

**CRIMES (PERSONAL AND FAMILY VIOLENCE)
AMENDMENT ACT 1987 No. 184**

NEW SOUTH WALES



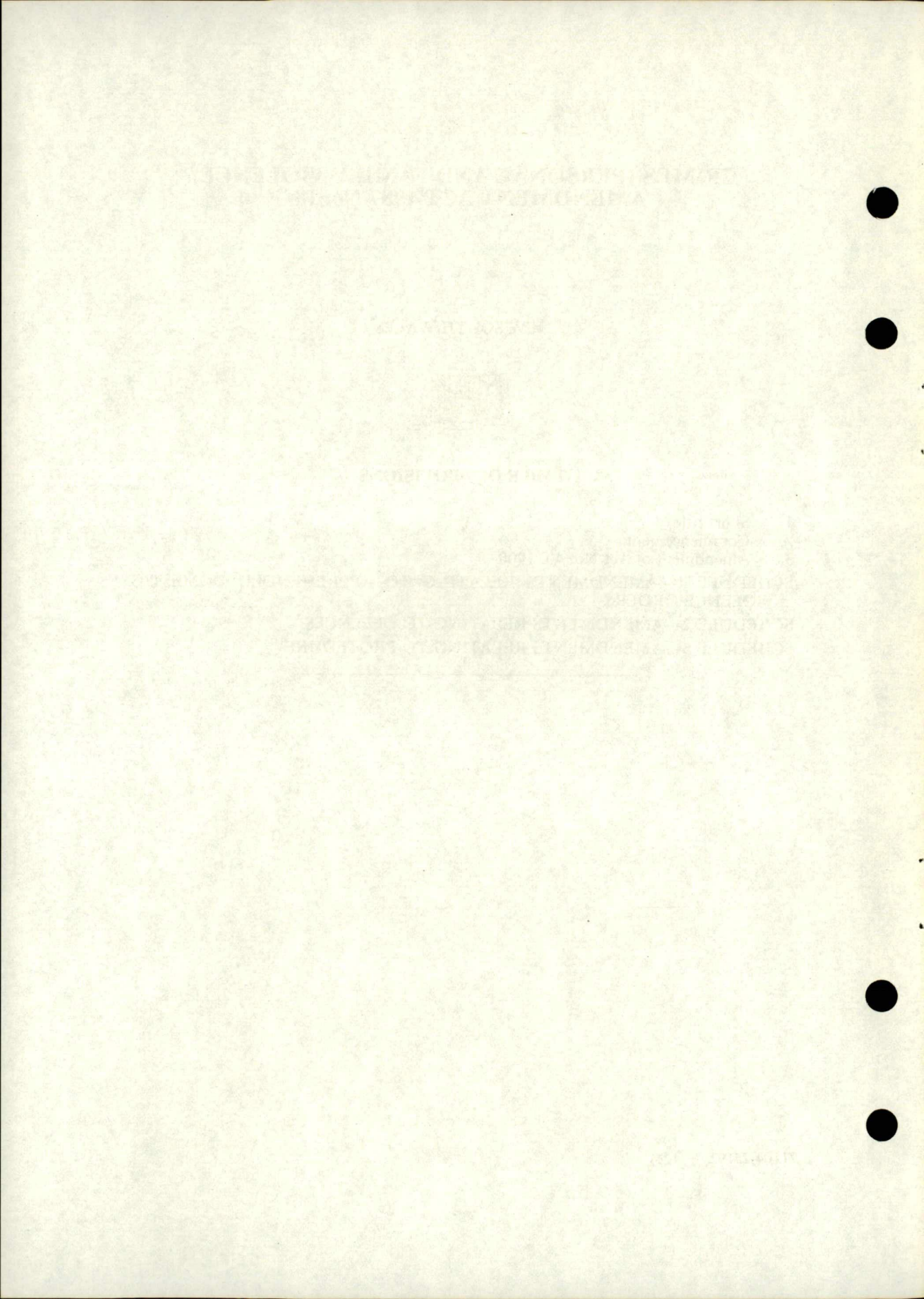
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**CRIMES (PERSONAL AND FAMILY VIOLENCE) AMENDMENT
ACT 1987 No. 184**

NEW SOUTH WALES



Act No. 184, 1987

An Act to amend the Crimes Act 1900 in relation to personal and family violence. [Assented to 4 December 1987]

See also Bail (Personal and Family Violence) Amendment Act 1987; Children (Care and Protection) (Personal and Family Violence) Amendment Act 1987.

Crimes (Personal and Family Violence) Amendment 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes (Personal and Family Violence) Amendment Act 1987.

Commencement

2. This Act shall commence on a day or days to be appointed by proclamation.

Amendment of Act No. 40, 1900

3. The Crimes Act 1900 is amended as set out in Schedules 1-3.

SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED DOMESTIC VIOLENCE ORDERS

(Sec. 3)

(1) Section 1 (**Short title and contents of Act**)—

(a) From the matter relating to Chapter III of Part XIV, omit item (F), insert instead:

(F) RECOGNIZANCE TO KEEP THE PEACE—*s. 547.*

(b) After the matter relating to Part XV, insert:

PART XV_A—APPREHENDED DOMESTIC VIOLENCE ORDERS—*ss. 562A-562R.*

(2) Section 4 (**Definitions**)—

Section 4 (1), definition of “Domestic violence offence”—

(a) Omit “or” where lastly occurring in subparagraphs (i) and (ii).

(b) After subparagraph (ii), insert:

(iii) a person who is living or has lived ordinarily in the same household as the person who commits the offence (otherwise than merely as a tenant or boarder);

(iv) a person who is or has been a relative (within the meaning of Part XV_A) of the person who commits the offence; or

(v) a person who has or has had an intimate personal relationship with the person who commits the offence; or

(3) Section 407_{AA} (**Compellability of spouses to give evidence in certain proceedings**)—

(a) Section 407_{AA} (1) (b)—

SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED
DOMESTIC VIOLENCE ORDERS—*continued*

Omit the paragraph, insert instead:

- (b) a reference to a domestic violence offence committed upon the husband or wife of an accused person includes a reference to an offence of contravening a prohibition or restriction specified in an apprehended domestic violence order under Part XVA which was made against the accused person and in respect of which that husband or wife was the aggrieved person;

- (b) Section 407AA (1) (c), (d)—

At the end of section 407AA (1) (c), insert:

; and

- (d) a reference to a child assault offence committed upon a child includes a reference to an offence of contravening a prohibition or restriction specified in an apprehended domestic violence order under Part XVA which was made against the accused person and in respect of which that child was the aggrieved person.

- (4) Section 547, heading—

Omit the heading before section 547, insert instead:

(F) RECOGNIZANCE TO KEEP THE PEACE

- (5) Section 547AA (**Apprehended domestic violence orders**)—

Omit the section.

- (6) Part XVA—

After Part XV, insert:

**PART XVA—APPREHENDED DOMESTIC VIOLENCE
ORDERS**

Definitions

562A. In this Part—

“aggrieved person” means the person whose fear of a domestic violence offence or other conduct is the subject of a complaint under this Part;

“authorised Justice” means—

- (a) a Magistrate; or
(b) a Justice employed in the Attorney General’s Department;

“court” means—

- (a) a Local Court;

SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED
DOMESTIC VIOLENCE ORDERS—*continued*

(b) the Children's Court; or

(c) the District Court,

exercising jurisdiction under section 562G;

“defendant” means the person against whom an order is made;

“order” means an apprehended domestic violence order in force under this Part and, if the order is varied under this Part, means the order as so varied;

“relative” means—

(a) father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law;

(b) son, daughter, grandson, granddaughter, step-son, step-daughter, son-in-law or daughter-in-law;

(c) brother, sister, half-brother, half-sister, brother-in-law or sister-in-law;

(d) uncle, aunt, uncle-in-law or aunt-in-law;

(e) nephew or niece; or

(f) cousin,

and includes, in the case of de-facto partners, a person who would be such a relative if the de-facto partners were married.

Apprehended domestic violence orders

562B. (1) A court may, on complaint, make an apprehended domestic violence order if it is satisfied on the balance of probabilities that a person fears the commission by another person—

(a) who is or has been the spouse or de-facto partner of the person;

(b) who is living or has lived ordinarily in the same household as the person (otherwise than merely as a tenant or boarder);

(c) who is or has been a relative of the person; or

(d) who has or has had an intimate personal relationship with the person,

of a domestic violence offence on the person or of conduct consisting of harassment or molestation of the person (being conduct which falls short of actual or threatened violence but which, in the opinion of the court, is sufficient to warrant the making of the order).

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DOMESTIC VIOLENCE ORDERS—*continued*

(2) Before the court makes an order it must be satisfied on the balance of probabilities that the person's fear is reasonable.

