



New South Wales

Crimes Amendment (Special Care Offences) Bill 2020

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* as follows—

- (a) to implement certain recommendations contained in the report by the Legislative Council Standing Committee on Law and Justice entitled “Adequacy and scope of special care offences” published in November 2018, in relation to offences in which a person (the *offender*) has sexual intercourse with a young person between 16 and 18 years (the *victim*) who is under the offender’s special care (*special care sexual intercourse offences*)—
 - (i) to expressly require the offender to be in a position of authority relative to the victim for certain special care relationships involving religious, sporting, musical or other instruction to be established, and
 - (ii) to revise a special care relationship that is established if the offender is employed at the victim’s school and has authority over students at the school, to clarify that it applies to paid, unpaid and voluntary workers at the school and to require the victim to be under the offender’s authority, and
 - (iii) to provide that a special care relationship is established if the offender works for an organisation that provides residential care to young persons in out-of-home care and has an established personal relationship with the victim in connection with the provision of that residential care, in which the victim is under the authority of the offender, and
 - (iv) to provide that a special care relationship is established if the offender works for an organisation that provides refuge or crisis accommodation and has an established

- personal relationship with the victim in connection with the provision of that accommodation, in which the victim is under the authority of the offender, and
- (v) to provide that a special care relationship is established if the offender is the adoptive parent or the de facto partner of an adoptive parent of the victim,
 - (b) to provide that a special care relationship is established if the offender is the spouse of a biological or adoptive parent of the victim (rather than a step-parent of the victim),
 - (c) to extend the special care relationships to include those where the offender is the biological or adoptive parent of a biological or adoptive parent of the victim, or that person's spouse or de facto partner, or the spouse of a guardian or an authorised carer of the victim, excluding any person who is a close family member of the victim for the purposes of the offence of incest,
 - (d) to extend the amendments referred to in paragraphs (a) and (b) and (without the exclusion) in paragraph (c) to offences involving sexual touching of young persons between 16 and 18 years under special care (*special care sexual touching offences*),
 - (e) to grant immunity from prosecution to young persons between 16 and 18 years for an offence of incest if the other person to whom the charge relates is the young person's parent or grandparent,
 - (f) to make consequential and ancillary amendments.

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

Special care relationship involving persons performing work at a school

Schedule 1[2] omits a definition that is made redundant by the amendments made by **Schedule 1[6]**.

Schedule 1[4] inserts a note in relation to the interpretation to be given to references to a person being under the authority of another person in the provisions relating to special care offences.

Schedule 1[6] revises an existing special care relationship that is established if the offender is employed at the victim's school and has students at the school under the offender's authority, to require the victim to be under the authority of the offender and to apply the relationship to persons who perform work at the school. **Schedule 1[3]** inserts an interpretive provision to make it clear that a reference to performing work at a school is a reference to performing that work, whether as an employee (whether paid or unpaid), a contractor, a volunteer or otherwise.

Schedule 1[6] also restates the existing special care relationship that arises if the offender is a teacher at, or the principal or a deputy principal of, the school at which the victim is a student.

Special care relationship involving religious, sporting, musical or other instruction

Schedule 1[7] requires a victim with whom an offender has an established personal relationship in connection with the offender's provision of religious, sporting, musical or other instruction to the victim (which is currently a special care relationship for the purposes of the special care offences) to also be under the authority of the offender in that personal relationship before a special care relationship is established for the purposes of the special care offences.

Special care relationship involving residential care or refuge or crisis accommodation

Schedule 1[8] creates 2 new categories of special care relationships for the purposes of the special care offences, if—

- (a) the offender—
 - (i) performs work for an organisation that provides residential care to young persons in out-of-home care, and
 - (ii) has an established personal relationship with the victim in connection with the provision of that residential care, in which the victim is under the authority of the offender, or
- (b) the offender—
 - (i) performs work for an organisation that provides refuge or crisis accommodation, and
 - (ii) has an established personal relationship with the victim in connection with the provision of that accommodation, in which the victim is under the authority of the offender.

Schedule 1[3] inserts an interpretive provision for the purposes of these categories of special care relationships to make it clear that a reference to performing work for an organisation is a reference to performing that work, whether as an employee (whether paid or unpaid), a contractor, a volunteer or otherwise.

