



New South Wales

Crimes Legislation Amendment (Child Sexual Offences) Bill 1998

Explanatory note

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

Overview of Bill

The object of this Bill is to create the following offences:

- (a) persistent sexual abuse of a child (maximum penalty: imprisonment for 25 years),
- (b) loitering by convicted child sexual offenders near premises frequented by children (maximum penalty: 50 penalty units or imprisonment for 2 years, or both).

The new indictable offence of persistent sexual abuse adopts a recommendation of the Report of the Paedophile Inquiry of the Wood Police Royal Commission that a new offence be created in line with recommendations of the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General.

The new summary offence of loitering by convicted child sexual offenders is similar to a Victorian offence (section 60B of the *Crimes Act 1958* of Victoria).

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 or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes Act 1900* and the *Summary Offences Act 1988* set out in Schedules 1 and 2.

Schedule 1 Amendment of Crimes Act 1900

Schedule 1 [2] inserts in the *Crimes Act 1900* a new indictable offence of persistent sexual abuse of a child. The offence carries a maximum penalty of 25 years penal servitude. A *child* is defined as a person under the age of 18 years.

A person commits the new offence if the person engages in conduct in relation to a particular child that constitutes a sexual offence on 3 or more separate occasions, each occurring on separate days during a particular period. *Sexual offence* is defined to include a number of offences under the *Crimes Act 1900*, including various offences relating to sexual intercourse with children, sexual assault, indecent assault, act of indecency with or in the presence of a child and other offences of a sexual nature. It also includes an attempt to commit such an offence and similar offences committed outside New South Wales. The conduct need not be of the same nature, or constitute the same sexual offence, on each occasion for the offence to be proved.

In proceedings for the new offence, it is not necessary to specify or prove the dates or exact circumstances of the alleged occasions on which the conduct constituting the offence occurred. This addresses a decision of the High Court in *S v The Queen* (1989) 168 CLR 266, that particularity was required in trials of sexual assault to the same degree as in trials for other offences. The new offence provides that, in order for a person to be convicted of the offence, it is sufficient that the jury is satisfied beyond reasonable doubt that the evidence establishes at least 3 separate occasions, occurring on separate days during a particular period, on which the person engaged in conduct constituting a sexual offence in relation to a particular child of the nature described in the charge for the offence, and is satisfied about the material facts of those 3 occasions. It is not necessary for the jury to be satisfied about the dates or the order of those occasions.

The new offence also makes provision for alternative verdicts by the jury and includes provisions aimed at protecting the defendant from double jeopardy.

As persistent sexual abuse of a child is a new offence, the offence applies only to conduct occurring after the commencement of the new offence.

Schedule 1 [3] makes it clear that consent of the child is not a defence to a charge of persistent sexual abuse of a child.

Schedule 1 [1] applies certain procedural provisions in the *Crimes Act 1900* applicable to sexual offences to proceedings for the new offence, namely sections 77A (proceedings in camera if court directs), 405B (warnings to jury about lack of complaints), 409A (depositions of previous connected proceedings may be read as evidence in committal proceedings), 409B (general prohibition on cross-examination of victim's previous sexual history) and 578A (prohibition on publication identifying victim).

Schedule 2 Amendment of Summary Offences Act 1988

Schedule 2 inserts in the *Summary Offences Act 1988* a new summary offence of loitering, without reasonable excuse, by convicted child sexual offenders near schools or other premises frequented by children. The offence carries a maximum penalty of a fine of 50 penalty units (presently \$5,500) or imprisonment for 2 years, or both.

A *child sexual offence* is defined as:

- (a) an offence involving sexual activity or acts of indecency that was committed in New South Wales against or in respect of a child and that was punishable by penal servitude or imprisonment for 12 months or more, or
- (b) an offence under sections 91D–91G of the *Crimes Act 1900*, other than if committed by a child prostitute, which relates to engaging in or being involved in child prostitution or pornography, or
- (c) an offence under section 578B or 578C (2A) of the *Crimes Act 1900*, which relates to possession or publication of child pornography, or
- (d) an offence of attempting, or of conspiracy or incitement, to commit any such offence, or
- (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).

The provision extends to child sexual offenders who were convicted before the commencement of the new offence.

First print



New South Wales

Crimes Legislation Amendment (Child Sexual Offences) Bill 1998

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Acts	2

Schedules

1 Amendment of Crimes Act 1900 No 40	3
2 Amendment of Summary Offences Act 1988 No 25	6



New South Wales

Crimes Legislation Amendment (Child Sexual Offences) Bill 1998

No. , 1998

A Bill for

An Act to amend the *Crimes Act 1900* and the *Summary Offences Act 1988* to create offences relating to the persistent sexual abuse of children and to loitering by convicted child sexual offenders near premises frequented by children.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Legislation Amendment (Child Sexual Offences) Act 1998*.

