



New South Wales

Criminal Legislation Amendment (Child Sexual Abuse) Bill 2018

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to create an offence of failing to reduce or remove the risk of child abuse,
- (b) to replace offences of indecent assault and act of indecency with offences of sexual touching and sexual act and to create a new offence of sexually touching where the alleged victim is a young person under the special care of the accused person,
- (c) to increase the penalty for persistent sexual abuse of a child to imprisonment for life and to provide that the offence occurs if there is an unlawful sexual relationship between the accused person and a child,
- (d) to introduce a new offence of grooming an adult to procure a child under his or her care for an unlawful sexual activity and to extend an existing offence of grooming a child,
- (e) to permit the prosecution of a child sexual offence where the exact date on which it occurred is uncertain and a change in the law or the age of the child makes it difficult to determine which offence to prosecute,
- (f) to require proceedings against children or young persons for offences relating to the production, dissemination or possession of child abuse material to be approved by the Director of Public Prosecutions and to provide exceptions and defences to those offences where the material depicts only the accused person or where the accused person is under the age of 18 years and a reasonable person would consider that its possession by the accused person is acceptable,
- (g) to create an offence of failing to report a child abuse offence,

- (h) to give retrospective effect to the repeal of a provision that prevents the prosecution of certain historical child abuse offences,
- (i) to permit a court when sentencing a person for a sexual offence that was committed when the person was a child to order that the person is not to be treated as a registrable person in respect of that offence,
- (j) to provide that in sentencing for historical child sexual offences the sentencing is to be in accordance with current sentencing patterns and practices,
- (k) to permit a Judge in a trial for a prescribed sexual offence to inform the jury as to certain matters relating to the reasons why there may be differences in a complainant's account,
- (l) to make a number of statute law amendments.

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.

Schedule 1 Amendment of Crimes Act 1900 No 40

Schedule 1 [1] creates a new offence if a person, who carries out work for an organisation that employs an adult worker in child-related work, knows that there is a serious risk that the adult worker will commit a child abuse offence and negligently fails to reduce or remove that risk, but only if the person, by reason of the person's position in the organisation, has the power or responsibility to reduce or remove that risk. The maximum penalty is imprisonment for 2 years.

Schedule 1 [6] moves existing definitions of *sexual intercourse* and *cognitive impairment* into separate sections, moves an existing provision relating to consent to sexual intercourse into a separate section and extends the application of that provision to sexual touching and sexual acts and sets out what is meant by sexual touching and sexual acts. *Sexual touching* means a person touching another person in circumstances where a reasonable person would consider the touching to be sexual. *Sexual act* means any act (other than sexual touching) carried out in circumstances where a reasonable person would consider the act to be sexual. Anything done for genuine medical or hygienic purposes is not sexual touching or a sexual act. **Schedule 1 [4] and [48]** make consequential amendments.

Schedule 1 [7] omits existing offences relating to indecent assault and acts of indecency and replaces these offences with offences of sexual touching and sexual act. The replacement of existing offences against children is done by **Schedule 1 [16]**. An offence of sexual touching occurs if a person (the *alleged offender*), without the consent of another person (the *alleged victim*) and knowing that the alleged victim does not consent, sexually touches the alleged victim or incites the alleged victim to sexually touch the alleged offender or a third person or incites a third person to sexually touch the alleged victim. The maximum penalty is 5 years imprisonment. However, if certain circumstances of aggravation exist the maximum penalty is 7 years imprisonment. An offence of sexual act occurs if the alleged offender, without the consent of the alleged victim and knowing that the alleged victim does not consent, carries out a sexual act with or towards the alleged victim or incites the alleged victim to carry out a sexual act with or towards the alleged offender or a third person or incites a third person to carry out a sexual act with or towards the alleged victim. The maximum penalty is 18 months imprisonment. However, if certain circumstances of aggravation exist the maximum penalty is 3 years imprisonment. **Schedule 1 [16]** inserts similar sexual touching and sexual act offences where the alleged victim is a child. Sexual touching where the alleged victim is a child under 10 years of age has a maximum penalty of 16 years imprisonment. If the alleged victim is a child between 10 and 16 years of age, the maximum penalty is 10 years imprisonment. A sexual act where the alleged victim is a child under 10 years of age has a maximum penalty of 7 years imprisonment. If the alleged victim is a child between 10 and 16 years of age, the maximum penalty is 2 years

imprisonment (unless certain circumstances of aggravation exist, in which case the maximum penalty is 5 years imprisonment). If the alleged offender knows that the sexual act is being filmed for the production of child abuse material, the maximum penalty is 10 years imprisonment regardless of the age of the child. **Schedule 1 [17]** provides that a verdict of sexual touching of a child is an alternative verdict for a charge of sexual intercourse with a child. **Schedule 1 [5], [26], [39]–[45] and [47]** make consequential amendments.

Schedule 1 [34] creates a new sexual touching offence where the alleged victim is a young person between 16 and 18 years of age who is under the special care of the alleged offender such as where the alleged offender is an authority figure to the alleged victim. For example, a parent, teacher, custodial officer or health professional or where the alleged offender provides religious, sporting, musical or other instruction to the alleged victim. The maximum penalty for the new offence is 4 years imprisonment if the young person is between 16 and 17 years of age or 2 years imprisonment if the young person is between 17 and 18 years of age.

Schedule 1 [20] replaces an offence of persistent sexual abuse of a child with a new offence having a maximum penalty of life imprisonment. In order to convict a person for the offence the jury must be satisfied beyond reasonable doubt that an unlawful sexual relationship existed between the person and a child. An unlawful sexual relationship occurs if a person above the age of 18 years engages in 2 or more unlawful sexual acts with or towards a child over any period. The proposed offence extends to relationships occurring wholly or partly before the commencement of the proposed offence.

Schedule 1 [22] provides that the offence of an adult grooming a child for unlawful sexual activity will also occur if the adult provides the child with a financial or other material benefit with the intention of making it easier to procure the child for unlawful sexual activity with that adult or any other person.

Schedule 1 [23] creates a new offence where an adult provides another person with a financial or other material benefit with the intention of making it easier to procure a child under the authority of that other person for unlawful sexual activity with that adult or any other person. The maximum penalty is 6 years imprisonment if the child is under the age of 14 years or 5 years imprisonment in any other case. A prosecution for the new offence may only be instituted by or with the approval of the Director of Public Prosecutions.

Schedule 1 [46] provides for the prosecution of a sexual offence against a child in circumstances where the exact date on which the offending conduct occurred is uncertain. If the conduct occurred in a period and the alleged victim was a child for the whole of that period and at no time during that period was the alleged conduct not a sexual offence and because of a change in the law or the age of the child during that period the conduct would have constituted more than one sexual offence, then the person may be convicted for whichever of those offences has the lowest penalty regardless of when during that period the conduct actually occurred. **Schedule 1 [46]** also provides for a defence against prosecution for certain child sexual offences if the alleged victim is of or above the age of 14 years and the age difference between the alleged victim and the accused person is no more than 2 years.

Schedule 1 [50] and [51] provide that proceedings against persons under the age of 18 years for offences relating to the production, dissemination or possession of child abuse material may only be instituted by or with the approval of the Director of Public Prosecutions. **Schedule 1 [49]** makes a consequential amendment.

Schedule 1 [52] provides an exception to an offence of possessing child abuse material if the possession of the material occurs when the accused person was under the age of 18 years and a reasonable person would consider the possession of the material by the accused person as acceptable.

Schedule 1 [53] provides a defence to an offence of possessing child abuse material if the only person depicted in the material is the accused person. A defence is also provided to offences of producing or disseminating child abuse material if the production or dissemination occurs when

the accused person is under the age of 18 years and the only person depicted in the material is the accused person.

Schedule 1 [57] creates a new concealment offence if an adult knows, believes or reasonably ought to know that a child abuse offence has been committed and that he or she has information which might be of material assistance in securing the apprehension, prosecution or conviction of the offender and the person fails without reasonable excuse to bring the information to the attention of a member of the NSW Police Force. The maximum penalty for the offence is imprisonment for 2 years. Another offence is also created if a person solicits, accepts or agrees to accept any benefit in consideration for committing the new concealment offence. The maximum penalty for this other offence is imprisonment for 5 years. **Schedule 1 [54]–[56]** make consequential amendments.

Schedule 1 [58] inserts a Schedule of former sexual offences to avoid the need to repeat this information in a number of provisions of the *Crimes Act 1900*.

Schedule 1 [61] inserts a number of savings and transitional provisions consequent on the amendments made by the proposed Act. It also gives retrospective effect to the repeal of section 78 of the *Crimes Act 1900* by the *Criminal Legislation (Amendment) Act 1992*. That section placed a 12 month time limit on the prosecution of certain child sexual offences. While that section was repealed in 1992 it still worked to prevent prosecution for offences occurring before its repeal. That section is now repealed as if it were never enacted and so it is no longer a bar to any prosecution. **Schedule 1 [60]** makes a consequential amendment.

Schedule 1 [8], [25] and [31] omit redundant offences relating to attempts as section 344A of the *Crimes Act 1900* already deals with these. **Schedule 1 [26]** includes consequential amendments.

Schedule 1 [12]–[15], [28], [29] and [32] update provisions to ensure that the terms child (a person under the age of 16 years) and young person (a person of or above the age of 16 years and under 18 years) are used where appropriate.

Schedule 1 [2], [3], [9]–[11], [18], [19], [21], [24], [27], [33], [35]–[38] and [59] rename Division 10 of Part 3 of the *Crimes Act 1900* and restructure that Division by introducing Subdivisions dealing with different matters and move certain provisions, in order to make the Division easier to follow.

Schedule 1 [30] updates a reference to foster parent with authorised carer (the current terminology). **Schedule 1 [27]** includes a definition of *authorised carer*.

Schedule 2 Amendment of Child Protection (Offenders Registration) Act 2000 No 42

Schedule 2 [6] permits a court, that sentences a person for a sexual offence committed by the person when the person was a child, to make an order declaring that the person is not to be treated as a registrable person in respect of that offence (the *Child Protection (Offenders Registration) Act 2000* provides for certain obligations to be placed on registrable persons, including reporting obligations). The court may make an order only if the victim of the offence was under 18 years of age, the offender has not been convicted of certain other offences, the court does not impose a sentence of full-time detention or a control order in respect of the offence and the court is satisfied that the person does not pose a risk to the lives or sexual safety of children. **Schedule 2 [7] and [8]** make consequential amendments.

