actual bodily harm on the alleged victim or any other person who is present or nearby, or
- (b) at the time of, or immediately before or after, the commission of the offence, the alleged offender threatens to inflict actual bodily harm on the alleged victim or any other person who is present or nearby by means of an offensive weapon or instrument, or

-
- (c) the alleged offender is in the company of another person or persons, or
 - (d) the alleged victim is under the age of 16 years, or
 - (e) the alleged victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender, or
 - (f) the alleged victim has a serious physical disability, or
 - (g) the alleged victim has a serious intellectual disability.

[4] Section 80A (2) and (2A)

Omit section 80A (2). Insert instead:

- (2) Any person who compels another person to engage in self-manipulation, by means of a threat that the other person could not reasonably be expected to resist, is liable to imprisonment for 14 years.
- (2A) Any person who compels another person to engage in self-manipulation:
 - (a) by means of a threat that the other person could not reasonably be expected to resist, and
 - (b) in circumstances of aggravation,is liable to imprisonment for 20 years.

[5] Eleventh Schedule Savings and transitional provisions

Insert at the end of the Schedule, with appropriate Part and clause numbers:

Part Crimes Legislation Amendment Act 2004

Dangerous driving and dangerous navigation

- (1) Section 52A, as in force immediately before its amendment by the *Crimes Legislation Amendment Act 2004*, continues to apply to circumstances arising before the commencement of that amendment as if that amendment had not been made.
- (2) Section 52B, as in force immediately before its amendment by the *Crimes Legislation Amendment Act 2004*, continues to apply to circumstances arising before the commencement of that amendment as if that amendment had not been made.

Sexual assault by forced self-manipulation

Section 80A, as in force immediately before its amendment by the *Crimes Legislation Amendment Act 2004*, continues to apply to an offence committed before the commencement of those amendments as if those amendments had not been made.

Explanatory note

Item [1] amends section 52A so as to extend the range of circumstances that can give rise to an offence of dangerous driving occasioning death or grievous bodily harm.

Item [2] amends section 52B so as to extend the range of circumstances that can give rise to an offence of dangerous navigation occasioning death or grievous bodily harm.

Items [3] and [4] amend section 80A so as to create separate offences of sexual assault by forced self-manipulation and sexual assault by forced self-manipulation in circumstances of aggravation. ***Circumstances of aggravation*** are defined in the same way as they are defined in relation to other sexual assaults. One consequence of this similarity is that the penalty of 20 years that currently applies if the victim is under 10 years' old will in future apply if the victim is under 16 years' old.

Item [5] deals with savings and transitional matters.

Schedule 5 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

(Section 3)

Section 100J Functions of Sentencing Council

Omit section 100J (1) (b). Insert instead:

- (b) to advise and consult with the Minister in relation to:
 - (i) matters suitable for guideline judgments under Division 4 of Part 3, and
 - (ii) the submissions to the Court of Criminal Appeal to be made by the Minister in guideline proceedings,

Explanatory note

This amendment enables the Sentencing Council to advise and consult with the Minister administering the *Crimes (Sentencing Procedure) Act 1999* in relation to all matters that are suitable for guideline judgments by the Court of Criminal Appeal, not just in relation to offences (as is currently the case), and in relation to submissions to be made by the Minister in guideline proceedings generally, not just submissions concerning applications for guideline judgments (as is currently the case).

Schedule 6 Amendment of Criminal Appeal Act 1912 No 16

(Section 3)

Section 7 Powers of court in special cases

Insert “or may make such other order (including an order releasing the appellant from custody, either unconditionally or subject to conditions) as the court considers appropriate” after “due process of law” in section 7 (4).

Explanatory note

This amendment allows the Court of Criminal Appeal to make the same kinds of order with respect to an appellant whom it finds not guilty by reason of mental illness as a court of trial may make under section 39 of the *Mental Health (Criminal Procedure) Act 1990* in respect of a person whom a jury finds not guilty by reason of mental illness.

Schedule 7 Amendment of Mental Health Act 1990 No 9

(Section 3)

[1] Section 81 Tribunal to review cases of persons found not guilty by reason of mental illness

Omit section 81 (1) (b). Insert instead:

- (b) to a person found, after a trial by a court or on an appeal, to be not guilty by reason of mental illness and ordered:
 - (i) under section 39 of the *Mental Health (Criminal Procedure) Act 1990*, or
 - (ii) under section 7 (4) of the *Criminal Appeal Act 1912* (including that subsection as applied by section 5AA (5) of that Act),

to be detained in a hospital or other place or to be released from custody subject to conditions.

[2] Section 101 Termination of classification as forensic patient of person found not guilty by reason of mental illness

Omit section 101 (1) (b). Insert instead:

- (b) to a person found, after a trial by a court or on an appeal, to be not guilty by reason of mental illness and ordered:
 - (i) under section 39 of the *Mental Health (Criminal Procedure) Act 1990*, or
 - (ii) under section 7 (4) of the *Criminal Appeal Act 1912* (including that subsection as applied by section 5AA (5) of that Act),

to be detained in a hospital or other place or to be released from custody subject to conditions.

[3] Schedule 1 Dictionary of terms used in the Act

Insert “, or released from custody subject to conditions,” after “other place” in paragraph (a) of the definition of *forensic patient*.

Explanatory note

Item [1] extends the power of review conferred on the Mental Health Review Tribunal by section 81 of the *Mental Health Act 1990* to persons who are conditionally released under section 39 of the *Mental Health (Criminal Procedure) Act 1990* or section 7 of the *Criminal Appeal Act 1912*, rather than (as is currently the case) only those persons who are ordered under those provisions to be detained in custody.

Item [2] extends section 101 of the *Mental Health Act 1990*, and item [3] extends the definition of *forensic patient* in the Dictionary to the *Mental Health Act 1990*, to include a reference to persons so released.

Schedule 8 Amendment of Summary Offences Act 1988 No 25

(Section 3)

Part 3B

Insert after Part 3A:

Part 3B Filming for indecent purposes

21G Filming for indecent purposes

- (1) Any person who films, or attempts to film, another person to provide sexual arousal or sexual gratification, whether for himself or herself or for a third person, where the other person:
- (a) is in a state of undress, or is engaged in a private act, in circumstances in which a reasonable person would reasonably expect to be afforded privacy, and
 - (b) does not consent to being filmed,
- is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) For the purposes of this section:
- (a) a person *films another person* if the person causes one or more images (whether still or moving) of another person to be recorded or transmitted for the purpose of enabling himself or herself, or a third person, to observe those images (whether while the other person is being filmed or later), and
 - (b) a person is *engaged in a private act* if the person is engaged in using the toilet, showering or bathing, carrying on a sexual act of a kind not ordinarily done in public or any other like activity.

21H Installing device to facilitate filming for indecent purposes

Any person who installs any device, or constructs or adapts the fabric of any building, vehicle, vessel, tent or temporary structure for the purpose of facilitating the installation or

operation of any device, with the intention of enabling that or any other person to commit an offence under section 21G is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

Explanatory note

This amendment inserts a new Part 3B into the *Summary Offences Act 1988*. The new Part contains two offences: filming for indecent purposes and installing a device to facilitate filming for indecent purposes. In this context, "filming for indecent purposes" involves filming, for one's own or someone else's sexual arousal or sexual gratification, some other person who is undressed, or is using the toilet or engaged in a private sexual act, in circumstances in which a reasonable person would reasonably expect to be afforded privacy.

[Second reading speech made in—
Legislative Assembly on 27 February 2004
Legislative Council on 16 March 2004]

BY AUTHORITY