New South Wales

Criminal Legislation Amendment (Child Sexual Abuse) Act 2018 No 33

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New South Wales

Criminal Legislation Amendment (Child Sexual Abuse) Act 2018 No 33

Act No 33, 2018

An Act to amend the *Crimes Act 1900* and other legislation to make further provision for sexual offences and for the protection of children from abuse. [Assented to 27 June 2018]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Crimes Act 1900 No 40

[1] Section 43B

Insert after section 43A:

43B Failure to reduce or remove risk of child becoming victim of child abuse

(1) A person commits an offence if:

(a) the person is an adult who carries out work for an organisation, whether as an employee, contractor, volunteer or otherwise (a ***position holder***), and

(b) the organisation is the employer of an adult worker who engages in child-related work, and

(c) there is a serious risk that the adult worker will commit a child abuse offence against a child who is, or may come, under the care, supervision or authority of the organisation, and

(d) the position holder knows that the risk exists, and

(e) the position holder, by reason of the person's position, has the power or responsibility to reduce or remove that risk, and

(f) the position holder negligently fails to reduce or remove that risk.

Maximum penalty: Imprisonment for 2 years.

(2) In proceedings for an offence under this section, it is not necessary to prove that a child abuse offence has been committed.

(3) In this section:

adult means a person who is of or above the age of 18 years.

child means a person who is under the age of 18 years.

child abuse offence means:

(a) murder or manslaughter of a child (including under section 22A), or

(b) an offence under section 27, 29, 33, 35, 37, 38, 38A, 39, 41, 41A, 44, 45, 45A, 46, 59, 60E, 86 or 91J or Division 10, 10A, 10B or 15 of Part 3 where the alleged victim is a child, or

(c) an offence under section 42, 43, 43A, 91G or 91H, or

(d) an offence of attempting to commit an offence referred to in paragraphs (a)–(c).

child-related work (and ***engage*** in child-related work), ***employer*** and ***worker*** have the same meanings as in the *Child Protection (Working with Children) Act 2012*.

[2] Part 3, Division 10, heading

Omit the heading. Insert instead:

Division 10 Sexual offences against adults and children

[3] Part 3, Division 10, Subdivision 1, heading

Insert before section 61H:

Subdivision 1 Interpretation

[4] Section 61H Definitions

Omit section 61H (1) and (1A). Insert instead:

(1) In this Division:

cognitive impairment—see section 61HD.

sexual act—see section 61HC.

sexual intercourse—see section 61HA.

sexual touching—see section 61HB.

[5] Section 61H (3)

Omit the subsection. Insert instead:

(3) For the purposes of this Act, a person who incites another person to carry out sexual touching or a sexual act, as referred to in a provision of Subdivision 3, 4, 6, 7 or 11, is taken to commit an offence on the other person.

[6] Sections 61HA–61HE

Omit section 61HA. Insert instead:

61HA Meaning of "sexual intercourse"

For the purposes of this Division, ***sexual intercourse*** means:

(a) sexual connection occasioned by the penetration to any extent of the genitalia (including a surgically constructed vagina) of a female person or the anus of any person by:

(i) any part of the body of another person, or

(ii) any object manipulated by another person,

except where the penetration is carried out for proper medical purposes, or

(b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person, or

(c) cunnilingus, or

(d) the continuation of sexual intercourse as defined in paragraph (a), (b) or (c).

61HB Meaning of "sexual touching"

(1) For the purposes of this Division, ***sexual touching*** means a person touching another person:

(a) with any part of the body or with anything else, or

(b) through anything, including anything worn by the person doing the touching or by the person being touched,

in circumstances where a reasonable person would consider the touching to be sexual.

(2) The matters to be taken into account in deciding whether a reasonable person would consider touching to be sexual include:

(a) whether the area of the body touched or doing the touching is the person's genital area or anal area or (in the case of a female person, or transgender or intersex person identifying as female) the person's breasts, whether or not the breasts are sexually developed, or

(b) whether the person doing the touching does so for the purpose of obtaining sexual arousal or sexual gratification, or

(c) whether any other aspect of the touching (including the circumstances in which it is done) makes it sexual.

(3) Touching done for genuine medical or hygienic purposes is not sexual touching.

61HC Meaning of "sexual act"

(1) For the purposes of this Division, ***sexual act*** means an act (other than sexual touching) carried out in circumstances where a reasonable person would consider the act to be sexual.

(2) The matters to be taken into account in deciding whether a reasonable person would consider an act to be sexual include:

(a) whether the area of the body involved in the act is a person's genital area or anal area or (in the case of a female person, or transgender or intersex person identifying as female) the person's breasts, whether or not the breasts are sexually developed, or

(b) whether the person carrying out the act does so for the purpose of obtaining sexual arousal or sexual gratification, or

(c) whether any other aspect of the act (including the circumstances in which it is carried out) makes it sexual.

(3) An act carried out for genuine medical or hygienic purposes is not a sexual act.

61HD Meaning of "cognitive impairment"

For the purposes of this Division, a person has a ***cognitive impairment*** if the person has:

(a) an intellectual disability, or

(b) a developmental disorder (including an autistic spectrum disorder), or

(c) a neurological disorder, or

(d) dementia, or

(e) a severe mental illness, or

(f) a brain injury,

that results in the person requiring supervision or social habilitation in connection with daily life activities.

61HE Consent in relation to sexual offences

(1) **Offences to which section applies**

This section applies for the purposes of the offences, or attempts to commit the offences, under sections 61I, 61J, 61JA, 61KC, 61KD, 61KE and 61KF.

(2) **Meaning of "consent"**

A person ***consents*** to a sexual activity if the person freely and voluntarily agrees to the sexual activity.

(3) **Knowledge about consent**

A person who without the consent of the other person (the ***victim***) engages in a sexual activity with or towards the victim, incites the victim to engage in a sexual activity or incites a third person to engage in a sexual activity with or towards the victim, knows that the victim does not consent to the sexual activity if:

(a) the person knows that the victim does not consent to the sexual activity, or

(b) the person is reckless as to whether the victim consents to the sexual activity, or

(c) the person has no reasonable grounds for believing that the victim consents to the sexual activity.

(4) For the purpose of making any such finding, the trier of fact must have regard to all the circumstances of the case:

(a) including any steps taken by the person to ascertain whether the victim consents to the sexual activity, but

(b) not including any self-induced intoxication of the person.

(5) **Negation of consent**

A person does not consent to a sexual activity:

(a) if the person does not have the capacity to consent to the sexual activity, including because of age or cognitive incapacity, or

(b) if the person does not have the opportunity to consent to the sexual activity because the person is unconscious or asleep, or

(c) if the person consents to the sexual activity because of threats of force or terror (whether the threats are against, or the terror is instilled in, that person or any other person), or

(d) if the person consents to the sexual activity because the person is unlawfully detained.

(6) A person who consents to a sexual activity with or from another person under any of the following mistaken beliefs does not consent to the sexual activity:

(a) a mistaken belief as to the identity of the other person,

(b) a mistaken belief that the other person is married to the person,

(c) a mistaken belief that the sexual activity is for health or hygienic purposes,

(d) any other mistaken belief about the nature of the activity induced by fraudulent means.

(7) For the purposes of subsection (3), the other person knows that the person does not consent to the sexual activity if the other person knows the person consents to the sexual activity under such a mistaken belief.

(8) The grounds on which it may be established that a person does not consent to a sexual activity include:

(a) if the person consents to the sexual activity while substantially intoxicated by alcohol or any drug, or

(b) if the person consents to the sexual activity because of intimidatory or coercive conduct, or other threat, that does not involve a threat of force, or

(c) if the person consents to the sexual activity because of the abuse of a position of authority or trust.

