



New South Wales

Crimes Amendment (Child Pornography) Bill 1997

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to increase the maximum term of imprisonment for the offence of possessing child pornography from 12 months imprisonment to 2 years imprisonment, and
 - (b) to increase the maximum penalties for publishing an indecent article if that article constitutes child pornography from 100 penalty units or 12 months imprisonment (or both) in the case of an individual, or 200 penalty units in the case of a corporation, to a maximum penalty of 1,000 penalty units or 5 years imprisonment (or both) in the case of an individual, or 2,000 penalty units in the case of a corporation, and
-

- (c) to provide for the offence of publishing an indecent article that constitutes child pornography to be an indictable offence that is to be dealt with summarily unless the prosecuting authority elects otherwise, and
- (d) to replace the offence of employing a child for pornographic purposes with an indictable offence of using a child for pornographic purposes whether the child is employed for that purpose or not.

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* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to various Acts set out in Schedule 2.

Schedule 1 Amendment of Crimes Act 1900

Possessing child pornography

Schedule 1 [5] amends section 578B (2) as described in paragraph (a) of the Overview of the Bill.

Publishing child pornography

Schedule 1 [7] and [8] amend section 578C of the Principal Act in the manner described in paragraphs (b) and (c) of the Overview of the Bill. Currently the publication of child pornography is dealt with under section 578C which deals generally with the publication of indecent articles. The maximum penalty for the publication of such articles is 100 penalty units or 12 months imprisonment (or both) in the case of an individual, or 200 penalty units in the case of a corporation. The proposed amendments make specific

provision for the offence of publication of child pornography, and also increase the maximum penalty for such publication so that an individual will be liable to a maximum penalty of 1,000 penalty units or 5 years imprisonment (or both) and a corporation will be liable to a maximum penalty of 2,000 penalty units.

Use of a child for pornographic purposes

Schedule 1 [2]–[4] amend section 91G in the manner described in paragraph (d) of the Overview of the Bill. Section 91G currently makes it an offence to employ a child for pornographic purposes or to cause or procure a child to be, or consent to a child being, so used. The proposed amendments to section 91G (1) made by Schedule 1 [2] and [3] will instead provide for the offence of using a child for pornographic purposes (or causing or procuring a child to be, or consenting to a child being, so used) whether employed for that purpose or not.

The penalty for an offence under section 91G remains unchanged so that a person convicted of using a child for pornographic purposes is liable to penal servitude for 5 years or, if the child is under 14 years, 7 years penal servitude.

Proposed Schedule 1 [4] replaces section 91G (2) (which currently provides that a child is employed for pornographic purposes if money or some other material thing is paid or provided to the child, or some other person, for the employment of the child and in the course of employment the child is engaged in an activity of a sexual nature for the purpose of producing pornography, or the child is in the presence of a person so engaged) to remove the element of employment. The new section 91G (2) provides that a child is used by a person for pornographic purposes if the child is engaged in activity of a sexual nature (such as actual or simulated sexual intercourse or a striptease) for the purpose of the production of pornography by that person, or the child is in the presence of another person so engaged for that purpose.

Other amendments

Schedule 1 [1], [6] and [9] make minor and consequential amendments.

Schedule 1 [10] makes amendments of a savings and transitional nature.

Schedule 2 Amendment of other Acts

Schedule 2.2 amends section 33K of the *Criminal Procedure Act 1986* to provide that an offence under proposed section 578C (2A) (in relation to the publication of child pornography) is to be dealt with summarily unless the prosecution elects to have it dealt with on indictment. The maximum penalties for the publication of child pornography if the matter is dealt with summarily is to be 100 penalty units or 2 years imprisonment (or both) in the case of an individual, or 200 penalty units in the case of a corporation.

Schedule 2.1 and 2.3 make consequential amendments to the *Children (Care and Protection) Act 1987* and the *Victims Compensation Act 1996*.

First print



New South Wales

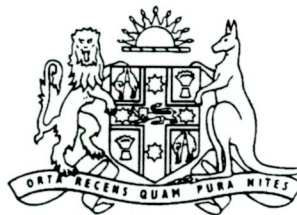
Crimes Amendment (Child Pornography) Bill 1997

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Crimes Act 1900 No 40	2
4 Amendment of other Acts	2

Schedules

1 Amendment of Crimes Act 1900	3
2 Amendment of other Acts	5



New South Wales

Crimes Amendment (Child Pornography) Bill 1997

No , 1997

A Bill for

An Act to amend the *Crimes Act 1900* and the *Criminal Procedure Act 1986* with respect to the possession and publication of child pornography and the use of children for pornographic purposes; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Child Pornography) Act 1997*.

