

## Sexual Offence Damages Bill 1999

### Explanatory note

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

The object of this Bill is to allow the recovery of damages in respect of the death of or injury to a person resulting from or arising out of an act constituting a sexual offence (such as rape) from persons who produce, distribute, exhibit, broadcast, disseminate or sell pornographic material which motivated the offender to commit the offence.

### 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 3 months after assent, unless commenced sooner by proclamation.

**Clause 3** defines the term **offensive sexual material** to mean material (including books, magazines and films) which depicts or describes sexual behaviour and which is obscene, or depicts a child in an offensive way or depicts a person being subjected to violence in a sexual context. Clause 3 also defines **sexual offence** to mean a prescribed sexual offence under the *Crimes Act 1900* (such as sexual assault) and any violent offence committed at or about the time of that offence. This will include the offence which used to be known as rape in New South Wales but which is now dealt with by New South Wales law as a form of sexual assault.

**Clause 4** provides that an action may be brought against a person responsible for offensive sexual material for damages in respect of the death of or injury to a person caused by or arising out of an act constituting a sexual offence which was caused by the offensive sexual material. In such an action the person responsible is liable as if that person had committed the offence. Accordingly, the damages recoverable from the person responsible are the same as would be recoverable in an action against the person who committed the offence (such as damages for pain and suffering and economic loss). The person responsible for the offensive sexual material has a defence if he or she can prove that he or she did not foresee and could not reasonably be expected to have foreseen that the material would cause the offence.

**Clause 5** provides that a "person responsible" for offensive sexual material is a person who, in the course of business, produced or distributed the material or exhibited, broadcast, disseminated or sold the material to the person who did the act constituting the sexual offence.

**Clause 6** provides that offensive sexual material is considered to have caused an offence if the person who did the act constituting the offence was exposed to the material and it motivated the person to commit the offence.

**Clause 7** provides that a claim under the proposed Act may be made even if the person who committed the sexual offence cannot be identified or found, or is dead, and whether or not criminal proceedings have been taken or proven in respect of the offence.

**Clause 8** sets out certain types of evidence (including expert opinion) which may be admitted as evidence that the offensive sexual material caused the act constituting a sexual offence.

**Clause 9** makes it clear that the standard of proof in proceedings under the proposed Act is proof on the balance of probabilities.

**Clause 10** provides that each director and person concerned in the management of a corporation which is the subject of a liability under the proposed Act is subject to the same liability (jointly and severally with the corporation) unless that person can prove the offensive sexual material concerned was produced, distributed, exhibited, broadcast, disseminated or sold without his or her knowledge or consent.

**Clause 11** allows the award of exemplary (punitive) damages in a case where the victim of the sexual offence has died before the proceedings are taken.

**Clause 12** provides for a 6 year limitation period on an action commenced under the proposed

Act. A court has discretion under the *Limitation Act 1969* to extend the limitation period.

**Clause 13** makes it clear that a person can be liable under the proposed Act only in respect of something done after the commencement of the proposed Act. It also provides that a person can be liable under the proposed Act in respect of offensive sexual material distributed, exhibited, broadcast, disseminated or sold after the commencement of the proposed Act even if the material was produced before that commencement.