



New South Wales

Crimes Amendment (Sexual Offences) Bill 2008

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* and other criminal legislation as follows:

- (a) to provide for an aggravated offence of having sexual intercourse with a child under the age of 10 years, with a maximum penalty of imprisonment for life,
- (b) to make kidnapping (or deprivation of liberty) an additional circumstance in which sexual intercourse with a child aged between 10 and 16 years is treated as an aggravated offence,
- (c) to make breaking and entering, and kidnapping (or deprivation of liberty), additional circumstances in which sexual intercourse without a person's consent is treated as an aggravated offence,
- (d) to create a new offence of aggravated act of indecency, with a maximum penalty of 10 years imprisonment, where an act of indecency is committed with or towards a child under the age of 16 years and the offender knows that the act of indecency is being filmed for the purposes of the production of child pornography,

- (e) to increase the maximum penalty for the offence of indecent assault against a child aged between 10 and 16 years,
- (f) to create a new offence of meeting a child, or travelling to meet a child, following grooming that child for sexual purposes,
- (g) to increase the maximum penalty for the aggravated offence of causing a person to enter into or remain in sexual servitude,
- (h) to create a specific statutory offence of inciting a person to commit a sexual offence (carrying the same maximum penalty as the offence incited),
- (i) to increase the maximum penalty for the offence of receiving money or a material benefit derived from child prostitution, where the offence involves a child under the age of 14 years,
- (j) to increase the maximum penalty for possession of child pornography and make other changes to child pornography offences,
- (k) to create new offences of voyeurism and filming a person's private parts and to transfer to the *Crimes Act 1900* and extend the existing offence of filming a person engaged in a private act,
- (l) to make various changes with respect to the sentencing of sex offenders and young offenders,
- (m) to provide for other miscellaneous matters (including consequential and savings and transitional matters).

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. Most of the provisions of the proposed Act will commence on a day or days to be appointed by proclamation.

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

Clause 4 is a formal provision that gives effect to the amendments to the other Acts and instrument specified in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Crimes Act 1900

Aggravated sexual offences

Schedule 1 [9] creates a new aggravated offence of having sexual intercourse with a child under the age of 10 years. The existing (non-aggravated) offence carries a maximum penalty of 25 years imprisonment. The new offence will carry a maximum penalty of imprisonment for life. The circumstances that will make the offence an aggravated offence are as follows:

- (a) at the time of, or immediately before or after, the commission of the offence, the alleged offender intentionally or recklessly inflicts actual bodily harm on the alleged victim or any other person who is present or nearby,
- (b) at the time of, or immediately before or after, the commission of the offence, 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,
- (c) the alleged offender is in the company of another person or persons,
- (d) the alleged victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender,
- (e) the alleged victim has a serious physical disability,
- (f) the alleged victim has a serious intellectual disability (or what is now referred to as a cognitive impairment),
- (g) the alleged offender took advantage of the alleged victim being under the influence of alcohol or a drug in order to commit the offence,
- (h) the alleged offender deprives the alleged victim of his or her liberty for a period before or after the commission of the offence.

These circumstances of aggravation are identical to the existing circumstances in which the offence of having sexual intercourse with a person aged between 10 and 16 years becomes an aggravated offence, with the addition of the last factor, namely, that the offender deprives the victim of his or her liberty before or after the commission of the offence. **Schedule 1 [11]** adds this additional circumstance of aggravation to the offence of having sexual intercourse with a person aged between 10 and 16 years, so that the circumstances of aggravation relating to the 2 offences remain consistent.

Schedule 1 [1] provides for additional circumstances in which the offence of having sexual intercourse with another person, without that person's consent, becomes an aggravated offence. The additional circumstances are:

- (a) the alleged offender breaks and enters into any dwelling-house or other building with the intention of committing the offence or any other serious indictable offence, or
- (b) the alleged offender deprives the alleged victim of his or her liberty for a period before or after the commission of the offence.

Schedule 1 [5] creates a new aggravated act of indecency offence of committing an act of indecency with or towards a child under the age of 16 years, or inciting a child under that age to an act of indecency, where the offender knows that the act of indecency is being filmed for the purposes of the production of child pornography. The maximum penalty for this offence is imprisonment for 10 years (consistent with the penalties for the production of child pornography).

Schedule 1 [3] increases the maximum penalty for the offence of indecent assault against a child aged between 10 and 16 years to 10 years imprisonment (so that it is the same as the maximum penalty for the offence of indecent assault against a child under the age of 10 years). At present the maximum penalty for this offence is 7 years imprisonment.

Schedule 1 [2], [4], [6], [7], [8], [17] and [32] make consequential and related amendments to the amendments described above.

Child grooming

Schedule 1 [14] creates a new offence of intentionally meeting a child under the age of 16 years, or travelling to meet a child under the age of 16 years, after grooming the child for sexual purposes. A person grooms a child if the person engages in conduct (for example, by communication over the internet) that exposes the child to indecent material. Only adults can be convicted of this offence. The offence carries a higher penalty than the offence of grooming a child for sexual purposes. The maximum penalty for the offence will be imprisonment for 15 years (in the case of a child under the age of 14 years) or imprisonment for 12 years (in any other case).

Schedule 1 [15] and [16] are consequential amendments.

Causing sexual servitude

Schedule 1 [18] increases the maximum penalty for the offence of causing a person to enter into or remain in sexual servitude from 19 years imprisonment to 20 years imprisonment. Circumstances of aggravation are that the victim is under the age of 18 years or has a cognitive impairment.

