

SUMMARY OFFENCES BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Justices (Sentencing) Amendment Bill 1988 is cognate with this Bill.

The objects of this Bill are—

- (a) to repeal the Offences in Public Places Act 1979, the Public Assemblies Act 1979 and the Prostitution Act 1979; and
- (b) to enact provisions like those of the repealed Acts with some extension of the repealed provisions; and
- (c) to increase certain of the penalties at present applicable under the Acts to be repealed; and
- (d) to create the following new offences:
 - using offensive language in certain circumstances (clause 4 (1) (b));
 - soliciting in a public street within view from certain places (clause 19 (1));
 - soliciting in a manner that distresses or harasses (clause 19 (3));
 - taking part in public in an act of prostitution (clause 20);
 - group violence (clause 28).

PART 1—PRELIMINARY

Clause 1 (Short title) specifies the short title of the proposed Act.

Clause 2 (Commencement) provides for the proposed Act to commence on a proclaimed day or days.

Clause 3 (Definitions) defines certain expressions for the purposes of the proposed Act.

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PART 2—OFFENCES IN PUBLIC PLACES

Clause 4 (Offensive conduct or language) continues the substance of section 5 of the Offences in Public Places Act prohibiting offensive conduct in or near, or within view or hearing from, a public place or a school. However, the new provision includes as an offence the use of offensive language in or near, or within hearing from, a public place or a school.

Clause 5 (Obscene exposure) continues the substance of section 6 of the Offences in Public Places Act prohibiting wilful obscene exposure in, or within view from, a public place or a school.

Clause 6 (Obstructing traffic) continues the substance of section 7 of the Offences in Public Places Act prohibiting the obstruction, without reasonable excuse, of traffic in a public place.

Clause 7 (Damaging fountains) continues the substance of section 8 of the Offences in Public Places Act prohibiting wilful damage to, and certain other actions in relation to, a fountain in a public place.

Clause 8 (Damaging shrines, monuments or statues) continues the substance of section 9 of the Offences in Public Places Act prohibiting wilful damage to, or wilful defacement of, a shrine, monument or statue in a public place.

Clause 9 (Defacing walls) continues the substance of section 10 of the Offences in Public Places Act prohibiting a person, except in certain circumstances, from fixing a placard or paper to premises or marking premises with chalk, paint or other material.

Clause 10 (Custody of offensive implement) continues the substance of section 11A of the Offences in Public Places Act by making it an offence for a person to have an offensive implement in his or her custody in a public place and without reasonable excuse.

Clause 11 (Possession of liquor by minors) continues the substance of section 11B of the Offences in Public Places Act by prohibiting the possession or consumption of liquor in a public place by a minor who is not under the supervision of a responsible adult or does not have a reasonable excuse. The provision enables a member of the Police Force to seize the liquor and deals with the consequences of such a seizure.

Clause 12 (Defence) continues the substance of section 12 of the Offences in Public Places Act by providing a general defence of "lawful authority" to a prosecution for an offence under the proposed Part 2.

Clause 13 (Particulars to be furnished) continues the substance of section 13 of the Offences in Public Places Act enabling the defendant to obtain proper particulars of the alleged conduct on which a prosecution for an offence under the proposed Part 2 has been based.

PART 3—PROSTITUTION

Clause 14 (Exclusion of matters dealt with under certain Acts) continues the exclusion under section 4 of the Prostitution Act 1979 of the premises of a club registered under the Registered Clubs Act 1976 and licensed premises under the Liquor Act 1982. Matters that might otherwise affect those premises are dealt with under those Acts.

Clause 15 (Living on earnings of prostitution) continues the substance of section 5 of the Prostitution Act prohibiting a person from knowingly living on the earnings of prostitution.

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Clause 16 (Prostitution or soliciting in massage parlours etc.) continues the substance of section 6 of the Prostitution Act prohibiting a person from using a massage parlour or photographic studio for the purpose of prostitution or soliciting for prostitution.

Clause 17 (Allowing premises to be used for prostitution) continues the substance of section 7 of the Prostitution Act prohibiting the owner, occupier, manager or assistant manager of a massage parlour or photographic studio from knowingly suffering or permitting the premises to be used for the purpose of prostitution or soliciting for prostitution.

Clause 18 (Advertising premises used for prostitution) continues the substance of section 8 of the Prostitution Act prohibiting any person from advertising the availability of any premises or person for the purpose of prostitution.