Schedule 2 [1]–[5] make amendments consequential on the amendments made to the *Crimes Act 1900* by Schedule 1.

Schedule 2 [9] inserts savings and transitional provisions consequent on the other amendments in Schedule 2.

Schedule 3 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

A court, in determining the appropriate sentence for the breach of a child sexual offence provision, is required to not take into account as a mitigating factor the good character or lack of previous convictions of the offender if it is satisfied that the factor concerned was of assistance to the offender in the commission of the offence. **Schedule 3 [4] and [5]** extend the definition of *child sexual offence* for the purposes of that requirement to include certain repealed child sexual offences.

Schedule 3 [6] sets out a number of additional requirements with respect to sentencing for sexual offences committed against children. These are that the sentence must be in accordance with the sentencing patterns and practices at the time of sentencing, not at the time of the offence, and the court must also have regard to the trauma of sexual abuse on children as understood at the time of sentencing. However, the standard non-parole period (if any) for the offence is the standard non-parole period that applied at the time of the offence, not at the time of sentencing.

Schedule 3 [1]–[3] and [7]–[10] make amendments consequential on the amendments made to the *Crimes Act 1900* by Schedule 1.

Schedule 4 Amendment of Criminal Procedure Act 1986 No 209

Schedule 4 [10] permits the Judge in a trial of a person for a prescribed sexual offence to inform the jury as to certain matters relating to the reasons why there may be differences in a complainant's account. The requirement arises if the Judge considers that there is evidence that suggests a difference in the complainant's account that may be relevant to the complainant's truthfulness or reliability.

Schedule 4 [1]–[9] and [11]–[19] make amendments consequential on the amendments made to the *Crimes Act 1900* by Schedule 1.

Schedule 5 Amendments to other legislation

Schedule 5 amends other legislation consequential on the amendments made to the *Crimes Act 1900* by Schedule 1.



New South Wales

Criminal Legislation Amendment (Child Sexual Abuse) Bill 2018

Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Crimes Act 1900 No 40	3
Schedule 2	Amendment of Child Protection (Offenders Registration) Act 2000 No 42	25
Schedule 3	Amendment of Crimes (Sentencing Procedure) Act 1999 No 92	27
Schedule 4	Amendment of Criminal Procedure Act 1986 No 209	29
Schedule 5	Amendments to other legislation	32



New South Wales

Criminal Legislation Amendment (Child Sexual Abuse) Bill 2018

No. , 2018

A Bill for

An Act to amend the *Crimes Act 1900* and other legislation to make further provision for sexual offences and for the protection of children from abuse.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*.

3

2 Commencement

4

This Act commences on a day or days to be appointed by proclamation.

5

Schedule 1	Amendment of Crimes Act 1900 No 40	1
[1] Section 43B		2
	Insert after section 43A:	3
43B	Failure to reduce or remove risk of child becoming victim of child abuse	4
(1)	A person commits an offence if:	5
(a)	the person is an adult who carries out work for an organisation, whether as an employee, contractor, volunteer or otherwise (a <i>position holder</i>), and	6 7 8
(b)	the organisation is the employer of an adult worker who engages in child-related work, and	9 10
(c)	there is a serious risk that the adult worker will commit a child abuse offence against a child who is, or may come, under the care, supervision or authority of the organisation, and	11 12 13
(d)	the position holder knows that the risk exists, and	14
(e)	the position holder, by reason of the person's position, has the power or responsibility to reduce or remove that risk, and	15 16
(f)	the position holder negligently fails to reduce or remove that risk.	17
	Maximum penalty: Imprisonment for 2 years.	18
(2)	In proceedings for an offence under this section, it is not necessary to prove that a child abuse offence has been committed.	19 20
(3)	In this section:	21
	<i>adult</i> means a person who is of or above the age of 18 years.	22
	<i>child</i> means a person who is under the age of 18 years.	23
	<i>child abuse offence</i> means:	24
(a)	murder or manslaughter of a child (including under section 22A), or	25
(b)	an offence under section 27, 29, 33, 35, 37, 38, 38A, 39, 41, 41A, 44, 45, 45A, 46, 59, 60E, 86 or 91J or Division 10, 10A, 10B or 15 of Part 3 where the alleged victim is a child, or	26 27 28
(c)	an offence under section 42, 43, 43A, 91G or 91H, or	29
(d)	an offence of attempting to commit an offence referred to in paragraphs (a)–(c).	30 31
	<i>child-related work</i> (and <i>engage</i> in child-related work), <i>employer</i> and <i>worker</i> have the same meanings as in the <i>Child Protection (Working with Children) Act 2012</i> .	32 33 34
[2] Part 3, Division 10, heading		35
	Omit the heading. Insert instead:	36
Division 10	Sexual offences against adults and children	37
[3] Part 3, Division 10, Subdivision 1, heading		38
	Insert before section 61H:	39
Subdivision 1	Interpretation	40

[4] Section 61H Definitions	1
Omit section 61H (1) and (1A). Insert instead:	2
(1) In this Division:	3
<i>cognitive impairment</i> —see section 61HD.	4
<i>sexual act</i> —see section 61HC.	5
<i>sexual intercourse</i> —see section 61HA.	6
<i>sexual touching</i> —see section 61HB.	7
[5] Section 61H (3)	8
Omit the subsection. Insert instead:	9
(3) For the purposes of this Act, a person who incites another person to carry out sexual touching or a sexual act, as referred to in a provision of Subdivision 3, 4, 6, 7 or 11, is taken to commit an offence on the other person.	10 11 12
[6] Sections 61HA–61HE	13
Omit section 61HA. Insert instead:	14
61HA Meaning of “sexual intercourse”	15
For the purposes of this Division, <i>sexual intercourse</i> means:	16
(a) sexual connection occasioned by the penetration to any extent of the genitalia (including a surgically constructed vagina) of a female person or the anus of any person by:	17 18 19
(i) any part of the body of another person, or	20
(ii) any object manipulated by another person,	21
except where the penetration is carried out for proper medical purposes,	22
or	23
(b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person, or	24 25
(c) cunnilingus, or	26
(d) the continuation of sexual intercourse as defined in paragraph (a), (b) or (c).	27 28
61HB Meaning of “sexual touching”	29
(1) For the purposes of this Division, <i>sexual touching</i> means a person touching another person:	30 31
(a) with any part of the body or with anything else, or	32
(b) through anything, including anything worn by the person doing the touching or by the person being touched,	33 34
in circumstances where a reasonable person would consider the touching to be sexual.	35 36
(2) The matters to be taken into account in deciding whether a reasonable person would consider touching to be sexual include:	37 38
(a) whether the area of the body touched or doing the touching is the person’s genital area or anal area or (in the case of a female person, or transgender or intersex person identifying as female) the person’s breasts, whether or not the breasts are sexually developed, or	39 40 41 42
(b) whether the person doing the touching does so for the purpose of obtaining sexual arousal or sexual gratification, or	43 44

(c)	whether any other aspect of the touching (including the circumstances in which it is done) makes it sexual.	1 2
(3)	Touching done for genuine medical or hygienic purposes is not sexual touching.	3 4
61HC	Meaning of “sexual act”	5
(1)	For the purposes of this Division, <i>sexual act</i> means an act (other than sexual touching) carried out in circumstances where a reasonable person would consider the act to be sexual.	6 7 8
(2)	The matters to be taken into account in deciding whether a reasonable person would consider an act to be sexual include:	9 10
(a)	whether the area of the body involved in the act is a person’s genital area or anal area or (in the case of a female person, or transgender or intersex person identifying as female) the person’s breasts, whether or not the breasts are sexually developed, or	11 12 13 14
(b)	whether the person carrying out the act does so for the purpose of obtaining sexual arousal or sexual gratification, or	15 16
(c)	whether any other aspect of the act (including the circumstances in which it is carried out) makes it sexual.	17 18
(3)	An act carried out for genuine medical or hygienic purposes is not a sexual act.	19
61HD	Meaning of “cognitive impairment”	20
	For the purposes of this Division, a person has a <i>cognitive impairment</i> if the person has:	21 22
(a)	an intellectual disability, or	23
(b)	a developmental disorder (including an autistic spectrum disorder), or	24
(c)	a neurological disorder, or	25
(d)	dementia, or	26
(e)	a severe mental illness, or	27
(f)	a brain injury,	28
	that results in the person requiring supervision or social habilitation in connection with daily life activities.	29 30
61HE	Consent in relation to sexual offences	31
(1)	Offences to which section applies	32
	This section applies for the purposes of the offences, or attempts to commit the offences, under sections 61I, 61J, 61JA, 61KC, 61KD, 61KE and 61KF.	33 34
(2)	Meaning of “consent”	35
	A person <i>consents</i> to a sexual activity if the person freely and voluntarily agrees to the sexual activity.	36 37
(3)	Knowledge about consent	38
	A person who without the consent of the other person (the <i>victim</i>) engages in a sexual activity with or towards the victim, incites the victim to engage in a sexual activity or incites a third person to engage in a sexual activity with or towards the victim, knows that the victim does not consent to the sexual activity if:	39 40 41 42 43

- (a) the person knows that the victim does not consent to the sexual activity, or 1
 - (b) the person is reckless as to whether the victim consents to the sexual activity, or 2
 - (c) the person has no reasonable grounds for believing that the victim consents to the sexual activity. 3
- (4) For the purpose of making any such finding, the trier of fact must have regard to all the circumstances of the case: 4
- (a) including any steps taken by the person to ascertain whether the victim consents to the sexual activity, but 5
 - (b) not including any self-induced intoxication of the person. 6
- (5) **Negation of consent** 7
- A person does not consent to a sexual activity: 8
- (a) if the person does not have the capacity to consent to the sexual activity, including because of age or cognitive incapacity, or 9
 - (b) if the person does not have the opportunity to consent to the sexual activity because the person is unconscious or asleep, or 10
 - (c) if the person consents to the sexual activity because of threats of force or terror (whether the threats are against, or the terror is instilled in, that person or any other person), or 11
 - (d) if the person consents to the sexual activity because the person is unlawfully detained. 12
- (6) A person who consents to a sexual activity with or from another person under any of the following mistaken beliefs does not consent to the sexual activity: 13
- (a) a mistaken belief as to the identity of the other person, 14
 - (b) a mistaken belief that the other person is married to the person, 15
 - (c) a mistaken belief that the sexual activity is for health or hygienic purposes, 16
 - (d) any other mistaken belief about the nature of the activity induced by fraudulent means. 17
- (7) For the purposes of subsection (3), the other person knows that the person does not consent to the sexual activity if the other person knows the person consents to the sexual activity under such a mistaken belief. 18
- (8) The grounds on which it may be established that a person does not consent to a sexual activity include: 19
- (a) if the person consents to the sexual activity while substantially intoxicated by alcohol or any drug, or 20
 - (b) if the person consents to the sexual activity because of intimidatory or coercive conduct, or other threat, that does not involve a threat of force, or 21
 - (c) if the person consents to the sexual activity because of the abuse of a position of authority or trust. 22
- (9) A person who does not offer actual physical resistance to a sexual activity is not, by reason only of that fact, to be regarded as consenting to the sexual activity. 23

