

[Act 2001 No 62]



New South Wales

Crimes Amendment (Aggravated Sexual Assault in Company) Bill 2001

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* to make sexual assault carried out in the company of others and accompanied by the infliction of harm, the threat of harm or the deprivation of liberty, an offence carrying a maximum penalty of life imprisonment.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

Clause 4 is a formal provision giving effect to consequential amendments to other Acts set out in Schedule 2.

Schedule 1 Amendment of Crimes Act 1900

Schedule 1 [2] inserts proposed section 61JA into the Principal Act to create an offence of aggravated sexual assault in company carrying a maximum penalty of life imprisonment.

The elements of the proposed offence are sexual assault (that is, sexual intercourse with another person without the person's consent and with knowledge of or recklessness as to that lack of consent) committed:

- (a) in the company of another person or persons, and
- (b) in any one or more of the following circumstances:
 - (i) the alleged offender maliciously inflicts actual bodily harm on the alleged victim or any other person who is present or nearby,
 - (ii) 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,
 - (iii) the alleged offender deprives the alleged victim of his or her liberty for a period before or after the commission of the offence.

Proposed section 61JA (2) provides that a person sentenced to life imprisonment for the proposed offence is to serve that sentence for the term of the person's natural life. Proposed section 61JA (3) preserves the operation of section 21 of the *Crimes (Sentencing Procedure) Act 1999* (which authorises the passing of a lesser sentence than imprisonment for life). Proposed section 61JA (4) preserves the prerogative of mercy in respect of persons sentenced to life imprisonment.

Schedule 1 [3] amends section 61P of the Principal Act to provide that a person convicted of attempting to commit the proposed offence will be liable to the penalty provided for commission of the offence.

Explanatory note

Schedule 1 [4] amends section 61Q of the Principal Act to provide that, on the trial of a person for the proposed offence, a jury may reach an alternative verdict of not guilty of that offence but guilty of an offence under section 61I (Sexual assault) or 61J (Aggravated sexual assault) where the jury is satisfied on the evidence that the person is guilty of the latter offence but not of the offence charged.

Schedule 1 [1] and **[5]–[10]** make consequential amendments to the Principal Act.

Schedule 2 Consequential amendment of other Acts

Schedule 2 makes consequential amendments to various Acts, including an amendment to the *Bail Act 1978* to remove the presumption in favour of bail for a person who is alleged to have committed the proposed offence.