(9) A person who does not offer actual physical resistance to a sexual activity is not, by reason only of that fact, to be regarded as consenting to the sexual activity.

(10) This section does not limit the grounds on which it may be established that a person does not consent to a sexual activity.

(11) In this section:

sexual activity means sexual intercourse, sexual touching or a sexual act.

Subdivision 2 Sexual assault and assault with intent to have sexual intercourse

[7] Part 3, Division 10, Subdivisions 3 and 4

Omit sections 61L–61O. Insert instead:

Subdivision 3 Sexual touching

61KC Sexual touching

Any person (the ***alleged offender***) who without the consent of another person (the ***alleged victim***) and knowing that the alleged victim does not consent intentionally:

(a) sexually touches the alleged victim, or

(b) incites the alleged victim to sexually touch the alleged offender, or

(c) incites a third person to sexually touch the alleged victim, or

(d) incites the alleged victim to sexually touch a third person,

is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

61KD Aggravated sexual touching

(1) Any person (the ***alleged offender***) who without the consent of another person (the ***alleged victim***) and knowing that the alleged victim does not consent and in circumstances of aggravation intentionally:

(a) sexually touches the alleged victim, or

(b) incites the alleged victim to sexually touch the alleged offender, or

(c) incites a third person to sexually touch the alleged victim, or

(d) incites the alleged victim to sexually touch a third person,

is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

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

(a) the alleged offender is in the company of another person or persons, or

(b) the alleged victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender, or

(c) the alleged victim has a serious physical disability, or

(d) the alleged victim has a cognitive impairment.

Subdivision 4 Sexual act

61KE Sexual act

Any person (the ***alleged offender***) who without the consent of another person (the ***alleged victim***) and knowing that the alleged victim does not consent intentionally:

(a) carries out a sexual act with or towards the alleged victim, or

(b) incites the alleged victim to carry out a sexual act with or towards the alleged offender, or

(c) incites a third person to carry out a sexual act with or towards the alleged victim, or

(d) incites the alleged victim to carry out a sexual act with or towards a third person,

is guilty of an offence.

Maximum penalty: Imprisonment for 18 months.

61KF Aggravated sexual act

(1) Any person (the ***alleged offender***) who without the consent of another person (the ***alleged victim***) and knowing that the alleged victim does not consent and in circumstances of aggravation intentionally:

(a) carries out a sexual act with or towards the alleged victim, or

(b) incites the alleged victim to carry out a sexual act with or towards the alleged offender, or

(c) incites a third person to carry out a sexual act with or towards the alleged victim, or

(d) incites the alleged victim to carry out a sexual act with or towards a third person,

is guilty of an offence.

Maximum penalty: Imprisonment for 3 years.

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

(a) the alleged offender is in the company of another person or persons, or

(b) the alleged victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender, or

(c) the alleged victim has a serious physical disability, or

(d) the alleged victim has a cognitive impairment.

[8] Section 61P Attempt to commit offence under sections 61I–61O

Omit the section.

[9] Sections 80AB, 80AC, 80AD and 80AE

Renumber sections 61Q, 61S, 63 and 77 as sections 80AB, 80AC, 80AD and 80AE, respectively and move them into proposed Subdivision 15 of Division 10 of Part 3 after section 80AA.

[10] Sections 61KA and 61KB

Renumber sections 61T and 61U as sections 61KA and 61KB, respectively and move them into proposed Subdivision 2 of Division 10 of Part 3 after section 61K.

[11] Part 3, Division 10, Subdivision 5, heading

Insert before section 66A:

Subdivision 5 Children—sexual assault

[12] Section 66B Attempting, or assaulting with intent, to have sexual intercourse with child under 10

Omit "another person". Insert instead "a child".

[13] Section 66B

Omit "any such person". Insert instead "a child who is under the age of 10 years".

[14] Section 66C Sexual intercourse—child between 10 and 16

Omit "another person" wherever occurring in section 66C (1)–(4). Insert instead "a child".

[15] Section 66D

Omit the section. Insert instead:

66D Assault with intent to have sexual intercourse—child between 10 and 16

Any person who assaults a child who is of or above the age of 10 years and under the age of 16 years with intent to commit an offence under section 66C on the child is liable to the penalty provided for the commission of that offence.

[16] Part 3, Division 10, Subdivisions 6 and 7

Insert after section 66D:

Subdivision 6 Children—sexual touching

66DA Sexual touching—child under 10

Any person who intentionally:

(a) sexually touches a child who is under the age of 10 years, or

(b) incites a child who is under the age of 10 years to sexually touch the person, or

(c) incites a child who is under the age of 10 years to sexually touch another person, or

(d) incites another person to sexually touch a child who is under the age of 10 years,

is guilty of an offence.

Maximum penalty: Imprisonment for 16 years.

66DB Sexual touching—child between 10 and 16

Any person who intentionally:

(a) sexually touches a child who is of or above the age of 10 years and under the age of 16 years, or

(b) incites a child who is of or above the age of 10 years and under the age of 16 years to sexually touch the person, or

(c) incites a child who is of or above the age of 10 years and under the age of 16 years to sexually touch another person, or

(d) incites another person to sexually touch a child who is of or above the age of 10 years and under the age of 16 years,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

Subdivision 7 Children—sexual act

66DC Sexual act—child under 10

Any person who intentionally:

(a) carries out a sexual act with or towards a child who is under the age of 10 years, or

(b) incites a child who is under the age of 10 years to carry out a sexual act with or towards the person, or

(c) incites a child who is under the age of 10 years to carry out a sexual act with or towards another person, or

(d) incites another person to carry out a sexual act with or towards a child who is under the age of 10 years,

is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

66DD Sexual act—child between 10 and 16

Any person who intentionally:

(a) carries out a sexual act with or towards a child who is of or above the age of 10 years and under the age of 16 years, or

(b) incites a child who is of or above the age of 10 years and under the age of 16 years to carry out a sexual act with or towards the person, or

(c) incites a child who is of or above the age of 10 years and under the age of 16 years to carry out a sexual act with or towards another person, or

(d) incites another person to carry out a sexual act with or towards a child who is of or above the age of 10 years and under the age of 16 years,

is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

66DE Aggravated sexual act—child between 10 and 16

(1) Any person who in circumstances of aggravation intentionally:

(a) carries out a sexual act with or towards a child who is of or above the age of 10 years and under the age of 16 years, or

(b) incites a child who is of or above the age of 10 years and under the age of 16 years to carry out a sexual act with or towards the person, or

(c) incites a child who is of or above the age of 10 years and under the age of 16 years to carry out a sexual act with or towards another person, or

(d) incites another person to carry out a sexual act with or towards a child who is of or above the age of 10 years and under the age of 16 years,

is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

(2) 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 intentionally or recklessly 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

(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 cognitive impairment, 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, or

(h) the alleged offender deprives the alleged victim of his or her liberty for a period before or after the commission of the offence, or

(i) the alleged offender breaks and enters into any dwelling-house or other building with the intention of committing the offence or any other serious indictable offence.

66DF Sexual act for production of child abuse material—child under 16

Any person who intentionally:

(a) carries out a sexual act with or towards a child who is under the age of 16 years, or

(b) incites a child who is under the age of 16 years to carry out a sexual act with or towards the person, or

(c) incites a child who is under the age of 16 years to carry out a sexual act with or towards another person, or

(d) incites another person to carry out a sexual act with or towards a child who is under the age of 16 years,

and who knows that the sexual act is being filmed for the purposes of the production of child abuse material, is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

[17] Section 66E Alternative verdicts

Insert after section 66E (5):

(6) If on the trial of a person for an offence under section 66A, 66B, 66C or 66D the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied that the accused is guilty of an offence under section 66DA or 66DB, it may find the accused not guilty of the offence charged but guilty of an offence under section 66DA or 66DB. The accused is liable to punishment accordingly.