Incitement to commit sexual offence

Schedule 1 [19] provides for a specific offence of inciting a person to commit a sexual offence. Sexual offences are offences against Division 10 of Part 3 of the *Crimes Act 1900* (such as sexual assault, sexual intercourse with children, indecent assault and acts of indecency), offences against Division 10A of that Part (sexual servitude) and offences against Division 15A of that Part (child pornography offences). The incitement offence will carry the same maximum penalty as the offence incited.

The offence of incitement will not apply to offences in the nature of attempt or offences that are themselves constituted by inciting another person to do something (such as inciting a person to commit an act of indecency).

Child prostitution

Schedule 1 [22] increases the maximum penalty for receiving money or any other material benefit that is derived from an act of prostitution from 10 years imprisonment to 14 years imprisonment, if the offence involves a child under the age of 14 years. **Schedule 1 [23]** requires the age of the child to be set out in the charge for the offence, if the higher maximum penalty is sought.

Child pornography

Schedule 1 [27] increases the maximum penalty for being in possession of child pornography from 5 years imprisonment to 10 years imprisonment. As the offence will now carry the same maximum penalty as producing or disseminating child pornography, the 2 child pornography offences (one being the offence of possession of child pornography, and the other being the offence of production or dissemination of child pornography) are merged into a single offence.

Schedule 1 [25] and [30] make amendments to clarify that the child pornography offence extends to material that appears to depict or describe a child (a person under the age of 16 years) in a pornographic manner. This includes where an image of a person is manipulated in a manner to make the person appear to be a child or appear to be engaged in a sexual activity, in a sexual context or a victim of torture, cruelty or physical abuse.

Schedule 1 [26] defines “produce”, for the purposes of the offences relating to production of child pornography, to include filming, photographing, printing or otherwise making child pornography, altering or manipulating an image for the purpose of making child pornography, or entering into an agreement or arrangement to do any of those things.

Schedule 1 [24] is a law revision amendment that creates a separate Division for the child pornography offences. Currently, the child pornography offences are contained in the same Division as child prostitution offences. The offences are placed in a separate Division as the child prostitution offences relate to persons under the age of 18 years, and the child pornography offences relate to persons under the age of 16 years.

Schedule 1 [13], [20], [21], [28] and [29] are consequential amendments to the amendments described above.

Voyeurism and related offences

Schedule 1 [31] provides for new offences of observing or filming a person engaged in a private act. A person is engaged in a private act if:

- (a) the person is in a state of undress, using the toilet, showering or bathing, engaged in a sexual act of a kind not ordinarily done in public, or engaged in any other like activity, and
- (b) the circumstances are such that a reasonable person would reasonably expect to be afforded privacy.

The new offence of voyeurism is constituted by observing a person who is engaged in a private act without the consent of the person observed and knowing that the person observed does not consent. It will be necessary to prove that the person observing the private act did so for the purpose of obtaining sexual arousal or sexual gratification. The offence will be a summary offence punishable by a maximum penalty of 100 penalty units (currently \$11,000) or 2 years imprisonment, or both. There will also be an aggravated offence that may be prosecuted on indictment. The aggravated offence is committed if the person observed is a child under the age of 16 years or the offender constructs or adapts the fabric of a building for the purpose of facilitating the commission of the offence. The aggravated offence will carry a maximum penalty of 5 years imprisonment.

The amendments also provide for an offence of filming a person who is engaged in a private act. The offence is constituted by filming a person who is engaged in a private act without the consent of the person filmed and knowing that the person filmed does not consent. It will be necessary to prove the person filming did so for the purpose of obtaining sexual arousal or sexual gratification or enabling another person to obtain sexual arousal or sexual gratification. This behaviour is already an offence under the *Summary Offences Act 1988*, so the new offence is partly a re-enactment in the *Crimes Act 1900* of the existing summary offence. It will continue to be a summary offence with the same maximum penalty as it currently carries (100 penalty units or imprisonment for 2 years, or both). However, the amendments also create a new aggravated version of the offence that may be prosecuted on indictment. The aggravated offence is committed if the person filmed is a child under the age of 16 years or the offender constructs or adapts the fabric of a building for the purpose of facilitating the commission of the offence. The aggravated offence will carry a maximum penalty of 5 years imprisonment.

The amendments also create a new offence of filming a person's private parts (that is, the person's genital or anal area, whether bare or covered in underwear) in circumstances where a reasonable person would reasonably expect the person's private parts could not be filmed. Similar to the voyeurism and other filming offence described above, the offence will apply if the offender filmed the person's private parts for the purpose of obtaining, or enabling another person to obtain, sexual arousal or sexual gratification, and did so without the consent of the person filmed, and knowing that the person filmed did not consent. The offence will be a summary offence with a maximum penalty of 100 penalty units or imprisonment for 2 years, or both. There will also be an aggravated offence which may be prosecuted on indictment. The aggravated offence is committed if the person filmed is a child under the age of 16 years or the offender constructs or adapts the fabric of a building for the purpose of facilitating the commission of the offence. The aggravated offence will carry a maximum penalty of 5 years imprisonment.

The amendments also provide for an offence of installing a device, or constructing or adapting the fabric of a building, for the purpose of enabling a person to commit one of the above offences. This will be a summary offence with a maximum penalty of 100 penalty units or imprisonment for 2 years, or both.

Miscellaneous

Schedule 1 [33] provides for savings and transitional matters.

