

[Act 1995 No 49]



New South Wales

Crimes Amendment (Child Pornography) Bill 1995

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* to prohibit the possession of films, computer games and publications containing child pornography. The Bill also amends the *Film and Computer Game Classification Act 1984* and the *Indecent Articles and Classified Publications Act 1975* in related respects as described below, and the *Search Warrants Act 1985*.

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

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 gives effect to the Schedule of amendments to the *Crimes Act 1900*.

Clause 4 gives effect to the Schedule of amendments to the *Film and Computer Game Classification Act 1984*, the *Indecent Articles and Classified Publications Act 1975* and the *Search Warrants Act 1985*.

Schedule 1 (1) and (2) contain consequential amendments to the *Crimes Act 1900*.

Schedule 1 (3) inserts proposed section 3 10A into the *Crimes Act 1900*. The proposed section makes it an offence (penalty of 12 months imprisonment or a fine of \$10,000, or both) for a person to possess child pornography. This is defined to mean:

- any film that has been, or that is subsequently, refused classification under the *Film and Computer Game Classification Act 1984* because it is a child abuse film (ie a film which depicts a child in a manner likely to cause offence to a reasonable adult), or
- any computer game that has been, or that is subsequently, refused classification under the *Film and Computer Game Classification Act 1984* because it depicts in any form a child (whether engaged in sexual activity or otherwise) in a manner that is likely to cause offence to a reasonable adult, or
- any publication (eg a book, newspaper, magazine, photograph or other pictorial matter) that has been, or that is subsequently, classified as a prohibited publication under the *Indecent Articles and Classified Publications Act 1975* because it contains indecent matter that depicts a child engaged in an activity of a sexual nature (including posing) or who is in the presence of another person who is so engaged.

Proposed section 3 10A provides that proceedings for an offence under the section must be commenced not later than 6 months after the date of the alleged offence (ie when the person was in possession of the child pornography). Certain defences are also provided, in particular, that the person depicted or described in the material was of or above the age of 16 when the material was made, taken, produced or published.

Schedule 1 (4) inserts proposed section 357EB into the *Crimes Act 1900*. The proposed section empowers a police officer to apply for a search warrant authorising the entry and search of premises in respect of which the officer believes an offence under proposed section 3 10A is being committed.

Schedule 2 amends the *Film and Computer Game Classification Act 1984* and the *Indecent Articles and Classified Publications Act 1975*. The definition of a “child” for the purposes of classifying a film, computer game or publication is amended so that it will cover a person who is a child or who, in the opinion of the censor, looks like a child. This is a modification of the present test of assessing whether the person depicted or described is a child.

Schedule 2 also amends the *Search Warrants Act 1985* as a consequence of the insertion of proposed section 357EB into the *Crimes Act 1900*.