



New South Wales

Crimes Amendment (Child Pornography) Act 1997 No 142

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New South Wales

Crimes Amendment (Child Pornography) Act 1997 No 142

Act No 142, 1997

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. [Assented to 17 December 1997]

The Legislature of New South Wales enacts:

1 Name of Act

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

2 Commencement

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

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).

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”.

[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:
 - (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.

[5] Section 578B Possession of child pornography

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

[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.

[7] Section 578C (2)

Insert "(other than an indecent article that is child pornography)" after "indecent article".

[8] Section 578C (2A)–(2C)

Insert after section 578C (2):

- (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.

- (2B) A court that convicts a person of an offence under subsection (2A) may order forfeiture to the Crown of any computer used to publish the child pornography.

- (2C) On the making of an order under subsection (2B) the computer becomes the property of the Crown.

[9] Section 578C (5)

Omit "this section". Insert instead "subsection (2)".

[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.

[11] Eleventh Schedule Savings and transitional provisions

Insert at the end of the Schedule:

Part 11 Crimes Amendment (Child Pornography) Act 1997

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.

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.
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 *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 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 1900*.

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”.

[Minister’s second reading speech made in—
Legislative Assembly on 19 November 1997
Legislative Council on 5 December 1997]