Schedule 2 Amendment of other Acts and instrument

Schedule 2 amends the following Acts and instrument:

- (a) the *Child Protection (Offenders Registration) Act 2000*,
- (b) the *Children (Criminal Proceedings) Act 1987*,
- (c) the *Commission for Children and Young People Act 1998*,
- (d) the *Crimes (Sentencing Procedure) Act 1999*,
- (e) the *Crimes (Serious Sex Offenders) Act 2006*,
- (f) the *Criminal Assets Recovery Act 1990*,
- (g) the *Criminal Procedure Act 1986*,
- (h) the *Firearms Regulation 2006*,
- (i) the *Pre-Trial Diversion of Offenders Act 1985*,
- (j) the *Summary Offences Act 1988*.

Some of the amendments relate to new proposals regarding sentencing, pre-trial diversion of offenders, and the prosecution of offences on indictment and some are consequential to the other amendments set out in this Bill.

Sentencing

The amendments to the *Crimes (Sentencing Procedure) Act 1999* set out in **Schedule 2.4 [1] and [2]** provide that an offender's previous good character or lack of previous convictions is not to be regarded as a mitigating factor in sentencing, if the offender is found guilty of a child sexual offence and the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offence.

Schedule 2.4 [3] amends the *Crimes (Sentencing Procedure) Act 1999* to provide that a court must not take into account, as a mitigating factor in sentencing a sexual offender, the fact that the person has or may become the subject of the various requirements (such as reporting requirements) under the *Child Protection (Offenders Registration) Act 2000*, the *Child Protection (Offenders Prohibition Orders) Act 2004* or the *Crimes (Serious Sex Offenders) Act 2006*.

Schedule 2.4 [4] amends the *Crimes (Sentencing Procedure) Act 1999* to provide that the standard non-parole periods provided for by that Act do not apply to an offender under the age of 18 years. **Schedule 2.2** is a consequential amendment to the *Children (Criminal Proceedings) Act 1987*.

Schedule 2.4 [7] provides for the making of savings and transitional regulations under the *Crimes (Sentencing Procedure) Act 1999* as a consequence of the amendments and **Schedule 2.4 [8]** provides for savings and transitional matters.

Pre-trial diversion of offenders

Schedule 2.9 amends the *Pre-Trial Diversion of Offenders Act 1985* to extend the scheme under that Act to the offence under the *Crimes Act 1900* of persistent sexual abuse of a child.

Prosecution of offences on indictment

Schedule 2.7 [1] and [3] amend the *Criminal Procedure Act 1986* so that the various child grooming offences contained in the *Crimes Act 1900*, including the new offence of meeting a child following grooming, may be tried on indictment on the election of the person charged. At present only the prosecutor may elect to have the offence tried on indictment.

Consequential amendments

The following amendments are consequential on the creation of the new offences in the *Crimes Act 1900* of voyeurism, filming a person engaged in a private act and filming a person's private parts:

- (a) the amendments to the *Child Protection (Offenders Registration) Act 2000* set out in **Schedule 2.1**,
- (b) the amendment to the *Commission for Children and Young People Act 1998* set out in **Schedule 2.3**,
- (c) the amendment to the *Crimes (Serious Sex Offenders) Act 2006* set out in **Schedule 2.5 [2]**,
- (d) the amendment to the *Criminal Procedure Act 1986* set out in **Schedule 2.7 [2]** (which provides that the offences are to be dealt with summarily unless the prosecutor or person charged elects otherwise).

Schedule 2.10 repeals the offences relating to filming persons engaged in private acts that are contained in the *Summary Offences Act 1988* as these offences will now be contained in the *Crimes Act 1900*.

The amendment to standard non-parole periods in the *Crimes (Sentencing Procedure) Act 1999* set out in **Schedule 2.4 [5]** is consequential on the creation of a new aggravated offence of sexual intercourse with a child under the age of 10 years.

The amendment to the *Criminal Procedure Act 1986* set out in **Schedule 2.7 [1]**, relating to section 61O (2A) of the *Crimes Act 1900*, makes that offence (act of indecency committed for the purposes of the production of child pornography) an offence that is to be dealt with summarily unless the prosecutor or person charged elects otherwise.

Crimes Amendment (Sexual Offences) Bill 2008

Explanatory note

Schedule 2.7 [4] enables savings and transitional regulations to be made under the *Criminal Procedure Act 1986* as a consequence of the amendments made by the proposed Act.

Schedule 2.5 [1], 2.6 and 2.8 make amendments to the *Crimes (Serious Sex Offenders) Act 2006*, the *Criminal Assets Recovery Act 1990* and the *Firearms Regulation 2006* that are consequential on the re-location of the child pornography offences in the *Crimes Act 1900* in a separate Division.

Schedule 2.4 [6] makes an amendment to the *Crimes (Sentencing Procedure) Act 1999* that is consequential on the creation of the new aggravated offence of sexual intercourse with a child under 10 years of age.



New South Wales

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New South Wales

Crimes Amendment (Sexual Offences) Bill 2008

No. , 2008

A Bill for

An Act to amend the *Crimes Act 1900* and other criminal legislation to make further provision with respect to sexual offences, sentencing and other matters.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes Amendment (Sexual Offences) Act 2008</i> .	3
2 Commencement	4
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).	5 6
(2) Schedule 1 [10] commences on the commencement of Schedule 1 [9] or, if Schedule 1 [1] to the <i>Crimes Amendment (Cognitive Impairment—Sexual Offences) Act 2008</i> has not commenced when Schedule 1 [9] to this Act commences, on the commencement of Schedule 1 [1] to the <i>Crimes Amendment (Cognitive Impairment—Sexual Offences) Act 2008</i> .	7 8 9 10 11 12
3 Amendment of Crimes Act 1900 No 40	13
The <i>Crimes Act 1900</i> is amended as set out in Schedule 1.	14
4 Amendment of other Acts and instrument	15
The Acts and instrument specified in Schedule 2 are amended as set out in that Schedule.	16 17
5 Repeal of Act	18
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	19 20
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	21 22