(3) An order may impose such prohibitions or restrictions on the behaviour of the defendant as appear necessary or desirable to the court.

Making of complaint

562C. (1) A complaint for an order—

- (a) may be made orally or in writing to a Justice; and
- (b) shall be substantiated on oath before the Justice.

(2) A complaint for an order may be made by—

- (a) the aggrieved person; or
- (b) a member of the Police Force.

(3) Notwithstanding subsection (2), a complaint for an order must be made by a member of the Police Force if the aggrieved person is a child under the age of 18 years at the time of the complaint.

(4) A complaint for an order may be made by or on behalf of more than one aggrieved person.

Prohibitions and restrictions imposed by orders

562D. (1) Without limiting the generality of section 562B, an order may do all or any of the following:

- (a) prohibit or restrict approaches by the defendant to the aggrieved person;
- (b) prohibit or restrict access by the defendant to any specified premises occupied by the aggrieved person, any specified place of work of the aggrieved person or any other specified premises or place frequented by the aggrieved person (whether or not the defendant has a legal or equitable interest in the premises or place);
- (c) prohibit or restrict the possession of all or any specified firearms by the defendant;
- (d) prohibit or restrict specified behaviour by the defendant which might affect the aggrieved person.

(2) Before making an order which prohibits or restricts access to the defendant's residence, the court shall consider the accommodation needs of all relevant parties and the effect of making such an order on any children.

SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED
DOMESTIC VIOLENCE ORDERS—*continued*

(3) If the court makes an order which prohibits or restricts the possession of firearms by the defendant, the court may by the order require the defendant to dispose of firearms in the defendant's possession and to surrender to the Commissioner of Police any licence, permit or other authority under the Firearms and Dangerous Weapons Act 1973 held by the defendant.

Duration of order

562E. (1) An order remains in force for such period as is specified in the order by the court, and does not have effect unless a period is so specified.

(2) The period so specified shall be as long as is necessary, in the opinion of the court, to ensure the protection of the aggrieved person.

Variation or revocation of orders

562F. (1) If an order is made—

- (a) the aggrieved person (whether or not the complainant);
- (b) if the complainant was a member of the Police Force—
that or any other member of the Police Force; or
- (c) the defendant,

may, at any time, apply to a court for the variation or revocation of the order.

(2) Notwithstanding subsection (1), an application must be made by a member of the Police Force if the aggrieved person is a child under the age of 18 years at the time of the application.

(3) The court may, if satisfied that in all the circumstances it is proper to do so, vary or revoke the order.

(4) In particular, an order may be varied under this section—

- (a) by extending or reducing the period during which the order is to remain in force;
- (b) by amending or deleting any prohibitions or restrictions specified in the order; or
- (c) by specifying additional prohibitions or restrictions in the order.

(5) An order shall not be varied or revoked on the application of the defendant unless notice of the application has been served on the aggrieved person.

(6) An order shall not be varied or revoked on the application of the complainant or aggrieved person unless notice of the application has been served on the defendant.

**SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED
DOMESTIC VIOLENCE ORDERS—*continued***

(7) Notice of an application shall be served personally or in such other manner as the court hearing the application directs.

Courts authorised to make orders etc.

562G. (1) The following courts have jurisdiction (in the circumstances specified) to make orders under this Part:

- (a) a Local Court—except where the defendant is less than 18 years of age at the time the complaint is made;
- (b) the Children's Court—where the defendant is less than 18 years of age at the time the complaint is made;
- (c) the District Court—where a complaint by or on behalf of the aggrieved person has been dismissed by a Local Court or the Children's Court.

(2) A Local Court has jurisdiction to vary or revoke an order made by it or any other court (except where the defendant is less than 18 years of age at the time the application for the variation or revocation is made).

(3) The Children's Court has jurisdiction to vary or revoke an order made by it irrespective of the age of the defendant at the time the application for variation or revocation is made.

(4) The District Court has jurisdiction to vary or revoke an order made by it.

Interim orders etc. made in absence of defendant

562H. (1) An order may, if in all the circumstances it appears to the court to be necessary or appropriate, be made in the absence of the defendant.

(2) An order may be made in the absence of the defendant whether or not the defendant has been given notice of the proceedings.

(3) If an order is made in the absence of the defendant and without the defendant having been given notice of the proceedings—

- (a) the court shall summon the defendant to appear at a further hearing of the matter as soon as possible after the order is made;
- (b) at the further hearing the court may confirm or may revoke or vary the order (whether or not the defendant appears at the further hearing); and
- (c) pending the further hearing, the order has the same effect as any other order under this Part.

SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED
DOMESTIC VIOLENCE ORDERS—*continued*

Offence of contravening order

562i. (1) A person who knowingly contravenes a prohibition or restriction specified in an order made against the person is guilty of an offence.

Penalty: 20 penalty units or imprisonment for 6 months, or both.

(2) A person is not guilty of an offence against this section unless a copy of the record of the order concerned was served on the person—

- (a) personally under section 562j; or
- (b) in such other manner as the court which made the order directs.

(3) If a member of the Police Force believes on reasonable grounds that a person has committed an offence against this section, the member of the Police Force may, without warrant, arrest and detain the person.

(4) A person so arrested and detained shall be brought as soon as practicable before a court to be dealt with for the offence.

(5) Proceedings for an offence against this section shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Service of copy of order etc. on defendant, police etc.

562j. (1) The clerk of a court which makes an order, or varies or revokes an order, shall prepare a written record of the order or of the variation or revocation.

- (2) The clerk of the court shall—
 - (a) serve a copy of the record of an order or of the variation of an order personally on the defendant if the defendant is present in court; or
 - (b) if the clerk of the court is unable to serve a copy of that record personally on the defendant, the clerk shall arrange for the copy of that record to be served personally on the defendant by a member of the Police Force or such other person as the clerk thinks fit.
- (3) The clerk of the court shall cause—
 - (a) a copy of the record of an order, or of the variation or revocation of an order; and
 - (b) a copy of any complaint for an order,

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to be forwarded to the Commissioner of Police and to the aggrieved person.

Summons for appearance or arrest of defendant

562K. (1) If a complaint for an order is made, an authorised Justice may issue—

- (a) a summons for the appearance of the defendant; or
- (b) a warrant for the arrest of the defendant,

as if the complaint alleged the commission of an offence.

(2) An authorised Justice may issue a warrant for the arrest of the defendant even though the defendant is not alleged to have committed an offence.

(3) An authorised Justice shall issue a warrant for the arrest of the defendant if it appears to the authorised Justice that the personal safety of the aggrieved person will be put at risk unless the defendant is arrested for the purpose of being brought before the court.

Application of Bail Act 1978

562L. If a complaint for an order is made, the Bail Act 1978 applies to the defendant as if—

- (a) where the defendant is arrested pursuant to a warrant issued under this Part or first appears before a court in answer to a summons so issued—the defendant were an accused person charged with an offence; and
- (b) proceedings in respect of the complaint or order were proceedings in respect of an offence to which section 8 of the Bail Act 1978 applies.

Appeal by defendant against order made by Local Court or Children's Court

562M. (1) An order made by a Local Court or the Children's Court shall be deemed to be an order whereby the defendant is punished within the meaning of section 122 of the Justices Act 1902.

(2) In the application of section 123 of the Justices Act 1902 and the Bail Act 1978 to the defendant, the defendant shall be deemed to be an accused person who, because of the prohibitions or restrictions imposed by the order, is in custody.

(3) In this section, "order" includes an order which varies an order.

**SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED
DOMESTIC VIOLENCE ORDERS—*continued*****Costs**

562N. (1) A court may, in proceedings under this Part, award costs to the complainant or the defendant.

(2) A Local Court or the Children's Court shall not award costs against a complainant who is the aggrieved person unless satisfied that the complaint was frivolous or vexatious.

(3) Costs awarded under this section may be recovered in the same manner as costs awarded by the court in proceedings for an offence.

Concurrent criminal proceedings

562O. (1) A court may make an order against a defendant even though the defendant has been charged with an offence arising out of the same conduct as that out of which the complaint for the order arose.

(2) Where a person stands charged before a court with an offence which appears to the court to be a domestic violence offence—

- (a) the court shall inquire whether a complaint under this Part has been made;
- (b) if a complaint has not been made, the court shall inform the person on whom the offence is alleged to have been committed and who appears in the proceedings of the person's right to apply for an order under this Part; and
- (c) the court shall then inquire whether a complaint under this Part is to be made.

(3) If such a complaint has been or is made, the court shall, if it has jurisdiction and it is practicable to do so, deal with the complaint forthwith.