(10)	This section does not limit the grounds on which it may be established that a person does not consent to a sexual activity.	1 2
(11)	In this section: <i>sexual activity</i> means sexual intercourse, sexual touching or a sexual act.	3 4
	Subdivision 2 Sexual assault and assault with intent to have sexual intercourse	5 6
[7]	Part 3, Division 10, Subdivisions 3 and 4	7
	Omit sections 61L–61O. Insert instead:	8
	Subdivision 3 Sexual touching	9
61KC	Sexual touching	10
	Any person (the <i>alleged offender</i>) who without the consent of another person (the <i>alleged victim</i>) and knowing that the alleged victim does not consent intentionally:	11 12 13
	(a) sexually touches the alleged victim, or	14
	(b) incites the alleged victim to sexually touch the alleged offender, or	15
	(c) incites a third person to sexually touch the alleged victim, or	16
	(d) incites the alleged victim to sexually touch a third person,	17
	is guilty of an offence.	18
	Maximum penalty: Imprisonment for 5 years.	19
61KD	Aggravated sexual touching	20
(1)	Any person (the <i>alleged offender</i>) who without the consent of another person (the <i>alleged victim</i>) and knowing that the alleged victim does not consent and in circumstances of aggravation intentionally:	21 22 23
	(a) sexually touches the alleged victim, or	24
	(b) incites the alleged victim to sexually touch the alleged offender, or	25
	(c) incites a third person to sexually touch the alleged victim, or	26
	(d) incites the alleged victim to sexually touch a third person,	27
	is guilty of an offence.	28
	Maximum penalty: Imprisonment for 7 years.	29
(2)	In this section, <i>circumstances of aggravation</i> means circumstances in which:	30
	(a) the alleged offender is in the company of another person or persons, or	31
	(b) the alleged victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender, or	32 33
	(c) the alleged victim has a serious physical disability, or	34
	(d) the alleged victim has a cognitive impairment.	35
	Subdivision 4 Sexual act	36
61KE	Sexual act	37
	Any person (the <i>alleged offender</i>) who without the consent of another person (the <i>alleged victim</i>) and knowing that the alleged victim does not consent intentionally:	38 39 40

(a)	carries out a sexual act with or towards the alleged victim, or	1
(b)	incites the alleged victim to carry out a sexual act with or towards the alleged offender, or	2 3
(c)	incites a third person to carry out a sexual act with or towards the alleged victim, or	4 5
(d)	incites the alleged victim to carry out a sexual act with or towards a third person,	6 7
	is guilty of an offence.	8
	Maximum penalty: Imprisonment for 18 months.	9
61KF	Aggravated sexual act	10
(1)	Any person (the <i>alleged offender</i>) who without the consent of another person (the <i>alleged victim</i>) and knowing that the alleged victim does not consent and in circumstances of aggravation intentionally:	11 12 13
(a)	carries out a sexual act with or towards the alleged victim, or	14
(b)	incites the alleged victim to carry out a sexual act with or towards the alleged offender, or	15 16
(c)	incites a third person to carry out a sexual act with or towards the alleged victim, or	17 18
(d)	incites the alleged victim to carry out a sexual act with or towards a third person,	19 20
	is guilty of an offence.	21
	Maximum penalty: Imprisonment for 3 years.	22
(2)	In this section, <i>circumstances of aggravation</i> means circumstances in which:	23
(a)	the alleged offender is in the company of another person or persons, or	24
(b)	the alleged victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender, or	25 26
(c)	the alleged victim has a serious physical disability, or	27
(d)	the alleged victim has a cognitive impairment.	28
[8]	Section 61P Attempt to commit offence under sections 61I–61O	29
	Omit the section.	30
[9]	Sections 80AB, 80AC, 80AD and 80AE	31
	Re-number sections 61Q, 61S, 63 and 77 as sections 80AB, 80AC, 80AD and 80AE, respectively and move them into proposed Subdivision 15 of Division 10 of Part 3 after section 80AA.	32 33 34
[10]	Sections 61KA and 61KB	35
	Re-number sections 61T and 61U as sections 61KA and 61KB, respectively and move them into proposed Subdivision 2 of Division 10 of Part 3 after section 61K.	36 37
[11]	Part 3, Division 10, Subdivision 5, heading	38
	Insert before section 66A:	39
	Subdivision 5 Children—sexual assault	40

[12]	Section 66B Attempting, or assaulting with intent, to have sexual intercourse with child under 10	1 2
	Omit “another person”. Insert instead “a child”.	3
[13]	Section 66B	4
	Omit “any such person”. Insert instead “a child who is under the age of 10 years”.	5
[14]	Section 66C Sexual intercourse—child between 10 and 16	6
	Omit “another person” wherever occurring in section 66C (1)–(4). Insert instead “a child”.	7
[15]	Section 66D	8
	Omit the section. Insert instead:	9
	66D Assault with intent to have sexual intercourse—child between 10 and 16	10
	Any person who assaults a child who is of or above the age of 10 years and under the age of 16 years with intent to commit an offence under section 66C on the child is liable to the penalty provided for the commission of that offence.	11 12 13 14
[16]	Part 3, Division 10, Subdivisions 6 and 7	15
	Insert after section 66D:	16
	Subdivision 6 Children—sexual touching	17
	66DA Sexual touching—child under 10	18
	Any person who intentionally:	19
	(a) sexually touches a child who is under the age of 10 years, or	20
	(b) incites a child who is under the age of 10 years to sexually touch the person, or	21 22
	(c) incites a child who is under the age of 10 years to sexually touch another person, or	23 24
	(d) incites another person to sexually touch a child who is under the age of 10 years,	25 26
	is guilty of an offence.	27
	Maximum penalty: Imprisonment for 16 years.	28
	66DB Sexual touching—child between 10 and 16	29
	Any person who intentionally:	30
	(a) sexually touches a child who is of or above the age of 10 years and under the age of 16 years, or	31 32
	(b) incites a child who is of or above the age of 10 years and under the age of 16 years to sexually touch the person, or	33 34
	(c) incites a child who is of or above the age of 10 years and under the age of 16 years to sexually touch another person, or	35 36
	(d) incites another person to sexually touch a child who is of or above the age of 10 years and under the age of 16 years,	37 38
	is guilty of an offence.	39
	Maximum penalty: Imprisonment for 10 years.	40

Subdivision 7	Children—sexual act	1
66DC	Sexual act—child under 10	2
	Any person who intentionally:	3
	(a) carries out a sexual act with or towards a child who is under the age of 10 years, or	4 5
	(b) incites a child who is under the age of 10 years to carry out a sexual act with or towards the person, or	6 7
	(c) incites a child who is under the age of 10 years to carry out a sexual act with or towards another person, or	8 9
	(d) incites another person to carry out a sexual act with or towards a child who is under the age of 10 years,	10 11
	is guilty of an offence.	12
	Maximum penalty: Imprisonment for 7 years.	13
66DD	Sexual act—child between 10 and 16	14
	Any person who intentionally:	15
	(a) carries out a sexual act with or towards a child who is of or above the age of 10 years and under the age of 16 years, or	16 17
	(b) incites a child who is of or above the age of 10 years and under the age of 16 years to carry out a sexual act with or towards the person, or	18 19
	(c) incites a child who is of or above the age of 10 years and under the age of 16 years to carry out a sexual act with or towards another person, or	20 21
	(d) incites another person to carry out a sexual act with or towards a child who is of or above the age of 10 years and under the age of 16 years,	22 23
	is guilty of an offence.	24
	Maximum penalty: Imprisonment for 2 years.	25
66DE	Aggravated sexual act—child between 10 and 16	26
(1)	Any person who in circumstances of aggravation intentionally:	27
	(a) carries out a sexual act with or towards a child who is of or above the age of 10 years and under the age of 16 years, or	28 29
	(b) incites a child who is of or above the age of 10 years and under the age of 16 years to carry out a sexual act with or towards the person, or	30 31
	(c) incites a child who is of or above the age of 10 years and under the age of 16 years to carry out a sexual act with or towards another person, or	32 33
	(d) incites another person to carry out a sexual act with or towards a child who is of or above the age of 10 years and under the age of 16 years,	34 35
	is guilty of an offence.	36
	Maximum penalty: Imprisonment for 5 years.	37
(2)	In this section, <i>circumstances of aggravation</i> means circumstances in which:	38
	(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	39 40 41 42
	(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	43 44

	the alleged victim or any other person who is present or nearby by means of an offensive weapon or instrument, or	1 2
	(c) the alleged offender is in the company of another person or persons, or	3
	(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	4 5
	(e) the alleged victim has a serious physical disability, or	6
	(f) the alleged victim has a cognitive impairment, or	7
	(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	8 9
	(h) the alleged offender deprives the alleged victim of his or her liberty for a period before or after the commission of the offence, or	10 11
	(i) 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.	12 13 14
66DF	Sexual act for production of child abuse material—child under 16	15
	Any person who intentionally:	16
	(a) carries out a sexual act with or towards a child who is under the age of 16 years, or	17 18
	(b) incites a child who is under the age of 16 years to carry out a sexual act with or towards the person, or	19 20
	(c) incites a child who is under the age of 16 years to carry out a sexual act with or towards another person, or	21 22
	(d) incites another person to carry out a sexual act with or towards a child who is under the age of 16 years,	23 24
	and who knows that the sexual act is being filmed for the purposes of the production of child abuse material, is guilty of an offence.	25 26
	Maximum penalty: Imprisonment for 10 years.	27
[17]	Section 66E Alternative verdicts	28
	Insert after section 66E (5):	29
	(6) If on the trial of a person for an offence under section 66A, 66B, 66C or 66D 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 66DA or 66DB, it may find the accused not guilty of the offence charged but guilty of an offence under section 66DA or 66DB. The accused is liable to punishment accordingly.	30 31 32 33 34 35
[18]	Section 66E	36
	Renumber section 66E (1), (3), (4), (5) and (6) (as inserted by item [17]) as section 80AB (7), (8), (9), (10) and (11) respectively and move them into section 80AB (as renumbered by item [9]) and omit section 66E.	37 38 39
[19]	Part 3, Division 10, Subdivision 8, heading	40
	Insert before section 66EA:	41
	Subdivision 8 Children—persistent sexual abuse	42

