

[Act 1998 No 131]



New South Wales

Crimes Legislation Amendment (Child Sexual Offences) Bill 1998

Explanatory note

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

Overview of Bill

The object of this Bill is to create the following offences:

- (a) persistent sexual abuse of a child (maximum penalty: imprisonment for 25 years).
- (b) loitering by convicted child sexual offenders near premises frequented by children (maximum penalty: 50 penalty units or imprisonment for 2 years, or both).

The new indictable offence of persistent sexual abuse adopts a recommendation of the Report of the Paedophile Inquiry of the Wood Police Royal Commission that a new offence be created in line with recommendations of the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General.

The new summary offence of loitering by convicted child sexual offenders is similar to a Victorian offence (section 60B of the Crimes Act 1958 of Victoria).

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* and the *Summary Offences Act 1988* set out in Schedules 1 and 2.

Schedule 1 Amendment of Crimes Act 1900

Schedule 1 [2] inserts in the *Crimes Act 1900* a new indictable offence of persistent sexual abuse of a child. The offence carries a maximum penalty of 25 years penal servitude. A *child* is defined as a person under the age of 18 years.

A person commits the new offence if the person engages in conduct in relation to a particular child that constitutes a sexual offence on 3 or more separate occasions, each occurring on separate days during a particular period. *Sexual offence* is defined to include a number of offences under the *Crimes Act 1900*, including various offences relating to sexual intercourse with children, sexual assault, indecent assault, act of indecency with or in the presence of a child and other offences of a sexual nature. It also includes an attempt to commit such an offence and similar offences committed outside New South Wales. The conduct need not be of the same nature, or constitute the same sexual offence, on each occasion for the offence to be proved.

In proceedings for the new offence, it is not necessary to specify or prove the dates or exact circumstances of the alleged occasions on which the conduct constituting the offence occurred. This addresses a decision of the High Court in *S v The Queen* (1989) 168 CLR 266, that particularity was required in trials of sexual assault to the same degree as in trials for other offences. The new offence provides that, in order for a person to be convicted of the offence, it is sufficient that the jury is satisfied beyond reasonable doubt that the evidence establishes at least 3 separate occasions, occurring on separate days during a particular period, on which the person engaged in conduct constituting a sexual offence in relation to a particular child of the nature described in the charge for the offence, and is satisfied about the material facts of those 3 occasions. It is not necessary for the jury to be satisfied about the dates or the order of those occasions.

The new offence also makes provision for alternative verdicts by the jury and includes provisions aimed at protecting the defendant from double jeopardy.

As persistent sexual abuse of a child is a new offence, the offence applies only to conduct occurring after the commencement of the new offence.

Schedule 1[3] makes it clear that consent of the child is not a defence to a charge of persistent sexual abuse of a child.

Schedule 1 [1] applies certain procedural provisions in the *Crimes Act 1900* applicable to sexual offences to proceedings for the new offence, namely sections 77A (proceedings in camera if court directs), 405B (warnings to jury about lack of complaints), 409A (depositions of previous connected proceedings may be read as evidence in committal proceedings), 409B (general prohibition on cross-examination of victim's previous sexual history) and 578A (prohibition on publication identifying victim).

Schedule 2 Amendment of Summary Offences Act 1988

Schedule 2 inserts in the *Summary Offences Act 1988* a new summary offence of loitering, without reasonable excuse, by convicted child sexual offenders near schools or other premises frequented by children. The offence carries a maximum penalty of a fine of 50 penalty units (presently \$5,500) or imprisonment for 2 years, or both.

A *child sexual offence* is defined as:

- (a) an offence involving sexual activity or acts of indecency that was committed in New South Wales against or in respect of a child and that was punishable by penal servitude or imprisonment for 12 months or more, or
- (b) an offence under sections 91D–91G of the *Crimes Act 1900*, other than if committed by a child prostitute, which relates to engaging in or being involved in child prostitution or pornography, or
- (c) an offence under section 578B or 578C (2A) of the *Crimes Act 1900*, which relates to possession or publication of child pornography, or
- (d) an offence of attempting, or of conspiracy or incitement, to commit any such offence, or
- (e) an offence under the law of a place outside New South Wales that would, if it had been committed in New South Wales, be an offence referred to in paragraphs (a)–(d).

The provision extends to child sexual offenders who were convicted the commencement of the new offence.