Recognizance to keep peace not affected

562P. Nothing in this Part prevents or restricts the application of section 547 in relation to cases to which this Part applies.

Regulations

562Q. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed under this Part or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.

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DOMESTIC VIOLENCE ORDERS—*continued*****Transitional provisions**

562R. (1) An order in force under section 547AA, immediately before the commencement of this Part, shall be deemed to be an order under this Part.

(2) A complaint for an order under section 547AA, or an application for the variation or revocation of such an order, pending on the commencement of this Part, shall be deemed to be a complaint or application made under this Part.

(3) In this Part a reference to the Children's Court shall, before the commencement of the Children's Court Act 1987, be construed as a reference to a children's court under the Child Welfare Act 1939.

(4) The District Court does not have jurisdiction under this Part in the case of a complaint that has been dismissed by a court before the commencement of this Part.

SCHEDULE 2—AMENDMENTS RELATING TO OFFENCES

(Sec. 3)

(1) Section 61A (Definition of sexual intercourse etc.)—**(a) Section 61A (1), (2), (5)—**

Omit “-66E” wherever occurring, insert instead “-66F”.

(b) Section 61A (6)—

After section 61A (5), insert:

(6) For the purposes of sections 61C-61E, a person is in the company of others if the person is in the company of 1 or more other persons.

(2) Section 61C (Sexual assault category 2—inflicting actual bodily harm etc. with intent to have sexual intercourse)—**Section 61C (3), (4)—**

After section 61C (2), insert:

(3) Any person who, in the company of others—

(a) maliciously inflicts actual bodily harm upon another person; or

(b) threatens to inflict actual bodily harm upon another person by means of an offensive weapon or instrument,

with intent to have sexual intercourse with the other person shall be liable to penal servitude for 14 years.

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 SCHEDULE 2—AMENDMENTS RELATING TO OFFENCES—
continued

(4) Any person who, in the company of others—

- (a) maliciously inflicts actual bodily harm upon another person; or
- (b) threatens to inflict actual bodily harm upon another person,

with intent to have sexual intercourse with a third person who is present or nearby shall be liable to penal servitude for 14 years.

(3) Section 61D (Sexual assault category 3—sexual intercourse without consent)—

(a) Section 61D (1)—

Omit “7 years”, insert instead “8 years”.

(b) Section 61D (1B), (1C)—

After section 61D (1A), insert:

(1B) Any person who, in the company of others, 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 shall be liable to penal servitude for 10 years or, if the other person is under the age of 16 years, to penal servitude for 12 years.

(1C) Any person who, in the company of others, has sexual intercourse with another person who—

- (a) is under the age of 16 years; and
- (b) is (whether generally or at the time of the sexual intercourse only) under the authority of the person,

without the consent of the other person and who knows that the other person does not consent to the sexual intercourse shall be liable to penal servitude for 14 years.

(c) Section 61D (2), (3)—

Omit “subsections (1) and (1A)” wherever occurring, insert instead “this section”.

(4) Section 61E (Sexual assault category 4—indecent assault and act of indecency)—

Section 61E (1B), (1C)—

After section 61E (1A), insert:

(1B) Any person who, in the company of others, assaults another person and, at the time of, or immediately before or after, the assault, commits an act of indecency upon or in the presence of the other person, shall be liable to penal servitude for 6 years.

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SCHEDULE 2—AMENDMENTS RELATING TO OFFENCES—
continued

(1C) Any person who, in the company of others, assaults another person who—

(a) is under the age of 16 years; and

(b) is (whether generally or at the time of the assault only) under the authority of the person,

and at the time of, or immediately before or after, the assault, commits an act of indecency upon or in the presence of the other person, shall be liable to penal servitude for 8 years.

(5) Section 61G (**Alternative verdicts**)—

Section 61G (1A)—

After section 61G (1), insert:

(1A) Where on the trial of a person for an offence under section 61C (3) or (4), 61D (1B) or (1C) or 61E (1B) or (1C) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied that the accused is guilty of an offence under section 61C (1) or (2), 61D (1) or (1A) or 61E (1) or (1A), it may find the accused not guilty of the offence charged but guilty of an offence under section 61C (1) or (2), 61D (1) or (1A) or 61E (1) or (1A), as the case may be, and the accused shall be liable to punishment accordingly.

(6) Section 65A—

Before section 66, insert:

Sexual intercourse procured by intimidation, coercion and other non-violent threats

65A. (1) In this section—

“non-violent threat” means intimidatory or coercive conduct, or other threat, which does not involve a threat of physical force.

(2) Any person who has sexual intercourse with another person shall, if the other person submits to the sexual intercourse as a result of a non-violent threat and could not in the circumstances be reasonably expected to resist the threat, be liable to penal servitude for 6 years.

(3) A person does not commit an offence under this section unless the person knows that the person concerned submits to the sexual intercourse as a result of the non-violent threat.

SCHEDULE 2—AMENDMENTS RELATING TO OFFENCES—
continued

(7) Section 66F—

After section 66E, insert:

Sexual intercourse—intellectual disability

66F. (1) In this section—

“intellectual disability” means an appreciably below average general intellectual function that results in the person requiring supervision or social habilitation in connection with daily life activities.

(2) Any person who has sexual intercourse with another person who—

(a) has an intellectual disability; and

(b) is (whether generally or at the time of the sexual intercourse only) under the authority of the person in connection with any facility or programme providing services to persons who have intellectual disabilities,

shall be liable to penal servitude for 10 years.

(3) Any person who has sexual intercourse with another person who has an intellectual disability, with the intention of taking advantage of the other person’s vulnerability to sexual exploitation, shall be liable to penal servitude for 8 years.

(4) Any person who attempts to commit an offence under this section upon another person who has an intellectual disability shall be liable to the penalty provided for the commission of the offence.

(5) A person does not commit an offence under this section unless the person knows that the person concerned has an intellectual disability.

(6) No prosecution for an offence against this section shall be commenced without the approval of the Attorney General.

(8) Section 72A (**Carnal knowledge of idiot or imbecile**)—

Omit the section.

(9) Section 77 (**Consent no defence in certain cases**)—

Section 77 (1)—

After “66D,” insert “66F.”

(10) Section 78M (**Homosexual intercourse with idiot or imbecile (cf. s. 72A)**)—

Omit the section.

*Crimes (Personal and Family Violence) Amendment 1987***SCHEDULE 2—AMENDMENTS RELATING TO OFFENCES—**
*continued***(11) Section 578 (Publication of evidence may be forbidden in certain cases)—****(a) Section 578 (1)—**

After “65,” insert “65A.”

(b) Section 578 (1)—

After “66D,” insert “66F.”

SCHEDULE 3—AMENDMENTS RELATING TO PROCEDURE

(Sec. 3)

(1) Section 4 (Definitions)—**Section 4 (1)—**

Before the definition of “Property”, insert:

“Prescribed sexual offence” means—

(a) an offence under section 61B, 61C, 61D, 61E, 65A, 66A, 66B, 66C, 66D, 66F, 78H, 78I, 78K or 78L;**(b)** an offence (such as an offence under section 37 or 112) which includes the commission, or an intention to commit, an offence referred to in paragraph (a); or**(c)** an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a) or (b).

“Prescribed sexual offence proceedings” means proceedings in which a person stands charged with a prescribed sexual offence, whether the person stands charged with that offence alone or together with any other offence (as an additional or alternative count) and whether or not the person is liable, on the charge, to be found guilty of any other offence.

(2) Section 77A—

Omit the section, insert instead:

Proceedings in camera in certain cases**77A. (1)** This section applies to—**(a)** a prescribed sexual offence;**(b)** an offence under section 63, 65, 66, 67, 68, 71, 72, 72A, 73, 74, 76, 76A, 78M, 78N, 78O or 78Q; and**(c)** an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (b).

SCHEDULE 3—AMENDMENTS RELATING TO PROCEDURE—
continued

(2) Any proceedings, or any part of any proceedings, in respect of an offence to which this section applies shall, if the Court so directs, be held in camera.

(3) If the Court makes a direction under this section, it may (either absolutely or subject to conditions) exempt any person from that direction to the extent necessary to allow that person to be present as a support for a person giving evidence or for any other purpose which the Court thinks fit.

(4) The Court may make a direction under this section on its own motion or at the request of any party.

(5) In determining whether to make a direction under this section the Court shall consider—

- (a) the need of the complainant to have any person excluded from those proceedings;
- (b) the need of the complainant to have any person present in those proceedings;
- (c) the interests of justice; and
- (d) any other matter which the Court thinks relevant.

(6) In this section—

“complainant”, in relation to any proceedings, means the person, or any of the persons, upon whom the offence with which the accused person stands charged in those proceedings, is alleged to have been committed.

