

Act No. 184

**CRIMES (PERSONAL AND FAMILY VIOLENCE)
AMENDMENT BILL 1987**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:

Bail (Personal and Family Violence) Amendment Bill 1987;

Children (Care and Protection) (Personal and Family Violence) Amendment Bill 1987.

The object of this Bill is to amend the Crimes Act 1900 to further protect the victims of personal and family violence. The Bill—

- (a) extends the availability of apprehended domestic violence orders and seeks to improve the protection afforded by those orders;
- (b) increases the penalties for sexual assault offences (in particular for sexual assault offences committed in company) and extends sexual assault offences in relation to threatening, intimidatory or coercive conduct and in relation to persons with intellectual disabilities; and
- (c) makes certain changes to criminal procedure, in particular—
 - (i) to require a young child victim's evidence in personal (including sexual) assault offences to be given by means of closed-circuit television facilities and in certain other cases by means of specially prescribed alternative arrangements; and
 - (ii) to prevent the publication (except in specified circumstances) of the identity of the victim of sexual assault offences.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Principal Act.

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SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED DOMESTIC VIOLENCE ORDERS

Schedule 1 (1)–(4) contain consequential amendments.

Schedule 1 (5) and (6) substitute existing section 547AA of the Principal Act relating to apprehended domestic violence orders and replace it with a new Part XVA of the Principal Act. The new Part—

- (a) extends the availability of apprehended domestic violence orders (which are at present restricted to spouses and de-facto partners) to persons who share a common household (otherwise than merely as tenants or boarders), are related by blood or marriage or have an intimate personal relationship;
- (b) provides that complaints for those orders are to be made by police officers if they are to protect a child;
- (c) removes the 6 months' time limit on the duration of those orders;
- (d) enables a court to restrict or prohibit the possession of firearms by those orders;
- (e) restricts the award of costs against complainants in proceedings for those orders;
- (f) enables the District Court to make those orders in any case where a Magistrate has refused to do so;
- (g) enables the making of interim orders in the absence of and without notice to the defendant; and
- (h) clarifies the circumstances in which proceedings for those orders should be commenced by a warrant for the arrest of the defendant.

SCHEDULE 2—AMENDMENTS RELATING TO OFFENCES

Schedule 2 (1) contains consequential amendments.

Schedule 2 (2), (3) (b) and (c), (4) and (5) create separate offences (with an additional 2 years penalty) in respect of various categories of sexual assault offences for an offence committed in the company of 1 or more other persons. For example, the maximum penalty will be—

- (a) 14 years for committing in company the category 2 sexual assault offence of inflicting actual bodily harm etc. with intent to have sexual intercourse;
- (b) 10 years for committing in company the category 3 sexual assault offence of sexual intercourse without consent (or 12 years if the victim is a child under the age of 16 years or 14 years if the child is under the authority of the accused person); and
- (c) 6 years for committing in company the category 4 sexual assault offence of indecent assault (or 8 years if the victim is a child under the age of 16 years and under the authority of the accused person).

Schedule 2 (3) (a) increases the maximum basic penalty for the category 3 sexual assault offence of sexual intercourse without consent from 7 years to 8 years (higher penalties apply at present for offences committed in specified aggravated circumstances).

Schedule 2 (6) creates a new category of sexual assault offence, namely, sexual intercourse to which a person submits as a result of non-violent threatening conduct (including intimidatory or coercive conduct), but only where the person could not in the circumstances be reasonably expected to resist the threat. The maximum penalty is 6 years.

Schedule 2 (7), (8) and (10) replace the existing offences of having sexual intercourse with idiots or imbeciles with new offences. Under the new provisions—

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- (a) the expressions “idiots” and “imbeciles” have been replaced by the specially defined expression of persons who have an “intellectual disability”;
- (b) an offence has been created (maximum penalty 10 years) to deal with certain persons in authority who have sexual intercourse with intellectually disabled persons under their care or control; and
- (c) the offence of having sexual intercourse with an intellectually disabled person (maximum basic penalty 8 years) applies only where the offender intended to take advantage of the disabled person’s vulnerability to sexual exploitation.

Schedule 2 (9) and (11) contain consequential amendments.

SCHEDULE 3—AMENDMENTS RELATING TO PROCEDURE

Schedule 3 (1) transfers to the general definition section from various sections in the Principal Act the definitions of “prescribed sexual offence” and “prescribed sexual offence proceedings”. The substituted definitions include reference to the new sexual assault offences inserted by Schedule 2 and also certain additional offences such as breaking into premises with intent to commit a sexual assault offence.

Schedule 3 (2) extends the power of a court to hear certain sexual assault offences in camera to all prescribed sexual offences referred to in Schedule 3 (1). It also provides that the court will, in deciding whether a hearing is to be held in camera, consider the needs of any victim of the offence instead of only (as at present) the needs of any child victim.

Schedule 3 (3) is consequential on the amendment made by Schedule 3 (2).

Schedule 3 (4), (5), (7), (8) and (9) make amendments as a consequence of the transfer of the definitions of “prescribed sexual offence” and “prescribed sexual offence proceedings” to the general definition section. The various procedural reforms contained in the sections amended will now apply to the extended category of sexual offences referred to in Schedule 3 (1).

Schedule 3 (6) inserts proposed sections 405D and 405E into the Principal Act.

Proposed section 405D requires the use of closed-circuit television facilities when a child under 10 years of age gives evidence if the child is the victim of a personal assault (including a sexual assault) offence.

Proposed section 405E requires the use of alternative arrangements (prescribed by the Attorney General for individual courts) when a child under 16 years of age gives evidence if the child is the victim of a personal assault (including a sexual assault) offence. The alternative arrangements may involve seating arrangements or adjournment to more suitable premises. If the child is under 10 years of age and closed-circuit television facilities are available, those facilities must be used.

Section 3 (10) ensures that the prohibition of publication of evidence by court order under section 578 of the Principal Act applies to committal proceedings.

Section 3 (11) makes it an offence, except in certain circumstances, to publish any matter which identifies the victim of a prescribed sexual offence referred to in Schedule 3 (1).

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Schedule 3 (12) ensures that section 77A of the Principal Act (as proposed to be amended by Schedule 3 (2)) applies to all courts, including courts hearing committal proceedings.