[20] Section 66EA	1
Omit the section. Insert instead:	2
66EA Persistent sexual abuse of a child	3
(1) An adult who maintains an unlawful sexual relationship with a child is guilty of an offence.	4
Maximum penalty: Imprisonment for life.	5
(2) An <i>unlawful sexual relationship</i> is a relationship in which an adult engages in 2 or more unlawful sexual acts with or towards a child over any period.	6
(3) It is immaterial that any of those unlawful sexual acts occurred outside New South Wales, so long as at least one of the unlawful sexual acts occurred in New South Wales.	7
(4) In proceedings for an offence under this section, the prosecution:	8
(a) is not required to allege the particulars of any unlawful sexual act that would be necessary if the act were charged as a separate offence, and	9
(b) is required to allege the particulars of the period of time over which the unlawful sexual relationship existed.	10
(5) In order for the accused to be convicted of an offence under this section:	11
(a) the jury must be satisfied beyond reasonable doubt that the evidence establishes that an unlawful sexual relationship existed, and	12
(b) the jury is not required to be satisfied of the particulars of any unlawful sexual act that it would have to be satisfied of if the act were charged as a separate offence, and	13
(c) the members of the jury are not required to agree on which unlawful sexual acts constitute the unlawful sexual relationship.	14
(6) In proceedings for an offence under this section, the judge must inform the jury of the requirements of subsection (5).	15
(7) This section extends to a relationship that existed wholly or partly before the commencement of the relevant amendments, or the predecessor offence, if the acts engaged in by the accused were unlawful sexual acts during the period in which the relationship existed.	16
(8) A court, when imposing a sentence for an offence under this section constituted by an unlawful sexual relationship that existed wholly or partly before the commencement of the relevant amendments, must take into account (but is not limited by) the maximum penalty for the unlawful sexual acts engaged in by the accused during the period in which the unlawful sexual relationship existed.	17
(9) A person who has been convicted or acquitted of an unlawful sexual act in relation to a child cannot be convicted of an offence under this section in relation to the same child if the unlawful sexual act of which the person has been convicted or acquitted is one of the unlawful sexual acts that are alleged to constitute the unlawful sexual relationship.	18
(10) A person who has been convicted or acquitted of an offence under this section for having an unlawful sexual relationship with a child cannot be convicted of an unlawful sexual act in relation to the same child if the occasion on which the unlawful sexual act is alleged to have occurred is during the period over which the unlawful sexual relationship was alleged to have existed. This subsection does not prevent an alternative verdict under subsection (13).	19

(11)	A person who has been convicted or acquitted of a predecessor offence in relation to a child cannot be convicted of an offence under this section of having an unlawful sexual relationship with the same child if the period of the alleged unlawful sexual relationship includes any part of the period during which the person was alleged to have committed the predecessor offence.	1 2 3 4 5
(12)	For the purposes of subsections (9)–(11), a person ceases to be regarded as having been convicted for an offence if the conviction is quashed or set aside.	6 7
(13)	If on the trial of a person charged with an offence under this section the jury is not satisfied that the offence is proven but is satisfied that the person has, in respect of any of the occasions relied on as evidence of the commission of the offence under this section, committed an unlawful sexual act, the jury may acquit the person of the offence charged and find the person guilty of that unlawful sexual act. The person is liable to punishment accordingly.	8 9 10 11 12 13
(14)	Proceedings for an offence under this section may only be instituted by or with the approval of the Director of Public Prosecutions.	14 15
(15)	In this section:	16
	<i>adult</i> means a person who is of or above the age of 18 years.	17
	<i>child</i> means a person who is under the age of 16 years.	18
	<i>predecessor offence</i> means this section before its substitution by the <i>Criminal Legislation Amendment (Child Sexual Abuse) Act 2018</i> .	19 20
	<i>relevant amendments</i> means the substitution of this section by the <i>Criminal Legislation Amendment (Child Sexual Abuse) Act 2018</i> .	21 22
	<i>unlawful sexual act</i> means any act that constitutes, or would constitute (if particulars of the time and place at which the act took place were sufficiently particularised), any of the following offences:	23 24 25
	(a) an offence under section 61I, 61J, 61JA, 61K, 61KC, 61KD, 61KE, 61KF, 66A, 66B, 66C, 66D, 66DA, 66DB, 66DC, 66DD, 66DE, 66DF, 66F or 80A,	26 27 28
	(b) an offence under a provision of this Act set out in Column 1 of Schedule 1A,	29 30
	(c) an offence of attempting to commit an offence referred to in paragraph (a) or (b),	31 32
	(d) an offence under a previous enactment that is substantially similar to an offence referred to in paragraphs (a)–(c),	33 34
	(e) an offence under the law of a place outside New South Wales that would, if it had been committed in New South Wales, be an offence referred to in paragraphs (a)–(d).	35 36 37
[21]	Part 3, Division 10, Subdivision 9, heading	38
	Insert before section 66EB:	39
	Subdivision 9 Children—procurement and grooming	40
[22]	Section 66EB Procuring or grooming child under 16 for unlawful sexual activity	41
	Insert “or with any financial or other material benefit” after “intoxicating substance” in section 66EB (3) (a).	42 43

[23] Section 66EC	1
Insert after section 66EB:	2
66EC Grooming a person for unlawful sexual activity with a child under the person's authority	3
(1) In this section:	4
<i>adult person</i> means a person who is of or above the age of 18 years.	5
<i>child</i> means a person who is under the age of 16 years.	6
<i>unlawful sexual activity</i> means an act that constitutes an offence under this Division or Division 10A, 15 or 15A (or, in the case of an act occurring outside this State, that would constitute such an offence if it occurred in this State).	7
(2) An adult person:	8
(a) who provides a person (other than a child) with any financial or other material benefit, and	9
(b) who does so with the intention of making it easier to procure a child who is under the authority of the person for unlawful sexual activity with the adult person or any other person,	10
is guilty of an offence.	11
Maximum penalty:	12
(a) in the case of a child who is under the age of 14 years—imprisonment for 6 years, or	13
(b) in any other case—imprisonment for 5 years.	14
(3) Proceedings for an offence under this section may only be instituted by or with the approval of the Director of Public Prosecutions.	15
[24] Part 3, Division 10, Subdivision 10, heading	16
Insert before section 66F:	17
Subdivision 10 Sexual offences—cognitive impairment	18
[25] Section 66F Sexual offences—cognitive impairment	19
Omit section 66F (4).	20
[26] Section 66F (5)–(8)	21
Omit the subsections. Insert instead:	22
(5) Consent not a defence for sexual intercourse	23
The consent of a person who has a cognitive impairment is not a defence to a charge for an offence under subsection (2) or (3) (or under section 344A in connection with such an offence).	24
(6) Consent not a defence for sexual touching or sexual act	25
The consent of a person who has a cognitive impairment is not a defence to a charge for an offence under section 61KC, 61KD, 61KE or 61KF (or under section 344A in connection with such an offence) if:	26
(a) the accused was responsible for the care of that person (whether generally or at the time of the conduct constituting the offence), or	27
(b) the accused engaged in the conduct constituting the offence with the intention of taking advantage of that person's cognitive impairment.	28

(7) Defences	1
It is a defence to a charge for an offence under subsection (2) or (3) (or under section 344A in connection with such an offence) or an offence referred to in subsection (6) in which the prosecution relies on the operation of that subsection:	2
(a) if, at the time of the conduct constituting the offence:	3
(i) the accused did not know the person to whom the charge relates had a cognitive impairment, or	4
(ii) the accused was married to the person to whom the charge relates or was the de facto partner of that person, or	5
(b) if the act constituting the offence was carried out for any proper medical or hygienic purpose.	6
(8) Approval of Attorney General for prosecution	7
A prosecution for any of the following offences may not be commenced without the approval of the Attorney General:	8
(a) an offence under subsection (2) or (3) (or under section 344A in connection with such an offence),	9
(b) an offence referred to in subsection (6) in which the prosecution relies on the operation of that subsection.	10
[27] Part 3, Division 10, Subdivision 11	11
Insert before section 73:	12
Subdivision 11 Sexual offences—young person under special care	13
72B Definitions	14
In this Subdivision:	15
<i>authorised carer</i> has the same meaning as in the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	16
<i>member of the teaching staff</i> of a school means:	17
(a) a teacher at the school, or	18
(b) the principal or a deputy principal at the school, or	19
(c) any other person employed at the school who has students at the school under his or her care or authority.	20
<i>young person</i> means a person who is of or above the age of 16 years and under the age of 18 years.	21
[28] Section 73 Sexual intercourse—young person between 16 and 18 under special care	22
Omit “another person” wherever occurring in section 73 (1) and (2).	23
Insert instead “a young person”.	24
[29] Section 73 (3)	25
Omit “a person”. Insert instead “a young person”.	26
[30] Section 73 (3) (a)	27
Omit “foster parent” wherever occurring. Insert instead “authorised carer”.	28

[31] Section 73 (4)	1
Omit the subsection.	2
[32] Section 73 (5)	3
Omit “the other person”. Insert instead “the young person”.	4
[33] Section 73 (6)	5
Omit the subsection.	6
[34] Section 73A	7
Insert after section 73:	8
73A Sexual touching—young person between 16 and 18 under special care	9
(1) Any person who intentionally:	10
(a) sexually touches a young person under the person’s special care, or	11
(b) incites a young person under the person’s special care to sexually touch the person, or	12
(c) incites a young person under the person’s special care to sexually touch another person, or	14
(d) incites another person to sexually touch a young person under the first person’s special care,	16
is guilty of an offence.	17
Maximum penalty:	18
(a) in the case of a young person who is of or above the age of 16 years and under the age of 17 years—imprisonment for 4 years, or	19
(b) in the case of a young person who is of or above the age of 17 years and under the age of 18 years—imprisonment for 2 years.	20
(2) A person does not commit an offence under this section if the person and the young person to whom the charge relates were, at the time the offence is alleged to have been committed, married to each other.	21
(3) For the purposes of this section, a young person (<i>the victim</i>) is under the special care of another person (<i>the offender</i>) if, and only if:	22
(a) the offender is the parent, grandparent, step-parent, guardian or authorised carer of the victim or the de facto partner of a parent, guardian or authorised carer of the victim, or	23
(b) the offender is a member of the teaching staff of the school at which the victim is a student, or	24
(c) the offender has an established personal relationship with the victim in connection with the provision of religious, sporting, musical or other instruction to the victim, or	25
(d) the offender is a custodial officer of an institution of which the victim is an inmate, or	26
(e) the offender is a health professional and the victim is a patient of the health professional.	27
	28
	29
	30
	31
	32
	33
	34
	35
	36
	37
	38
	39
	40