[18] Section 66E

Renumber section 66E (1), (3), (4), (5) and (6) (as inserted by item [17]) as section 80AB (7), (8), (9), (10) and (11) respectively and move them into section 80AB (as renumbered by item [9]) and omit section 66E.

[19] Part 3, Division 10, Subdivision 8, heading

Insert before section 66EA:

Subdivision 8 Children—persistent sexual abuse

[20] Section 66EA

Omit the section. Insert instead:

66EA Persistent sexual abuse of a child

(1) An adult who maintains an unlawful sexual relationship with a child is guilty of an offence.

Maximum penalty: Imprisonment for life.

(2) An ***unlawful sexual relationship*** is a relationship in which an adult engages in 2 or more unlawful sexual acts with or towards a child over any period.

(3) It is immaterial that any of those unlawful sexual acts occurred outside New South Wales, so long as at least one of the unlawful sexual acts occurred in New South Wales.

(4) In proceedings for an offence under this section, the prosecution:

(a) is not required to allege the particulars of any unlawful sexual act that would be necessary if the act were charged as a separate offence, and

(b) is required to allege the particulars of the period of time over which the unlawful sexual relationship existed.

(5) In order for the accused to be convicted of an offence under this section:

(a) the jury must be satisfied beyond reasonable doubt that the evidence establishes that an unlawful sexual relationship existed, and

(b) the jury is not required to be satisfied of the particulars of any unlawful sexual act that it would have to be satisfied of if the act were charged as a separate offence, and

(c) the members of the jury are not required to agree on which unlawful sexual acts constitute the unlawful sexual relationship.

(6) In proceedings for an offence under this section, the judge must inform the jury of the requirements of subsection (5).

(7) This section extends to a relationship that existed wholly or partly before the commencement of the relevant amendments, or the predecessor offence, if the acts engaged in by the accused were unlawful sexual acts during the period in which the relationship existed.

(8) A court, when imposing a sentence for an offence under this section constituted by an unlawful sexual relationship that existed wholly or partly before the commencement of the relevant amendments, must take into account (but is not limited by) the maximum penalty for the unlawful sexual acts engaged in by the accused during the period in which the unlawful sexual relationship existed.

(9) A person who has been convicted or acquitted of an unlawful sexual act in relation to a child cannot be convicted of an offence under this section in relation to the same child if the unlawful sexual act of which the person has been convicted or acquitted is one of the unlawful sexual acts that are alleged to constitute the unlawful sexual relationship.

(10) A person who has been convicted or acquitted of an offence under this section for having an unlawful sexual relationship with a child cannot be convicted of an unlawful sexual act in relation to the same child if the occasion on which the unlawful sexual act is alleged to have occurred is during the period over which the unlawful sexual relationship was alleged to have existed. This subsection does not prevent an alternative verdict under subsection (13).

(11) A person who has been convicted or acquitted of a predecessor offence in relation to a child cannot be convicted of an offence under this section of having an unlawful sexual relationship with the same child if the period of the alleged unlawful sexual relationship includes any part of the period during which the person was alleged to have committed the predecessor offence.

(12) For the purposes of subsections (9)–(11), a person ceases to be regarded as having been convicted for an offence if the conviction is quashed or set aside.

(13) If on the trial of a person charged with an offence under this section the jury is not satisfied that the offence is proven but is satisfied that the person has, in respect of any of the occasions relied on as evidence of the commission of the offence under this section, committed an unlawful sexual act, the jury may acquit the person of the offence charged and find the person guilty of that unlawful sexual act. The person is liable to punishment accordingly.

(14) Proceedings for an offence under this section may only be instituted by or with the approval of the Director of Public Prosecutions.

(15) In this section:

adult means a person who is of or above the age of 18 years.

child means a person who is under the age of 16 years.

predecessor offence means this section before its substitution by the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*.

relevant amendments means the substitution of this section by the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*.

unlawful sexual act means any act that constitutes, or would constitute (if particulars of the time and place at which the act took place were sufficiently particularised), any of the following offences:

(a) an offence under section 61I, 61J, 61JA, 61K, 61KC, 61KD, 61KE, 61KF, 66A, 66B, 66C, 66D, 66DA, 66DB, 66DC, 66DD, 66DE, 66DF, 66F or 80A,

(b) an offence under a provision of this Act set out in Column 1 of Schedule 1A,

(c) an offence of attempting to commit an offence referred to in paragraph (a) or (b),

(d) an offence under a previous enactment that is substantially similar to an offence referred to in paragraphs (a)–(c),

(e) an offence under the law of a place outside New South Wales that would, if it had been committed in New South Wales, be an offence referred to in paragraphs (a)–(d).

[21] Part 3, Division 10, Subdivision 9, heading

Insert before section 66EB:

Subdivision 9 Children—procurement and grooming

[22] Section 66EB Procuring or grooming child under 16 for unlawful sexual activity

Insert “or with any financial or other material benefit” after “intoxicating substance” in section 66EB (3) (a).

[23] Section 66EC

Insert after section 66EB:

66EC Grooming a person for unlawful sexual activity with a child under the person's authority

(1) In this section:

adult person means a person who is of or above the age of 18 years.

child means a person who is under the age of 16 years.

unlawful sexual activity means an act that constitutes an offence under this Division or Division 10A, 15 or 15A (or, in the case of an act occurring outside this State, that would constitute such an offence if it occurred in this State).

(2) An adult person:

(a) who provides a person (other than a child) with any financial or other material benefit, and

(b) who does so with the intention of making it easier to procure a child who is under the authority of the person for unlawful sexual activity with the adult person or any other person,

is guilty of an offence.

Maximum penalty:

(a) in the case of a child who is under the age of 14 years—imprisonment for 6 years, or

(b) in any other case—imprisonment for 5 years.

(3) Proceedings for an offence under this section may only be instituted by or with the approval of the Director of Public Prosecutions.

[24] Part 3, Division 10, Subdivision 10, heading

Insert before section 66F:

Subdivision 10 Sexual offences—cognitive impairment

[25] Section 66F Sexual offences—cognitive impairment

Omit section 66F (4).

[26] Section 66F (5)–(8)

Omit the subsections. Insert instead:

(5) **Consent not a defence for sexual intercourse**

The consent of a person who has a cognitive impairment is not a defence to a charge for an offence under subsection (2) or (3) (or under section 344A in connection with such an offence).

(6) **Consent not a defence for sexual touching or sexual act**

The consent of a person who has a cognitive impairment is not a defence to a charge for an offence under section 61KC, 61KD, 61KE or 61KF (or under section 344A in connection with such an offence) if:

(a) the accused was responsible for the care of that person (whether generally or at the time of the conduct constituting the offence), or

(b) the accused engaged in the conduct constituting the offence with the intention of taking advantage of that person's cognitive impairment.

(7) **Defences**

It is a defence to a charge for an offence under subsection (2) or (3) (or under section 344A in connection with such an offence) or an offence referred to in subsection (6) in which the prosecution relies on the operation of that subsection:

(a) if, at the time of the conduct constituting the offence:

(i) the accused did not know the person to whom the charge relates had a cognitive impairment, or

(ii) the accused was married to the person to whom the charge relates or was the de facto partner of that person, or

(b) if the act constituting the offence was carried out for any proper medical or hygienic purpose.

