

Passed by both Houses



New South Wales

Crimes Amendment (Sexual Offences) Bill 2003

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2003*



New South Wales

Crimes Amendment (Sexual Offences) Bill 2003

Act No , 2003

An Act to amend the *Crimes Act 1900* to provide for the equal treatment of sexual offences against males and females and to increase the penalties for sexual offences against children; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Sexual Offences) Act 2003*.

2 Commencement

This Act commences on a day 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 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Crimes Act 1900

(Section 3)

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

Omit “sections 61H–66F” from section 61H (1) and (2) wherever occurring.

Insert instead “this Division”.

[2] Section 61Q Alternative verdicts

Omit “66C (1) or 66C (2)” from section 61Q (2).

Insert instead “66C (3) or 66C (4)”.

[3] Section 61Q (3)

Omit “, 66C (1) or 66C (2)”. Insert instead “or 66C”.

[4] Section 61R Consent

Insert “(or any other mistaken belief about the nature of the act induced by fraudulent means)” after “purposes” in section 61R (2) (a1).

[5] Section 62 Carnal knowledge—proof

Omit the section.

[6] Section 63 Common law offences of rape and attempted rape abolished

Insert at the end of the section:

- (2) Parts 1 and 19 of the Eleventh Schedule make provision with respect to rape and other former sexual offences.

[7] Sections 64, 69, 70, 78E and 78T

Omit the sections and insert them, as clauses numbered 51, 52, 53, 54 and 55, after clause 50 in Part 19 of the Eleventh Schedule (as inserted by this Act).

[8] Section 66 Procuring etc carnal knowledge by fraud

Omit the section.

[9] Section 66C

Omit the section. Insert instead:

66C Sexual intercourse—child between 10 and 16

(1) Child between 10 and 14

Any person who has sexual intercourse with another person who is of or above the age of 10 years and under the age of 14 years is liable to imprisonment for 16 years.

(2) Child between 10 and 14—aggravated offence

Any person who has sexual intercourse with another person who is of or above the age of 10 years and under the age of 14 years in circumstances of aggravation is liable to imprisonment for 20 years.

(3) Child between 14 and 16

Any person who has sexual intercourse with another person who is of or above the age of 14 years and under the age of 16 years is liable to imprisonment for 10 years.

(4) Child between 14 and 16—aggravated offence

Any person who has sexual intercourse with another person who is of or above the age of 14 years and under the age of 16 years in circumstances of aggravation is liable to imprisonment for 12 years.

(5) In this section, *circumstances of aggravation* means circumstances in which:

- (a) at the time of, or immediately before or after, the commission of the offence, the alleged offender maliciously inflicts actual bodily harm on the alleged victim or any other person who is present or nearby, or
- (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 the alleged victim or any other person who is present or nearby by means of an offensive weapon or instrument, or
- (c) the alleged offender is in the company of another person or persons, or

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- (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
 - (e) the alleged victim has a serious physical disability, or
 - (f) the alleged victim has a serious intellectual disability, or
 - (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.

[10] Section 66E Alternative verdicts

Omit “16 years” from section 66E (1) (a). Insert instead “14 years”.

[11] Section 66E (1A) and (1B)

Insert after section 66E (1):

- (1A) Where on the trial of a person for an offence under section 66C (2) or 66C (4) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 66C (1) or 66C (3), it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly.
- (1B) Where on the trial of a person for an offence under section 66C (1) or 66C (2) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 66C (3) or 66C (4), it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly.

[12] Section 73

Omit sections 73–75. Insert instead:

73 Sexual intercourse with child between 16 and 18 under special care

- (1) Any person who has sexual intercourse with another person who:
 - (a) is under his or her special care, and

- (b) is of or above the age of 16 years and under the age of 17 years,
is liable to imprisonment for 8 years.
- (2) Any person who has sexual intercourse with another person who:
 - (a) is under his or her special care, and
 - (b) is of or above the age of 17 years and under the age of 18 years,
is liable to imprisonment for 4 years.
- (3) For the purposes of this section, a person (*the victim*) is under the special care of another person (*the offender*) if, and only if:
 - (a) the offender is the step-parent, guardian or foster parent of the victim, or
 - (b) the offender is a school teacher and the victim is a pupil of the offender, or
 - (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
 - (d) the offender is a custodial officer of an institution of which the victim is an inmate, or
 - (e) the offender is a health professional and the victim is a patient of the health professional.
- (4) Any person who attempts to commit an offence under subsection (1) or (2) is liable to the penalty provided for the commission of the offence.
- (5) A person does not commit an offence under this section if the person and the other person to whom the charge relates were, at the time the offence is alleged to have been committed, married to each other.

[13] Section 77 Consent no defence in certain cases

Omit “Except as provided by subsection (2), the” from section 77 (1).

Insert instead “The”.

[14] Section 77 (2)

Omit the subsection.

[15] Section 78A

Omit the section. Insert instead:

78A Incest

- (1) Any person who has sexual intercourse with a close family member who is of or above the age of 16 years is liable to imprisonment for 8 years.
- (2) For the purposes of this section, a *close family member* is a parent, son, daughter, sibling (including a half-brother or half-sister), grandparent or grandchild, being such a family member from birth.

[16] Section 78B Incest attempts

Omit “Whosoever, being a male, attempts to commit any offence under section 78A, shall be”.

Insert instead “Any person who attempts to commit an offence under section 78A is”.

[17] Section 78D Removal from guardianship etc

Omit the section.

[18] Sections 78G, 78J, 78K, 78L, 78N, 78O, 78P, 78Q and 78R

Omit the sections.

[19] Section 80AA

Insert after section 80A:

80AA Referral to child protection agency

On conviction of a person for an offence under this Division, the court may refer the matter to an appropriate child protection agency if the person against whom or with whom the offence was committed is under the authority of the offender.

[20] Section 91D Promoting or engaging in acts of child prostitution

Omit section 91D (2).

[21] Section 91D (3)

Omit “, except as provided by subsection (2)”.

[22] Eleventh Schedule Savings and transitional provisions

Insert after Part 18:

**Part 19 Crimes Amendment (Sexual Offences)
Act 2003**

49 Defence under section 77 (2)

Section 77 (2), as in force before its repeal by the *Crimes Amendment (Sexual Offences) Act 2003*, continues to apply to offences committed before its repeal.

50 Defence under section 91D (2)

Section 91D (2), as in force before its repeal by the *Crimes Amendment (Sexual Offences) Act 2003*, continues to apply to offences committed before its repeal.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Criminal Procedure Act 1986 No 209

[1] Section 3 Definitions

Omit “, 78H, 78I, 78K, 78L” from paragraph (a) of the definition of *prescribed sexual offence*.

[2] Section 117 Application of Division

Omit “66, 73, 74, 78A, 78B, 78N, 78O, 78Q,”.

Insert instead “73, 78A, 78B,”.

2.2 Young Offenders Act 1997 No 54

Section 8 Offences covered by Act

Omit “, 78Q” from section 8 (2) (d).