[35] Part 3, Division 10, Subdivision 12, heading	1
Insert before section 78A:	2
Subdivision 12 Incest	3
[36] Part 3, Division 10, Subdivision 13, heading	4
Insert before section 79:	5
Subdivision 13 Bestiality	6
[37] Part 3, Division 10, Subdivision 14, heading	7
Insert before section 80A:	8
Subdivision 14 Sexual assault by forced self-manipulation	9
[38] Part 3, Division 10, Subdivision 15, heading	10
Insert after section 80A:	11
Subdivision 15 Miscellaneous	12
[39] Section 80AB Alternative verdicts (as renumbered by item [9])	13
Omit “61M or 61O” from section 80AB (1). Insert instead “61KD or 61KF”.	14
[40] Section 80AB (1)	15
Omit “61L or 61N”. Insert instead “61KC or 61KE”.	16
[41] Section 80AB (6)	17
Omit “section 61O (2A)”. Insert instead “section 66DF”.	18
[42] Section 80AB (6)	19
Omit “section 61O (2) or 61N”. Insert instead “section 66DC or 66DD”.	20
[43] Section 80AE Consent no defence in certain cases (as renumbered by item [9])	21
Insert “, 66DA, 66DB, 66DC, 66DD, 66DE, 66DF” after “66D”.	22
[44] Section 80AE (as renumbered by item [9])	23
Insert “66EC,” after “66EB,”.	24
[45] Section 80AE (as renumbered by item [9])	25
Insert “73A,” after “73,”.	26
[46] Sections 80AF and 80AG	27
Insert after section 80AE (as renumbered by item [9]):	28
80AF Uncertainty about time when sexual offence against child occurred	29
(1) This section applies if:	30
(a) it is uncertain as to when during a period conduct is alleged to have occurred, and	31 32
(b) the victim of the alleged conduct was for the whole of that period a child, and	33 34

(c)	there was no time during that period that the alleged conduct, if proven, would not have constituted a sexual offence, and	1 2
(d)	because of a change in the law or a change in the age of the child during that period, the alleged conduct, if proven, would have constituted more than one sexual offence during that period.	3 4 5
(2)	In such a case, a person may be prosecuted in respect of the conduct under whichever of those sexual offences has the lesser maximum penalty regardless of when during that period the conduct actually occurred, and in prosecuting that offence:	6 7 8 9
(a)	any requirement to establish that the offence charged was in force is satisfied if the prosecution can establish that the offence was in force at some time during that period, and	10 11 12
(b)	any requirement to establish that the victim was of a particular age is satisfied if the prosecution can establish that the victim was of that age at some time during that period.	13 14 15
(3)	In this section:	16
	<i>child</i> means a person who is under the age of 16 years.	17
	<i>sexual offence</i> means the following offences regardless of when the offence occurred:	18 19
(a)	an offence under a provision of this Division or Division 10A, 10B, 15 or 15A,	20 21
(b)	an offence under a provision of this Act set out in Column 1 of Schedule 1A,	22 23
(c)	an offence (whether under section 344A or otherwise) of attempting to commit any offence referred to in paragraph (a) or (b),	24 25
(d)	an offence under a previous enactment that is substantially similar to an offence referred to in paragraphs (a)–(c).	26 27
80AG	Defence of similar age	28
(1)	It is a defence to a prosecution for an offence under section 66C (3), 66DB, 66DD, 73 or 73A if the alleged victim is of or above the age of 14 years and the age difference between the alleged victim and the accused person is no more than 2 years.	29 30 31 32
(2)	In any criminal proceedings in which the application of this section is raised, the prosecution has the onus of proving, beyond reasonable doubt, that the alleged victim was less than 14 years of age or that the difference in age between the alleged victim and the accused person is more than 2 years.	33 34 35 36
[47]	Section 80G Incitement to commit sexual offence	37
	Omit section 80G (5) (a) and (b). Insert instead:	38
(a)	an offence under section 61KC, 61KD, 61KE, 61KF, 66DA, 66DB, 66DC, 66DD, 66DE, 66DF or 73A that is constituted by inciting another person to sexual touching or a sexual act within the meaning of Division 10,	39 40 41 42
(b)	an offence under section 66EB, 66EC, 78B or 80 or an offence under section 344A of attempting to commit an offence under Division 10, 10A or 15.	43 44 45
[48]	Section 91C Definitions	46
	Omit “section 61H”. Insert instead “Division 10”.	47

[49] Section 91FA Definitions	1
Insert in alphabetical order:	2
<i>young person</i> means a person who is of or above the age of 16 years and under the age of 18 years.	3 4
[50] Section 91G Children not to be used for production of child abuse material	5
Insert after section 91G (5):	6
(6) Proceedings for an offence under this section against a child or young person may only be instituted by or with the approval of the Director of Public Prosecutions.	7 8 9
[51] Section 91H Production, dissemination or possession of child abuse material	10
Insert after section 91H (2):	11
(3) Proceedings for an offence under this section against a child or young person may only be instituted by or with the approval of the Director of Public Prosecutions.	12 13 14
[52] Section 91HAA	15
Insert after section 91H:	16
91HAA Exception	17
A person does not commit an offence under section 91H of possessing child abuse material if:	18 19
(a) the possession of the material occurred when the accused person was under the age of 18 years, and	20 21
(b) a reasonable person would consider the possession of the material by the accused person as acceptable having regard to each of the following (to the extent relevant):	22 23 24
(i) the nature and content of the material,	25
(ii) the circumstances in which the material was produced and came into the possession of the accused person,	26 27
(iii) the age, intellectual capacity, vulnerability or other relevant circumstances of the child depicted in the material,	28 29
(iv) the age, intellectual capacity, vulnerability or other relevant circumstances of the accused person at the time the accused person first came into possession of the material and at the time that the accused person's possession of the material first came to the attention of a police officer,	30 31 32 33 34
(v) the relationship between the accused person and the child depicted in the material.	35 36
[53] Section 91HA Defences	37
Insert after section 91HA (8):	38
(9) Person producing, disseminating or possessing depictions of himself or herself	39 40
It is a defence in proceedings for an offence against section 91H of possessing child abuse material if the only person depicted in the material is the accused person.	41 42 43

(10)	It is a defence in proceedings for an offence against section 91H of producing or disseminating child abuse material if:	1
		2
(a)	the production or dissemination of the material occurred when the accused person was under the age of 18 years, and	3
		4
(b)	the only person depicted in the material is the accused person.	5
(11)	Material that depicts a person other than the accused person is taken, for the purposes of this section, to depict only the accused person if the material would no longer be child abuse material were the depiction of the accused person to be removed.	6
		7
		8
		9
(12)	The onus of proving under subsection (9) or (10) that material depicts the accused person and no other person lies with the accused person on the balance of probabilities.	10
		11
		12
[54]	Section 311 Definitions	13
	Insert in alphabetical order in section 311 (1):	14
	<i>adult</i> means a person who is of or above the age of 18 years.	15
[55]	Section 313 Knowledge about type of offence is unnecessary	16
	Insert “or child abuse offence (within the meaning of section 316A)” after “serious indictable offence” wherever occurring.	17
		18
[56]	Section 316 Concealing serious indictable offence	19
	Insert after section 316 (5):	20
(6)	In this section:	21
	<i>serious indictable offence</i> does not include a child abuse offence (within the meaning of section 316A).	22
		23
	Note. Concealing a child abuse offence is an offence under section 316A. A section 316A offence can only be committed by an adult.	24
		25
[57]	Section 316A	26
	Insert after section 316:	27
316A	Concealing child abuse offence	28
(1)	An adult:	29
(a)	who knows, believes or reasonably ought to know that a child abuse offence has been committed against another person, and	30
		31
(b)	who knows, believes or reasonably ought to know that he or she has information that might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for that offence, and	32
		33
		34
		35
(c)	who fails without reasonable excuse to bring that information to the attention of a member of the NSW Police Force as soon as it is practicable to do so,	36
		37
		38
	is guilty of an offence.	39
	Maximum penalty: Imprisonment for 2 years.	40
(2)	For the purposes of subsection (1), a person has a reasonable excuse for failing to bring information to the attention of a member of the NSW Police Force if:	41
		42
(a)	the person believes on reasonable grounds that the information is already known to police, or	43
		44

- (b) the person has reported the information in accordance with the applicable requirements under Part 2 of Chapter 3 of the *Children and Young Persons (Care and Protection) Act 1998* or believes on reasonable grounds that another person has done so, or
- (c) the person has reported the information to the Ombudsman under Part 3A of the *Ombudsman Act 1974* or believes on reasonable grounds that another person has done so, or
- (d) the person has reasonable grounds to fear for the safety of the person or any other person (other than the offender) if the information were to be reported to police, or
- (e) the information was obtained by the person when the person was under the age of 18 years, or
- (f) the alleged victim was an adult at the time that the information was obtained by the person and the person believes on reasonable grounds that the alleged victim does not wish the information to be reported to police.
- (3) Subsection (2) does not limit the grounds on which it may be established that a person has a reasonable excuse for failing to bring information to the attention of a member of the NSW Police Force.
- (4) A person who solicits, accepts or agrees to accept any benefit for the person or any other person in consideration for doing anything that would be an offence under subsection (1) is guilty of an offence.
Maximum penalty: Imprisonment for 5 years.
- (5) It is not an offence under subsection (4) merely to solicit, accept or agree to accept the making good of loss or injury caused by an offence or the making of reasonable compensation for that loss or injury.
- (6) A prosecution for an offence under subsection (1) is not to be commenced against a person without the approval of the Attorney General in respect of information obtained by an adult in the course of practising or following a profession, calling or vocation prescribed by the regulations for the purposes of this subsection.
- (7) The regulations may prescribe a profession, calling or vocation as referred to in subsection (6).
- (8) The reporting of information by a person in good faith under this section:
- (a) does not constitute unprofessional conduct or a breach of professional ethics on the part of the person, and
- (b) does not make the person subject to any civil liability in respect of it (including liability for defamation).
- (9) In this section:
- child** means a person who is under the age of 18 years.
- child abuse offence** means:
- (a) murder or manslaughter of a child (including under section 22A), or
- (b) an offence under section 27, 29, 33, 35, 37, 38, 38A, 39, 41, 41A, 44, 45, 45A, 46, 59, 60E, 86 or 91J or Division 10, 10A, 10B or 15 of Part 3 where the alleged victim is a child, or
- (c) an offence under section 42, 43, 43A, 91G or 91H, or
- (d) an offence under a provision of this Act set out in Column 1 of Schedule 1A where the alleged victim was a child, or