(3) Section 78s (**Proceedings in camera in certain cases (cf. s. 77A)**)—
Omit the section.

(4) Section 405B (**Warning to be given by Judge in relation to lack of complaint in certain sexual offence proceedings**)—
Section 405B (1)—
Omit the subsection.

(5) Section 405C (**Judge not required to warn jury against convicting person of certain sexual offences**)—
Section 405C (1)—
Omit the subsection.

(6) Sections 405D, 405E—
After section 405C, insert:
Closed-circuit television to be used for young child victim’s evidence
405D. (1) In this section—

SCHEDULE 3—AMENDMENTS RELATING TO PROCEDURE—
continued

“personal assault offence” means an offence under—

- (a) Part III;
- (b) section 493 or 494; or
- (c) section 25 of the Children (Care and Protection) Act 1987,

or an offence of attempting, or of conspiracy or incitement, to commit such an offence (but does not include an offence exempted from this section by the regulations);

“young child”, in relation to any proceedings, means a child under the age of 10 years at the time that the child is giving evidence in the proceedings.

(2) In any criminal proceedings in which it is alleged that the accused person has committed a personal assault offence on a young child, the evidence of the young child shall be given by means of closed-circuit television facilities.

(3) It is not necessary for any such evidence to be given by means of closed-circuit television facilities if the court certifies—

- (a) that the premises in which the proceedings are being conducted are not equipped with closed-circuit television facilities; and
- (b) there is no other court (equipped with those facilities) to which it is reasonably practicable for the proceedings to be adjourned.

(4) If the evidence of a young child is given by means of closed-circuit television facilities, the facilities shall be operated in such a manner that the persons who have an interest in the proceedings are able to see the young child (and any person present with the young child as a support or as an interpreter) on the same or another television monitor.

(5) In any criminal proceedings in which the evidence of a young child is given by means of closed-circuit television facilities, the Judge shall give such directions to the jury as the Judge considers appropriate—

- (a) to inform the jury that the use of those facilities is standard procedure required by law in all cases of evidence given by young children on whom it is alleged that an offence such as that charged has been committed; and
- (b) to warn the jury not to draw any inferences or give the evidence any greater or lesser weight because of the use of those facilities.

SCHEDULE 3—AMENDMENTS RELATING TO PROCEDURE—
continued

(6) The premises in which a young child gives evidence by means of closed-circuit television facilities shall be deemed to be part of the court in which the proceedings are being held.

(7) The failure of a young child to give evidence by means of closed-circuit television facilities in accordance with this section does not affect the validity of the proceedings or any decision made in connection with those proceedings.

(8) The Governor may make regulations for or with respect to—

(a) the use of closed-circuit television facilities under this section; and

(b) exempting personal assault offences from this section.

(9) The rules of court may (subject to the regulations) also make provision for or with respect to the use of closed-circuit television facilities under this section.

Alternative arrangements for child victim's evidence

405E. (1) In this section—

“child”, in relation to any proceedings, means a child under the age of 16 years at the time that the child is giving evidence in those proceedings;

“personal assault offence” has the same meaning as it has in section 405D.

(2) In any criminal proceedings in which it is alleged that the accused person has committed a personal assault offence on a child, the evidence of the child shall, if an alternative arrangement has been prescribed for the court under this section, be given by means of that alternative arrangement.

(3) The Attorney General may, by order published in the Gazette, prescribe an alternative arrangement in respect of any particular court for the purposes of children giving evidence in accordance with this section.

(4) The alternative arrangements prescribed under this section shall be such as the Attorney General considers appropriate to reduce the trauma for or intimidation of the child when giving evidence.

(5) Without limiting the generality of subsections (3) and (4), the following types of alternative arrangements may be prescribed under this section:

Crimes (Personal and Family Violence) Amendment 1987

 SCHEDULE 3—AMENDMENTS RELATING TO PROCEDURE—
continued

- (a) seating arrangements for persons who have an interest in the proceedings (including the level at which they are seated and the persons in the child's line of vision);
- (b) adjournment of any part of the proceedings to other premises.
- (6) In any criminal proceedings in which the evidence of a child is given by means of an alternative arrangement in accordance with this section, the Judge may, at the request of the accused or counsel for the accused, give such directions to the jury as the Judge considers appropriate—
- (a) to inform the jury that the use of the alternative arrangement is standard procedure required by law; and
- (b) to warn the jury not to draw any inferences or give the evidence any greater or lesser weight because of the use of the alternative arrangement.
- (7) Nothing in this section affects an obligation under section 405D for a court to use closed-circuit television facilities in the case of a child under the age of 10 years.
- (8) This section applies when the evidence of a child under the age of 10 years is not given by means of closed-circuit television facilities because of a certificate under section 405D (3).
- (9) If closed circuit-television facilities are prescribed as an alternative arrangement under this section in respect of any court, the provisions of section 405D apply when the evidence of a child is given by means of those facilities in accordance with this section.
- (10) The failure of a child to give evidence by means of an alternative arrangement in accordance with this section does not affect the validity of the proceedings or any decision made in connection with those proceedings.
- (11) Nothing in this section limits any discretion that a court has with respect to the conduct of proceedings in any case to which this section does not apply.
- (7) Section 409A (**Depositions of previous connected proceedings may be read as evidence in committal proceedings**)—
- Section 409A (1), definition of "prescribed sexual offence"—
- Omit the definition.

Crimes (Personal and Family Violence) Amendment 1987

SCHEDULE 3—AMENDMENTS RELATING TO PROCEDURE—
continued
(8) Section 409B (Admissibility of evidence relating to sexual experience etc.)—

Section 409B (1), definitions of “prescribed sexual offence” and “prescribed sexual offence proceedings”—

Omit the definitions.

(9) Section 409C (Limitation on dock statements in certain sexual offence proceedings)—

Section 409C (1)—

Omit “referred to in section 409B”.

(10) Section 578 (Publication of evidence may be forbidden in certain cases)—

Section 578 (4)—

After section 578 (3), insert:

(4) A reference in this section to the Judge presiding at a trial includes a reference to a Justice presiding at committal proceedings.

(11) Section 578A—

After section 578, insert:

Prohibition of publication identifying victims of certain sexual offences

578A. (1) In this section—

“complainant”, in relation to any proceedings, means the person, or any of the persons, upon whom a prescribed sexual offence with which the accused person stands charged in those proceedings is alleged to have been committed;

“matter” includes a picture;

“publish” includes broadcast by radio or television.

(2) A person shall not publish any matter which identifies the complainant in prescribed sexual offence proceedings or any matter which is likely to lead to the identification of the complainant.

Penalty: In the case of an individual—50 penalty units or imprisonment for 6 months, or both; in the case of a corporation—500 penalty units.

Crimes (Personal and Family Violence) Amendment 1987

SCHEDULE 3—AMENDMENTS RELATING TO PROCEDURE—
continued

(3) This section applies even though the prescribed sexual offence proceedings have been finally disposed of.

(4) This section does not apply to—

- (a) a publication authorised by the Judge or Justice presiding in the proceedings concerned;
- (b) a publication made with the consent of the complainant (being a complainant who is of or over the age of 14 years at the time of publication);
- (c) a publication authorised by the Attorney General under section 11 of the Children (Criminal Proceedings) Act 1987 in respect of a complainant who is under the age of 14 years at the time of publication;
- (d) an official law report of the prescribed sexual offence proceedings or any official publication in the course of, and for the purposes of, those proceedings;
- (e) the supply of transcripts of the prescribed sexual offence proceedings to persons with a genuine interest in those proceedings or for genuine research purposes; or
- (f) a publication made after the complainant's death.

(5) A Judge or Justice shall not authorise a publication under subsection (4) (a) unless the Judge or Justice—

- (a) has sought and considered any views of the complainant; and
- (b) is satisfied that the publication is in the public interest.

(6) The prohibition contained in this section applies in addition to any other prohibition or restriction imposed by law on the publication of any matter relating to prescribed sexual offence proceedings.

(7) Proceedings for an offence against this section shall be dealt with summarily before—

- (a) a Local Court constituted by a Magistrate sitting alone; or
- (b) the Supreme Court in its summary jurisdiction.

Crimes (Personal and Family Violence) Amendment 1987

SCHEDULE 3—AMENDMENTS RELATING TO PROCEDURE—
continued

(8) If proceedings for an offence against this Act are brought before a Local Court, the maximum penalty that the Local Court may impose on a corporation is 50 penalty units.

(12) Second Schedule—

Insert, in appropriate order, “, 77A”.

**CRIMES (PERSONAL AND FAMILY VIOLENCE)
AMENDMENT BILL 1987**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

Bail (Personal and Family Violence) Amendment Bill 1987;

Children (Care and Protection) (Personal and Family Violence) Amendment Bill 1987.