Special care relationships involving forms of familial relationships

Schedule 1[5] creates new categories of special care relationships for the purposes of the special care sexual intercourse offences if the offender is the adoptive parent or the de facto partner of an adoptive parent of the victim, or the biological or adoptive parent of a biological or adoptive parent of the victim or that person's spouse or de facto partner, or the spouse of the guardian or authorised carer of the victim, excluding any person who is a close family member of the victim for the purposes of the offence of incest. The item also changes the existing special care relationship involving the step-parent of the victim to one involving a spouse of the biological or adoptive parent of the victim.

Schedule 1[9] creates the same new categories of special care relationships for the purposes of the special care sexual touching offences (but without excluding close family members of the victim, given the offence of incest does not apply to sexual touching).

Schedule 1[1] inserts definitions for the purposes of the amendments made by items [5] and [9].

Immunity from prosecution for young persons for incest if other person charged is parent or grandparent

Schedule 1[10] grants immunity from prosecution to young persons who are between 16 and 18 years for an offence of incest if the other person to whom the charge relates is the young person's parent or grandparent.



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New South Wales

Crimes Amendment (Special Care Offences) Bill 2020

No. , 2020

A Bill for

An Act to amend the *Crimes Act 1900* to make further provision with respect to sexual offences; and for related purposes.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Crimes Amendment (Special Care Offences) Act 2020*.

3

2 Commencement

4

This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Crimes Act 1900 No 40	1
[1] Section 72B Definitions		2
Insert in alphabetical order—		3
<i>close family member</i> has the same meaning as in section 78A.		4
<i>parent</i> means biological parent or adoptive parent.		5
[2] Section 72B, definition of “member of the teaching staff”		6
Omit the definition.		7
[3] Section 72B(2)		8
Insert at the end of section 72B—		9
(2) In this Subdivision, a reference to performing work at a school or performing work for an organisation is a reference to performing work at the school or for the organisation, whether as an employee (whether paid or unpaid), contractor, volunteer or otherwise.		10 11 12 13
[4] Section 72B, note		14
Insert at the end of the section—		15
Note. For the purposes of this Subdivision, a person is under the authority of another person if the person is in the care, or under the supervision or authority, of the other person (see section 61H(2)).		16 17 18
[5] Section 73 Sexual intercourse—young person between 16 and 18 under special care		19
Omit section 73(3)(a). Insert instead—		20
(a) the offender is any of the following who is not a close family member of the victim—		21 22
(i) the parent or the parent of a parent of the victim,		23
(ii) the guardian or authorised carer of the victim,		24
(iii) the spouse or de facto partner of a person referred to in subparagraph (i) or (ii), or		25 26
[6] Sections 73(3)(b) and (b1) and 73A(3)(b) and (b1)		27
Omit sections 73(3)(b) and 73A(3)(b). Insert instead—		28
(b) the offender is a teacher at, or the principal or a deputy principal of, the school at which the victim is a student, or		29 30
(b1) the offender performs work at the school at which the victim is a student, in which the offender has students at the school, including the victim, under the offender’s authority, or		31 32 33
[7] Sections 73(3)(c) and 73A(3)(c)		34
Insert “, in which relationship the victim is under the authority of the offender” after “victim” where secondly occurring.		35 36
[8] Sections 73(3)(f) and (g) and 73A(3)(f) and (g)		37
Insert at the end of sections 73(3)(e) and 73A(3)(e)—		38
, or		39
(f) the offender—		40

(i)	performs work for an organisation that provides residential care to young persons placed in out-of-home care (within the meaning of the <i>Children and Young Persons (Care and Protection) Act 1998</i>), and	1 2 3 4
(ii)	has an established personal relationship with the victim in connection with the provision of that residential care to the victim, in which relationship the victim is under the authority of the offender, or	5 6 7 8
(g)	the offender—	9
(i)	performs work for an organisation that provides refuge or crisis accommodation, and	10 11
(ii)	has an established personal relationship with the victim in connection with the provision of that accommodation to the victim, in which relationship the victim is under the authority of the offender.	12 13 14 15
[9]	Section 73A Sexual touching—young person between 16 and 18 under special care	16
	Omit section 73A(3)(a). Insert instead—	17
(a)	the offender is any of the following—	18
(i)	the parent or the parent of a parent of the victim,	19
(ii)	the guardian or authorised carer of the victim,	20
(iii)	the spouse or de facto partner of a person referred to in subparagraph (i) or (ii), or	21 22
[10]	Section 78A Incest	23
	Insert after section 78A(1)—	24
(1A)	A person does not commit an offence under this section if the person is of or above the age of 16 years and under the age of 18 years at the time the offence is alleged to have been committed and the other person to whom the charge relates is the person’s parent or grandparent.	25 26 27 28