Schedule 1	Amendment of Crimes Act 1900	1
	(Section 3)	2
[1]	Section 61J Aggravated sexual assault	3
	Insert at the end of section 61J (2) (g):	4
	, or	5
	(h) the alleged offender breaks and enters into any dwelling-house or other building with the intention of committing the offence or any other serious indictable offence, or	6 7 8 9
	(i) the alleged offender deprives the alleged victim of his or her liberty for a period before or after the commission of the offence.	10 11 12
[2]	Section 61J (3)	13
	Insert after section 61J (2):	14
	(3) In this section, <i>building</i> has the same meaning as it does in Subdivision 4 of Division 1 of Part 4.	15 16
[3]	Section 61M Aggravated indecent assault	17
	Omit “the age of 10 years” from section 61M (2).	18
	Insert instead “the age of 16 years”.	19
[4]	Section 61M (3) (b)	20
	Omit the paragraph.	21
[5]	Section 61O Aggravated act of indecency	22
	Insert after section 61O (2):	23
	(2A) A person:	24
	(a) who commits an act of indecency with or towards a person under the age of 16 years, or incites a person under the age of 16 years to an act of indecency with or towards that person or another person, and	25 26 27 28
	(b) who knows that the act of indecency is being filmed for the purposes of the production of child pornography,	29 30
	is guilty of an offence.	31
	Maximum penalty: imprisonment for 10 years.	32

[6] Section 61O (3)	1
Omit “In this section”.	2
Insert instead “For the purposes subsections (1) and (1A)”.	3
[7] Section 61O (4)	4
Insert after section 61O (3):	5
(4) For the purposes of subsection (2A):	6
(a) <i>child pornography</i> has the meaning given by Division 15A, and	7
	8
(b) an act of indecency is being <i>filmed</i> if one or more images (whether still or moving) of the act of indecency are being recorded or transmitted for the purpose of enabling those images to be observed by any person (whether during the filming or later).	9
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[8] Section 61Q Alternative verdicts	14
Insert as section 61Q (6):	15
(6) Question of whether offence committed for purposes of production of child pornography	16
	17
If on the trial of a person for an offence under section 61O (2A) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 61O (2) or 61N, it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly.	18
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	23
[9] Section 66A	24
Omit the section. Insert instead:	25
66A Sexual intercourse—child under 10	26
(1) Child under 10	27
Any person who has sexual intercourse with another person who is under the age of 10 years is guilty of an offence.	28
	29
Maximum penalty: imprisonment for 25 years.	30
(2) Child under 10—aggravated offence	31
Any person who has sexual intercourse with another person who is under the age of 10 years in circumstances of aggravation is guilty of an offence.	32
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	34
Maximum penalty: imprisonment for life.	35

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| (3) In this section, <i>circumstances of aggravation</i> means circumstances in which: | 1
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| (a) at the time of, or immediately before or after, the commission of the offence, the alleged offender intentionally or recklessly inflicts actual bodily harm on the alleged victim or any other person who is present or nearby, or | 3
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| (b) at the time of, or immediately before or after, the commission of the offence, 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, or | 8
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| (c) the alleged offender is in the company of another person or persons, or | 13
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| (d) the alleged victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender, or | 15
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| (e) the alleged victim has a serious physical disability, or | 18 |
| (f) the alleged victim has a serious intellectual disability, or | 19 |
| (g) the alleged offender took advantage of the alleged victim being under the influence of alcohol or a drug in order to commit the offence, or | 20
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| (h) the alleged offender deprives the alleged victim of his or her liberty for a period before or after the commission of the offence. | 23
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| (4) A person sentenced to imprisonment for life for an offence under subsection (2) is to serve that sentence for the term of the person's natural life. | 26
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| (5) Nothing in this section affects the operation of section 21 of the <i>Crimes (Sentencing Procedure) Act 1999</i> (which authorises the passing of a lesser sentence than imprisonment for life). | 29
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31 |
| (6) Nothing in this section affects the prerogative of mercy. | 32 |
| (7) If on the trial of a person charged with another offence against this Act the person is instead found guilty of an offence against this section (as provided by section 61Q), the maximum penalty that may be imposed on the person for the offence against this section is the penalty for the offence charged. | 33
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[10] Section 66A (as substituted by this Act)	1
Omit “serious intellectual disability” from section 66A (3) (f).	2
Insert instead “cognitive impairment”.	3
[11] Section 66C Sexual intercourse—child between 10 and 16	4
Insert at the end of section 66C (5) (g):	5
, or	6
(h) the alleged offender deprives the alleged victim of his or her liberty for a period before or after the commission of the offence.	7 8 9
[12] Section 66E	10
Omit the section. Insert instead:	11
66E Alternative verdicts	12
(1) If on the trial of a person for an offence under section 66A (1) or (2) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied that the accused is guilty of an offence under section 66B, 66C (1), (2), (3) or (4) or 66D, it may find the accused not guilty of the offence charged but guilty of an offence under section 66B, 66C (1), (2), (3) or (4) or 66D. The accused is liable to punishment accordingly.	13 14 15 16 17 18 19
(2) If on the trial of a person for an offence under section 66A (2) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied that the accused is guilty of an offence under section 66A (1), it may find the accused not guilty of the offence charged but guilty of an offence under section 66A (1). The accused is liable to punishment accordingly.	20 21 22 23 24 25
(3) If on the trial of a person for an offence under section 66C (2) or (4) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied that the accused is guilty of an offence under section 66C (1) or (3), it may find the accused not guilty of the offence charged but guilty of an offence under section 66C (1) or (3). The accused is liable to punishment accordingly.	26 27 28 29 30 31
(4) If on the trial of a person for an offence under section 66C (1) or (2) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied that the accused is guilty of an offence under section 66C (3) or (4), it may find the accused not guilty of the offence charged but guilty of an offence under section 66C (3) or (4). The accused is liable to punishment accordingly.	32 33 34 35 36 37

