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consultation draft

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NOTE: THIS BILL DOES NOT REPRESENT GOVERNMENT POLICY, BUT HAS BEEN PREPARED FOR CONSULTATION ONLY.



New South Wales

# Crimes Amendment (Intellectual Impairment—Sexual Offences) Bill 2007

No. , 2007

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## A Bill for

An Act to amend the *Crimes Act 1900* with respect to offences of a sexual nature committed against intellectually impaired persons; and for other purposes.

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Clause 1            Crimes Amendment (Intellectual Impairment—Sexual Offences) Bill 2007

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Crimes Amendment (Intellectual Impairment—Sexual Offences) Act 2007*.

**2 Commencement**

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

**3 Amendment of Crimes Act 1900 No 40**

The *Crimes Act 1900* is amended as set out in Schedule 1.

**4 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of the Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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Crimes Amendment (Intellectual Impairment—Sexual Offences) Bill 2007

Amendment of Crimes Act 1900

Schedule 1

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## Schedule 1 Amendment of Crimes Act 1900

(Section 3)

**[1] Section 61H Definition of “sexual intercourse” and other terms**

Omit “or 61O” from section 61H (3). Insert instead “, 61O or 66F (6) and (7)”.

**[2] Sections 61J (2) (g), 61M (3) (e), 61O (3) (d), 66C (5) (f), 80A (1), paragraph (g) of the definition of “circumstances of aggravation” and 80C (b)**

Omit “serious intellectual disability” wherever occurring.

Insert instead “serious intellectual impairment”.

**[3] Section 66F**

Omit the section. Insert instead:

**66F Sexual intercourse and other sexual acts—intellectual impairment**

**(1) Definitions**

For the purposes of this section, a person is *intellectually impaired* if the person has:

- (a) an appreciably below average general intellectual function, or
- (b) a cognitive impairment (including dementia or autism) arising from, or as a result of, a brain acquired injury, neurological disorder or a developmental disorder, or
- (c) any other intellectual disability,

that results in the person requiring supervision or assistance in connection with daily life activities.

- (2) For the purposes of this section, *special care facility or program* means a facility or program providing services to intellectually impaired persons, whether or not the services are provided voluntarily or for fee or reward, and includes any such services provided at a person’s home.

**(3) Sexual intercourse—carers of intellectually impaired persons**

A person (*the offender*) who has sexual intercourse with an intellectually impaired person who is (whether generally or at the time of the sexual intercourse only) being cared for by the offender in connection with a special care facility or program is guilty of an offence.

Maximum penalty: imprisonment for 10 years.

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Crimes Amendment (Intellectual Impairment—Sexual Offences) Bill 2007

Schedule 1      Amendment of Crimes Act 1900

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(4) **Sexual intercourse—persons taking advantage of intellectually impaired persons**

A person who has sexual intercourse with an intellectually impaired person, with the intention of taking advantage of the intellectually impaired person's vulnerability to sexual exploitation, is guilty of an offence.

Maximum penalty: imprisonment for 8 years.

(5) **Indecent assault—carers of intellectually impaired persons**

A person (*the offender*) who assaults an intellectually impaired person and, at the time of, or immediately before or after, the assault, commits an act of indecency on or in the presence of the intellectually impaired person who is (whether generally or at the time of the assault only) being cared for by the offender in connection with a special care facility or program is guilty of an offence.

Maximum penalty: imprisonment for 6 years.

(6) **Indecent assault—persons taking advantage of intellectually impaired persons**

A person who assaults an intellectually impaired person and, at the time of, or immediately before or after, the assault, commits an act of indecency on or in the presence of the intellectually impaired person, with the intention of taking advantage of the intellectually impaired person's vulnerability to sexual exploitation, is guilty of an offence.

Maximum penalty: imprisonment for 4 years.

(7) **Acts of indecency—carers of intellectually impaired persons**

A person (*the offender*) who commits an act of indecency with or towards an intellectually impaired person, or incites an intellectually impaired person to an act of indecency with or towards the offender or another person, is, if the intellectually impaired person is (whether generally or at the time the act occurs only) being cared for by the offender in connection with a special care facility or program is guilty of an offence.

Maximum penalty: imprisonment for 2 years.

(8) **Acts of indecency—persons taking advantage of intellectually impaired persons**

A person (*the offender*) who commits an act of indecency with or towards an intellectually impaired person, or incites an intellectually impaired person to an act of indecency with or towards the offender or another person, with the intention of

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Crimes Amendment (Intellectual Impairment—Sexual Offences) Bill 2007

Amendment of Crimes Act 1900

Schedule 1

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taking advantage of the intellectually impaired person's vulnerability to sexual exploitation, is guilty of an offence.

Maximum penalty: imprisonment for 18 months.

(9) **Defences**

A person does not commit an offence under this section on, with or towards another person unless the person knows that the other person is intellectually impaired.

- (10) It is a defence to any charge for an offence under this section that the act concerned was carried out for any necessary medical or hygienic purpose.

(11) **Attempts**

A person who attempts to commit an offence under this section on, with or towards an intellectually impaired person is liable to the penalty provided for the commission of the offence.

(12) **Approval for prosecution**

A prosecution for an offence under this section may not be commenced without the approval of the Attorney General.

**[4] Eleventh Schedule Savings and transitional provisions**

Insert at the end of the Schedule with appropriate Part and clause number:

**Part Crimes Amendment (Intellectual Impairment—Sexual Offences) Act 2007**

**Amendments**

The amendments made to this Act by the *Crimes Amendment (Intellectual Impairment—Sexual Offences) Act 2007* do not extend to any proceedings commenced before the commencement of the amendments and any such proceedings are to be dealt with as if that Act had not been enacted.