



New South Wales

Crimes Amendment (Reckless Infliction of Harm) Bill 2012

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Crimes Act 1900* in relation to offences involving the reckless infliction of grievous bodily harm and reckless wounding.

The *Crimes Amendment Act 2007* replaced malice with recklessness as the fault element in various offences in the *Crimes Act 1900*. The Court of Criminal Appeal held in *Blackwell v Regina* [2011] NSWCCA 93 that the effect of the amendments was that the offence of recklessly inflicting grievous bodily harm now required recklessness as to causing grievous bodily harm, not just some physical harm, as was the case before the amendments.

The Bill provides that a person will be guilty of the offence of recklessly causing grievous bodily harm and related offences if the person causes grievous bodily harm to a person and is reckless as to causing actual bodily harm (and not necessarily grievous bodily harm) to that or any 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]–[6] amend the following provisions to give effect to the object of the Bill as described in the Overview above:

- (a) section 35 (Reckless grievous bodily harm or wounding),
- (b) section 60 (Assault and other actions against police officers),
- (c) section 60A (Assault and other actions against law enforcement officers (other than police officers)),
- (d) section 60E (Assaults etc at schools),
- (e) section 105A (Definitions) for the purposes of specially aggravated break and enter offences in sections 109–113.

In the case of the offence of recklessly wounding or causing grievous bodily harm to a police officer, the Bill makes it clear that recklessness relates to causing actual bodily harm to a police officer or any other person. The Bill makes similar amendments in relation to the same offence against other law enforcement officers and school teachers and students.

Schedule 1 [7] is a transitional provision which provides that the amendments made by the proposed Act only apply to offences committed, or alleged to have been committed, on or after the commencement of the amendments.

First print



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New South Wales

Crimes Amendment (Reckless Infliction of Harm) Bill 2012

No. , 2012

A Bill for

An Act to amend the *Crimes Act 1900* with respect to offences involving the reckless infliction of harm.

| | |
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| The Legislature of New South Wales enacts: | 1 |
| 1 Name of Act | 2 |
| This Act is the <i>Crimes Amendment (Reckless Infliction of Harm) Act 2012</i> . | 3 4 |
| 2 Commencement | 5 |
| This Act commences on the date of assent to this Act. | 6 |

Schedule 1 Amendment of Crimes Act 1900 No 40

[1] Section 35 Reckless grievous bodily harm or wounding

Omit section 35 (1)–(4). Insert instead:

(1) Reckless grievous bodily harm—in company

A person who, in the company of another person or persons:

- (a) causes grievous bodily harm to any person, and
- (b) is reckless as to causing actual bodily harm to that or any other person,

is guilty of an offence.

Maximum penalty: Imprisonment for 14 years.

(2) Reckless grievous bodily harm

A person who:

- (a) causes grievous bodily harm to any person, and
- (b) is reckless as to causing actual bodily harm to that or any other person,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(3) Reckless wounding—in company

A person who, in the company of another person or persons:

- (a) wounds any person, and
- (b) is reckless as to causing actual bodily harm to that or any other person,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(4) Reckless wounding

A person who:

- (a) wounds any person, and
- (b) is reckless as to causing actual bodily harm to that or any other person,

is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

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| [2] Section 60 Assault and other actions against police officers | 1 |
| Omit section 60 (3) and (3A). Insert instead: | 2 |
| (3) A person who by any means: | 3 |
| (a) wounds or causes grievous bodily harm to a police officer while in the execution of the officer's duty, and | 4 |
| (b) is reckless as to causing actual bodily harm to that officer or any other person, | 6 |
| is liable to imprisonment for 12 years. | 8 |
| (3A) A person who by any means during a public disorder: | 9 |
| (a) wounds or causes grievous bodily harm to a police officer while in the execution of the officer's duty, and | 10 |
| (b) is reckless as to causing actual bodily harm to that officer or any other person, | 12 |
| is liable to imprisonment for 14 years. | 14 |
| [3] Section 60A Assault and other actions against law enforcement officers (other than police officers) | 15 |
| Omit section 60A (3). Insert instead: | 16 |
| (3) A person who by any means: | 17 |
| (a) wounds or causes grievous bodily harm to a law enforcement officer (other than a police officer) while in the execution of the officer's duty, and | 18 |
| (b) is reckless as to causing actual bodily harm to that officer or any other person, | 19 |
| is liable to imprisonment for 12 years. | 20 |
| [4] Section 60E Assaults etc at schools | 21 |
| Omit section 60E (3). Insert instead: | 22 |
| (3) A person who by any means: | 23 |
| (a) wounds or causes grievous bodily harm to a school student or member of staff of a school while the student or member of staff is attending a school, and | 24 |
| (b) is reckless as to causing actual bodily harm to that student or member of staff or any other person, | 25 |
| is liable to imprisonment for 12 years. | 26 |

| | |
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| [5] Section 105A Definitions | 1 |
| Omit the definition of <i>circumstances of special aggravation</i> from section 105A (1). | 2 3 |
| Insert instead: | 4 |
| <i>circumstances of special aggravation</i> means circumstances involving any or all of the following: | 5 6 |
| (a) the alleged offender intentionally wounds or intentionally inflicts grievous bodily harm on any person, | 7 8 |
| (b) the alleged offender inflicts grievous bodily harm on any person and is reckless as to causing actual bodily harm to that or any other person, | 9 10 11 |
| (c) the alleged offender is armed with a dangerous weapon. | 12 |
| [6] Section 105A (2) (b) | 13 |
| Insert “or (b)” after “paragraph (a)”. | 14 |
| [7] Schedule 11 Savings and transitional provisions | 15 |
| Insert after Part 29: | 16 |
| Part 30 Crimes Amendment (Reckless Infliction of Harm) Act 2012 | 17 18 |
| 72 Application of amendments | 19 |
| An amendment made by the <i>Crimes Amendment (Reckless Infliction of Harm) Act 2012</i> applies only in respect of an offence committed, or alleged to have been committed, on or after the commencement of the amendment. | 20 21 22 23 |