

## CRIMES (AMENDMENT) BILL 1988

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The objects of this Bill are—

- (a) to abolish the common law offences of riot, rout and affray and create statutory offences of riot and affray; and
- (b) to clarify the effect of certain provisions relating to prosecutions for culpable driving and culpable navigation; and
- (c) to create an offence of stealing a motor car and to increase the penalties for offences against certain provisions relating to “joy-riding”; and
- (d) to repeal provisions relating to the summary offences of common and aggravated assault; and
- (e) to enable certain indictable assault offences to be dealt with summarily without the consent of the accused.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the proposed Act to commence on a day or days to be appointed by proclamation.

**Clauses 3 and 4** are formal provisions that give effect to the Schedules of amendments.

**Clause 5** provides that amendments to be made by Schedule 4 to the proposed Act apply only in respect of offences committed after they commence.

### SCHEDULE 1—AMENDMENTS RELATING TO PUBLIC ORDER

#### Offences of riot and affray

Schedule 1 (2) inserts a new Part 3A into the Act.

The provisions of the proposed Part (sections 93A–93E) create the statutory offences of riot and affray and abolish the common law offences of riot, rout and affray.

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The provisions are modelled on sections 1, 3 and 6 of the Public Order Act 1986 of the United Kingdom.

The proposed Part includes the following provisions:

Section 93A defines violence for the purposes of the Part.

Section 93B creates the statutory offence of riot. For the offence to be committed a group of at least 12 persons must use or threaten unlawful violence for a common purpose in a way that would arouse fear in a bystander of reasonable firmness. Each person in the group who intends to use such violence or who is aware that his or her conduct may be violent will be guilty of the offence.

Section 93C creates the statutory offence of affray. Affray is similar to riot in that it involves the use or threat of unlawful violence. However, it does not require the existence of a group and a person who threatens violence without intending to use violence may be guilty of the offence.

Section 93D contains provisions relating to the mental element required for commission of riot and affray.

Section 93E abolishes the common law offences of riot, rout and affray.

Schedule 1 (1) contains a consequential amendment to section 1 (short title and contents of Act).

**Summary proceedings for offences of riot and affray**

Schedule 1 (3) amends section 476 (indictable offences punishable summarily with consent of accused) so that offences under proposed sections 93B and 93C may be dealt with summarily.

**SCHEDULE 2—AMENDMENTS RELATING TO CULPABLE DRIVING AND CULPABLE NAVIGATION**

**“Back-up” charges**

Schedule 2 (1) amends section 52A (culpable driving). The proviso to section 52A (4) contains a prohibition against prosecuting a person under section 52A if the person has been convicted or acquitted of murder or manslaughter *or of any other offence* on the same or substantially the same facts. The italicised words could be construed to apply the proviso in respect of offences whether or not they are prosecuted under the Crimes Act. The proposed amendment will make it clear that the prohibition only applies in respect of offences under the Crimes Act by inserting “under this Act” after the italicised words.

Schedule 2 (2) makes a similar amendment to section 52B (culpable navigation).

**SCHEDULE 3—AMENDMENTS RELATING TO CAR STEALING**

**Separate offence of stealing a motor car**

Schedule 3 (2) inserts a new section 154AA into the Act creating the offence of stealing a motor car (which is defined to include motor vehicles such as panel vans, utilities, station wagons, campervans and motor cycles but to exclude caravans, trailers and motor vehicles constructed principally for use in agricultural production). The maximum penalty for the offence is to be imprisonment for 10 years.

Schedule 3 (1) contains a consequential amendment to section 1 (short title and contents of Act).

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**Summary proceedings for offence of stealing a motor car**

Schedule 3 (3) amends section 476 (indictable offences punishable summarily with consent of accused) so that offences under proposed section 154AA may be dealt with summarily.

**Increased penalty for summary offence of “joy-riding”**

Schedule 3 (4) increases the maximum penalty for an offence against section 526A (taking a conveyance without the consent of the owner) from imprisonment for 12 months, or a fine of \$1,000, or both, to imprisonment for 2 years, or a fine of \$5,000, or both.

**SCHEDULE 4—AMENDMENTS RELATING TO ASSAULTS**

**Increased penalty for some assaults**

Schedule 4 (1) increases the maximum penalty for an offence under section 58 (assault with intent to commit felony on certain officers) from 2 to 5 years' imprisonment.

**Summary proceedings for assault offences**

Schedule 4 (3) and (4) repeal sections 493 (common assaults) and 494 (aggravated assaults). The sections provide for certain offences similar to the indictable offences contained in section 58 (assault with intent to commit felony on certain officers) and section 61 (common assault prosecuted by indictment) to be dealt with summarily.

Proposed section 495 (Schedule 4 (5)) provides for offences against sections 58 and 61 and also sections 56 (obstructing clergyman in discharge of his duties) and 59 (assault occasioning actual bodily harm) to be dealt with summarily in appropriate cases, whether or not the accused consents.

The maximum penalty that may be imposed if an offence against section 56 or 61 is dealt with summarily under the proposed section is imprisonment for 12 months, or a fine of \$1,000, or both.

The maximum penalty that may be imposed if an offence against section 58 or 59 is dealt with summarily under the proposed section is imprisonment for 2 years, or a fine of \$5,000, or both.

Schedule 4 (2) and (6) contain consequential amendments to sections 476 (indictable offences punishable summarily with consent of accused) and 500 (exception from jurisdiction).

**SCHEDULE 5—MISCELLANEOUS AMENDMENTS**

Schedule 5 makes miscellaneous amendments to the Act that are consequential on or ancillary to amendments contained in Schedule 4.

Schedule 5 (1) contains consequential amendments to section 1 (short title and contents of Act).

Schedule 5 (2) (a) amends section 4 (definition of “Domestic violence offence”), and Schedule 5 (6) and (7) repeal sections 498 (certificate of dismissal) and 499 (certificate or conviction a bar to other proceedings), as a consequence of the proposed repeal of sections 493 and 494 (Schedule 4 (3) and (4)).

Schedule 5 (2) (b) inserts a referential provision consequent on the establishment of Local Courts.

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Schedule 5 (3) substitutes a more appropriate heading than that now appearing before section 493.

Schedule 5 (4) renumbers section 501 of the Act as section 496 so it will be juxtaposed with proposed section 495.

Schedule 5 (5) provides that a Local Court may decline to deal with an offence under proposed section 495 or section 496 (as renumbered).

**SCHEDULE 6—AMENDMENT OF MOTOR TRAFFIC ACT 1909**

Schedule 6 amends section 8A (motor vehicles not to be driven or used without consent of owner) so as to increase the maximum penalty for an offence against the section from \$500 to \$2,000.

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