2 Commencement

5

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

3 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 1.

4 Amendment of other Acts

10

Each Act specified in Schedule 2 is amended as set out in that Schedule.

Schedule 1 Amendment of Crimes Act 1900

(Section 3)

[1] Section 77A Proceedings in camera in certain cases

Omit "employed" from paragraph (b) of the definition of *complainant* in section 77A (6).

5

Insert instead "used".

[2] Section 91G Children not to be used for pornographic purposes

Omit "employs" from section 91G (1) (a). Insert instead "uses".

[3] Section 91G (1)

Omit "employed" wherever occurring in section 91G (1) (b) and (c).
Insert instead "used".

10

[4] Section 91G (2)

Omit the subsection. Insert instead:

(2) For the purposes of this section, a child is used by a person for pornographic purposes if:

15

(a) the child is engaged in activity of a sexual nature (for example, actual or simulated sexual intercourse or a striptease) for the purpose of the production of pornography by that person, or

(b) the child is in the presence of another person engaged in such an activity for that purpose.

20

[5] Section 578B Possession of child pornography

Omit "12 months" from section 578B (2). Insert instead "2 years".

Crimes Amendment (Child Pornography) Bill 1997

Schedule 1 Amendment of Crimes Act 1900

- [6] **Section 578C Publishing child pornography and indecent articles**
- Insert in alphabetical order in section 578C (1):
- child pornography* has the same meaning as it has in section 578B. 5
- [7] **Section 578C (2)**
- Insert “(other than an indecent article that is child pornography)” after “indecent article”.
- [8] **Section 578C (2A)**
- Insert after section 578C (2): 10
- (2A) A person who publishes an indecent article that is child pornography is guilty of an offence.
- Maximum penalty: in the case of an individual—1,000 penalty units or imprisonment for 5 years (or both), or in the case of a corporation—2,000 penalty units. 15
- [9] **Section 578C (5)**
- Omit “this section”. Insert instead “subsection (2)”.
- [10] **Eleventh Schedule Savings and transitional provisions**
- Insert at the end of the Schedule:
- Part 11 Crimes Amendment (Child Pornography) Act 1997** 20
- 34 Operation of amendments in relation to use or employment of a child for pornographic purposes**
- Section 91G, as amended by Schedule 1 [2]–[4] to the *Crimes Amendment (Child Pornography) Act 1997*, does not apply in respect of an act giving rise to proceedings for an offence that occurred before that amendment commenced. 25

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Children (Care and Protection) Act 1987 No 54

Section 60 Removal of children without warrant

Omit "employed" from section 60 (3) (b) wherever occurring. 5
Insert instead "used".

2.2 Criminal Procedure Act 1986 No 209

[1] Section 33K Maximum penalties for Table 2 offences

Insert at the end of section 33K (2):

- (j) for an offence under section 578C (2A) of the 10
Crimes Act 1900—in the case of an individual,
imprisonment for 2 years, or a fine of 100 penalty
units (or both), or in the case of a corporation, 200
penalty units.

[2] Part 9A, Table 2 Indictable offences that are to be dealt with 15 summarily unless prosecuting authority elects otherwise

Insert after Part 5:

Part 6 Miscellaneous offences

10 Publishing of child pornography

An offence under section 578C (2A) of the *Crimes Act* 20
1900.

Crimes Amendment (Child Pornography) Bill 1997

Schedule 2 Amendment of other Acts

2.3 Victims Compensation Act 1996 No 115

Dictionary

Omit "employment" from paragraph (e) of the definition of *sexual assault and apprehended domestic violence*.

Insert instead "use".

5

CRIMES AMENDMENT (CHILD PORNOGRAPHY) BILL

Schedule of the amendment referred to in the Legislative Council's Message of 5 December 1997.

Page 4, insert after line 24:

[10] Section 578C (7)-(9)

Insert after section 578C (6):

- (7) If a corporation contravenes, whether by act or omission, another provision of this section, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the provision if the person knowingly authorised or permitted the contravention.
 - (8) A person may be proceeded against and convicted under a provision pursuant to subsection (7) whether or not the corporation has been proceeded against or been convicted under that provision.
 - (9) Nothing in subsection (7) or (8) affects any liability imposed on a corporation for an offence committed by the corporation under a provision of this section.
-