(5)	If on the trial of a person for an offence under section 66C the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied that the accused is guilty of an offence under section 66D, it may find the accused not guilty of the offence charged but guilty of an offence under section 66D. The accused is liable to punishment accordingly.	1 2 3 4 5 6
[13]	Section 66EB Procuring or grooming child under 16 for unlawful sexual activity	7 8
	Omit “or 15” from the definition of <i>unlawful sexual activity</i> in section 66EB (1).	9 10
	Insert instead “, 15 or 15A”.	11
[14]	Section 66EB (2A) and (2B)	12
	Insert after section 66EB (2):	13
(2A)	Meeting child following grooming	14
	An adult person:	15
(a)	who intentionally meets a child, or travels with the intention of meeting a child, whom the adult person has groomed for sexual purposes, and	16 17 18
(b)	who does so with the intention of procuring the child for unlawful sexual activity with that adult person or any other person,	19 20 21
	is guilty of an offence.	22
	Maximum penalty:	23
(a)	in the case of a child who is under the age of 14 years—imprisonment for 15 years, or	24 25
(b)	in any other case—imprisonment for 12 years.	26
(2B)	For the purposes of subsection (2A), a child has been <i>groomed for sexual purposes</i> by an adult person if, on one or more previous occasions, the adult person has engaged in conduct that exposed the child to indecent material.	27 28 29 30
[15]	Section 66EB (6)	31
	Insert “, (2A)” after “subsection (2)”.	32
[16]	Section 66EB (8)	33
	Insert “or (2A)” after “subsection (2)”.	34

[17] Section 77 Consent no defence in certain cases	1
Omit “or 61O (1) or (2), 66A,”.	2
Insert instead “, 61O (1), (2) or (2A), 66A (1) or (2),”.	3
[18] Section 80D Causing sexual servitude	4
Omit “19 years” from the penalty provision to section 80D (2).	5
Insert instead “20 years”.	6
[19] Part 3, Division 10B	7
Insert after Division 10A:	8
Division 10B Incitement to commit sexual offence	9
80G Incitement to commit sexual offence	10
(1) A person who incites the commission of an offence under Division 10, 10A or 15A is guilty of an offence and is liable to the penalty provided for the commission of the offence.	11 12 13
(2) For the person to be guilty, the person must intend that the offence incited be committed.	14 15
(3) A person may be found guilty even if committing the offence incited is impossible.	16 17
(4) Any defences, procedures, limitations or qualifying provisions that apply to the offence incited also apply to an offence under this section.	18 19 20
(5) It is not an offence to incite the commission of the following offences:	21 22
(a) an offence against section 61N or 61O that is constituted by inciting another person to an act of indecency,	23 24
(b) an offence against section 61P, 66B, 66D, 66EB, 66F (4), 73 (4), 78B or 80.	25 26
[20] Part 3, Division 15, heading	27
Omit “and pornography”.	28
[21] Section 91C Definitions	29
Omit the definition of <i>material</i> .	30

[22]	Section 91E Obtaining benefit from child prostitution	1
	Insert “or, if the act of child prostitution involves a child under the age of 14 years, to imprisonment for 14 years” after “10 years” in section 91E (1).	2 3
[23]	Section 91E (3)	4
	Insert after section 91E (2):	5
	(3) The higher maximum penalty under this section in the case of an offence involving a child under the age of 14 years does not apply unless the age of the child is set out in the charge for the offence.	6 7 8
[24]	Part 3, Division 15A	9
	Insert before section 91G:	10
	Division 15A Child pornography	11
	91FA Definitions	12
	For the purposes of this Division:	13
	<i>child</i> means a person who is under the age of 16 years.	14
	<i>material</i> includes any film, printed matter, electronic data or any other thing of any kind (including any computer image or other depiction).	15 16 17
[25]	Section 91H Production, dissemination or possession of child pornography	18 19
	Omit the definition of <i>child pornography</i> from section 91H (1). Insert instead:	20
	<i>child pornography</i> means material that depicts or describes (or appears to depict or describe), in a manner that would in all the circumstances cause offence to reasonable persons, a person who is (or appears to be) a child:	21 22 23 24
	(a) engaged in sexual activity, or	25
	(b) in a sexual context, or	26
	(c) as the victim of torture, cruelty or physical abuse (whether or not in a sexual context).	27 28
[26]	Section 91H (1)	29
	Insert in alphabetical order:	30
	<i>produce</i> child pornography includes:	31
	(a) film, photograph, print or otherwise make child pornography, or	32 33

