



Crimes Legislation Amendment Bill.

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [5.13 p.m.]:
I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Government is pleased to introduce the *Crimes Legislation Amendment Bill 2004*.

The Bill makes a number of miscellaneous amendments to the criminal law and procedure. These amendments are designed to improve the administration of the criminal justice system.

The first amendment contained in **Schedule 1**, is a consequential amendment to the *Child (Protection Offenders Registration) Act 2000* to include the new filming offence as a "registrable offence" on the Child Protection Register. The creation of the new offence is dealt with by Schedule 8 of the Bill.

Schedule 8 amends the *Summary Offences Act 1989* to create two new offences of:

"Filming for indecent purposes" and
"Installing a device to facilitate filming for indecent purposes"

All members of this House would be aware of a number of recent and troubling cases concerning persons using modern surveillance devices in an untoward manner.

Because of the use of modern technology and the fact that the filming often takes place in the perpetrator's own home, there is no relevant offence on the statute book to deal with these serious invasions of privacy for indecent purposes.

The new offence under section 21G, **"Filming for indecent purposes"** will cover the situation where: the perpetrator films another person to provide sexual arousal or sexual gratification, where the other person:

is in a state of undress, or is engaged in a private act, in circumstances in which a reasonable person would reasonably expect to be afforded privacy, and where the person does not consent to being filmed.

The maximum penalty will be 100 penalty units or imprisonment for 2 years, or both.

Filming is defined in such a way as to cover both viewing the image in "real time" or recording the image to be viewed later.

In order to be serious enough to warrant a criminal conviction the 'state of undress'—together with the accompanying behaviour on the part of the accused—should constitute a serious invasion of privacy. The level of undress that meets the requisite degree of criminality is a matter appropriately left to the courts to determine in all the circumstances of the particular case.

Ultimately the proof of this offence will rely heavily on the type of images or recordings made and the locations in which the cameras are set up.

The offence is also drafted in such a way as to catch those who produce these films for themselves, or for the purpose of passing the recording on to another person.

The new offence under section 21H of **Installing a device to facilitate filming for indecent purposes** will also cover the situation where a person installs a surveillance device with the intention of committing an offence under section 21G.

Schedule 2 amends section 11 of the *Children (Criminal Proceedings) Act 1987* to clarify that the protections provided by the section apply to deceased child victims, and to extend the protection to the child siblings of child victims.

Section 11(1) of the *Children (Criminal Proceedings) Act 1987* prohibits the publication or broadcasting of the name of any child who appears as a witness in criminal proceedings.

This amendment closes a gap to cover situations where the victim of the offence is a deceased child, and extends that protection to include the siblings of child victims, including deceased child victims, in order to minimise the trauma to the family of the deceased.

Schedule 3 amends the *Costs in Criminal Cases Act 1967* to provide that an applicant can seek a certificate for costs in relation to a special hearing.

Pursuant to section 2 of the *Costs in Criminal Cases Act 1967*, the court may grant a certificate to a defendant seeking costs.

It is unclear as to whether this section applies to applications made in respect of a special hearing. Special hearings are trials held for defendants who have been found unfit to be tried in the normal way.

Special hearings may be distinguished from other criminal cases because of the limited evidence that is available and because the defence advocate faces unique problems in relation to obtaining instructions. This on its own, however, should not be a bar to obtaining costs. In every other respect the matter proceeds in the same way as a normal criminal trial.

Accordingly, this amendment allows applicants in special hearings to seek a certificate for costs when the applicant has been acquitted or where the court has not reached a verdict following a special hearing.

Schedule 4 Items [1] and [2] amend sections 52A and 52B of the *Crimes Act 1900* expanding the definition of "impact" for dangerous driving offences.

Section 52A of the *Crimes Act 1900* provides for the offence of dangerous driving occasioning death or grievous bodily harm where a vehicle is involved in an impact which causes the death or grievous bodily harm of a person.

Section 52B is set out in similar terms, however that section concerns the offence of "dangerous navigation".

Section 52A(5) sets out the definition of "impact." It covers many—but not all—scenarios. Dangerous driving can result in serious injury or death, even though the vehicle itself does not collide with anything. Examples of this are where a person is thrown or ejected from a vehicle or where a part of the body of the person protrudes from the vehicle and impacts with some object (including the ground).

The Government therefore proposes amending sections 52A(5) and 52B(5) to accommodate these situations.

It is still a defence where the death or serious injury is in no way attributable to the manner of driving.

Schedule 4 Items [3] and [4] amend section 80A of the *Crimes Act 1900* so that it has the same circumstances of aggravation and penalties as other sexual offences in the *Crimes Act 1900*.

Section 80A of the *Crimes Act* provides that it is an offence to compel another person, by means of a threat, to engage in self-manipulation.

The offence carries a maximum penalty of 14 years imprisonment. Unlike other sexual offences, however, section 80A only identifies one aggravating feature: if the victim is under the age of 10 years.

It is anomalous that none of the circumstances of aggravation set out in section 61J, such as offences committed in company, or where the victim suffers from a serious physical or intellectual disability, apply to this offence.

Accordingly, the amendment expands the circumstances of aggravation that are capable of elevating the maximum penalty for that offence to 20 years. The circumstances of aggravation reflect each of those circumstances identified in section 61J (2) of the *Crimes Act 1900*.

Schedule 5 amends the *Crimes (Sentencing Procedure) Act 1999* to clarify the powers of the Sentencing Council in respect of guideline judgments.

We know that guideline judgments can be very effective in giving the courts guidance on the appropriate factors to take into account in the exercise of their sentencing function. They foster more consistent sentencing by the courts.

Section 100J(1)(b) will now allow the Sentencing Council to advise and consult with the Attorney, not only in relation to offences suitable for guideline judgments, but also in relation to

- particular courts or classes of courts,
- particular offences or classes of offences,
- particular penalties or classes of penalties, or
- particular classes of offenders (but not to particular offenders).

Schedules 6 and 7 relate to consequential amendments arising out of amendments put forward last year to section 39

of the *Mental Health (Criminal Procedure) Act* 1990 so that, after a finding of not guilty by reason of mental illness, the Court is empowered to order a person's detention or release on such terms and conditions as the Court considers appropriate.

The amendment to section 7(4) of the *Criminal Appeal Act* 1912 simply provides the Court of Criminal Appeal with the same powers as a court now has under section 39.

The amendments in Schedule 7 clarify that the Mental Health Review Tribunal and authorised officers have the same powers in relation to persons that are released conditionally under section 39 as they do for other forensic patients who are detained under section 39.

In conclusion, the Bill contains a number of amendments that are necessary for the continuing development of an efficient and equitable criminal justice system in New South Wales.

I commend the bill to the House.

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