

CRIMES ACT AMENDMENT (SEXUAL OFFENCES AND FEMALE GENITAL MUTILATION) BILL 2025

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Crimes Act Amendment (Sexual Offences and Female Genital Mutilation) Bill 2025 forms part of the NSW Government's ongoing legislative reform program to ensure our criminal laws are fit for purpose. The reforms contained in this Bill respond to court decisions, coronial inquests and other external developments. Four proposals are being progressed.

The Bill amends the **female genital mutilation offences** under sections 45 and 45A of the *Crimes Act 1900* (Crimes Act), to address the Court of Criminal Appeal's (CCA) decision in *Russell v R* [2023] NSWCCA 272, which held that the offences only apply to child victims, and to acts for ritualistic or traditional purposes.

- The Bill's amendments will provide that the offences apply regardless of whether the victim is an adult or a child, and clarify that acts can still constitute female genital mutilation even where they are not done for a ritualistic or traditional purpose.
- Supporting amendments are also included to make clear that tattooing and piercing, when compliant with all legal and professional standards, is not female genital mutilation, and to enable additional classes of persons to be prescribed authorised medical professionals for certain surgical procedures.

The Bill expands the existing offences for sexual acts 'with or towards' a child under Part 3, Division 10, Subdivision 7 of the Crimes Act to also apply to **sexual acts done 'in the presence of' a child**, where the presence of the child is a source of sexual gratification and / or arousal.

- This responds to the CCA decision in *DPP (NSW) v Presnell* [2022] NSWCCA 146, which held that the for a sexual act to be 'with or towards' a child, there must be an intention, on some level, to for the offender to engage the child physically.
- Where a person gains sexual arousal or gratification from the physical presence of a child, this indicates both a sexual interest in children and a willingness to act on that interest, even if there is no intention to engage physically. It is appropriate for the criminal law to prohibit such behaviour, which exposes children to risky sexual behaviour.

The Bill will introduce a new provision that enables a trier of fact to return a **special verdict in circumstances where there is uncertainty as to whether the victim was alive or dead at the time sexual interference occurs**.

- Currently, an accused may escape criminal liability by technicality, because a sexual offence can only be committed against a living person, and the offence of indecent interference with a dead human body can only be committed on a deceased person. This means that even where it is beyond reasonable doubt that sexual interference occurred, neither offence will be able to apply.
- This reform will close this gap – where a trier of fact is satisfied beyond reasonable doubt that either a sexual offence or the indecent interference offence has been committed, but is unable to be satisfied of which due to uncertainty around whether the victim was alive or dead at the time, the accused is then liable to be sentenced according to the offence with the lesser maximum penalty.
- This reform responds to the Coronial Inquest into the deaths of Mona Lisa and Jacinta (Cindy) Smith, where there was evidence that Cindy had been sexually interfered, but because time of death was uncertain, no charges for this conduct were pursued.

- While novel in this context, a similar provision is in place for larceny and receiving under section 121 of the Crimes Act. That special verdict also deals with circumstances where it is beyond reasonable doubt that criminal conduct has occurred, but due to the circumstances it is unclear which specific offence applies.
- As a related reform, the Bill will also increase the maximum penalty for the offence of indecent interference with a dead human body under section 81C(a) of the Crimes Act to three years imprisonment.

The Bill will amend the definition of ‘child’ to refer to a person under 18 years of age, rather than a person under 16 years of age, for the purpose of the child abuse material offences under Division 15A of the Crimes Act.

- Child abuse material refers to material that depicts or describes a child as a victim of torture, cruelty or physical abuse; engaged in a sexual pose or activity; in the presence of a person engaged in a sexual pose or activity; or that depicts or describes the private parts of a child. The relevant criminal offences cover the production, possession and dissemination of child abuse material and the administration or use of digital platforms to deal with child abuse material.
- Raising the age of child for these offences will align NSW with other Australian jurisdictions, notably the Commonwealth. Comparable offences under the *Criminal Code Act 1995* (Cth) already have a threshold age of 18, noting these offences require connection to a carriage service.
- This reform will also meet our obligations under the *Worst Forms of Child Labour Convention* (C182) of the International Labour Organisation (ILO). This convention requires prohibition of certain forms of child labour, relevantly including the use, procuring or offering of a child under 18 for the production of pornography or for pornographic performances. In 2022, the ILO recommended NSW raise the age for these offences to ensure compliance with C182.

Objectives: What is the policy’s objective couched in terms of the public interest?

The Bill makes a number of discrete changes to ensure that the criminal law continues to provide appropriate protection of victims in relation to sexual offending and female genital mutilation.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The reforms in this Bill respond to specific limitations or issues with the relevant provisions, and require legislative amendment to address.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The Bill makes targeted amendments to address the specific issues identified. Drafting seeks to otherwise maintain the existing legislative framework to avoid any unintended consequences.

Pathway: What are the timetable and steps for the policy’s rollout and who will administer it?

These are technical legislative reforms which will mostly commence on assent. The reform under Schedule 1[10] will commence on a date to be fixed by proclamation, to enable systems updates to be made and tested.

Implementation and operationalisation will be undertaken by impacted agencies as part of business as usual activities following legislative reform.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Targeted consultation was tailored to each of the reform proposals, but the following stakeholders were engaged:

- NSW Government agencies, including the Department of Communities and Justice, NSW Police Force, the Office of the Women's Safety Commissioner, the Office of the Director of Public Prosecutions, Legal Aid NSW, the Public Defenders, the Judicial Commission of NSW, Heads of Jurisdiction for the Supreme, District, Local and Children's Courts, Youth Justice NSW, the NSW Ministry of Health, NSW Industrial Relations and the Cabinet Office.
- legal stakeholders, including the Law Society of NSW, the NSW Bar Association, the Aboriginal Legal Service NSW/ACT, the National Justice Project, the Women's Legal Service NSW and Wirringa Baiya Aboriginal Women's Legal Centre
- health sector stakeholders, including the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, the Australian Medical Association, the Royal College of General Practitioners and the Medical Board of Australia
- representatives from the domestic and family violence sector, including Domestic Violence NSW and Full Stop Australia.