2 Commencement

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

3 Amendment of Acts

The Acts specified in Schedules 1 and 2 are amended as set out in those Schedules.

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**Schedule 1 Amendment of Crimes Act 1900
No 40**

(Section 3)

[1] Section 4 Definitions

Insert “, 66EA” after “66D” in the definition of *prescribed sexual offence* in section 4 (1). 5

[2] Section 66EA

Insert after section 66E:

66EA Persistent sexual abuse of a child

- (1) A person who, on 3 or more separate occasions occurring on separate days during any period, engages in conduct in relation to a particular child that constitutes a sexual offence is liable to penal servitude for 25 years. 10
- (2) It is immaterial whether or not the conduct is of the same nature, or constitutes the same offence, on each occasion. 15
- (3) It is immaterial that the conduct on any of those occasions occurred outside New South Wales, so long as the conduct on at least one of those occasions occurred in New South Wales.
- (4) In proceedings for an offence against this section, it is not necessary to specify or to prove the dates or exact circumstances of the alleged occasions on which the conduct constituting the offence occurred. 20
- (5) A charge of an offence against this section:
 - (a) must specify with reasonable particularity the period during which the offence against this section occurred, and 25
 - (b) must describe the nature of the separate offences alleged to have been committed by the accused during that period. 30

- (6) In order for the accused to be convicted of an offence against this section:
- (a) the jury must be satisfied beyond reasonable doubt that the evidence establishes at least 3 separate occasions, occurring on separate days during the period concerned, on which the accused engaged in conduct constituting a sexual offence in relation to a particular child of a nature described in the charge, and 5
 - (b) the jury must be so satisfied about the material facts of the 3 such occasions, although the jury need not be so satisfied about the dates or the order of those occasions, and 10
 - (c) if more than 3 such occasions are relied on as evidence of the commission of an offence against this section, all the members of the jury must be so satisfied about the same 3 occasions, and 15
 - (d) the jury must be satisfied that the 3 such occasions relied on as evidence of the commission of an offence against this section occurred after the commencement of this section. 20
- (7) In proceedings for an offence against this section, the judge must inform the jury of the requirements of subsection (6).
- (8) A person who has been convicted or acquitted of an offence against this section may not be convicted of a sexual offence in relation to the same child that is alleged to have been committed in the period during which the accused was alleged to have committed an offence against this section. This subsection does not prevent an alternative verdict under subsection (10). 25 30
- (9) A person who has been convicted or acquitted of a sexual offence may not be convicted of an offence against this section in relation to the same child if any of the occasions relied on as evidence of the commission of the offence against this section includes the occasion of that sexual offence. 35

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- (10) If on the trial of a person charged with an offence against 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 against this section, committed a sexual offence, the jury may acquit the person of the offence charged and find the person guilty of that sexual offence. The person is liable to punishment accordingly. 5
- (11) Proceedings for an offence against this section may only be instituted by or with the approval of the Director of Public Prosecutions. 10
- (12) In this section:
- child* means a person under the age of 18 years.
- sexual offence* means any of the following: 15
- (a) an offence under section 61I, 61J, 61K, 61L, 61M, 61N, 61O, 66A, 66B, 66C, 66D, 66F, 73, 74, 78H, 78I, 78K, 78L, 78N, 78O, 78Q or 80A,
- (b) an offence of attempting to commit an offence referred to in paragraph (a), 20
- (c) 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 paragraph (a) or (b).
- [3] Section 77 Consent no defence in certain cases** 25
- Insert “, 66EA” after “66D” in section 77 (1).

Schedule 2 Amendment of Summary Offences Act 1988 No 25

(Section 3)

Part 2, Division 2A (section 11G)

Insert after Division 2 of Part 2: 5

Division 2A Loitering by convicted child sexual offenders

11G Loitering by convicted child sexual offenders near premises frequented by children

- (1) A person who is a convicted child sexual offender and who loiters, without reasonable excuse, in or near: 10
- (a) a school, or
 - (b) a public place regularly frequented by children and in which children are present at the time of the loitering, 15

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.

- (2) In this section:
child means a person under the age of 16 years. 20

convicted child sexual offender means a person who has been convicted, whether before or after the commencement of this section, of any of the following offences:

- (a) an offence involving sexual activity or acts of indecency that was committed in New South Wales against or in respect of a child and that was punishable by penal servitude or imprisonment for 12 months or more, 25
- (b) an offence under sections 91D–91G of the *Crimes Act 1900* (other than if committed by a child prostitute), 30
- (c) an offence under section 578B or 578C (2A) of the *Crimes Act 1900*.

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- (d) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraphs (a)–(c),
 - (e) an offence under a 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).

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conviction includes a spent conviction.