(8) **Approval of Attorney General for prosecution**

A prosecution for any of the following offences may not be commenced without the approval of the Attorney General:

(a) an offence under subsection (2) or (3) (or under section 344A in connection with such an offence),

(b) an offence referred to in subsection (6) in which the prosecution relies on the operation of that subsection.

[27] Part 3, Division 10, Subdivision 11

Insert before section 73:

Subdivision 11 Sexual offences—young person under special care

72B Definitions

In this Subdivision:

authorised carer has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.

member of the teaching staff of a school means:

(a) a teacher at the school, or

(b) the principal or a deputy principal at the school, or

(c) any other person employed at the school who has students at the school under his or her care or authority.

young person means a person who is of or above the age of 16 years and under the age of 18 years.

[28] Section 73 Sexual intercourse—young person between 16 and 18 under special care

Omit “another person” wherever occurring in section 73 (1) and (2).

Insert instead “a young person”.

[29] Section 73 (3)

Omit “a person”. Insert instead “a young person”.

[30] Section 73 (3) (a)

Omit “foster parent” wherever occurring. Insert instead “authorised carer”.

[31] Section 73 (4)

Omit the subsection.

[32] Section 73 (5)

Omit "the other person". Insert instead "the young person".

[33] Section 73 (6)

Omit the subsection.

[34] Section 73A

Insert after section 73:

73A Sexual touching—young person between 16 and 18 under special care

(1) Any person who intentionally:

(a) sexually touches a young person under the person's special care, or

(b) incites a young person under the person's special care to sexually touch the person, or

(c) incites a young person under the person's special care to sexually touch another person, or

(d) incites another person to sexually touch a young person under the first person's special care,

is guilty of an offence.

Maximum penalty:

(a) in the case of a young person who is of or above the age of 16 years and under the age of 17 years—imprisonment for 4 years, or

(b) in the case of a young person who is of or above the age of 17 years and under the age of 18 years—imprisonment for 2 years.

(2) A person does not commit an offence under this section if the person and the young person to whom the charge relates were, at the time the offence is alleged to have been committed, married to each other.

(3) For the purposes of this section, a young person (***the victim***) is under the special care of another person (***the offender***) if, and only if:

(a) the offender is the parent, grandparent, step-parent, guardian or authorised carer of the victim or the de facto partner of a parent, guardian or authorised carer of the victim, or

(b) the offender is a member of the teaching staff of the school at which the victim is a student, 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.

[35] Part 3, Division 10, Subdivision 12, heading

Insert before section 78A:

Subdivision 12 Incest

[36] Part 3, Division 10, Subdivision 13, heading

Insert before section 79:

Subdivision 13 Bestiality

[37] Part 3, Division 10, Subdivision 14, heading

Insert before section 80A:

Subdivision 14 Sexual assault by forced self-manipulation

[38] Part 3, Division 10, Subdivision 15, heading

Insert after section 80A:

Subdivision 15 Miscellaneous

[39] Section 80AB Alternative verdicts (as renumbered by item [9])

Omit "61M or 61O" from section 80AB (1). Insert instead "61KD or 61KF".

[40] Section 80AB (1)

Omit "61L or 61N". Insert instead "61KC or 61KE".

[41] Section 80AB (6)

Omit "section 61O (2A)". Insert instead "section 66DF".

[42] Section 80AB (6)

Omit "section 61O (2) or 61N". Insert instead "section 66DC or 66DD".

[43] Section 80AE Consent no defence in certain cases (as renumbered by item [9])

Insert ", 66DA, 66DB, 66DC, 66DD, 66DE, 66DF" after "66D".

[44] Section 80AE (as renumbered by item [9])

Insert "66EC," after "66EB,".

[45] Section 80AE (as renumbered by item [9])

Insert "73A," after "73,".

[46] Sections 80AF and 80AG

Insert after section 80AE (as renumbered by item [9]):

80AF Uncertainty about time when sexual offence against child occurred

(1) This section applies if:

(a) it is uncertain as to when during a period conduct is alleged to have occurred, and

(b) the victim of the alleged conduct was for the whole of that period a child, and

(c) there was no time during that period that the alleged conduct, if proven, would not have constituted a sexual offence, and

(d) because of a change in the law or a change in the age of the child during that period, the alleged conduct, if proven, would have constituted more than one sexual offence during that period.

(2) In such a case, a person may be prosecuted in respect of the conduct under whichever of those sexual offences has the lesser maximum penalty regardless of when during that period the conduct actually occurred, and in prosecuting that offence:

(a) any requirement to establish that the offence charged was in force is satisfied if the prosecution can establish that the offence was in force at some time during that period, and

(b) any requirement to establish that the victim was of a particular age is satisfied if the prosecution can establish that the victim was of that age at some time during that period.

(3) In this section:

child means a person who is under the age of 16 years.

sexual offence means the following offences regardless of when the offence occurred:

(a) an offence under a provision of this Division or Division 10A, 10B, 15 or 15A,

(b) an offence under a provision of this Act set out in Column 1 of Schedule 1A,

(c) an offence (whether under section 344A or otherwise) of attempting to commit any offence referred to in paragraph (a) or (b),

(d) an offence under a previous enactment that is substantially similar to an offence referred to in paragraphs (a)–(c).

80AG Defence of similar age

(1) It is a defence to a prosecution for an offence under section 66C (3), 66DB, 66DD, 73 or 73A if the alleged victim is of or above the age of 14 years and the age difference between the alleged victim and the accused person is no more than 2 years.

(2) In any criminal proceedings in which the application of this section is raised, the prosecution has the onus of proving, beyond reasonable doubt, that the alleged victim was less than 14 years of age or that the difference in age between the alleged victim and the accused person is more than 2 years.

[47] Section 80G Incitement to commit sexual offence

Omit section 80G (5) (a) and (b). Insert instead:

(a) an offence under section 61KC, 61KD, 61KE, 61KF, 66DA, 66DB, 66DC, 66DD, 66DE, 66DF or 73A that is constituted by inciting another person to sexual touching or a sexual act within the meaning of Division 10,

(b) an offence under section 66EB, 66EC, 78B or 80 or an offence under section 344A of attempting to commit an offence under Division 10, 10A or 15.

[48] Section 91C Definitions

Omit “section 61H”. Insert instead “Division 10”.

[49] Section 91FA Definitions

Insert in alphabetical order:

young person means a person who is of or above the age of 16 years and under the age of 18 years.

[50] Section 91G Children not to be used for production of child abuse material

Insert after section 91G (5):

(6) Proceedings for an offence under this section against a child or young person may only be instituted by or with the approval of the Director of Public Prosecutions.

[51] Section 91H Production, dissemination or possession of child abuse material

Insert after section 91H (2):

(3) Proceedings for an offence under this section against a child or young person may only be instituted by or with the approval of the Director of Public Prosecutions.

[52] Section 91HAA

Insert after section 91H:

91HAA Exception

A person does not commit an offence under section 91H of possessing child abuse material if:

(a) the possession of the material occurred when the accused person was under the age of 18 years, and

(b) a reasonable person would consider the possession of the material by the accused person as acceptable having regard to each of the following (to the extent relevant):

(i) the nature and content of the material,

(ii) the circumstances in which the material was produced and came into the possession of the accused person,

(iii) the age, intellectual capacity, vulnerability or other relevant circumstances of the child depicted in the material,

(iv) the age, intellectual capacity, vulnerability or other relevant circumstances of the accused person at the time the accused person first came into possession of the material and at the time that the accused person's possession of the material first came to the attention of a police officer,

(v) the relationship between the accused person and the child depicted in the material.