- (e) an offence of attempting to commit an offence referred to in paragraphs (a)–(d), or 1
 - (f) an offence under a previous enactment that is substantially similar to an offence referred to in paragraphs (a)–(e). 2
- obtain* includes receive or become aware of. 3
4
5

[58] Schedule 1A 6
 Insert before Schedule 2: 7

Schedule 1A Former sexual offences 8

(Sections 66EA, 80AF and 316A) 9

Column 1	Column 2
Provision of this Act	Description of offence (for guidance only as the description of the offence may have changed over time)
Section 61B	Maliciously inflicting grievous bodily harm with intent to have sexual intercourse
Section 61C	Maliciously inflicting actual bodily harm with intent to have sexual intercourse
Section 61D	Sexual intercourse without consent
Section 61E	Indecent assault and act of indecency
Section 61F	Attempted offence under section 61B, 61C, 61D or 61E
Section 61L	Indecent assault
Section 61M	Aggravated indecent assault
Section 61N	Act of indecency
Section 61O	Aggravated act of indecency
Section 61P	Attempt to commit an offence under sections 61I–61O
Section 63	Rape
Section 65	Attempted rape
Section 65A	Sexual intercourse procured by non-violent threats
Section 66	Carnal knowledge by fraud
Section 67	Carnal knowledge of a girl under 10
Section 68	Attempted carnal knowledge of a girl under 10
Section 71	Carnal knowledge of a girl between 10 and 14/Carnal knowledge of a girl between 10 and 16
Section 72	Attempted carnal knowledge of a girl between 10 and 14/Attempted carnal knowledge of a girl between 10 and 16
Section 72A	Carnal knowledge of an idiot or imbecile
Section 74	Attempted carnal knowledge of a girl between 10 and 16 by teacher etc/Attempted carnal knowledge of a girl between 10 and 17 by teacher etc
Section 76	Indecent assault of female
Section 76A	Act of indecency with or toward girl under 16 years
Section 77	Indecent assault on girl under 14

Column 1	Column 2	
Provision of this Act	Description of offence (for guidance only as the description of the offence may have changed over time)	
Section 78	Indecent assault on female above the age of 14	
Section 78H	Homosexual intercourse with male under 10	
Section 78I	Attempt, or assault with intent, to have homosexual intercourse with male under 10	
Section 78K	Homosexual intercourse with male between 10 and 18	
Section 78L	Attempt, or assault with intent, to have homosexual intercourse with male between 10 and 18	
Section 78M	Homosexual intercourse with idiot or imbecile	
Section 78N	Homosexual intercourse by teacher etc	
Section 78O	Attempt, or assault with intent, to have homosexual intercourse with pupil etc	
Section 78Q	Act of gross indecency	
Section 81	Indecent assault on a male	
Section 81A	Procuring or attempting to procure the commission of an act of indecency by a male person with another male person	
Section 81B	Soliciting or inciting an offence under section 79, 81 or 81A in a public place	
[59] Schedule 2 Application of Act		1
	Omit “and 77”. Insert instead “and 80AE”.	2
[60] Schedule 11, heading		3
	Omit “and transitional”. Insert instead “, transitional and other”.	4
[61] Schedule 11		5
	Insert at the end of the Schedule, with appropriate Part and clause numbering:	6
Part	Criminal Legislation Amendment (Child Sexual Abuse) Act 2018	7
		8
	Indecent assault now sexual touching	9
	A reference in any Act or law to indecent assault is taken to include a reference to sexual touching within the meaning of Division 10 of Part 3 of this Act.	10
		11
	Act of indecency now sexual touching and sexual act	12
	A reference in any Act or law to an act of indecency is taken to include a reference to sexual touching and sexual act within the meaning of Division 10 of Part 3 of this Act.	13
		14
		15
	Omitted provisions	16
	Sections 61L–61P, as in force immediately before their repeal by the <i>Criminal Legislation Amendment (Child Sexual Abuse) Act 2018</i> , continue to apply to offences committed or alleged to have been committed before the repeal.	17
		18
		19

Former section 61Q	1
Section 61Q, as in force immediately before its renumbering and amendment by the <i>Criminal Legislation Amendment (Child Sexual Abuse) Act 2018</i> , continues to apply in respect of offences committed before that renumbering and amendment.	2 3 4 5
Cognitive impairment—consent not a defence for indecent assault or act of indecency	6 7
Section 66F (5)–(8), as in force immediately before their substitution by the <i>Criminal Legislation Amendment (Child Sexual Abuse) Act 2018</i> , continues to apply in respect of offences committed before that substitution.	8 9 10
Retrospective operation of repeal of section 78 limitation period	11
The repeal of section 78 by the <i>Criminal Legislation (Amendment) Act 1992</i> is taken to have repealed that section retrospectively as if that section had never been enacted and consequently that section cannot be relied on to prevent any prosecution for an offence even if the offence occurred before that repeal.	12 13 14 15
Incitement to commit sexual offence	16
Section 80G (5), as in force immediately before its amendment by the <i>Criminal Legislation Amendment (Child Sexual Abuse) Act 2018</i> , continues to apply in respect of offences committed before that amendment.	17 18 19
Application of section 316A	20
Section 316A, as inserted by the <i>Criminal Legislation Amendment (Child Sexual Abuse) Act 2018</i> , applies in respect of information obtained on or after the commencement of that section, including if that information relates to a child abuse offence that occurred or may have occurred before the commencement of that section.	21 22 23 24 25

Schedule 2	Amendment of Child Protection (Offenders Registration) Act 2000 No 42	1
		2
[1] Section 3 Definitions		3
	Omit “an act of indecency” from paragraph (a1) of the definition of <i>Class 2 offence</i> in section 3 (1).	4
		5
	Insert instead “sexual touching or a sexual act”.	6
[2] Section 3 (1), definition of “Class 2 offence”		7
	Insert “or 66EC” after “66EB” in paragraph (a3).	8
[3] Section 3 (1), definition of “sexual intercourse”		9
	Omit the definition. Insert instead:	10
	<i>sexual act, sexual intercourse</i> and <i>sexual touching</i> have the same meanings as in Division 10 of Part 3 of the <i>Crimes Act 1900</i> .	11
		12
[4] Section 3 (7)		13
	Omit “an act of indecency”. Insert instead “sexual touching or a sexual act”.	14
[5] Section 3A Registrable persons		15
	Omit “an act of indecency” from section 3A (2) (c) (i).	16
	Insert instead “sexual touching or a sexual act”.	17
[6] Section 3C		18
	Insert after section 3B:	19
3C Discretion to treat child offender as non-registrable		20
(1)	A court that sentences a person for a sexual offence committed by the person when the person was a child may make an order declaring that the person is not to be treated as a registrable person for the purposes of this Act in respect of that offence.	21
		22
		23
		24
(2)	While the order remains in force, the person is not a registrable person under this Act because of that offence.	25
		26
(3)	A court may make an order under this section only if:	27
(a)	the victim of the offence was under the age of 18 years at the time that the offence was committed, and	28
		29
(b)	the person has not previously been convicted of any other Class 1 offence or Class 2 offence, and	30
		31
(c)	the court does not impose in respect of the offence:	32
(i)	a sentence of full-time detention, or	33
(ii)	a control order (unless the court also, by order, suspends the execution of the control order), and	34
		35
(d)	the court is satisfied that the person does not pose a risk to the lives or sexual safety of one or more children, or of children generally.	36
		37
(4)	This section applies only if the sexual offence concerned is a registrable offence and does not limit section 3A (2) (c) as it applies to offences committed by children.	38
		39
		40

(5)	If an order is made under this section, the order is taken, for the purpose of any provisions that enable the Crown or a prosecutor to appeal against a sentence imposed on the person, to be a part of the person’s sentence.	1 2 3
(6)	In this section: <i>control order</i> means an order under section 33 (1) (g) of the <i>Children (Criminal Proceedings) Act 1987</i> . <i>full-time detention</i> has the same meaning as in the <i>Crimes (Sentencing Procedure) Act 1999</i> . <i>sexual offence</i> means the following offences regardless of when the offence occurred:	4 5 6 7 8 9 10
(a)	an offence under a provision of Division 10, 10A, 15 or 15A of Part 3 of the <i>Crimes Act 1900</i> or under section 91J, 91K or 91L of that Act,	11 12
(b)	an offence under a provision of that Act set out in Column 1 of Schedule 1A to that Act,	13 14
(c)	an offence under section 233BAB of the <i>Customs Act 1901</i> of the Commonwealth involving items of child pornography or child abuse material,	15 16 17
(d)	an offence under Subdivision D of Division 474 of Part 10.6 of the <i>Criminal Code</i> of the Commonwealth,	18 19
(e)	an offence of attempting to commit any offence referred to in paragraphs (a)–(d),	20 21
(f)	an offence under a previous enactment that is substantially similar to an offence referred to in paragraphs (a)–(e).	22 23
[7]	Section 3H Risk to sexual safety of children—meaning Omit “Part” from section 3H (1). Insert instead “Act”.	24 25
[8]	Section 3AA Renumber section 3H as section 3AA and move to Part 1 after section 3.	26 27
[9]	Schedule 2 Savings, transitional and other provisions Insert at the end of the Schedule, with appropriate Part and clause numbering:	28 29
Part	Provisions consequent on enactment of Criminal Legislation Amendment (Child Sexual Abuse) Act 2018	30 31 32
	Sexual touching and sexual act include former acts of indecency	33
	Any references in this Act to sexual touching or sexual act are taken, in a reference to any offence occurring before the commencement of this clause, to include a reference to an act of indecency.	34 35 36
	Application of section 3C	37
	Section 3C, as inserted by the <i>Criminal Legislation Amendment (Child Sexual Abuse) Act 2018</i> , applies to sentences passed after the commencement of that section, regardless of when the offence was committed.	38 39 40