	(b) alter or manipulate any image for the purpose of making child pornography, or	1 2
	(c) enter into any agreement or arrangement to do so.	3
[27]	Section 91H (2)	4
	Omit section 91H (2) and (3). Insert instead:	5
	(2) Production, dissemination or possession of child pornography	6
	A person who produces, disseminates or possesses child pornography is guilty of an offence.	7 8
	Maximum penalty: imprisonment for 10 years.	9
[28]	Section 91H (4)	10
	Omit “or (3)”.	11
[29]	Section 91H (5)	12
	Omit “any charge for an offence under subsection (3)”.	13
	Insert instead “a charge for an offence under subsection (2) not involving the production or dissemination of child pornography”.	14 15
[30]	Section 91H (6)	16
	Insert after section 91H (5):	17
	(6) Alteration of images	18
	A reference in this section to material that appears to depict or describe a person who is a child, or a person as referred to in paragraph (a), (b) or (c) of the definition of <i>child pornography</i> , includes a reference to material that contains or displays an image of a person that has been altered or manipulated so that the person appears to be a child, or appears as referred to in any of those paragraphs, or both.	19 20 21 22 23 24 25
[31]	Part 3, Division 15B	26
	Insert after section 91H:	27
	Division 15B Voyeurism and related offences	28
	91I Definitions	29
	(1) In this Division:	30
	<i>building</i> includes a vehicle, vessel, tent or temporary structure.	31

	<i>private parts</i> means a person's genital area or anal area, whether bare or covered by underwear.	1 2
(2)	For the purposes of this Division, a person is <i>engaged in a private act</i> if:	3 4
	(a) the person is in a state of undress, using the toilet, showering or bathing, engaged in a sexual act of a kind not ordinarily done in public, or engaged in any other like activity, and	5 6 7 8
	(b) the circumstances are such that a reasonable person would reasonably expect to be afforded privacy.	9 10
(3)	For the purposes of this Division, a person <i>films</i> another person, or another person's private parts, if the person causes one or more images (whether still or moving) of the other person or the other person's private parts to be recorded or transmitted for the purpose of enabling the person or a third person to observe those images (whether during the filming or later).	11 12 13 14 15 16
91J	Voyeurism	17
(1)	General offence	18
	A person who, for the purpose of obtaining sexual arousal or sexual gratification, observes a person who is engaged in a private act:	19 20 21
	(a) without the consent of the person being observed to being observed for that purpose, and	22 23
	(b) knowing that the person being observed does not consent to being observed for that purpose,	24 25
	is guilty of an offence.	26
	Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.	27 28
(2)	An offence against subsection (1) is a summary offence.	29
(3)	Aggravated offence	30
	A person who, for the purpose of obtaining sexual arousal or sexual gratification, observes a person who is engaged in a private act:	31 32 33
	(a) without the consent of the person being observed to being observed for that purpose, and	34 35
	(b) knowing that the person being observed does not consent to being observed for that purpose, and	36 37

(c) in circumstances of aggravation,	1
is guilty of an offence.	2
Maximum penalty: imprisonment for 5 years.	3
(4) In this section, <i>circumstances of aggravation</i> means	4
circumstances in which:	5
(a) the person whom the offender observed was a child under	6
the age of 16 years, or	7
(b) the offender constructed or adapted the fabric of any	8
building for the purpose of facilitating the commission of	9
the offence.	10
(5) Alternative verdict	11
If on the trial of a person charged with an offence against	12
subsection (3) the trier of fact is not satisfied that the offence is	13
proven but is satisfied that the person has committed an offence	14
against subsection (1), the trier of fact may acquit the person of	15
the offence charged and find the person guilty of an offence	16
against subsection (1). The person is liable to punishment	17
accordingly.	18
(6) Attempts	19
A person who attempts to commit an offence under subsection	20
(1) or (3) is liable to the penalty provided for the commission of	21
the offence.	22
91K Filming a person engaged in private act	23
(1) General offence	24
A person who, for the purpose of obtaining, or enabling another	25
person to obtain, sexual arousal or sexual gratification, films	26
another person who is engaged in a private act:	27
(a) without the consent of the person being filmed to being	28
filmed for that purpose, and	29
(b) knowing that the person being filmed does not consent to	30
being filmed for that purpose,	31
is guilty of an offence.	32
Maximum penalty: 100 penalty units or imprisonment for	33
2 years, or both.	34
(2) An offence against subsection (1) is a summary offence.	35

(3) Aggravated offence	1
A person who, for the purpose of obtaining, or enabling another person to obtain, sexual arousal or sexual gratification, films another person who is engaged in a private act:	2 3 4
(a) without the consent of the person being filmed to being filmed for that purpose, and	5 6
(b) knowing that the person being filmed does not consent to being filmed for that purpose, and	7 8
(c) in circumstances of aggravation,	9
is guilty of an offence.	10
Maximum penalty: imprisonment for 5 years.	11
(4) In this section, <i>circumstances of aggravation</i> means circumstances in which:	12 13
(a) the person whom the offender filmed was a child under the age of 16 years, or	14 15
(b) the offender constructed or adapted the fabric of any building for the purpose of facilitating the commission of the offence.	16 17 18
(5) Alternative verdict	19
If on the trial of a person charged with an offence against subsection (3) the trier of fact is not satisfied that the offence is proven but is satisfied that the person has committed an offence against subsection (1), the trier of fact may acquit the person of the offence charged and find the person guilty of an offence against subsection (1). The person is liable to punishment accordingly.	20 21 22 23 24 25 26
(6) Attempts	27
A person who attempts to commit an offence under subsection (1) or (3) is liable to the penalty provided for the commission of the offence.	28 29 30
91L Filming a person's private parts	31
(1) General offence	32
A person who, for the purpose of obtaining, or enabling another person to obtain, sexual arousal or sexual gratification, films another person's private parts, in circumstances in which a reasonable person would reasonably expect the person's private parts could not be filmed:	33 34 35 36 37