[53] Section 91HA Defences

Insert after section 91HA (8):

(9) **Person producing, disseminating or possessing depictions of himself or herself**

It is a defence in proceedings for an offence against section 91H of possessing child abuse material if the only person depicted in the material is the accused person.

(10) It is a defence in proceedings for an offence against section 91H of producing or disseminating child abuse material if:

(a) the production or dissemination of the material occurred when the accused person was under the age of 18 years, and

(b) the only person depicted in the material is the accused person.

(11) Material that depicts a person other than the accused person is taken, for the purposes of this section, to depict only the accused person if the material would no longer be child abuse material were the depiction of the accused person to be removed.

(12) The onus of proving under subsection (9) or (10) that material depicts the accused person and no other person lies with the accused person on the balance of probabilities.

[54] Section 311 Definitions

Insert in alphabetical order in section 311 (1):

adult means a person who is of or above the age of 18 years.

[55] Section 313 Knowledge about type of offence is unnecessary

Insert "or child abuse offence (within the meaning of section 316A)" after "serious indictable offence" wherever occurring.

[56] Section 316 Concealing serious indictable offence

Omit "Attorney General" from section 316 (4).

Insert instead "Director of Public Prosecutions".

[57] Section 316 (6)

Insert after section 316 (5):

(6) In this section:

serious indictable offence does not include a child abuse offence (within the meaning of section 316A).

Note. Concealing a child abuse offence is an offence under section 316A. A section 316A offence can only be committed by an adult.

[58] Section 316A

Insert after section 316:

316A Concealing child abuse offence

(1) An adult:

(a) who knows, believes or reasonably ought to know that a child abuse offence has been committed against another person, and

(b) who knows, believes or reasonably ought to know that he or she has information that might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for that offence, and

(c) who fails without reasonable excuse to bring that information to the attention of a member of the NSW Police Force as soon as it is practicable to do so,

is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

(2) For the purposes of subsection (1), a person has a reasonable excuse for failing to bring information to the attention of a member of the NSW Police Force if:

(a) the person believes on reasonable grounds that the information is already known to police, or

(b) the person has reported the information in accordance with the applicable requirements under Part 2 of Chapter 3 of the *Children and Young Persons (Care and Protection) Act 1998* or believes on reasonable grounds that another person has done so, or

(c) the person has reported the information to the Ombudsman under Part 3A of the *Ombudsman Act 1974* or believes on reasonable grounds that another person has done so, or

(d) the person has reasonable grounds to fear for the safety of the person or any other person (other than the offender) if the information were to be reported to police, or

(e) the information was obtained by the person when the person was under the age of 18 years, or

(f) the alleged victim was an adult at the time that the information was obtained by the person and the person believes on reasonable grounds that the alleged victim does not wish the information to be reported to police.

(3) Subsection (2) does not limit the grounds on which it may be established that a person has a reasonable excuse for failing to bring information to the attention of a member of the NSW Police Force.

(4) A person who solicits, accepts or agrees to accept any benefit for the person or any other person in consideration for doing anything that would be an offence under subsection (1) is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

(5) It is not an offence under subsection (4) merely to solicit, accept or agree to accept the making good of loss or injury caused by an offence or the making of reasonable compensation for that loss or injury.

(6) A prosecution for an offence under subsection (1) is not to be commenced against a person without the approval of the Director of Public Prosecutions in respect of information obtained by an adult in the course of practising or following a profession, calling or vocation prescribed by the regulations for the purposes of this subsection.

(7) The regulations may prescribe a profession, calling or vocation as referred to in subsection (6).

(8) The reporting of information by a person in good faith under this section:

(a) does not constitute unprofessional conduct or a breach of professional ethics on the part of the person, and

(b) does not make the person subject to any civil liability in respect of it (including liability for defamation).

(9) In this section:

child means a person who is under the age of 18 years.

child abuse offence means:

(a) murder or manslaughter of a child (including under section 22A), or

(b) an offence under section 27, 29, 33, 35, 37, 38, 38A, 39, 41, 41A, 44, 45, 45A, 46, 59, 60E, 86 or 91J or Division 10, 10A, 10B or 15 of Part 3 where the alleged victim is a child, or

(c) an offence under section 42, 43, 43A, 91G or 91H, or

(d) an offence under a provision of this Act set out in Column 1 of Schedule 1A where the alleged victim was a child, or

(e) an offence of attempting to commit an offence referred to in paragraphs (a)–(d), or

(f) an offence under a previous enactment that is substantially similar to an offence referred to in paragraphs (a)–(e).

obtain includes receive or become aware of.

[59] Schedule 1A

Insert before Schedule 2:

Schedule 1A Former sexual offences

(Sections 66EA, 80AF and 316A)

Column 1	Column 2
Provision of this Act	**Description of offence (for guidance only as the description of the offence may have changed over time)**
Section 61B	Maliciously inflicting grievous bodily harm with intent to have sexual intercourse
Section 61C	Maliciously inflicting actual bodily harm with intent to have sexual intercourse
Section 61D	Sexual intercourse without consent
Section 61E	Indecent assault and act of indecency
Section 61F	Attempted offence under section 61B, 61C, 61D or 61E
Section 61L	Indecent assault
Section 61M	Aggravated indecent assault
Section 61N	Act of indecency
Section 61O	Aggravated act of indecency
Section 61P	Attempt to commit an offence under sections 61I–61O
Section 63	Rape
Section 65	Attempted rape
Section 65A	Sexual intercourse procured by non-violent threats
Section 66	Carnal knowledge by fraud
Section 67	Carnal knowledge of a girl under 10
Section 68	Attempted carnal knowledge of a girl under 10
Section 71	Carnal knowledge of a girl between 10 and 14/Carnal knowledge of a girl between 10 and 16
Section 72	Attempted carnal knowledge of a girl between 10 and 14/Attempted carnal knowledge of a girl between 10 and 16
Section 72A	Carnal knowledge of an idiot or imbecile

Column 1	Column 2
Provision of this Act	**Description of offence (for guidance only as the description of the offence may have changed over time)**
Section 74	Attempted carnal knowledge of a girl between 10 and 16 by teacher etc/Attempted carnal knowledge of a girl between 10 and 17 by teacher etc
Section 76	Indecent assault of female
Section 76A	Act of indecency with or toward girl under 16 years
Section 77	Indecent assault on girl under 14
Section 78	Indecent assault on female above the age of 14
Section 78H	Homosexual intercourse with male under 10
Section 78I	Attempt, or assault with intent, to have homosexual intercourse with male under 10
Section 78K	Homosexual intercourse with male between 10 and 18
Section 78L	Attempt, or assault with intent, to have homosexual intercourse with male between 10 and 18
Section 78M	Homosexual intercourse with idiot or imbecile
Section 78N	Homosexual intercourse by teacher etc
Section 78O	Attempt, or assault with intent, to have homosexual intercourse with pupil etc
Section 78Q	Act of gross indecency
Section 81	Indecent assault on a male
Section 81A	Procuring or attempting to procure the commission of an act of indecency by a male person with another male person
Section 81B	Soliciting or inciting an offence under section 79, 81 or 81A in a public place

[60] Schedule 2 Application of Act

Omit "and 77". Insert instead "and 80AE".

[61] Schedule 11, heading

Omit "**and transitional**". Insert instead "**, transitional and other**".

[62] Schedule 11

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Criminal Legislation Amendment (Child Sexual Abuse) Act 2018

Indecent assault now sexual touching

A reference in any Act or law to indecent assault is taken to include a reference to sexual touching within the meaning of Division 10 of Part 3 of this Act.