The object of this Bill is to amend the Crimes Act 1900 to further protect the victims of personal and family violence. The Bill—

- (a) extends the availability of apprehended domestic violence orders and seeks to improve the protection afforded by those orders;
- (b) increases the penalties for sexual assault offences (in particular for sexual assault offences committed in company) and extends sexual assault offences in relation to threatening, intimidatory or coercive conduct and in relation to persons with intellectual disabilities; and
- (c) makes certain changes to criminal procedure, in particular—
 - (i) to require a young child victim's evidence in personal (including sexual) assault offences to be given by means of closed-circuit television facilities and in certain other cases by means of specially prescribed alternative arrangements; and
 - (ii) to prevent the publication (except in specified circumstances) of the identity of the victim of sexual assault offences.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Principal Act.

Crimes (Personal and Family Violence) Amendment 1987

SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED DOMESTIC
VIOLENCE ORDERS

Schedule 1 (1)–(4) contain consequential amendments.

Schedule 1 (5) and (6) substitute existing section 547AA of the Principal Act relating to apprehended domestic violence orders and replace it with a new Part XVA of the Principal Act. The new Part—

- (a) extends the availability of apprehended domestic violence orders (which are at present restricted to spouses and de-facto partners) to persons who share a common household (otherwise than merely as tenants or boarders), are related by blood or marriage or have an intimate personal relationship;
- (b) provides that complaints for those orders are to be made by police officers if they are to protect a child;
- (c) removes the 6 months' time limit on the duration of those orders;
- (d) enables a court to restrict or prohibit the possession of firearms by those orders;
- (e) restricts the award of costs against complainants in proceedings for those orders;
- (f) enables the District Court to make those orders in any case where a Magistrate has refused to do so;
- (g) enables the making of interim orders in the absence of and without notice to the defendant; and
- (h) clarifies the circumstances in which proceedings for those orders should be commenced by a warrant for the arrest of the defendant.

SCHEDULE 2—AMENDMENTS RELATING TO OFFENCES

Schedule 2 (1) contains consequential amendments.

Schedule 2 (2), (3) (b) and (c), (4) and (5) create separate offences (with an additional 2 years penalty) in respect of various categories of sexual assault offences for an offence committed in the company of 1 or more other persons. For example, the maximum penalty will be—

- (a) 14 years for committing in company the category 2 sexual assault offence of inflicting actual bodily harm etc. with intent to have sexual intercourse;
- (b) 10 years for committing in company the category 3 sexual assault offence of sexual intercourse without consent (or 12 years if the victim is a child under the age of 16 years or 14 years if the child is under the authority of the accused person); and
- (c) 6 years for committing in company the category 4 sexual assault offence of indecent assault (or 8 years if the victim is a child under the age of 16 years and under the authority of the accused person).

Schedule 2 (3) (a) increases the maximum basic penalty for the category 3 sexual assault offence of sexual intercourse without consent from 7 years to 8 years (higher penalties apply at present for offences committed in specified aggravated circumstances).

Schedule 2 (6) creates a new category of sexual assault offence, namely, sexual intercourse to which a person submits as a result of non-violent threatening conduct (including intimidatory or coercive conduct), but only where the person could not in the circumstances be reasonably expected to resist the threat. The maximum penalty is 6 years.

Schedule 2 (7), (8) and (10) replace the existing offences of having sexual intercourse with idiots or imbeciles with new offences. Under the new provisions—

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- (a) the expressions "idiots" and "imbeciles" have been replaced by the specially defined expression of persons who have an "intellectual disability";
- (b) an offence has been created (maximum penalty 10 years) to deal with certain persons in authority who have sexual intercourse with intellectually disabled persons under their care or control; and
- (c) the offence of having sexual intercourse with an intellectually disabled person (maximum basic penalty 8 years) applies only where the offender intended to take advantage of the disabled person's vulnerability to sexual exploitation.

Schedule 2 (9) and (11) contain consequential amendments.

SCHEDULE 3—AMENDMENTS RELATING TO PROCEDURE

Schedule 3 (1) transfers to the general definition section from various sections in the Principal Act the definitions of "prescribed sexual offence" and "prescribed sexual offence proceedings". The substituted definitions include reference to the new sexual assault offences inserted by Schedule 2 and also certain additional offences such as breaking into premises with intent to commit a sexual assault offence.

Schedule 3 (2) extends the power of a court to hear certain sexual assault offences in camera to all prescribed sexual offences referred to in Schedule 3 (1). It also provides that the court will, in deciding whether a hearing is to be held in camera, consider the needs of any victim of the offence instead of only (as at present) the needs of any child victim.

Schedule 3 (3) is consequential on the amendment made by Schedule 3 (2).

Schedule 3 (4), (5), (7), (8) and (9) make amendments as a consequence of the transfer of the definitions of "prescribed sexual offence" and "prescribed sexual offence proceedings" to the general definition section. The various procedural reforms contained in the sections amended will now apply to the extended category of sexual offences referred to in Schedule 3 (1).

Schedule 3 (6) inserts proposed sections 405D and 405E into the Principal Act.

Proposed section 405D requires the use of closed-circuit television facilities when a child under 10 years of age gives evidence if the child is the victim of a personal assault (including a sexual assault) offence.

Proposed section 405E requires the use of alternative arrangements (prescribed by the Attorney General for individual courts) when a child under 16 years of age gives evidence if the child is the victim of a personal assault (including a sexual assault) offence. The alternative arrangements may involve seating arrangements or adjournment to more suitable premises. If the child is under 10 years of age and closed-circuit television facilities are available, those facilities must be used.

Section 3 (10) ensures that the prohibition of publication of evidence by court order under section 578 of the Principal Act applies to committal proceedings.

Section 3 (11) makes it an offence, except in certain circumstances, to publish any matter which identifies the victim of a prescribed sexual offence referred to in Schedule 3 (1).

Crimes (Personal and Family Violence) Amendment 1987

Schedule 3 (12) ensures that section 77A of the Principal Act (as proposed to be amended by Schedule 3 (2)) applies to all courts, including courts hearing committal proceedings.

**CRIMES (PERSONAL AND FAMILY VIOLENCE)
AMENDMENT BILL 1987**

NEW SOUTH WALES



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**CRIMES (PERSONAL AND FAMILY VIOLENCE)
AMENDMENT BILL 1987**

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Crimes Act 1900 in relation to personal and family violence.

See also Bail (Personal and Family Violence) Amendment Bill 1987; Children (Care and Protection) (Personal and Family Violence) Amendment Bill 1987.

Crimes (Personal and Family Violence) Amendment 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes (Personal and Family Violence) Amendment Act 1987.

5 Commencement

2. This Act shall commence on a day or days to be appointed by proclamation.

Amendment of Act No. 40, 1900

3. The Crimes Act 1900 is amended as set out in Schedules 1-3.

10 SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED DOMESTIC VIOLENCE ORDERS

(Sec. 3)

(1) Section 1 (**Short title and contents of Act**)—

15 (a) From the matter relating to Chapter III of Part XIV, omit item (F), insert instead:

(F) RECOGNIZANCE TO KEEP THE PEACE—s. 547.

(b) After the matter relating to Part XV, insert:

PART XV_A—APPREHENDED DOMESTIC VIOLENCE ORDERS—ss. 562_A–562_R.

20 (2) Section 4 (**Definitions**)—

Section 4 (1), definition of “Domestic violence offence”—

(a) Omit “or” where lastly occurring in subparagraphs (i) and (ii).

(b) After subparagraph (ii), insert:

25 (iii) a person who is living or has lived ordinarily in the same household as the person who commits the offence (otherwise than merely as a tenant or boarder);

(iv) a person who is or has been a relative (within the meaning of Part XV_A) of the person who commits the offence; or

30 (v) a person who has or has had an intimate personal relationship with the person who commits the offence; or

35 (3) Section 407_{AA} (**Compellability of spouses to give evidence in certain proceedings**)—

(a) Section 407_{AA} (1) (b)—

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SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED DOMESTIC VIOLENCE ORDERS—*continued*

Omit the paragraph, insert instead:

5 (b) a reference to a domestic violence offence committed upon the husband or wife of an accused person includes a reference to an offence of contravening a prohibition or restriction specified in an apprehended domestic violence order under Part XVA which was made against the accused person and in respect of which that husband or wife was the aggrieved person;

10 (b) Section 407AA (1) (c), (d)—

At the end of section 407AA (1) (c), insert:

; and

15 (d) a reference to a child assault offence committed upon a child includes a reference to an offence of contravening a prohibition or restriction specified in an apprehended domestic violence order under Part XVA which was made against the accused person and in respect of which that child was the aggrieved person.

