



New South Wales

Crimes Amendment (Female Genital Mutilation) Bill 2014

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to increase (from 7 years imprisonment to 21 years imprisonment) the maximum penalty for the offence of performing an act of female genital mutilation, or aiding, abetting, counselling or procuring a person to perform such an act, and
- (b) to create a separate offence (with a maximum penalty of 21 years imprisonment) if a person takes, or arranges for the taking of, another person from the State with the intention of having female genital mutilation performed on the other person.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Crimes Act 1900 No 40

Schedule 1 [1] inserts proposed section 10F (3) into the Act to provide that the necessary geographical nexus exists between the State and a female genital mutilation offence, if the person against whom the offence is committed is ordinarily resident in NSW, to enable a prosecution in NSW of those offences even if the offence is committed outside NSW.

Schedule 1 [2] amends section 45 (1) of the Act to increase, from 7 years imprisonment to 21 years imprisonment, the maximum penalty for an offence committed against that section.

Schedule 1 [3] makes a consequential amendment to section 45 of the Act to omit section 45 (2). Section 45 (2) is re-enacted under proposed section 10F (3).

Schedule 1 [4] inserts proposed section 45A into the Act to create a separate offence of taking a person from the State, or arranging for a person to be taken from the State, with the intention of having female genital mutilation performed on the person. The proposed section includes an evidentiary provision in relation to proceedings for the offence to the effect that, in the absence of proof to the contrary, the accused is presumed to have acted with the intention of having female genital mutilation performed on a person if the accused took, or arranged for the taking of, the person from the State and the mutilation was performed on the person while outside the State. The proposed section provides that it is not a defence to a charge under the section that the person taken from the State consented to being so taken.

Schedule 2 Amendment of Child Protection (Working with Children) Act 2012 No 51

Schedule 2 amends the *Child Protection (Working with Children) Act 2012* to provide that it is a trigger for an assessment requirement under that Act in relation to a person if proceedings have been commenced against the person for an offence against proposed section 45A of the *Crimes Act 1900*, whatever the outcome of the proceedings.



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New South Wales

Crimes Amendment (Female Genital Mutilation) Bill 2014

No. , 2014

A Bill for

An Act to amend the *Crimes Act 1900* to make further provision for offences relating to female genital mutilation; and for related purposes.

The Legislature of New South Wales enacts:

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1 Name of Act

2

This Act is the *Crimes Amendment (Female Genital Mutilation) Act 2014*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Crimes Act 1900 No 40	1
[1]	Section 10F Special provisions with respect to geographical jurisdiction	2
	Insert after section 10F (2):	3
	(3) The necessary geographical nexus exists between the State and an offence against section 45 or 45A if the person against whom the offence is committed is a person ordinarily resident in the State.	4 5 6
[2]	Section 45 Prohibition of female genital mutilation	7
	Omit “7 years” from section 45 (1). Insert instead “21 years”.	8
[3]	Section 45 (2)	9
	Omit the subsection.	10
[4]	Section 45A	11
	Insert after section 45:	12
45A	Removing person from State for female genital mutilation	13
	(1) A person is guilty of an offence if the person takes another person from the State, or arranges for another person to be taken from the State, with the intention of having female genital mutilation performed on the other person. Maximum penalty: imprisonment for 21 years.	14 15 16 17
	(2) In proceedings for an offence under subsection (1) and in the absence of proof to the contrary, it is to be presumed that the accused took another person, or arranged for another person to be taken, from the State with the intention of female genital mutilation being performed on the other person if it is proved that:	18 19 20 21 22
	(a) the accused took the person, or arranged for the person to be taken, from the State, and	23 24
	(b) female genital mutilation was performed on the person while outside the State.	25 26
	(3) It is not a defence to a charge under this section that the person taken from the State consented to being so taken.	27 28
	(4) In this section:	29
	<i>female genital mutilation</i> means an act referred to in section 45 (1) (a), the performance of which would be an offence against that section if performed in the State.	30 31 32

Schedule 2	Amendment of Child Protection (Working with Children) Act 2012 No 51	1
		2
Schedule 1 Assessment requirement triggers		3
Insert “or 45A” after “section 45” in clause 1 (2) (d) of Schedule 1.		4