Act of indecency now sexual touching and sexual act

A reference in any Act or law to an act of indecency is taken to include a reference to sexual touching and sexual act within the meaning of Division 10 of Part 3 of this Act.

Omitted provisions

Sections 61L–61P, as in force immediately before their repeal by the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*, continue to apply to offences committed or alleged to have been committed before the repeal.

Former section 61Q

Section 61Q, as in force immediately before its renumbering and amendment by the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*, continues to apply in respect of offences committed before that renumbering and amendment.

Cognitive impairment—consent not a defence for indecent assault or act of indecency

Section 66F (5)–(8), as in force immediately before their substitution by the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*, continues to apply in respect of offences committed before that substitution.

Retrospective operation of repeal of section 78 limitation period

The repeal of section 78 by the *Criminal Legislation (Amendment) Act 1992* is taken to have repealed that section retrospectively as if that section had never been enacted and consequently that section cannot be relied on to prevent any prosecution for an offence even if the offence occurred before that repeal.

Incitement to commit sexual offence

Section 80G (5), as in force immediately before its amendment by the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*, continues to apply in respect of offences committed before that amendment.

Application of section 316A

Section 316A, as inserted by the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*, applies in respect of information obtained on or after the commencement of that section, including if that information relates to a child abuse offence that occurred or may have occurred before the commencement of that section.

Schedule 2 Amendment of Child Protection (Offenders Registration) Act 2000 No 42

[1] Section 3 Definitions

Omit "an act of indecency" from paragraph (a1) of the definition of ***Class 2 offence*** in section 3 (1).

Insert instead "sexual touching or a sexual act".

[2] Section 3 (1), definition of "Class 2 offence"

Insert "or 66EC" after "66EB" in paragraph (a3).

[3] Section 3 (1), definition of "sexual intercourse"

Omit the definition. Insert instead:

> ***sexual act***, ***sexual intercourse*** and ***sexual touching*** have the same meanings as in Division 10 of Part 3 of the *Crimes Act 1900*.

[4] Section 3 (7)

Omit "an act of indecency". Insert instead "sexual touching or a sexual act".

[5] Section 3A Registrable persons

Omit "an act of indecency" from section 3A (2) (c) (i).

Insert instead "sexual touching or a sexual act".

[6] Section 3C

Insert after section 3B:

3C Discretion to treat child offender as non-registrable

(1) A court that sentences a person for a sexual offence committed by the person when the person was a child may make an order declaring that the person is not to be treated as a registrable person for the purposes of this Act in respect of that offence.

(2) While the order remains in force, the person is not a registrable person under this Act because of that offence.

(3) A court may make an order under this section only if:

(a) the victim of the offence was under the age of 18 years at the time that the offence was committed, and

(b) the person has not previously been convicted of any other Class 1 offence or Class 2 offence, and

(c) the court does not impose in respect of the offence:

(i) a sentence of full-time detention, or

(ii) a control order (unless the court also, by order, suspends the execution of the control order), and

(d) the court is satisfied that the person does not pose a risk to the lives or sexual safety of one or more children, or of children generally.

(4) This section applies only if the sexual offence concerned is a registrable offence and does not limit section 3A (2) (c) as it applies to offences committed by children.

(5) If an order is made under this section, the order is taken, for the purpose of any provisions that enable the Crown or a prosecutor to appeal against a sentence imposed on the person, to be a part of the person's sentence.

(6) In this section:

control order means an order under section 33 (1) (g) of the *Children (Criminal Proceedings) Act 1987*.

full-time detention has the same meaning as in the *Crimes (Sentencing Procedure) Act 1999*.

sexual offence means the following offences regardless of when the offence occurred:

(a) an offence under a provision of Division 10, 10A, 15 or 15A of Part 3 of the *Crimes Act 1900* or under section 91J, 91K or 91L of that Act,

(b) an offence under a provision of that Act set out in Column 1 of Schedule 1A to that Act,

(c) an offence under section 233BAB of the *Customs Act 1901* of the Commonwealth involving items of child pornography or child abuse material,

(d) an offence under Subdivision D of Division 474 of Part 10.6 of the *Criminal Code* of the Commonwealth,

(e) an offence of attempting to commit any offence referred to in paragraphs (a)–(d),

(f) an offence under a previous enactment that is substantially similar to an offence referred to in paragraphs (a)–(e).

[7] Section 3H Risk to sexual safety of children—meaning

Omit "Part" from section 3H (1). Insert instead "Act".

[8] Section 3AA

Renumber section 3H as section 3AA and move to Part 1 after section 3.

[9] Schedule 2 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Criminal Legislation Amendment (Child Sexual Abuse) Act 2018

Sexual touching and sexual act include former acts of indecency

Any references in this Act to sexual touching or sexual act are taken, in a reference to any offence occurring before the commencement of this clause, to include a reference to an act of indecency.

Application of section 3C

Section 3C, as inserted by the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*, applies to sentences passed after the commencement of that section, regardless of when the offence was committed.

Schedule 3 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

[1] Section 21A Aggravating, mitigating and other factors in sentencing

Omit "61M, 61N, 61O" from paragraph (a) of the definition of ***child sexual offence*** in section 21A (6).

Insert instead "61KC, 61KD, 61KE, 61KF".

[2] Section 21A (6), definition of "child sexual offence"

Insert "66DA, 66DB, 66DC, 66DD, 66DE, 66DF," after "66D," in paragraph (b).

[3] Section 21A (6), definition of "child sexual offence"

Insert "66EC," after "66EB," in paragraph (b).

[4] Section 21A (6), definition of "child sexual offence"

Insert after paragraph (d):

(d1) an offence against a provision of the *Crimes Act 1900* set out in Column 1 of Schedule 1A to that Act where the person against whom the offence was committed was then under the age of 16 years, or

[5] Section 21A (6), definition of "child sexual offence"

Insert at the end of paragraph (e):

, or

(f) an offence under a previous enactment that is substantially similar to an offence referred to in any of the above paragraphs.

[6] Section 25AA

Insert after section 25:

25AA Sentencing for child sexual offences

(1) A court must sentence an offender for a child sexual offence in accordance with the sentencing patterns and practices at the time of sentencing, not at the time of the offence.

(2) However, the standard non-parole period for a child sexual offence is the standard non-parole period (if any) that applied at the time of the offence, not at the time of sentencing.

(3) When sentencing an offender for a child sexual offence, a court must have regard to the trauma of sexual abuse on children as understood at the time of sentencing (which may include recent psychological research or the common experience of courts).

(4) This section does not affect section 19.

(5) In this section:

child sexual offence means the following offences regardless of when the offence occurred but only if the person against whom the offence was committed was then under the age of 16 years:

(a) an offence under a provision of Division 10, 10A, 10B, 15 or 15A of Part 3 of the *Crimes Act 1900*,

(b) an offence under a provision of that Act set out in Column 1 of Schedule 1A to that Act,

(c) an offence of attempting to commit any offence referred to in paragraph (a) or (b),

(d) an offence under a previous enactment that is substantially similar to an offence referred to in paragraphs (a)–(c).

[7] Part 4, Division 1A, Table

Omit "Section 61M (1) of the *Crimes Act 1900* (aggravated indecent assault)" from item 9A.

Insert instead "Section 61KD (1) of the *Crimes Act 1900* (aggravated sexual touching)".

[8] Part 4, Division 1A, Table

Omit "Section 61M (2) of the *Crimes Act 1900* (aggravated indecent assault)" from item 9B.

