



New South Wales

Crimes Amendment (Sexual Offences) Bill 2003

Explanatory note

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

Overview of Bill

The object of this Bill is to amend and repeal certain provisions of the *Crimes Act 1900* (the *Principal Act*) to provide for the equal treatment of sexual offences irrespective of whether the victim or the perpetrator is male or female. In particular, the Bill repeals certain provisions that apply solely to male homosexual acts. The result will be that, in future, certain types of sexual offences by any person, whether male or female, against any other person, whether male or female, will be dealt with on the same bases, including as to the age of the victim, the defences available to the accused and the penalties for the offence. The age of consent for all persons will be 16 years.

Consensual male homosexual acts that took place before the commencement of the amendments between persons who were not less than 16 years of age at the time will cease to be unlawful.

The Bill also makes other amendments with respect to sexual offences against children. The Bill increases the penalties for having sexual intercourse with a child between 10 and 16 years of age (currently 8 years imprisonment or, if under the authority of the offender, 10 years imprisonment) as follows:

- (a) where the child is between 10 and 14 years of age—16 years imprisonment (or 20 years imprisonment in circumstances of aggravation),
- (b) where the child is between 14 and 16 years of age—10 years imprisonment (or 12 years imprisonment in circumstances of aggravation).

The circumstances of aggravation are extended to those applicable to cases of sexual assault offences, including taking advantage of the intoxication of the victim.

The current penalty for having sexual intercourse with a child under 10 years of age is 25 years imprisonment. Sexual assault of a child under 16 years of age also carries a penalty of 20 years imprisonment.

The Bill also removes the current statutory defence of a person who has consensual sexual intercourse with a child under 16 years of age that the child was over 14 years of age and appeared to be over 16 years of age.

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 a day to be appointed by the Governor by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the other Acts set out in Schedule 2.

Schedule 1 Amendment of Crimes Act 1900

Equal treatment of sexual offences

Schedule 1 [18] repeals a number of separate offences relating to homosexual acts with males between 10 and 18 years of age. The result will be that sexual assault and offences against children will be dealt with by the same set of provisions that apply irrespective of whether the victim or the perpetrator is male or female. It will also result in a uniform age of consent, namely 16 years.

Schedule 1 [12] recasts sections 73–75 of the Principal Act (which make it an offence for a male teacher or parent to have carnal knowledge of a female pupil or child under 17 years of age). The revised offence will apply to both males and females. The proposed offence will not apply if the persons concerned are married to each other. References to parents are omitted and dealt with in the revised incest offence—see **Schedule 1 [15]**.

Schedule 1 [15] recasts section 78A (Incest) of the Principal Act, which makes it an offence for a male to have carnal knowledge of a close female family member over 16 years of age, or a female to allow a close male family member to have carnal knowledge of her. The revised offence provides that any person who has sexual intercourse with a close family member of or above the age of 16 years will be guilty of incest. **Schedule 1 [16]** makes a consequential amendment.

Schedule 1 [20] provides for the equal treatment of offences relating to child prostitution, irrespective of the gender of the child concerned.

Sexual offences against children

Schedule 1 [9] replaces section 66C of the Principal Act to increase the penalty for having sexual intercourse with a child between 10 and 16 years of age, as set out in the Overview above. **Schedule 1 [2], [3], [10] and [11]** make consequential amendments concerning alternative verdicts.

Defences

Schedule 1 [14] amends section 77 of the Principal Act to remove the current statutory defence of a person who has consensual sexual intercourse with a child under 16 years of age that the child was over 14 years of age and appeared to be over 16 years of age. **Schedule 1 [13]** makes a consequential amendment.

Definition of “sexual intercourse”

Schedule 1 [1] amends the definition of *sexual intercourse* in section 61H to ensure that the definition applies for the purposes of all the sexual offences in the Principal Act. The amendment is consequential upon the replacement of the term *carnal knowledge* by other amendments contained in the Bill. **Schedule 1 [5], [12] and [15]** make consequential amendments.

Law revision

Schedule 1 [8] repeals an obsolete offence of men procuring “illicit carnal connection” by fraud and **Schedule 1 [4]** makes a consequential amendment.

Schedule 1 [17] and [19] repeal an obsolete provision relating to guardianship of certain incest victims and replace it with new section 80AA, a general provision that allows a court to refer the matter to an appropriate child protection agency where a person is convicted of any sexual offence and the victim is under the authority of the offender.

Savings and transitional

Schedule 1 [21] inserts a new Part 19 into the Eleventh Schedule to the Principal Act. The new Part contains a transitional provision (new clause 49) which provides that it is a defence to an offence of homosexual acts alleged to have occurred before the commencement of the amendments made by this Bill that both parties were not less than 16 years of age at the time of the alleged offence, that the act was consensual, and that the act would not otherwise be unlawful after that commencement. The new Part will also contain transitional provisions relating to former offences transferred from the main body of the Principal Act by **Schedule 1 [7]**. **Schedule 1 [6]** amends section 63 of the Principal Act to clarify the location of the transferred provisions.

Schedule 2 Amendment of other Acts

Schedule 2 contains amendments to the *Criminal Procedure Act 1986* and the *Young Offenders Act 1997* that are consequential upon the amendments to the Principal Act contained in Schedule 1.