Schedule 3	Amendment of Crimes (Sentencing Procedure)	1
	Act 1999 No 92	2
[1]	Section 21A Aggravating, mitigating and other factors in sentencing	3
	Omit “61M, 61N, 61O” from paragraph (a) of the definition of <i>child sexual offence</i> in section 21A (6).	4
	Insert instead “61KC, 61KD, 61KE, 61KF”.	5
[2]	Section 21A (6), definition of “child sexual offence”	6
	Insert “66DA, 66DB, 66DC, 66DD, 66DE, 66DF,” after “66D,” in paragraph (b).	7
[3]	Section 21A (6), definition of “child sexual offence”	8
	Insert “66EC,” after “66EB,” in paragraph (b).	9
[4]	Section 21A (6), definition of “child sexual offence”	10
	Insert after paragraph (d):	11
	(d1) an offence against a provision of the <i>Crimes Act 1900</i> set out in Column 1 of Schedule 1A to that Act where the person against whom the offence was committed was then under the age of 16 years, or	12
[5]	Section 21A (6), definition of “child sexual offence”	13
	Insert at the end of paragraph (e):	14
	, or	15
	(f) an offence under a previous enactment that is substantially similar to an offence referred to in any of the above paragraphs.	16
[6]	Section 25AA	17
	Insert after section 25:	18
25AA	Sentencing for child sexual offences	19
(1)	A court must sentence an offender for a child sexual offence in accordance with the sentencing patterns and practices at the time of sentencing, not at the time of the offence.	20
(2)	However, the standard non-parole period for a child sexual offence is the standard non-parole period (if any) that applied at the time of the offence, not at the time of sentencing.	21
(3)	When sentencing an offender for a child sexual offence, a court must have regard to the trauma of sexual abuse on children as understood at the time of sentencing (which may include recent psychological research or the common experience of courts).	22
(4)	This section does not affect section 19.	23
(5)	In this section:	24
	<i>child sexual offence</i> means the following offences regardless of when the offence occurred but only if the person against whom the offence was committed was then under the age of 16 years:	25
(a)	an offence under a provision of Division 10, 10A, 10B, 15 or 15A of Part 3 of the <i>Crimes Act 1900</i> ,	26

(b)	an offence under a provision of that Act set out in Column 1 of Schedule 1A to that Act,	1 2
(c)	an offence of attempting to commit any offence referred to in paragraph (a) or (b),	3 4
(d)	an offence under a previous enactment that is substantially similar to an offence referred to in paragraphs (a)–(c).	5 6
[7]	Part 4, Division 1A, Table	7
	Omit “Section 61M (1) of the <i>Crimes Act 1900</i> (aggravated indecent assault)” from item 9A.	8 9
	Insert instead “Section 61KD (1) of the <i>Crimes Act 1900</i> (aggravated sexual touching)”.	10
[8]	Part 4, Division 1A, Table	11
	Omit “Section 61M (2) of the <i>Crimes Act 1900</i> (aggravated indecent assault)” from item 9B.	12 13
	Insert instead “Section 66DA of the <i>Crimes Act 1900</i> (sexual touching—child under 10)”.	14
[9]	Section 66 Intensive correction not available for certain sexual offences	15
	Omit “as defined by section 61H” from section 66 (2) (a) (ii).	16
	Insert instead “within the meaning of Division 10 of Part 3”.	17
[10]	Schedule 2 Savings, transitional and other provisions	18
	Insert at the end of the Schedule, with appropriate Part and clause numbering:	19
Part	Provision consequent on enactment of Criminal Legislation Amendment (Child Sexual Abuse) Act 2018	20 21 22
	Standard non-parole periods	23
	The Table to Division 1A of Part 4 of this Act, as in force immediately before its amendment by the <i>Criminal Legislation Amendment (Child Sexual Abuse) Act 2018</i> , continues to apply in respect of an offence against section 61M (1) or (2) of the <i>Crimes Act 1900</i> committed before that amendment.	24 25 26 27

Schedule 4	Amendment of Criminal Procedure Act 1986	1
	No 209	2
[1] Section 3 Definitions		3
	Insert “43B,” after “section” in paragraph (a) of the definition of <i>prescribed sexual offence</i> in section 3 (1).	4 5
[2] Section 3 (1), definition of “prescribed sexual offence”		6
	Insert “61KC, 61KD, 61KE, 61KF,” after “61K,” in paragraph (a).	7
[3] Section 3 (1), definition of “prescribed sexual offence”		8
	Insert “66DA, 66DB, 66DC, 66DD, 66DE, 66DF,” after “66D,” in paragraph (a).	9
[4] Section 3 (1), definition of “prescribed sexual offence”		10
	Insert “66EC,” after “66EB,” in paragraph (a).	11
[5] Section 3 (1), definition of “prescribed sexual offence”		12
	Insert “73A,” after “73,” in paragraph (a).	13
[6] Section 3 (1), definition of “prescribed sexual offence”		14
	Omit “or 91G” from paragraph (a). Insert instead “, 91G or 316A”.	15
[7] Section 268 Maximum penalties for Table 2 offences		16
	Insert “61KC, 61KE, 61KF,” after “61,” in section 268 (2) (a).	17
[8] Section 268 (2) (a)		18
	Insert “66DD, 66DE, 66EC, 73A,” after “or (1A),”.	19
[9] Section 293 Admissibility of evidence relating to sexual experience		20
	Omit “as defined in section 61H (1)” from section 293 (4) (c) (i).	21
	Insert instead “within the meaning of Division 10 of Part 3”.	22
[10] Section 293A		23
	Insert after section 293:	24
293A Warning may be given by Judge if differences in complainant’s account		25
(1)	This section applies if, on the trial of a person for a prescribed sexual offence, the Judge, after hearing submissions from the prosecution and the accused person, considers that there is evidence that suggests a difference in the complainant’s account that may be relevant to the complainant’s truthfulness or reliability.	26 27 28 29 30
(2)	In circumstances to which this section applies, the Judge may inform the jury:	31
(a)	that experience shows:	32
(i)	people may not remember all the details of a sexual offence or may not describe a sexual offence in the same way each time, and	33 34
(ii)	trauma may affect people differently, including affecting how they recall events, and	35 36
(iii)	it is common for there to be differences in accounts of a sexual offence, and	37 38

(iv)	both truthful and untruthful accounts of a sexual offence may contain differences, and	1 2
(b)	that it is up to the jury to decide whether or not any differences in the complainant's account are important in assessing the complainant's truthfulness and reliability.	3 4 5
(3)	In this section:	6
	<i>difference</i> in an account includes:	7
(a)	a gap in the account, and	8
(b)	an inconsistency in the account, and	9
(c)	a difference between the account and another account.	10
[11]	Section 348 Offences in respect of which an intervention program may be conducted	11
	Omit "(Offences in the nature of rape, offences relating to other acts of sexual assault etc)" from section 348 (2) (b).	12 13
	Insert instead "(Sexual offences against adults and children)".	14
[12]	Schedule 1 Indictable offences triable summarily	15
	Insert "43B," after "43A," in clause 2 of Table 1.	16
[13]	Schedule 1, Table 1, clause 2	17
	Insert "61KD," after "60E (2),".	18
[14]	Schedule 1, Table 1, clause 2	19
	Insert "66DA, 66DB, 66DC, 66DF," after "61O (2) or (2A),".	20
[15]	Schedule 1, Table 1, clause 2	21
	Omit "or 93". Insert instead ", 93 or 316A".	22
[16]	Schedule 1, Table 2, clause 1	23
	Insert "61KC, 61KE, 61KF," after "61,".	24
[17]	Schedule 1, Table 2, clause 1	25
	Insert "66DD, 66DE, 66EC, 73A," after "61O (1) or (1A),".	26
[18]	Schedule 2 Savings, transitional and other provisions	27
	Insert at the end of the Schedule, with appropriate Part and clause numbering:	28
Part	Provisions consequent on enactment of Criminal Legislation Amendment (Child Sexual Abuse) Act 2018	29 30 31
	Indictment for indecent assault	32
	Clause 14 of Schedule 3, as in force immediately before its substitution by the <i>Criminal Legislation Amendment (Child Sexual Abuse) Act 2018</i> , continues to apply in respect of an offence committed before that substitution.	33 34 35

[19] Schedule 3 Provisions relating to offences	1
Omit clause 14. Insert instead:	2
14 Sexual touching	3
In an indictment for an offence of sexual touching, it is sufficient to state that the accused person (at a specified time and place) committed an offence of sexual touching in relation to the person alleged to have been the victim of the offence, without stating the mode of touching.	4 5 6 7

Schedule 5	Amendments to other legislation	1
5.1	Aboriginal Land Rights Act 1983 No 42	2
	Section 79 Certain persons must not be employed	3
	Insert “or 66EC” after “66EB” in section 79 (1B) (b).	4
5.2	Child Protection (Working with Children) Act 2012 No 51	5
[1]	Section 26 Persons not entitled to apply for review or enabling order	6
	Insert “61KC, 61KD, 61KE, 61KF,” after “61K,” in section 26 (1) (a) (ii).	7
[2]	Section 26 (1) (a) (iv)	8
	Insert “66DA, 66DB, 66DC, 66DD, 66DE, 66DF,” after “66D,”.	9
[3]	Section 26 (1) (a) (iv)	10
	Omit “or 66EB”. Insert instead “, 66EB or 66EC”.	11
[4]	Section 26 (1) (a) (v)	12
	Insert “73A,” after “73,”.	13
[5]	Schedule 1 Assessment requirement triggers	14
	Omit “60E” from clause 1 (2) (e). Insert instead “43B, 60E or 316A”.	15
[6]	Schedule 2 Disqualifying offences	16
	Insert “61KC, 61KD, 61KE, 61KF,” after “61K,” in clause 1 (1) (e).	17
[7]	Schedule 2, clause 1 (1) (h)	18
	Insert “66DA, 66DB, 66DC, 66DD, 66DE, 66DF,” after “66D,”.	19
[8]	Schedule 2, clause 1 (1) (h)	20
	Insert “66EC,” after “66EB,”.	21
[9]	Schedule 2, clause 1 (1) (h)	22
	Omit “or 73”. Insert instead “, 73 or 73A”.	23
5.3	Court Suppression and Non-publication Orders Act 2010 No 106	24
	Section 8 Grounds for making an order	25
	Omit “an act of indecency” from section 8 (1) (d).	26
	Insert instead “sexual touching or a sexual act within the meaning of Division 10 of Part 3 of the <i>Crimes Act 1900</i> ”.	27
		28
5.4	Crimes (Domestic and Personal Violence) Act 2007 No 80	29
[1]	Section 4 Meaning of “personal violence offence”	30
	Insert “61KC, 61KD, 61KE, 61KF,” after “61K,” in section 4 (a).	31
[2]	Section 4 (a)	32
	Insert “66DA, 66DB, 66DC, 66DD, 66DE, 66DF,” after “66D,”.	33