Insert instead "Section 66DA of the *Crimes Act 1900* (sexual touching—child under 10)".

[9] Section 66 Intensive correction not available for certain sexual offences

Omit "as defined by section 61H" from section 66 (2) (a) (ii).

Insert instead "within the meaning of Division 10 of Part 3".

[10] Schedule 2 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provision consequent on enactment of Criminal Legislation Amendment (Child Sexual Abuse) Act 2018

Standard non-parole periods

The Table to Division 1A of Part 4 of this Act, as in force immediately before its amendment by the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*, continues to apply in respect of an offence against section 61M (1) or (2) of the *Crimes Act 1900* committed before that amendment.

Schedule 4 Amendment of Criminal Procedure Act 1986 No 209

[1] Section 3 Definitions

Insert "43B," after "section" in paragraph (a) of the definition of ***prescribed sexual offence*** in section 3 (1).

[2] Section 3 (1), definition of "prescribed sexual offence"

Insert "61KC, 61KD, 61KE, 61KF," after "61K," in paragraph (a).

[3] Section 3 (1), definition of "prescribed sexual offence"

Insert "66DA, 66DB, 66DC, 66DD, 66DE, 66DF," after "66D," in paragraph (a).

[4] Section 3 (1), definition of "prescribed sexual offence"

Insert "66EC," after "66EB," in paragraph (a).

[5] Section 3 (1), definition of "prescribed sexual offence"

Insert "73A," after "73," in paragraph (a).

[6] Section 3 (1), definition of "prescribed sexual offence"

Omit "or 91G" from paragraph (a). Insert instead ", 91G or 316A".

[7] Section 268 Maximum penalties for Table 2 offences

Insert "61KC, 61KE, 61KF," after "61," in section 268 (2) (a).

[8] Section 268 (2) (a)

Insert "66DD, 66DE, 66EC, 73A," after "or (1A),".

[9] Section 293 Admissibility of evidence relating to sexual experience

Omit "as defined in section 61H (1)" from section 293 (4) (c) (i).

Insert instead "within the meaning of Division 10 of Part 3".

[10] Section 293A

Insert after section 293:

293A Warning may be given by Judge if differences in complainant's account

(1) This section applies if, on the trial of a person for a prescribed sexual offence, the Judge, after hearing submissions from the prosecution and the accused person, considers that there is evidence that suggests a difference in the complainant's account that may be relevant to the complainant's truthfulness or reliability.

(2) In circumstances to which this section applies, the Judge may inform the jury:

(a) that experience shows:

(i) people may not remember all the details of a sexual offence or may not describe a sexual offence in the same way each time, and

(ii) trauma may affect people differently, including affecting how they recall events, and

(iii) it is common for there to be differences in accounts of a sexual offence, and

(iv) both truthful and untruthful accounts of a sexual offence may contain differences, and

(b) that it is up to the jury to decide whether or not any differences in the complainant's account are important in assessing the complainant's truthfulness and reliability.

(3) In this section:

difference in an account includes:

(a) a gap in the account, and

(b) an inconsistency in the account, and

(c) a difference between the account and another account.

[11] Section 348 Offences in respect of which an intervention program may be conducted

Omit "(Offences in the nature of rape, offences relating to other acts of sexual assault etc)" from section 348 (2) (b).

Insert instead "(Sexual offences against adults and children)".

[12] Schedule 1 Indictable offences triable summarily

Insert "43B," after "43A," in clause 2 of Table 1.

[13] Schedule 1, Table 1, clause 2

Insert "61KD," after "60E (2),".

[14] Schedule 1, Table 1, clause 2

Insert "66DA, 66DB, 66DC, 66DF," after "61O (2) or (2A),".

[15] Schedule 1, Table 1, clause 2

Omit "or 93". Insert instead ", 93 or 316A".

[16] Schedule 1, Table 2, clause 1

Insert "61KC, 61KE, 61KF," after "61,".

[17] Schedule 1, Table 2, clause 1

Insert "66DD, 66DE, 66EC, 73A," after "61O (1) or (1A),".

[18] Schedule 2 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Criminal Legislation Amendment (Child Sexual Abuse) Act 2018

Indictment for indecent assault

Clause 14 of Schedule 3, as in force immediately before its substitution by the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*, continues to apply in respect of an offence committed before that substitution.

[19] Schedule 3 Provisions relating to offences

Omit clause 14. Insert instead:

14 Sexual touching

In an indictment for an offence of sexual touching, it is sufficient to state that the accused person (at a specified time and place) committed an offence of sexual touching in relation to the person alleged to have been the victim of the offence, without stating the mode of touching.

Schedule 5 Amendments to other legislation

5.1 Aboriginal Land Rights Act 1983 No 42

Section 79 Certain persons must not be employed

Insert "or 66EC" after "66EB" in section 79 (1B) (b).

5.2 Child Protection (Working with Children) Act 2012 No 51

[1] Section 26 Persons not entitled to apply for review or enabling order

Insert "61KC, 61KD, 61KE, 61KF," after "61K," in section 26 (1) (a) (ii).

[2] Section 26 (1) (a) (iv)

Insert "66DA, 66DB, 66DC, 66DD, 66DE, 66DF," after "66D,".

[3] Section 26 (1) (a) (iv)

Omit "or 66EB". Insert instead ", 66EB or 66EC".

[4] Section 26 (1) (a) (v)

Insert "73A," after "73,".

[5] Schedule 1 Assessment requirement triggers

Omit "60E" from clause 1 (2) (e). Insert instead "43B, 60E or 316A".

[6] Schedule 2 Disqualifying offences

Insert "61KC, 61KD, 61KE, 61KF," after "61K," in clause 1 (1) (e).

[7] Schedule 2, clause 1 (1) (h)

Insert "66DA, 66DB, 66DC, 66DD, 66DE, 66DF," after "66D,".

[8] Schedule 2, clause 1 (1) (h)

Insert "66EC," after "66EB,".

[9] Schedule 2, clause 1 (1) (h)

Omit "or 73". Insert instead ", 73 or 73A".

5.3 Court Suppression and Non-publication Orders Act 2010 No 106

Section 8 Grounds for making an order

Omit "an act of indecency" from section 8 (1) (d).

Insert instead "sexual touching or a sexual act within the meaning of Division 10 of Part 3 of the *Crimes Act 1900*".

5.4 Crimes (Domestic and Personal Violence) Act 2007 No 80

[1] Section 4 Meaning of "personal violence offence"

Insert "61KC, 61KD, 61KE, 61KF," after "61K," in section 4 (a).

[2] Section 4 (a)

Insert "66DA, 66DB, 66DC, 66DD, 66DE, 66DF," after "66D,".

[3] Section 4 (a)

Insert "73A," after "73,".

[4] Section 40 Interim apprehended violence order must be made on charge for certain offences

Insert "61KC, 61KD," after "61K," in section 40 (5) (c).

[5] Section 40 (5) (c)

Insert "66DA, 66DB," after "66D,".

5.5 Crimes Regulation 2015

[1] Clause 4 Concealment of offences by certain persons

Omit "section 316 (5)". Insert instead "sections 316 (5) and 316A (7)".

[2] Clause 4 (h)

Omit "if the serious indictable offence referred to in section 316 (1)".

Insert instead "if the child abuse offence referred to in section 316A (1)".

5.6 Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017 No 53

Schedule 1 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92—principal amendments

Omit "as defined by section 61H" from paragraph (a) (ii) of the definition of ***prescribed sexual offence*** in proposed section 67 (2) in Schedule 1 [29].

Insert instead "within the meaning of Division 10 of Part 3".