New South Wales

Crimes Amendment (Sexual Offences) Bill 2003

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Crimes Amendment (Sexual Offences) Bill 2003

No. , 2003

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes Amendment (Sexual Offences) Act 2003</i> .	3
2 Commencement	4
This Act commences on a day to be appointed by proclamation.	5
3 Amendment of Crimes Act 1900 No 40	6
The <i>Crimes Act 1900</i> is amended as set out in Schedule 1.	7
4 Amendment of other Acts	8
The Acts specified in Schedule 2 are amended as set out in that Schedule.	9 10

Schedule 1 Amendment of Crimes Act 1900

(Section 3)

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| | 2 |
| [1] Section 61H Definition of “sexual intercourse” and other terms | 3 |
| Omit “sections 61H–66F” from section 61H (1) and (2) wherever occurring. | 4 |
| | 5 |
| Insert instead “this Division”. | 6 |
| [2] Section 61Q Alternative verdicts | 7 |
| Omit “66C (1) or 66C (2)” from section 61Q (2). | 8 |
| Insert instead “66C (3) or 66C (4)”. | 9 |
| [3] Section 61Q (3) | 10 |
| Omit “, 66C (1) or 66C (2)”. Insert instead “or 66C”. | 11 |
| [4] Section 61R Consent | 12 |
| Insert “(or any other mistaken belief about the nature of the act induced by fraudulent means)” after “purposes” in section 61R (2) (a1). | 13 |
| | 14 |
| [5] Section 62 Carnal knowledge—proof | 15 |
| Omit the section. | 16 |
| [6] Section 63 Common law offences of rape and attempted rape abolished | 17 |
| | 18 |
| Insert at the end of the section: | 19 |
| (2) Parts 1 and 19 of the Eleventh Schedule make provision with respect to rape and other former sexual offences. | 20 |
| | 21 |
| [7] Sections 64, 69, 70, 78E and 78T | 22 |
| 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). | 23 |
| | 24 |
| | 25 |
| [8] Section 66 Procuring etc carnal knowledge by fraud | 26 |
| Omit the section. | 27 |

[9] Section 66C	1
Omit the section. Insert instead:	2
66C Sexual intercourse—child between 10 and 16	3
(1) Child between 10 and 14	4
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.	5 6 7
(2) Child between 10 and 14—aggravated offence	8
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.	9 10 11 12
(3) Child between 14 and 16	13
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.	14 15 16
(4) Child between 14 and 16—aggravated offence	17
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.	18 19 20 21
(5) In this section, <i>circumstances of aggravation</i> means circumstances in which:	22 23
(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	24 25 26 27
(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	28 29 30 31 32
(c) the alleged offender is in the company of another person or persons, or	33 34

(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	1 2 3
(e)	the alleged victim has a serious physical disability, or	4
(f)	the alleged victim has a serious intellectual disability, or	5 6
(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.	7 8 9
[10]	Section 66E Alternative verdicts	10
	Omit “16 years” from section 66E (1) (a). Insert instead “14 years”.	11
[11]	Section 66E (1A) and (1B)	12
	Insert after section 66E (1):	13
(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.	14 15 16 17 18 19 20
(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.	21 22 23 24 25 26 27
[12]	Section 73	28
	Omit sections 73–75. Insert instead:	29
73	Sexual intercourse by teacher	30
(1)	Any teacher who has sexual intercourse with a pupil of the teacher who is of or above the age of 16 years and under the age of 17 years is liable to imprisonment for 8 years.	31 32 33

(2)	Any person who attempts to commit an offence under subsection (1) is liable to the penalty provided for the commission of the offence.	1 2 3
(3)	A teacher does not commit an offence under this section if the teacher and the pupil to whom the charge relates were, at the time the offence is alleged to have been committed, married to each other.	4 5 6 7
[13]	Section 77 Consent no defence in certain cases	8
	Omit “Except as provided by subsection (2), the” from section 77 (1).	9
	Insert instead “The”.	10
[14]	Section 77 (2)	11
	Omit the subsection.	12
[15]	Section 78A	13
	Omit the section. Insert instead:	14
	78A Incest	15
(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 7 years.	16 17 18
(2)	For the purposes of this section, a <i>close family member</i> is a parent, son, daughter, sibling (including a half-brother or half-sister), grandparent or grandchild, being such a family member from birth.	19 20 21 22
[16]	Section 78B Incest attempts	23
	Omit “Whosoever, being a male, attempts to commit any offence under section 78A, shall be”.	24 25
	Insert instead “Any person who attempts to commit an offence under section 78A is”.	26 27
[17]	Section 78D Removal from guardianship etc	28
	Omit the section.	29

[18] Sections 78G, 78J, 78K, 78L, 78N, 78O, 78P, 78Q and 78R	1
Omit the sections.	2
[19] Section 80AA	3
Insert after section 80A:	4
80AA Referral to child protection agency	5
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.	6 7 8 9 10
[20] Section 91D Promoting or engaging in acts of child prostitution	11
Omit "Except where the child and the other person alleged to have participated in the act of child prostitution are both male, a person" from section 91D (2).	12 13 14
Insert instead "A person".	15
[21] Eleventh Schedule Savings and transitional provisions	16
Insert after Part 18:	17
Part 19 Crimes Amendment (Sexual Offences) Act 2003	18 19
49 Previous consensual homosexual acts	20
(1) It is a defence to a homosexual offence that is alleged to have occurred before the commencement of the <i>Crimes Amendment (Sexual Offences) Act 2003</i> that:	21 22 23
(a) both parties were not less than 16 years of age at the time of the alleged offence, and	24 25
(b) both parties consented to the act concerned, and	26
(c) the act concerned would not, if it had occurred after that commencement, otherwise be unlawful.	27 28
(2) In this clause, homosexual offence means an offence against section 78K, 78L, 78N, 78O or 78Q.	29 30

50 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.

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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).

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