



New South Wales

# Crimes Amendment (Strangulation) Bill 2014

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Crimes Act 1900* (*the Act*) as follows:

- (a) to create a new offence that will apply if a person intentionally chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance while being reckless as to whether the other person is rendered unconscious, insensible or incapable of resistance,
- (b) to simplify and modernise an existing offence that applies if a person chokes, suffocates or strangles another person with intent to enable himself or herself to commit, or to assist another person to commit, another indictable offence.

## 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.

## Schedule 1 Amendment of Crimes Act 1900 No 40

Section 37 of the Act currently makes it an offence to attempt to choke, suffocate or strangle a person or, by means calculated to choke, suffocate or strangle, to attempt to render any person insensible, unconscious or incapable of resistance. The mental element required is that the person intended to enable himself or herself or another person to commit, or to assist another person to

commit, an indictable offence. The offence carries a maximum penalty of imprisonment for 25 years.

The amendment in **Schedule 1 [1]** repeals and replaces that offence with 2 separate offences.

The first offence is a new offence that will apply if a person intentionally chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance and is reckless as to rendering the other person unconscious, insensible or incapable of resistance.

The offence will also apply if the offender intended to render the victim unconscious, insensible or incapable of resistance because section 4A of the Act already provides that recklessness can be proved by proof of intention.

The new offence carries a maximum penalty of imprisonment for 10 years.

The second offence replaces and simplifies the existing offence under section 37 of the Act. That offence will now apply if a person:

- (a) chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance, and
- (b) does so with the intention of enabling himself or herself to commit, or assisting any other person to commit, another indictable offence.

Existing section 344A of the Act would apply to both offences. That section provides that a person who attempts to commit an offence under the Act for which a penalty is provided is liable to the same penalty.

**Schedule 1 [2]** is a consequential amendment.

## **Schedule 2     Amendment of other legislation**

**Schedule 2.1** makes the new offence an offence that is to be dealt with summarily unless the prosecutor or person charged elects otherwise.

**Schedule 2.2 and 2.3** are consequential amendments to the amendment in Schedule 1 [1].



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New South Wales

# Crimes Amendment (Strangulation) Bill 2014

No. , 2014

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## **A Bill for**

An Act to amend the *Crimes Act 1900* to make further provision for offences that involve choking, suffocation or strangulation; and for related purposes.

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

1

**1 Name of Act**

2

This Act is the *Crimes Amendment (Strangulation) Act 2014*.

3

**2 Commencement**

4

This Act commences on the date of assent to this Act.

5

<b>Schedule 1</b>	<b>Amendment of Crimes Act 1900 No 40</b>	1
<b>[1] Section 37</b>		2
	Omit the section. Insert instead:	3
	<b>37 Choking, suffocation and strangulation</b>	4
	(1) A person is guilty of an offence if the person:	5
	(a) intentionally chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance, and	6 7 8
	(b) is reckless as to rendering the other person unconscious, insensible or incapable of resistance.	9 10
	Maximum penalty: imprisonment for 10 years.	11
	(2) A person is guilty of an offence if the person:	12
	(a) chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance, and	13 14
	(b) does so with the intention of enabling himself or herself to commit, or assisting any other person to commit, another indictable offence.	15 16
	Maximum penalty: imprisonment for 25 years.	17
	(3) In this section:	18
	<i>another indictable offence</i> means an indictable offence other than an offence against this section.	19 20
<b>[2] Section 428B Offences of specific intent to which Part applies</b>		21
	Omit the matter relating to section 37 from the Table to section 428B. Insert instead:	22
	37 (2) Choking, suffocation or strangulation with intent to commit or assist in committing another indictable offence	

<b>Schedule 2</b>	<b>Amendment of other legislation</b>	1
<b>2.1</b>	<b>Criminal Procedure Act 1986 No 209</b>	2
	<b>Schedule 1 Indictable offences triable summarily</b>	3
	Insert “37 (1),” after “35A (1),” in clause 2 of Table 1.	4
<b>2.2</b>	<b>Criminal Procedure Regulation 2010</b>	5
	<b>Clause 63 Eligibility to participate in program</b>	6
	Omit “37” from paragraph (a) of the definition of <i>category 2 personal violence offence</i> in clause 63 (3).	7 8
	Insert instead “37 (1) or (2)”.	9
<b>2.3</b>	<b>Criminal Records Act 1991 No 8</b>	10
	<b>Section 7 Which convictions are capable of becoming spent?</b>	11
	Omit “37” from paragraph (e) of the definition of <i>sexual offences</i> in section 7 (4).	12
	Insert instead “37 (2)”.	13