(4) Section 547, heading—

Omit the heading before section 547, insert instead:

20 (F) **RECOGNIZANCE TO KEEP THE PEACE**

(5) Section 547AA (**Apprehended domestic violence orders**)—

Omit the section.

(6) Part XVA—

After Part XV, insert:

25 **PART XVA—APPREHENDED DOMESTIC VIOLENCE ORDERS**

Definitions

562A. In this Part—

30 “aggrieved person” means the person whose fear of a domestic violence offence or other conduct is the subject of a complaint under this Part;

“authorised Justice” means—

(a) a Magistrate; or
 35 (b) a Justice employed in the Attorney General’s Department;

“court” means—

(a) a Local Court;

Crimes (Personal and Family Violence) Amendment 1987

 SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED DOMESTIC VIOLENCE ORDERS—*continued*

(b) the Children's Court; or

(c) the District Court,

exercising jurisdiction under section 562G;

“defendant” means the person against whom an order is made;

“order” means an apprehended domestic violence order in force under this Part and, if the order is varied under this Part, means the order as so varied;

“relative” means—

(a) father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law;

(b) son, daughter, grandson, granddaughter, step-son, step-daughter, son-in-law or daughter-in-law;

(c) brother, sister, half-brother, half-sister, brother-in-law or sister-in-law;

(d) uncle, aunt, uncle-in-law or aunt-in-law;

(e) nephew or niece; or

(f) cousin,

and includes, in the case of de-facto partners, a person who would be such a relative if the de-facto partners were married.

Apprehended domestic violence orders

562B. (1) A court may, on complaint, make an apprehended domestic violence order if it is satisfied on the balance of probabilities that a person fears the commission by another person—

(a) who is or has been the spouse or de-facto partner of the person;

(b) who is living or has lived ordinarily in the same household as the person (otherwise than merely as a tenant or boarder);

(c) who is or has been a relative of the person; or

(d) who has or has had an intimate personal relationship with the person,

of a domestic violence offence on the person or of conduct consisting of harassment or molestation of the person (being conduct which falls short of actual or threatened violence but which, in the opinion of the court, is sufficient to warrant the making of the order).

Crimes (Personal and Family Violence) Amendment 1987

SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED DOMESTIC VIOLENCE ORDERS—*continued*

(2) Before the court makes an order it must be satisfied on the balance of probabilities that the person's fear is reasonable.

(3) An order may impose such prohibitions or restrictions on the behaviour of the defendant as appear necessary or desirable to the court.

Making of complaint

562C. (1) A complaint for an order—

- (a) may be made orally or in writing to a Justice; and
- (b) shall be substantiated on oath before the Justice.

(2) A complaint for an order may be made by—

- (a) the aggrieved person; or
- (b) a member of the Police Force.

(3) Notwithstanding subsection (2), a complaint for an order must be made by a member of the Police Force if the aggrieved person is a child under the age of 18 years at the time of the complaint.

(4) A complaint for an order may be made by or on behalf of more than one aggrieved person.

Prohibitions and restrictions imposed by orders

562D. (1) Without limiting the generality of section 562B, an order may do all or any of the following:

- (a) prohibit or restrict approaches by the defendant to the aggrieved person;
- (b) prohibit or restrict access by the defendant to any specified premises occupied by the aggrieved person, any specified place of work of the aggrieved person or any other specified premises or place frequented by the aggrieved person (whether or not the defendant has a legal or equitable interest in the premises or place);
- (c) prohibit or restrict the possession of all or any specified firearms by the defendant;
- (d) prohibit or restrict specified behaviour by the defendant which might affect the aggrieved person.

(2) Before making an order which prohibits or restricts access to the defendant's residence, the court shall consider the accommodation needs of all relevant parties and the effect of making such an order on any children.

Crimes (Personal and Family Violence) Amendment 1987

 SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED
 DOMESTIC VIOLENCE ORDERS—*continued*

(3) If the court makes an order which prohibits or restricts the possession of firearms by the defendant, the court may by the order require the defendant to dispose of firearms in the defendant's possession and to surrender to the Commissioner of Police any licence, permit or other authority under the Firearms and Dangerous Weapons Act 1973 held by the defendant.

Duration of order

562E. (1) An order remains in force for such period as is specified in the order by the court, and does not have effect unless a period is so specified.

(2) The period so specified shall be as long as is necessary, in the opinion of the court, to ensure the protection of the aggrieved person.

Variation or revocation of orders

562F. (1) If an order is made—

- (a) the aggrieved person (whether or not the complainant);
- (b) if the complainant was a member of the Police Force—that or any other member of the Police Force; or
- (c) the defendant,

may, at any time, apply to a court for the variation or revocation of the order.

(2) Notwithstanding subsection (1), an application must be made by a member of the Police Force if the aggrieved person is a child under the age of 18 years at the time of the application.

(3) The court may, if satisfied that in all the circumstances it is proper to do so, vary or revoke the order.

(4) In particular, an order may be varied under this section—

- (a) by extending or reducing the period during which the order is to remain in force;
- (b) by amending or deleting any prohibitions or restrictions specified in the order; or
- (c) by specifying additional prohibitions or restrictions in the order.

(5) An order shall not be varied or revoked on the application of the defendant unless notice of the application has been served on the aggrieved person.

(6) An order shall not be varied or revoked on the application of the complainant or aggrieved person unless notice of the application has been served on the defendant.

Crimes (Personal and Family Violence) Amendment 1987

 SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED
 DOMESTIC VIOLENCE ORDERS—*continued*

(7) Notice of an application shall be served personally or in such other manner as the court hearing the application directs.

Courts authorised to make orders etc.

562G. (1) The following courts have jurisdiction (in the circumstances specified) to make orders under this Part:

- 5
- (a) a Local Court—except where the defendant is less than 18 years of age at the time the complaint is made;
- (b) the Children's Court—where the defendant is less than 18 years of age at the time the complaint is made;
- 10 (c) the District Court—where a complaint by or on behalf of the aggrieved person has been dismissed by a Local Court or the Children's Court.

(2) A Local Court has jurisdiction to vary or revoke an order made by it or any other court (except where the defendant is less than 18 years of age at the time the application for the variation or revocation is made).

15

(3) The Children's Court has jurisdiction to vary or revoke an order made by it irrespective of the age of the defendant at the time the application for variation or revocation is made.

20 (4) The District Court has jurisdiction to vary or revoke an order made by it.

Interim orders etc. made in absence of defendant

562H. (1) An order may, if in all the circumstances it appears to the court to be necessary or appropriate, be made in the absence of the defendant.

25

(2) An order may be made in the absence of the defendant whether or not the defendant has been given notice of the proceedings.

(3) If an order is made in the absence of the defendant and without the defendant having been given notice of the proceedings—

30

- (a) the court shall summon the defendant to appear at a further hearing of the matter as soon as possible after the order is made;
- 35 (b) at the further hearing the court may confirm or may revoke or vary the order (whether or not the defendant appears at the further hearing); and
- (c) pending the further hearing, the order has the same effect as any other order under this Part.

SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED
DOMESTIC VIOLENCE ORDERS—*continued*

Offence of contravening order

562i. (1) A person who knowingly contravenes a prohibition or restriction specified in an order made against the person is guilty of an offence.

5 Penalty: 20 penalty units or imprisonment for 6 months, or both.

(2) A person is not guilty of an offence against this section unless a copy of the record of the order concerned was served on the person—

10 (a) personally under section 562j; or

(b) in such other manner as the court which made the order directs.

(3) If a member of the Police Force believes on reasonable grounds that a person has committed an offence against this section, the member of the Police Force may, without warrant, arrest and detain the person.

(4) A person so arrested and detained shall be brought as soon as practicable before a court to be dealt with for the offence.

(5) Proceedings for an offence against this section shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Service of copy of order etc. on defendant, police etc.

562j. (1) The clerk of a court which makes an order, or varies or revokes an order, shall prepare a written record of the order or of the variation or revocation.

(2) The clerk of the court shall—

(a) serve a copy of the record of an order or of the variation of an order personally on the defendant if the defendant is present in court; or

(b) if the clerk of the court is unable to serve a copy of that record personally on the defendant, the clerk shall arrange for the copy of that record to be served personally on the defendant by a member of the Police Force or such other person as the clerk thinks fit.

(3) The clerk of the court shall cause—

(a) a copy of the record of an order, or of the variation or revocation of an order; and

(b) a copy of any complaint for an order,

*Crimes (Personal and Family Violence) Amendment 1987***SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED DOMESTIC VIOLENCE ORDERS—*continued***

to be forwarded to the Commissioner of Police and to the aggrieved person.

