

First print



New South Wales

Crimes Amendment (Aggravated Sexual Assault in Company) Bill 2001

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* to make sexual assault carried out in the company of others and accompanied by the infliction of harm, the threat of harm or the deprivation of liberty, an offence carrying a maximum penalty of life imprisonment.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

Clause 4 is a formal provision giving effect to consequential amendments to other Acts set out in Schedule 2.

Schedule 1 Amendment of Crimes Act 1900

Schedule 1 [2] inserts proposed section 61JA into the Principal Act to create an offence of aggravated sexual assault in company carrying a maximum penalty of life imprisonment.

The elements of the proposed offence are sexual assault (that is, sexual intercourse with another person without the person's consent and with knowledge of or recklessness as to that lack of consent) committed:

- (a) in the company of another person or persons, and
- (b) in any one or more of the following circumstances:
 - (i) the alleged offender maliciously inflicts actual bodily harm on the alleged victim or any other person who is present or nearby,
 - (ii) the alleged offender threatens to inflict actual bodily harm on the alleged victim or any other person who is present or nearby by means of an offensive weapon or instrument
 - (iii) the alleged offender deprives the alleged victim of his or her liberty for a period before or after the commission of the offence.

Proposed section 61JA (2) provides that a person sentenced to life imprisonment for the proposed offence is to serve that sentence for the term of the person's natural life. Proposed section 61JA (3) preserves the operation of section 21 of the *Crimes (Sentencing Procedure) Act 1999* (which authorises the passing of a lesser sentence than imprisonment for life). Proposed section 61JA (4) preserves the prerogative of mercy in respect of persons sentenced to life imprisonment.

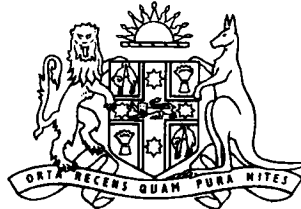
Schedule 1 [3] amends section 61P of the Principal Act to provide that a person convicted of attempting to commit the proposed offence will be liable to the penalty provided for commission of the offence.

Schedule 1 [4] amends section 61Q of the Principal Act to provide that, on the trial of a person for the proposed offence, a jury may reach an alternative verdict of not guilty of that offence but guilty of an offence under section 61I (Sexual assault) or 61J (Aggravated sexual assault) where the jury is satisfied on the evidence that the person is guilty of the latter offence but not of the offence charged.

Schedule 1 [1] and **[5]–[10]** make consequential amendments to the Principal Act.

Schedule 2 Consequential amendment of other Acts

Schedule 2 makes consequential amendments to various Acts, including an amendment to the *Bail Act 1978* to remove the presumption in favour of bail for a person who is alleged to have committed the proposed offence.



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New South Wales

Crimes Amendment (Aggravated Sexual Assault in Company) Bill 2001

No. , 2001

A Bill for

An Act to amend the *Crimes Act 1900* to provide for a maximum penalty of life imprisonment for aggravated sexual assault in company; and for related purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes Amendment (Aggravated Sexual Assault in Company) Act 2001</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Crimes Act 1900 No 40	8
The <i>Crimes Act 1900</i> is amended as set out in Schedule 1.	9
4 Consequential amendment of other Acts	10
Each Act referred to in Schedule 2 is amended as set out in that Schedule.	11 12

Schedule 1 Amendment of Crimes Act 1900

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(Section 3)

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[1] Section 4 Definitions

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Insert “, 61JA” after “61J” in the definition of *Personal violence offence* in section 4 (1).

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[2] Section 61JA

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Insert after section 61J:

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61JA Aggravated sexual assault in company

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(1) A person:

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(a) who has sexual intercourse with another person without the consent of the other person and who knows that the other person does not consent to the sexual intercourse, and

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(b) who is in the company of another person or persons, and

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(c) who:

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(i) at the time of, or immediately before or after, the commission of the offence, maliciously inflicts actual bodily harm on the alleged victim or any other person who is present or nearby, or

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(ii) at the time of, or immediately before or after, the commission of the offence, threatens to inflict actual bodily harm on the alleged victim or any other person who is present or nearby by means of an offensive weapon or instrument, or

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(iii) deprives the alleged victim of his or her liberty for a period before or after the commission of the offence,

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is liable to imprisonment for life.

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(2) A person sentenced to imprisonment for life for an offence under this section is to serve that sentence for the term of the person’s natural life.

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(3) Nothing in this section affects the operation of section 21 of the <i>Crimes (Sentencing Procedure) Act 1999</i> (which authorises the passing of a lesser sentence than imprisonment for life).	1 2 3
(4) Nothing in this section affects the prerogative of mercy.	4
[3] Section 61P Attempt to commit offence under sections 61I–61O	5
Insert “, 61JA” after “61J”.	6
[4] Section 61Q Alternative verdicts	7
Insert after section 61Q (1):	8
(1A) Question of aggravation in company. If on the trial of a person for an offence under section 61JA the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 61I or 61J, it may find the person not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly.	9 10 11 12 13 14 15
[5] Section 61Q (3)	16
Insert “or 61JA” after “61J”.	17
[6] Section 61R Consent	18
Omit “61I and 61J” wherever occurring.	19
Insert instead “61I, 61J and 61JA”.	20
[7] Section 61T Offender married to victim	21
Insert “, 61JA” after “61J”.	22
[8] Section 61U Circumstances of certain sexual offences to be considered in passing sentence	23 24
Insert at the end of section 61U (b):	25
or	26
(c) both an offence under section 61JA and an offence under section 61K,	27 28

[9] Section 66EA Persistent sexual abuse of a child	1
Insert “, 61JA” after “61J” in the definition of <i>sexual offence</i> in section 66EA (12).	2 3
[10] Section 431A Life sentences	4
Insert “, for an offence under 61JA” after “ for the offence of murder” in section 431A (2).	5 6

Schedule 2	Consequential amendment of other Acts	1
	(Section 4)	2
2.1	Bail Act 1978 No 161	3
	Section 9 Presumption in favour of bail for certain offences—exceptions	4
		5
	Insert “, 61JA” after “61J” in section 9 (1) (c).	6
2.2	Children (Care and Protection) Act 1987 No 54	7
	Section 3 Definitions	8
	Insert “, 61JA” after “61J” in section 3 (9).	9
2.3	Crimes (Sentencing Procedure) Act 1999 No 92	10
	Schedule 1 Existing life sentences	11
	Insert “or 61JA” after “19A” in the definition of <i>existing life sentence</i> in clause 1.	12
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2.4 Criminal Procedure Act 1986 No 209	1
Section 3 Definitions	2
Insert “, 61JA” after “61J” in the definition of <i>prescribed sexual offence</i> in section 3 (1).	3
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