

[Act 1997 No 142]



New South Wales

Crimes Amendment (Child Pornography) Bill 1997

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to increase the maximum term of imprisonment for the offence of possessing child pornography from 12 months imprisonment to 2 years imprisonment, and
- (b) to increase the maximum penalties for publishing an indecent article if that article constitutes child pornography from 100 penalty units or 12 months imprisonment (or both) in the case of an individual, or 200 penalty units in the case of a corporation, to a maximum penalty of 1,000 penalty units or 5 years imprisonment (or both) in the case of an individual, or 2,000 penalty units in the case of a corporation, and

* Amended in committee—see table at end of volume.

- (c) to provide for the offence of publishing an indecent article that constitutes child pornography to be an indictable offence that is to be dealt with summarily unless the prosecuting authority elects otherwise, and
- (d) to replace the offence of employing a child for pornographic purposes with an indictable offence of using a child for pornographic purposes whether the child is employed for that purpose or not.

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 the amendments to various Acts set out in Schedule 2.

Schedule 1 Amendment of Crimes Act 1900

Possessing child pornography

Schedule 1 [5] amends section 578B (2) as described in paragraph (a) of the Overview of the Bill.

Publishing child pornography

Schedule 1 [7] and [8] amend section 578C of the Principal Act in the manner described in paragraphs (b) and (c) of the Overview of the Bill. Currently the publication of child pornography is dealt with under section 578C which deals generally with the publication of indecent articles. The maximum penalty for the publication of such articles is 100 penalty units or 12 months imprisonment (or both) in the case of an individual, or 200 penalty units in the case of a corporation. The proposed amendments make specific provision for the offence of publication of child pornography, and also increase the maximum penalty for such publication so that an individual will be liable to a maximum penalty of 1,000 penalty units or 5 years imprisonment (or both) and a corporation will be liable to a maximum penalty of 2,000 penalty units.

Use of a child for pornographic purposes

Schedule 1 [2]–[4] amend section 91G in the manner described in paragraph (d) of the Overview of the Bill. Section 91G currently makes it an offence to employ a child for pornographic purposes or to cause or procure a child to be, or consent to a child being, so used. The proposed amendments to section 91G (1) made by Schedule 1 [2] and [3] will instead provide for the offence of using a child for pornographic purposes (or causing or procuring a child to be, or consenting to a child being, so used) whether employed for that purpose or not.

The penalty for an offence under section 91G remains unchanged so that a person convicted of using a child for pornographic purposes is liable to penal servitude for 5 years or, if the child is under 14 years, 7 years penal servitude.

Proposed Schedule 1 [4] replaces section 91G (2) (which currently provides that a child is employed for pornographic purposes if money or some other material thing is paid or provided to the child, or some other person, for the employment of the child and in the course of employment the child is engaged in an activity of a sexual nature for the purpose of producing pornography, or the child is in the presence of a person so engaged) to remove the element of employment. The new section 91G (2) provides that a child is used by a person for pornographic purposes if the child is engaged in activity of a sexual nature (such as actual or simulated sexual intercourse or a striptease) for the purpose of the production of pornography by that person, or the child is in the presence of another person so engaged for that purpose.

Other amendments

Schedule 1 [1], [6] and [9] make minor and consequential amendments.

Schedule 1 [10] makes amendments of a savings and transitional nature.

Schedule 2 Amendment of other Acts

Schedule 2.2 amends section 33K of the *Criminal Procedure Act 1986* to provide that an offence under proposed section 578C (2A) (in relation to the publication of child pornography) is to be dealt with summarily unless the prosecution elects to have it dealt with on indictment. The maximum penalties for the publication of child pornography if the matter is dealt with summarily is to be 100 penalty units or 2 years imprisonment (or both) in the case of an individual, or 200 penalty units in the case of a corporation.

Schedule 2.1 and 2.3 make consequential amendments to the *Children (Care and Protection) Act 1987* and the *Victims Compensation Act 1996*.