5.7 Electoral Act 2017 No 66

[1] Section 94 Definitions

Omit "acts of indecency" from the definition of ***relevant apprehended violence order*** in section 94 (1).

Insert instead "sexual touching or a sexual act within the meaning of Division 10 of Part 3 of the *Crimes Act 1900*".

[2] Schedule 7 Savings, transitional and other provisions

Insert after Part 2:

Part 3 Provision consequent on enactment of Criminal Legislation Amendment (Child Sexual Abuse) Act 2018

13 Sexual touching and sexual act include former acts of indecency

The reference in the definition of ***relevant apprehended violence order*** in section 94 (1) to sexual touching or a sexual act is taken, in a reference to any order made before the amendment of that definition by the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*, to include a reference to an act of indecency.

5.8 Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86

[1] Schedule 1 Modification of Health Practitioner Regulation National Law

Omit "acts of indecency" from paragraph (b) of the definition of ***sex or violence offence*** in section 138 (1) in item [13].

Insert instead "sexual touching or sexual acts within the meaning of Division 10 of Part 3 of the *Crimes Act 1900*".

[2] Schedule 1 [25], Schedule 5A

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provision consequent on enactment of Criminal Legislation Amendment (Child Sexual Abuse) Act 2018

Sexual touching and sexual act include former acts of indecency

The reference in paragraph (b) of the definition of ***sex or violence offence*** in section 138 (1) to sexual touching or sexual acts is taken, in a reference to an offence committed before the amendment of that definition by the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*, to include a reference to acts of indecency.

5.9 Health Services Act 1997 No 154

[1] Section 99 Duty to report certain criminal and disciplinary matters

Omit "acts of indecency" from the note to section 99 (1).

Insert instead "sexual touching or a sexual act".

[2] Section 103 Appeal rights

Omit "acts of indecency" from section 103 (2) (a).

Insert instead "sexual touching or a sexual act".

[3] Section 106 Right of appeal to Minister

Omit "acts of indecency" from section 106 (2) (c) (ii).

Insert instead "sexual touching or a sexual act".

[4] Section 117 Duty to report certain criminal conduct and disciplinary matters

Omit "acts of indecency" from the note to section 117 (1).

Insert instead "sexual touching or a sexual act".

[5] Schedule 7 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provision consequent on enactment of Criminal Legislation Amendment (Child Sexual Abuse) Act 2018

Sexual touching and sexual act include former acts of indecency

Any references in this Act to sexual touching or sexual act are taken, in a reference to any offence occurring before the commencement of this clause, to include a reference to an act of indecency.

[6] Dictionary

Omit "acts of indecency" from the definition of ***serious sex or violence offence*** in Part 1.

Insert instead "sexual touching or a sexual act".

[7] Dictionary, Part 1

Insert in alphabetical order:

sexual touching and ***sexual act*** have the same meanings as in Division 10 of Part 3 of the *Crimes Act 1900*.

5.10 Industrial Relations Act 1996 No 17

Section 72AB Definitions

Omit "sexual or indecent assault" from the definition of ***violent crime*** in section 72AB (1).

Insert instead "sexual assault or sexual touching".

5.11 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Section 46A Searchable offences

Omit "(Offences in the nature of rape, offences relating to other acts of sexual assault etc)" from paragraph (b) of the definition of ***serious offence*** in section 46A (2).

Insert instead "(Sexual offences against adults and children)".

5.12 Ombudsman Act 1974 No 68

[1] Section 25A Definitions

Insert at the end of paragraph (c) where firstly occurring of the definition of ***reportable conduct*** in section 25A (1)":

or

(d) any offence under section 43B or 316A of the *Crimes Act 1900*,

[2] Section 25A, definition of "reportable conduct"

Insert "concerned" after "the child".

5.13 Parliamentary Electorates and Elections Act 1912 No 41

[1] Section 81K Definitions

Omit "acts of indecency" wherever occurring in paragraphs (a) and (b) of the definition of ***child sexual offence*** in section 81K (1).

Insert instead "sexual touching or a sexual act".

[2] Section 81K (1), definition of "relevant apprehended violence order"

Omit "acts of indecency". Insert instead "sexual touching or a sexual act".

[3] Section 81K (1), definitions of "sexual touching" and "sexual act"

Insert in alphabetical order:

> ***sexual touching*** and ***sexual act*** have the same meanings as in Division 10 of Part 3 of the *Crimes Act 1900*.

[4] Section 81K (3)

Omit "an act of indecency". Insert instead "sexual touching or a sexual act".

[5] Schedule 22 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provision consequent on enactment of Criminal Legislation Amendment (Child Sexual Abuse) Act 2018

Sexual touching and sexual act include former acts of indecency

References in section 81K to sexual touching or a sexual act are taken, in a reference to any offence occurring or order made before the amendment of that section by the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*, to include a reference to an act of indecency.

5.14 Summary Offences Act 1988 No 25

[1] Section 3 Definitions

Omit "as defined in section 61H" from paragraph (a) of the definition of ***prostitution*** in section 3 (1).

Insert instead "within the meaning of Division 10 of Part 3".

[2] Section 11G Loitering by convicted child sexual offenders near premises frequented by children

Omit "acts of indecency" from paragraph (a) of the definition of ***convicted child sexual offender*** in section 11G (2).

Insert instead "sexual touching or a sexual act (within the meaning of Division 10 of Part 3 of the *Crimes Act 1900*)".

[3] Section 20 Public acts of prostitution

Omit "as defined in section 61H" from paragraph (a) of the definition of ***act of prostitution*** in section 20 (5).

Insert instead "within the meaning of Division 10 of Part 3".

[4] Schedule 2 Savings and transitional provisions

Insert after clause 2:

3 Provision consequent on enactment of Criminal Legislation Amendment (Child Sexual Abuse) Act 2018

The reference in paragraph (a) of the definition of ***convicted child sexual offender*** in section 11G (2) to sexual touching or a sexual act is taken, in a reference to any offence occurring before the amendment of that paragraph by the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*, to include a reference to an act of indecency.

5.15 Victims Rights and Support Act 2013 No 37

[1] Section 19 Meaning of "act of violence"

Omit "section 61H" wherever occurring in paragraphs (a) and (b) of the definition of ***sexual assault and domestic violence*** in section 19 (8).

Insert instead "Division 10 of Part 3".

[2] Section 19 (8), definition of "sexual assault and domestic violence"

Omit "that section" from paragraph (b). Insert instead "that Division".

[3] Section 19 (8), definition of "sexual assault and domestic violence"

Omit paragraph (d). Insert instead:

(d) sexual touching (within the meaning of Division 10 of Part 3 of the *Crimes Act 1900*) of a person without his or her consent or sexual touching of a child under the age of 16 years or the carrying out of a sexual act (within the meaning of that Division) with or towards a child under the age of 16 years,

[4] Section 34 Definitions

Omit the definition of ***indecent assault***. Insert in alphabetical order:

sexual touching or sexual act means sexual touching (within the meaning of Division 10 of Part 3 of the *Crimes Act 1900*) of a person without his or her consent or sexual touching of a child under the age of 16 years or the carrying out of a sexual act (within the meaning of that Division) with or towards a child under the age of 16 years.

[5] Section 35 Categories of recognition payment

Omit "indecent assault" from section 35 (2) (b).

Insert instead "sexual touching or sexual act".

[6] Section 35 (4) (a)

Omit the paragraph. Insert instead:

(a) sexual touching or sexual act,

[Second reading speech made in—

Legislative Assembly on 6 June 2018

Legislative Council on 20 June 2018]