Summons for appearance or arrest of defendant

5 562K. (1) If a complaint for an order is made, an authorised Justice may issue—

- (a) a summons for the appearance of the defendant; or
- (b) a warrant for the arrest of the defendant,

as if the complaint alleged the commission of an offence.

10 (2) An authorised Justice may issue a warrant for the arrest of the defendant even though the defendant is not alleged to have committed an offence.

15 (3) An authorised Justice shall issue a warrant for the arrest of the defendant if it appears to the authorised Justice that the personal safety of the aggrieved person will be put at risk unless the defendant is arrested for the purpose of being brought before the court.

Application of Bail Act 1978

562L. If a complaint for an order is made, the Bail Act 1978 applies to the defendant as if—

- 20 (a) where the defendant is arrested pursuant to a warrant issued under this Part or first appears before a court in answer to a summons so issued—the defendant were an accused person charged with an offence; and
- 25 (b) proceedings in respect of the complaint or order were proceedings in respect of an offence to which section 8 of the Bail Act 1978 applies.

Appeal by defendant against order made by Local Court or Children's Court

30 562M. (1) An order made by a Local Court or the Children's Court shall be deemed to be an order whereby the defendant is punished within the meaning of section 122 of the Justices Act 1902.

35 (2) In the application of section 123 of the Justices Act 1902 and the Bail Act 1978 to the defendant, the defendant shall be deemed to be an accused person who, because of the prohibitions or restrictions imposed by the order, is in custody.

(3) In this section, "order" includes an order which varies an order.

Crimes (Personal and Family Violence) Amendment 1987

**SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED
DOMESTIC VIOLENCE ORDERS—*continued***
Costs

562N. (1) A court may, in proceedings under this Part, award costs to the complainant or the defendant.

5 (2) A Local Court or the Children's Court shall not award costs against a complainant who is the aggrieved person unless satisfied that the complaint was frivolous or vexatious.

(3) Costs awarded under this section may be recovered in the same manner as costs awarded by the court in proceedings for an offence.

10 **Concurrent criminal proceedings**

562O. (1) A court may make an order against a defendant even though the defendant has been charged with an offence arising out of the same conduct as that out of which the complaint for the order arose.

15 (2) Where a person stands charged before a court with an offence which appears to the court to be a domestic violence offence—

(a) the court shall inquire whether a complaint under this Part has been made;

20 (b) if a complaint has not been made, the court shall inform the person on whom the offence is alleged to have been committed and who appears in the proceedings of the person's right to apply for an order under this Part; and

25 (c) the court shall then inquire whether a complaint under this Part is to be made.

(3) If such a complaint has been or is made, the court shall, if it has jurisdiction and it is practicable to do so, deal with the complaint forthwith.

Recognizance to keep peace not affected

30 562P. Nothing in this Part prevents or restricts the application of section 547 in relation to cases to which this Part applies.

Regulations

35 562Q. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed under this Part or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.

*Crimes (Personal and Family Violence) Amendment 1987***SCHEDULE 1—AMENDMENTS RELATING TO APPREHENDED DOMESTIC VIOLENCE ORDERS—*continued*****Transitional provisions**

562R. (1) An order in force under section 547AA, immediately before the commencement of this Part, shall be deemed to be an order under this Part.

5 (2) A complaint for an order under section 547AA, or an application for the variation or revocation of such an order, pending on the commencement of this Part, shall be deemed to be a complaint or application made under this Part.

10 (3) In this Part a reference to the Children's Court shall, before the commencement of the Children's Court Act 1987, be construed as a reference to a children's court under the Child Welfare Act 1939.

15 (4) The District Court does not have jurisdiction under this Part in the case of a complaint that has been dismissed by a court before the commencement of this Part.

SCHEDULE 2—AMENDMENTS RELATING TO OFFENCES

(Sec. 3)

(1) Section 61A (Definition of sexual intercourse etc.)—

(a) Section 61A (1), (2), (5)—

20 Omit “-66E” wherever occurring, insert instead “-66F”.

(b) Section 61A (6)—

After section 61A (5), insert:

25 (6) For the purposes of sections 61C-61E, a person is in the company of others if the person is in the company of 1 or more other persons.

(2) Section 61C (Sexual assault category 2—inflicting actual bodily harm etc. with intent to have sexual intercourse)—

Section 61C (3), (4)—

After section 61C (2), insert:

30 (3) Any person who, in the company of others—

(a) maliciously inflicts actual bodily harm upon another person; or

(b) threatens to inflict actual bodily harm upon another person by means of an offensive weapon or instrument,

35 with intent to have sexual intercourse with the other person shall be liable to penal servitude for 14 years.

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 SCHEDULE 2—AMENDMENTS RELATING TO OFFENCES—
continued

(4) Any person who, in the company of others—

(a) maliciously inflicts actual bodily harm upon another person; or

(b) threatens to inflict actual bodily harm upon another person,

with intent to have sexual intercourse with a third person who is present or nearby shall be liable to penal servitude for 14 years.

(3) Section 61D (**Sexual assault category 3—sexual intercourse without consent**)—

(a) Section 61D (1)—

Omit “7 years”, insert instead “8 years”.

(b) Section 61D (1B), (1C)—

After section 61D (1A), insert:

(1B) Any person who, in the company of others, 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 shall be liable to penal servitude for 10 years or, if the other person is under the age of 16 years, to penal servitude for 12 years.

(1C) Any person who, in the company of others, has sexual intercourse with another person who—

(a) is under the age of 16 years; and

(b) is (whether generally or at the time of the sexual intercourse only) under the authority of the person,

without the consent of the other person and who knows that the other person does not consent to the sexual intercourse shall be liable to penal servitude for 14 years.

(c) Section 61D (2), (3)—

Omit “subsections (1) and (1A)” wherever occurring, insert instead “this section”.

(4) Section 61E (**Sexual assault category 4—indecent assault and act of indecency**)—

Section 61E (1B), (1C)—

After section 61E (1A), insert:

(1B) Any person who, in the company of others, assaults another person and, at the time of, or immediately before or after, the assault, commits an act of indecency upon or in the presence of the other person, shall be liable to penal servitude for 6 years.

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SCHEDULE 2—AMENDMENTS RELATING TO OFFENCES—
continued

(1C) Any person who, in the company of others, assaults another person who—

(a) is under the age of 16 years; and

5 (b) is (whether generally or at the time of the assault only) under the authority of the person,

and at the time of, or immediately before or after, the assault, commits an act of indecency upon or in the presence of the other person, shall be liable to penal servitude for 8 years.

(5) Section 61G (**Alternative verdicts**)—

10 Section 61G (1A)—

After section 61G (1), insert:

15 (1A) Where on the trial of a person for an offence under section 61C (3) or (4), 61D (1B) or (1C) or 61E (1B) or (1C) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied that the accused is guilty of an offence under section 61C (1) or (2), 61D (1) or (1A) or 61E (1) or (1A), it may find the accused not guilty of the offence charged but guilty of an offence under section 61C (1) or (2), 61D (1) or (1A) or 61E (1) or (1A), as the case may be, and the accused shall be liable to punishment
20 accordingly.

(6) Section 65A—

Before section 66, insert:

Sexual intercourse procured by intimidation, coercion and other non-violent threats

25 65A. (1) In this section—

“non-violent threat” means intimidatory or coercive conduct, or other threat, which does not involve a threat of physical force.

30 (2) Any person who has sexual intercourse with another person shall, if the other person submits to the sexual intercourse as a result of a non-violent threat and could not in the circumstances be reasonably expected to resist the threat, be liable to penal servitude for 6 years.

35 (3) A person does not commit an offence under this section unless the person knows that the person concerned submits to the sexual intercourse as a result of the non-violent threat.

SCHEDULE 2—AMENDMENTS RELATING TO OFFENCES—
continued

(7) Section 66F—

After section 66E, insert:

Sexual intercourse—intellectual disability

66F. (1) In this section—

“intellectual disability” means an appreciably below average general intellectual function that results in the person requiring supervision or social habilitation in connection with daily life activities.

(2) Any person who has sexual intercourse with another person who—

(a) has an intellectual disability; and

(b) is (whether generally or at the time of the sexual intercourse only) under the authority of the person in connection with any facility or programme providing services to persons who have intellectual disabilities,

shall be liable to penal servitude for 10 years.

(3) Any person who has sexual intercourse with another person who has an intellectual disability, with the intention of taking advantage of the other person’s vulnerability to sexual exploitation, shall be liable to penal servitude for 8 years.

(4) Any person who attempts to commit an offence under this section upon another person who has an intellectual disability shall be liable to the penalty provided for the commission of the offence.

(5) A person does not commit an offence under this section unless the person knows that the person concerned has an intellectual disability.