[3] Section 4 (a)	1
Insert “73A,” after “73,”.	2
[4] Section 40 Interim apprehended violence order must be made on charge for certain offences	3
Insert “61KC, 61KD,” after “61K,” in section 40 (5) (c).	4
[5] Section 40 (5) (c)	5
Insert “66DA, 66DB,” after “66D,”.	6
5.5 Crimes Regulation 2015	7
[1] Clause 4 Concealment of offences by certain persons	8
Omit “section 316 (5)”. Insert instead “sections 316 (5) and 316A (7)”.	9
[2] Clause 4 (h)	10
Omit “if the serious indictable offence referred to in section 316 (1)”.	11
Insert instead “if the child abuse offence referred to in section 316A (1)”.	12
5.6 Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017 No 53	13
Schedule 1 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92—principal amendments	14
Omit “as defined by section 61H” from paragraph (a) (ii) of the definition of <i>prescribed sexual offence</i> in proposed section 67 (2) in Schedule 1 [29].	15
Insert instead “within the meaning of Division 10 of Part 3”.	16
5.7 Electoral Act 2017 No 66	17
[1] Section 94 Definitions	18
Omit “acts of indecency” from the definition of <i>relevant apprehended violence order</i> in section 94 (1).	19
Insert instead “sexual touching or a sexual act within the meaning of Division 10 of Part 3 of the <i>Crimes Act 1900</i> ”.	20
[2] Schedule 7 Savings, transitional and other provisions	21
Insert after Part 2:	22
Part 3 Provision consequent on enactment of Criminal Legislation Amendment (Child Sexual Abuse) Act 2018	23
13 Sexual touching and sexual act include former acts of indecency	24
The reference in the definition of <i>relevant apprehended violence order</i> in section 94 (1) to sexual touching or a sexual act is taken, in a reference to any order made before the amendment of that definition by the <i>Criminal Legislation Amendment (Child Sexual Abuse) Act 2018</i> , to include a reference to an act of indecency.	25
	26
	27
	28
	29
	30
	31
	32
	33
	34
	35
	36
	37

5.8 Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86	1 2
[1] Schedule 1 Modification of Health Practitioner Regulation National Law	3
Omit “acts of indecency” from paragraph (b) of the definition of <i>sex or violence offence</i> in section 138 (1) in item [13].	4 5
Insert instead “sexual touching or sexual acts within the meaning of Division 10 of Part 3 of the <i>Crimes Act 1900</i> ”.	6 7
[2] Schedule 1 [25], Schedule 5A	8
Insert at the end of the Schedule, with appropriate Part and clause numbering:	9
Part Provision consequent on enactment of Criminal Legislation Amendment (Child Sexual Abuse) Act 2018	10 11 12
Sexual touching and sexual act include former acts of indecency	13
The reference in paragraph (b) of the definition of <i>sex or violence offence</i> in section 138 (1) to sexual touching or sexual acts is taken, in a reference to an offence committed before the amendment of that definition by the <i>Criminal Legislation Amendment (Child Sexual Abuse) Act 2018</i> , to include a reference to acts of indecency.	14 15 16 17 18
5.9 Health Services Act 1997 No 154	19
[1] Section 99 Duty to report certain criminal and disciplinary matters	20
Omit “acts of indecency” from the note to section 99 (1).	21
Insert instead “sexual touching or a sexual act”.	22
[2] Section 103 Appeal rights	23
Omit “acts of indecency” from section 103 (2) (a).	24
Insert instead “sexual touching or a sexual act”.	25
[3] Section 106 Right of appeal to Minister	26
Omit “acts of indecency” from section 106 (2) (c) (ii).	27
Insert instead “sexual touching or a sexual act”.	28
[4] Section 117 Duty to report certain criminal conduct and disciplinary matters	29
Omit “acts of indecency” from the note to section 117 (1).	30
Insert instead “sexual touching or a sexual act”.	31

[5] Schedule 7 Savings, transitional and other provisions	1
Insert at the end of the Schedule, with appropriate Part and clause numbering:	2
Part Provision consequent on enactment of Criminal Legislation Amendment (Child Sexual Abuse) Act 2018	3
	4
	5
Sexual touching and sexual act include former acts of indecency	6
Any references in this Act to sexual touching or sexual act are taken, in a reference to any offence occurring before the commencement of this clause, to include a reference to an act of indecency.	7
	8
	9
[6] Dictionary	10
Omit “acts of indecency” from the definition of <i>serious sex or violence offence</i> in Part 1.	11
Insert instead “sexual touching or a sexual act”.	12
[7] Dictionary, Part 1	13
Insert in alphabetical order:	14
<i>sexual touching</i> and <i>sexual act</i> have the same meanings as in Division 10 of Part 3 of the <i>Crimes Act 1900</i> .	15
	16
5.10 Industrial Relations Act 1996 No 17	17
Section 72AB Definitions	18
Omit “sexual or indecent assault” from the definition of <i>violent crime</i> in section 72AB (1).	19
Insert instead “sexual assault or sexual touching”.	20
5.11 Law Enforcement (Powers and Responsibilities) Act 2002 No 103	21
Section 46A Searchable offences	22
Omit “(Offences in the nature of rape, offences relating to other acts of sexual assault etc)” from paragraph (b) of the definition of <i>serious offence</i> in section 46A (2).	23
	24
Insert instead “(Sexual offences against adults and children)”.	25
5.12 Ombudsman Act 1974 No 68	26
[1] Section 25A Definitions	27
Insert at the end of paragraph (c) where firstly occurring of the definition of <i>reportable conduct</i> in section 25A (1)”:	28
	29
or	30
(d) any offence under section 43B or 316A of the <i>Crimes Act 1900</i> ,	31
[2] Section 25A, definition of “reportable conduct”	32
Insert “concerned” after “the child”.	33

5.13 Parliamentary Electorates and Elections Act 1912 No 41	1
[1] Section 81K Definitions	2
Omit “acts of indecency” wherever occurring in paragraphs (a) and (b) of the definition of <i>child sexual offence</i> in section 81K (1).	3 4
Insert instead “sexual touching or a sexual act”.	5
[2] Section 81K (1), definition of “relevant apprehended violence order”	6
Omit “acts of indecency”. Insert instead “sexual touching or a sexual act”.	7
[3] Section 81K (1), definitions of “sexual touching” and “sexual act”	8
Insert in alphabetical order:	9
<i>sexual touching</i> and <i>sexual act</i> have the same meanings as in Division 10 of Part 3 of the <i>Crimes Act 1900</i> .	10 11
[4] Section 81K (3)	12
Omit “an act of indecency”. Insert instead “sexual touching or a sexual act”.	13
[5] Schedule 22 Savings, transitional and other provisions	14
Insert at the end of the Schedule, with appropriate Part and clause numbering:	15
Part Provision consequent on enactment of Criminal Legislation Amendment (Child Sexual Abuse) Act 2018	16 17 18
Sexual touching and sexual act include former acts of indecency	19
References in section 81K to sexual touching or a sexual act are taken, in a reference to any offence occurring or order made before the amendment of that section by the <i>Criminal Legislation Amendment (Child Sexual Abuse) Act 2018</i> , to include a reference to an act of indecency.	20 21 22 23
5.14 Summary Offences Act 1988 No 25	24
[1] Section 3 Definitions	25
Omit “as defined in section 61H” from paragraph (a) of the definition of <i>prostitution</i> in section 3 (1).	26 27
Insert instead “within the meaning of Division 10 of Part 3”.	28
[2] Section 11G Loitering by convicted child sexual offenders near premises frequented by children	29 30
Omit “acts of indecency” from paragraph (a) of the definition of <i>convicted child sexual offender</i> in section 11G (2).	31 32
Insert instead “sexual touching or a sexual act (within the meaning of Division 10 of Part 3 of the <i>Crimes Act 1900</i>)”.	33 34
[3] Section 20 Public acts of prostitution	35
Omit “as defined in section 61H” from paragraph (a) of the definition of <i>act of prostitution</i> in section 20 (5).	36 37
Insert instead “within the meaning of Division 10 of Part 3”.	38

[4] Schedule 2 Savings and transitional provisions	1
Insert after clause 2:	2
3 Provision consequent on enactment of Criminal Legislation Amendment (Child Sexual Abuse) Act 2018	3
The reference in paragraph (a) of the definition of <i>convicted child sexual offender</i> in section 11G (2) to sexual touching or a sexual act is taken, in a reference to any offence occurring before the amendment of that paragraph by the <i>Criminal Legislation Amendment (Child Sexual Abuse) Act 2018</i> , to include a reference to an act of indecency.	4
	5
	6
	7
	8
	9
5.15 Victims Rights and Support Act 2013 No 37	10
[1] Section 19 Meaning of “act of violence”	11
Omit “section 61H” wherever occurring in paragraphs (a) and (b) of the definition of <i>sexual assault and domestic violence</i> in section 19 (8).	12
Insert instead “Division 10 of Part 3”.	13
	14
[2] Section 19 (8), definition of “sexual assault and domestic violence”	15
Omit “that section” from paragraph (b). Insert instead “that Division”.	16
[3] Section 19 (8), definition of “sexual assault and domestic violence”	17
Omit paragraph (d). Insert instead:	18
(d) sexual touching (within the meaning of Division 10 of Part 3 of the <i>Crimes Act 1900</i>) of a person without his or her consent or sexual touching of a child under the age of 16 years or the carrying out of a sexual act (within the meaning of that Division) with or towards a child under the age of 16 years,	19
	20
	21
	22
	23
[4] Section 34 Definitions	24
Omit the definition of <i>indecent assault</i> . Insert in alphabetical order:	25
<i>sexual touching or sexual act</i> means sexual touching (within the meaning of Division 10 of Part 3 of the <i>Crimes Act 1900</i>) of a person without his or her consent or sexual touching of a child under the age of 16 years or the carrying out of a sexual act (within the meaning of that Division) with or towards a child under the age of 16 years.	26
	27
	28
	29
	30
[5] Section 35 Categories of recognition payment	31
Omit “indecent assault” from section 35 (2) (b).	32
Insert instead “sexual touching or sexual act”.	33

[6] Section 35 (4) (a)

1

Omit the paragraph. Insert instead:

2

(a) sexual touching or sexual act,

3