(a)	without the consent of the person being filmed to being filmed for that purpose, and	1 2
(b)	knowing that the person being filmed does not consent to being filmed for that purpose,	3 4
	is guilty of an offence.	5
	Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.	6 7
(2)	An offence against subsection (1) is a summary offence.	8
(3)	Aggravated offence	9
	A person who, for the purpose of obtaining, or enabling another person to obtain, sexual arousal or sexual gratification, films another person's private parts, in circumstances in which a reasonable person would expect that his or her private parts could not be filmed:	10 11 12 13 14
(a)	without the consent of the person being filmed to being filmed for that purpose, and	15 16
(b)	knowing that the person being filmed does not consent to being filmed for that purpose, and	17 18
(c)	in circumstances of aggravation,	19
	is guilty of an offence.	20
	Maximum penalty: imprisonment for 5 years.	21
(4)	In this section, <i>circumstances of aggravation</i> means circumstances in which:	22 23
(a)	the person whom the offender filmed was a child under the age of 16 years, or	24 25
(b)	the offender constructed or adapted the fabric of any building for the purpose of facilitating the commission of the offence.	26 27 28
(5)	Alternative verdict	29
	If on the trial of a person charged with an offence against subsection (3) the trier of fact is not satisfied that the offence is proven but is satisfied that the person has committed an offence against subsection (1), the trier of fact may acquit the person of the offence charged and find the person guilty of an offence against subsection (1). The person is liable to punishment accordingly.	30 31 32 33 34 35 36

(6)	Attempts	1
	A person who attempts to commit an offence under subsection (1) or (3) is liable to the penalty provided for the commission of the offence.	2 3 4
(7)	Double jeopardy	5
	A person cannot be convicted of both an offence against this section and an offence against section 91K in respect of conduct occurring on the same occasion.	6 7 8
91M	Installing device to facilitate observation or filming	9
(1)	Offence	10
	A person who, with the intention of enabling that person or any other person to commit an offence against section 91J, 91K or 91L, installs any device, or constructs or adapts the fabric of any building, for the purpose of facilitating the observation or filming of another person, is guilty of an offence.	11 12 13 14 15
	Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.	16 17
(2)	An offence against this section is a summary offence.	18
(3)	Alternative verdict	19
	If on the trial of a person charged with an offence against section 91J, 91K or 91L the trier of fact is not satisfied that the offence is proven but is satisfied that the person has committed an offence against this section, the trier of fact may acquit the person of the offence charged and find the person guilty of an offence against this section. The person is liable to punishment accordingly.	20 21 22 23 24 25
[32]	Section 431A Life sentences	26
	Insert “, for an offence under section 66A (2)” after “61JA” in section 431A (2).	27 28

Crimes Amendment (Sexual Offences) Bill 2008

Schedule 1 Amendment of Crimes Act 1900

[33] Schedule 11 Savings and transitional provisions	1
Insert at the end of the Schedule (with appropriate Part and clause numbers):	2
Part Crimes Amendment (Sexual Offences) Act 2008	3 4
Application of amendments	5
An amendment made to this Act by the <i>Crimes Amendment (Sexual Offences) Act 2008</i> applies in respect of an offence committed, or alleged to have been committed, on or after the commencement of the amendment.	6 7 8 9

Schedule 2	Amendment of other Acts and instrument	1
		2
	(Section 4)	3
2.1	Child Protection (Offenders Registration) Act 2000 No 42	4
[1]	Section 3 Definitions	5
	Omit paragraph (f) of the definition of <i>Class 2 offence</i> in section 3 (1).	6
	Insert instead:	7
	(f) an offence under section 91J, 91K or 91L of the <i>Crimes Act 1900</i> where the person who was being observed or filmed as referred to in those sections was then a child, or	8
		9
		10
[2]	Section 3A Registrable persons	11
	Insert “or section 91J (1), 91K (1) or 91L (1) of the <i>Crimes Act 1900</i> ” after “ <i>Summary Offences Act 1988</i> ” in section 3A (2) (c) (iii).	12
		13
2.2	Children (Criminal Proceedings) Act 1987 No 55	14
	Section 33C Application of Crimes (Sentencing Procedure) Act 1999 to children	15
		16
	Insert at the end of the section:	17
	Note. Division 1A of Part 4 of the <i>Crimes (Sentencing Procedure) Act 1999</i> (which provides for standard non-parole periods) does not apply in respect of offences committed by children.	18
		19
		20
2.3	Commission for Children and Young People Act 1998 No 146	21
	Section 33 Definitions	22
	Omit paragraph (a3) of the definition of <i>reportable conduct</i> in section 33 (1).	23
	Insert instead:	24
	(a3) an offence under section 91J, 91K, 91L or 91M of the <i>Crimes Act 1900</i> committed against, with or in the presence of a child, or	25
		26
		27
	(a4) an offence that was reportable conduct at the time that it was committed, or	28
		29