Clause 19 (Soliciting) continues the substance of section 8A of the Prostitution Act prohibiting soliciting for the purpose of prostitution if the soliciting takes place—

- (a) in a public street near a dwelling, school, church or hospital; or
- (b) in a school, church or hospital.

The new provision also prohibits soliciting in a public street *within view from* a dwelling, school, church or hospital and makes it a separate offence to solicit in a manner that harasses or distresses the person solicited.

Clause 20 (Public acts of prostitution) creates a new offence of taking part in an act of prostitution in, or within view from, a school, church, hospital or public place, or within view from a dwelling. It creates a similar offence where the act of prostitution occurs in a vehicle.

Clause 21 (Search warrant) continues the substance of section 9 of the Prostitution Act by providing for the issue of a search warrant if there are reasonable grounds for believing that an offence referred to in clause 16 or 17 is being committed.

PART 4—PUBLIC ASSEMBLIES

Clause 22 (Definitions) defines certain expressions for the purposes of Part 4.

Clause 23 (Authorised public assemblies) continues the substance of section 4 of the Public Assemblies Act 1979. It provides that an assembly or procession in a public street, public reserve or other place used by the public is an authorised public assembly if the Commissioner of Police approves after being given the appropriate notice.

Clause 24 (Participation in authorised public assembly) continues the substance of section 5 of the Public Assemblies Act. It provides that a participant in an authorised public assembly is not liable to prosecution for taking part in an unlawful assembly or for obstruction.

Clause 25 (Prohibition by a Court of a public assembly) continues the substance of section 6 of the Public Assemblies Act by authorising the Supreme Court or the District Court, on the application of the Commissioner of Police, to prohibit a particular public assembly of which notice has been given to the Commissioner.

Clause 26 (Authorisation by a Court of a public assembly) continues the substance of section 7 of the Public Assemblies Act by enabling the organiser of a public assembly, in certain circumstances, to obtain an order from the Supreme Court or the District Court authorising the holding of the public assembly.

Clause 27 (Applications under section 25 or 26) continues the substance of section 8 of the Public Assemblies Act by requiring a prompt decision on an application to a Court referred to in clauses 25 and 26.

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PART 5—VIOLENT DISORDER

Clause 28 (Group violence) creates a new offence dealing with the use or threat of violence by 3 or more persons assembled together if, as a result, a person of reasonable firmness would fear for his or her safety. The offence is not limited to behaviour in a public place and basically follows sections 2, 6 and 8 of the U.K. Public Order Act 1986 creating a new offence of violent disorder.

PART 6—GENERAL

Clause 29 (Penalty notices) provides for the issue of penalty notices for the offence of juvenile drinking under clause 11.

Clause 30 provides that no person is to be imprisoned or otherwise detained for failure to pay a pecuniary penalty for an offence under clause 11.

Clause 31 (Evidence as to public street etc.) follows section 8A (4) of the Prostitution Act which relates to evidence as to a place being a public street or public place, or a dwelling, school, church or hospital. The clause applies generally for the purposes of the proposed Act and is not limited to matters arising under Part 3 (Prostitution).

Clause 32 (Proceedings for offences) provides for proceedings for offences under the proposed Act to be taken before a Local Court constituted by a Magistrate sitting alone.

Clause 33 (Payment towards cost of repairing damage) enables a Local Court convicting a person of an offence under the proposed Act to order payment by the offender of a contribution towards the cost of any damage caused in committing the offence.

Clause 34 (Repeals) effects the repeal of the Offences in Public Places Act 1979, the Public Assemblies Act 1979, the Prostitution Act 1979 and certain other Acts.

Clause 35 (Regulations) enables the Governor to make regulations to give effect to the proposed Act.

Clause 36 makes a consequential amendment to the Justices Act 1902, so as to provide machinery for penalty notices issued under clause 29.

Clause 37 makes a consequential amendment to the Supreme Court Act 1970, in connection with public assemblies.

Clause 38 amends section 8 of the Bail Act 1978 (Right to release on bail for certain offences) which at present gives a right of release on bail to a person accused of an offence not punishable by imprisonment. The amendment would extend this right to a person accused of an offence under the proposed Act even if the offence is punishable by imprisonment.

Clause 39 makes a consequential amendment to the Search Warrants Act 1985.

SCHEDULE 1

Schedule 1 lists the Acts to be repealed under clause 34.
