

## CRIMES (AMENDMENT) BILL 1989

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Inclosed Lands Protection (Amendment) Bill 1989 is cognate with this Bill.

The object of this Bill is to amend the Crimes Act 1900, so as:

- (a) to revise and simplify the laws relating to sexual assault; and
- (b) to empower courts to impose pecuniary penalties for indictable offences; and
- (c) to increase certain pecuniary penalties.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence by proclamation.

Clause 3 is a formal provision giving effect to the Schedules of amendments.

#### SCHEDULE 1 - AMENDMENTS RELATING TO SEXUAL ASSAULT

Schedule 1 (2) omits the provisions creating the principal sexual assault offences.

Schedule 1 (3) inserts sections 61H-61U, containing new provisions regarding sexual assault offences. These provisions include the following:

Section 61H contains certain interpretation provisions, including a definition of "sexual intercourse". These are in the same terms as in the current provisions of the Crimes Act 1900.

Sections 61I-61P create the following offences:

- \* Section 61I: sexual assault (sexual intercourse without consent).
- \* Section 61J: aggravated sexual assault (sexual intercourse without consent), committed in "circumstances of aggravation". These cover circumstances involving actual or threatened bodily harm, group attacks,

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victims under 16, victims under authority and victims with serious physical or intellectual disabilities.

- \* Section 61K: assault with intent to have sexual intercourse.
- \* Section 61L: indecent assault.
- \* Section 61M: aggravated indecent assault, committed in "circumstances of aggravation". These cover circumstances involving group attacks, victims under 16, victims under authority and victims with serious physical or intellectual disabilities.
- \* Section 61N: act of indecency.
- \* Section 61O: aggravated act of indecency, committed in "circumstances of aggravation". These cover circumstances involving group attacks, victims under authority and victims with serious physical or intellectual disabilities.
- \* Section 61P: attempt to commit any of the above.

Section 61Q provides for alternative verdicts, in a way similar to that provided by the current section 61G.

Section 61R deals with matters relating to the giving of consent, in a similar way to that currently provided by section 61D (2) and (3).

Section 61S deals with the capacity of minors to engage in sexual activity, in a way similar to that currently provided by section 61A (2) and (3).

Section 61T deals with the case where the offender is married to the victim, in a way similar to that currently provided by section 61A (4).

Section 61U deals with certain cases where more than one offence is established, in a way similar to that provided by the current section 442A.

Schedule 1 (4) provides an alternative verdict where an offence of sexual intercourse with a child under 16 is charged. An alternative verdict of attempting, or assaulting with intent, to have sexual intercourse will be available.

Schedule 1 (6) creates a new offence, under which the offender compels a person (by means of threats or intimidation) to sexually abuse himself or herself by manipulating an object.

Schedule 1 (1), (5) and (7)-(12) contain consequential and ancillary amendments.

Schedule 1 (13) and (14) enact savings and transitional provisions.

## **SCHEDULE 2 - AMENDMENTS RELATING TO PENALTIES**

Schedule 2 (1) increases the pecuniary penalties that may be imposed on a body corporate.

Schedule 2 (2) omits section 440A, which contains a limited power to impose a fine on a person convicted on indictment. Proposed section 440AA (mentioned below) is intended to confer a wider power to impose fines.

Schedule 2 (3) inserts proposed section 440AA, which empowers a Judge to impose a fine for an indictable offence, where this is otherwise not available.

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**Schedule 2 (3)** also inserts proposed sections 440AB and 440AC. Section 440AB requires a Judge, when imposing a fine, to consider the circumstances of the accused (in a way similar to that provided by section 80A of the Justices Act 1902). Section 440AC requires a Judge to allow time for payment of a fine and enables a fine to be paid by instalments (in a way similar to that provided by section 83 of the Justices Act 1902).

**Schedule 2 (4)** increases the fine available to be imposed when a sentence is deferred or suspended.

**Schedule 2 (5)** increases the maximum penalty that may be imposed when an indictable offence is punished summarily with the consent of the accused.

**Schedule 2 (6) and (7)** increase the maximum penalty that may be imposed when an indictable offence for assault or larceny is punished summarily without the consent of the accused.

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