2.4 Crimes (Sentencing Procedure) Act 1999 No 92	1
[1] Section 21A Aggravating, mitigating and other factors in sentencing	2
Insert after section 21A (5):	3
(5A) Special rules for child sexual offences	4
In determining the appropriate sentence for a child sexual offence, the good character or lack of previous convictions of an offender is not to be taken into account as a mitigating factor if the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offence.	5 6 7 8 9
(5B) Subsection (5A) has effect despite any Act or rule of law to the contrary.	10 11
[2] Section 21A (6)	12
Insert in alphabetical order in the subsection:	13
<i>child sexual offence</i> means:	14
(a) an offence against section 61I, 61J, 61JA, 61K, 61M, 61N, 61O or 66F of the <i>Crimes Act 1900</i> where the person against whom the offence was committed was then under the age of 16 years, or	15 16 17 18
(b) an offence against section 66A, 66B, 66C, 66D, 66EA, 66EB, 91D, 91E, 91F, 91G or 91H of the <i>Crimes Act 1900</i> , or	19 20 21
(c) an offence against section 80D or 80E of the <i>Crimes Act 1900</i> where the person against whom the offence was committed was then under the age of 16 years, or	22 23 24
(d) an offence against section 91J, 91K or 91L of the <i>Crimes Act 1900</i> where the person who was being observed or filmed as referred to in those sections was then under the age of 16 years, or	25 26 27 28
(e) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in any of the above paragraphs.	29 30 31
[3] Section 24A	32
Insert after section 24:	33
24A Mandatory requirements for supervision of sex offenders to be disregarded in sentencing	34 35
(1) In sentencing an offender, the court must not take into account, as a mitigating factor in sentencing, the fact that the offender:	36 37

(a)	has or may become a registrable person under the <i>Child Protection (Offenders Registration) Act 2000</i> as a consequence of the offence, or	1 2 3
(b)	has or may become the subject of an order under the <i>Child Protection (Offenders Prohibition Orders) Act 2004</i> or the <i>Crimes (Serious Sex Offenders) Act 2006</i> .	4 5 6
(2)	This section has effect despite any Act or rule of law to the contrary.	7 8
[4]	Section 54D Exclusions from Division	9
	Insert after section 54D (2):	10
(3)	This Division does not apply to the sentencing of an offender in respect of an offence if the offender was under the age of 18 years at the time the offence was committed.	11 12 13
[5]	Part 4, Division 1A, Table	14
	Omit “66A” from item 10. Insert instead “66A (1) or (2)”.	15
[6]	Schedule 1 Existing life sentences	16
	Omit “or 61JA” from the definition of <i>existing life sentence</i> in clause 1.	17
	Insert instead “, 61JA or 66A (2)”.	18
[7]	Schedule 2 Savings, transitional and other provisions	19
	Insert at the end of clause 1 (1):	20
	<i>Crimes Amendment (Sexual Offences) Act 2008</i>	21
[8]	Schedule 2, Part 19	22
	Insert in appropriate order:	23
	Part 19 Provisions consequent on enactment of Crimes Amendment (Sexual Offences) Act 2008	24 25 26
59	Existing offences and proceedings	27
(1)	An amendment made to Part 3 of this Act by the <i>Crimes Amendment (Sexual Offences) Act 2008</i> applies to the determination of a sentence for an offence whenever committed, unless:	28 29 30 31
(a)	a court has convicted the person being sentenced of the offence, or	32 33

(b) a court has accepted a plea of guilty and the plea has not been withdrawn,	1 2
before the commencement of the amendment.	3
(2) In this clause:	4
<i>convict</i> includes make a finding of guilt.	5
60 Standard non-parole periods	6
(1) An amendment made to section 54D by the <i>Crimes Amendment (Sexual Offences) Act 2008</i> does not affect any sentence imposed before the commencement of that amendment.	7 8 9
(2) The Table to Division 1A of Part 4, as in force immediately before its amendment by the <i>Crimes Amendment (Sexual Offences) Act 2008</i> , continues to apply in respect of an offence against section 66A of the <i>Crimes Act 1900</i> committed before the commencement of the amendment.	10 11 12 13 14
2.5 Crimes (Serious Sex Offenders) Act 2006 No 7	15
[1] Section 5 Definitions of “serious sex offence” and “offence of a sexual nature”	16 17
Insert “or 15A” after “Division 15” in section 5 (2) (c).	18
[2] Section 5 (2) (e)	19
Omit the paragraph. Insert instead:	20
(e) an offence under section 91J, 91K, 91L or 91M of the <i>Crimes Act 1900</i> in relation to the observing or filming of a child,	21 22 23
2.6 Criminal Assets Recovery Act 1990 No 23	24
[1] Section 6 Meaning of “serious crime related activity”	25
Insert “or 15A” after “Division 15” in section 6 (2) (g).	26
[2] Section 6 (2) (g)	27
Omit “or 91H (3)”.	28
2.7 Criminal Procedure Act 1986 No 209	29
[1] Schedule 1 Indictable offences triable summarily	30
Insert “or (2A), 66EB” after “61O (2)” in clause 2 of Table 1.	31

[2] Schedule 1, Table 1	1
Insert “91J (3), 91K (3), 91L (3),” after “91H,” in clause 2.	2
[3] Schedule 1, Table 2	3
Omit “, 61O (1) or (1A) or 66EB” from clause 1.	4
Insert instead “or 61O (1) or (1A)”.	5
[4] Schedule 2 Savings, transitional and other provisions	6
Insert at the end of clause 1 (1):	7
<i>Crimes Amendment (Sexual Offences) Act 2008</i>	8
2.8 Firearms Regulation 2006	9
[1] Clause 5 Offences that disqualify applicants	10
Insert “or 15A” after “Division 15” in clause 5 (d) (iii).	11
[2] Clause 44 Offences that prevent persons from being involved in firearms dealing business	12
Insert “or 15A” after “Division 15” in clause 44 (d) (iii).	13
2.9 Pre-Trial Diversion of Offenders Act 1985 No 153	15
Section 3 Definitions	16
Insert “66EA,” after “66D,” in the definition of <i>child sexual assault offence</i> in section 3 (1).	17
2.10 Summary Offences Act 1988 No 25	19
Part 3B Filming for indecent purposes	20
Omit the Part.	21