



New South Wales

Crimes Amendment (Strangulation) Bill 2014

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Crimes Act 1900* (*the Act*) as follows:

- (a) to create a new offence that will apply if a person intentionally chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance while being reckless as to whether the other person is rendered unconscious, insensible or incapable of resistance,
- (b) to simplify and modernise an existing offence that applies if a person chokes, suffocates or strangles another person with intent to enable himself or herself to commit, or to assist another person to commit, another indictable 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 on the date of assent to the proposed Act.

Schedule 1 Amendment of Crimes Act 1900 No 40

Section 37 of the Act currently makes it an offence to attempt to choke, suffocate or strangle a person or, by means calculated to choke, suffocate or strangle, to attempt to render any person insensible, unconscious or incapable of resistance. The mental element required is that the person intended to enable himself or herself or another person to commit, or to assist another person to

commit, an indictable offence. The offence carries a maximum penalty of imprisonment for 25 years.

The amendment in **Schedule 1 [1]** repeals and replaces that offence with 2 separate offences.

The first offence is a new offence that will apply if a person intentionally chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance and is reckless as to rendering the other person unconscious, insensible or incapable of resistance.

The offence will also apply if the offender intended to render the victim unconscious, insensible or incapable of resistance because section 4A of the Act already provides that recklessness can be proved by proof of intention.

The new offence carries a maximum penalty of imprisonment for 10 years.

The second offence replaces and simplifies the existing offence under section 37 of the Act. That offence will now apply if a person:

- (a) chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance, and
- (b) does so with the intention of enabling himself or herself to commit, or assisting any other person to commit, another indictable offence.

Existing section 344A of the Act would apply to both offences. That section provides that a person who attempts to commit an offence under the Act for which a penalty is provided is liable to the same penalty.

Schedule 1 [2] is a consequential amendment.

Schedule 2 Amendment of other legislation

Schedule 2.1 makes the new offence an offence that is to be dealt with summarily unless the prosecutor or person charged elects otherwise.

Schedule 2.2 and 2.3 are consequential amendments to the amendment in **Schedule 1 [1]**.