(6) No prosecution for an offence against this section shall be commenced without the approval of the Attorney General.

(8) Section 72A (**Carnal knowledge of idiot or imbecile**)—

Omit the section.

(9) Section 77 (**Consent no defence in certain cases**)—

Section 77 (1)—

After “66D,” insert “66F.”

(10) Section 78M (**Homosexual intercourse with idiot or imbecile (cf. s. 72A)**)—

Omit the section.

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SCHEDULE 2—AMENDMENTS RELATING TO OFFENCES—
continued
(11) Section 578 (Publication of evidence may be forbidden in certain cases)—**(a) Section 578 (1)—**

After “65,” insert “65A,”.

5 **(b) Section 578 (1)—**

After “66D,” insert “66F,”.

SCHEDULE 3—AMENDMENTS RELATING TO PROCEDURE

(Sec. 3)

(1) Section 4 (Definitions)—10 **Section 4 (1)—**

Before the definition of “Property”, insert:

“Prescribed sexual offence” means—

- (a) an offence under section 61B, 61C, 61D, 61E, 65A, 66A, 66B, 66C, 66D, 66F, 78H, 78I, 78K or 78L;
- 15 (b) an offence (such as an offence under section 37 or 112) which includes the commission, or an intention to commit, an offence referred to in paragraph (a); or
- (c) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a) or (b).

20 “Prescribed sexual offence proceedings” means proceedings in which a person stands charged with a prescribed sexual offence, whether the person stands charged with that offence alone or together with any other offence (as an additional or alternative count) and whether or not the person is liable, on

25 the charge, to be found guilty of any other offence.

(2) Section 77A—

Omit the section, insert instead:

Proceedings in camera in certain cases

77A. (1) This section applies to—

- 30 (a) a prescribed sexual offence;
- (b) an offence under section 63, 65, 66, 67, 68, 71, 72, 72A, 73, 74, 76, 76A, 78M, 78N, 78O or 78Q; and
- (c) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (b).

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 SCHEDULE 3—AMENDMENTS RELATING TO PROCEDURE—
continued

(2) Any proceedings, or any part of any proceedings, in respect of an offence to which this section applies shall, if the Court so directs, be held in camera.

5 (3) If the Court makes a direction under this section, it may (either absolutely or subject to conditions) exempt any person from that direction to the extent necessary to allow that person to be present as a support for a person giving evidence or for any other purpose which the Court thinks fit.

10 (4) The Court may make a direction under this section on its own motion or at the request of any party.

(5) In determining whether to make a direction under this section the Court shall consider—

- 15 (a) the need of the complainant to have any person excluded from those proceedings;
- (b) the need of the complainant to have any person present in those proceedings;
- (c) the interests of justice; and
- (d) any other matter which the Court thinks relevant.

20 (6) In this section—
 “complainant”, in relation to any proceedings, means the person, or any of the persons, upon whom the offence with which the accused person stands charged in those proceedings, is alleged to have been committed.

25 (3) Section 78s (**Proceedings in camera in certain cases (cf. s. 77A)**)—
 Omit the section.

(4) Section 405B (**Warning to be given by Judge in relation to lack of complaint in certain sexual offence proceedings**)—
 Section 405B (1)—
 Omit the subsection.

30 (5) Section 405C (**Judge not required to warn jury against convicting person of certain sexual offences**)—
 Section 405C (1)—
 Omit the subsection.

35 (6) Sections 405D, 405E—
 After section 405C, insert:
Closed-circuit television to be used for young child victim’s evidence
 405D. (1) In this section—

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 SCHEDULE 3—AMENDMENTS RELATING TO PROCEDURE—
continued

“personal assault offence” means an offence under—

- (a) Part III;
- (b) section 493 or 494; or
- (c) section 25 of the Children (Care and Protection) Act 1987,

or an offence of attempting, or of conspiracy or incitement, to commit such an offence (but does not include an offence exempted from this section by the regulations);

“young child”, in relation to any proceedings, means a child under the age of 10 years at the time that the child is giving evidence in the proceedings.

(2) In any criminal proceedings in which it is alleged that the accused person has committed a personal assault offence on a young child, the evidence of the young child shall be given by means of closed-circuit television facilities.

(3) It is not necessary for any such evidence to be given by means of closed-circuit television facilities if the court certifies—

- (a) that the premises in which the proceedings are being conducted are not equipped with closed-circuit television facilities; and
- (b) there is no other court (equipped with those facilities) to which it is reasonably practicable for the proceedings to be adjourned.

(4) If the evidence of a young child is given by means of closed-circuit television facilities, the facilities shall be operated in such a manner that the persons who have an interest in the proceedings are able to see the young child (and any person present with the young child as a support or as an interpreter) on the same or another television monitor.

(5) In any criminal proceedings in which the evidence of a young child is given by means of closed-circuit television facilities, the Judge shall give such directions to the jury as the Judge considers appropriate—

- (a) to inform the jury that the use of those facilities is standard procedure required by law in all cases of evidence given by young children on whom it is alleged that an offence such as that charged has been committed; and
- (b) to warn the jury not to draw any inferences or give the evidence any greater or lesser weight because of the use of those facilities.

SCHEDULE 3—AMENDMENTS RELATING TO PROCEDURE—
continued

(6) The premises in which a young child gives evidence by means of closed-circuit television facilities shall be deemed to be part of the court in which the proceedings are being held.

5 (7) The failure of a young child to give evidence by means of closed-circuit television facilities in accordance with this section does not affect the validity of the proceedings or any decision made in connection with those proceedings.

(8) The Governor may make regulations for or with respect to—

10 (a) the use of closed-circuit television facilities under this section; and

(b) exempting personal assault offences from this section.

(9) The rules of court may (subject to the regulations) also make provision for or with respect to the use of closed-circuit television facilities under this section.

Alternative arrangements for child victim's evidence

405E. (1) In this section—

20 “child”, in relation to any proceedings, means a child under the age of 16 years at the time that the child is giving evidence in those proceedings;

“personal assault offence” has the same meaning as it has in section 405D.

25 (2) In any criminal proceedings in which it is alleged that the accused person has committed a personal assault offence on a child, the evidence of the child shall, if an alternative arrangement has been prescribed for the court under this section, be given by means of that alternative arrangement.

30 (3) The Attorney General may, by order published in the Gazette, prescribe an alternative arrangement in respect of any particular court for the purposes of children giving evidence in accordance with this section.

35 (4) The alternative arrangements prescribed under this section shall be such as the Attorney General considers appropriate to reduce the trauma for or intimidation of the child when giving evidence.

(5) Without limiting the generality of subsections (3) and (4), the following types of alternative arrangements may be prescribed under this section:

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SCHEDULE 3—AMENDMENTS RELATING TO PROCEDURE—
continued

- (a) seating arrangements for persons who have an interest in the proceedings (including the level at which they are seated and the persons in the child's line of vision);
- 5 (b) adjournment of any part of the proceedings to other premises.
- (6) In any criminal proceedings in which the evidence of a child is given by means of an alternative arrangement in accordance with this section, the Judge may, at the request of the accused or counsel for the accused, give such directions to the jury as the
10 Judge considers appropriate—
- (a) to inform the jury that the use of the alternative arrangement is standard procedure required by law; and
- (b) to warn the jury not to draw any inferences or give the
15 evidence any greater or lesser weight because of the use of the alternative arrangement.
- (7) Nothing in this section affects an obligation under section 405D for a court to use closed-circuit television facilities in the case of a child under the age of 10 years.
- (8) This section applies when the evidence of a child under the
20 age of 10 years is not given by means of closed-circuit television facilities because of a certificate under section 405D (3).
- (9) If closed circuit-television facilities are prescribed as an alternative arrangement under this section in respect of any court, the provisions of section 405D apply when the evidence of a child
25 is given by means of those facilities in accordance with this section.
- (10) The failure of a child to give evidence by means of an alternative arrangement in accordance with this section does not affect the validity of the proceedings or any decision made in
30 connection with those proceedings.
- (11) Nothing in this section limits any discretion that a court has with respect to the conduct of proceedings in any case to which this section does not apply.
- 35 (7) Section 409A (**Depositions of previous connected proceedings may be read as evidence in committal proceedings**)—
- Section 409A (1), definition of "prescribed sexual offence"—
- Omit the definition.

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 SCHEDULE 3—AMENDMENTS RELATING TO PROCEDURE—
continued

- (8) Section 409B (**Admissibility of evidence relating to sexual experience etc.**)—

Section 409B (1), definitions of “prescribed sexual offence” and “prescribed sexual offence proceedings”—

5 Omit the definitions.

- (9) Section 409C (**Limitation on dock statements in certain sexual offence proceedings**)—

Section 409C (1)—

Omit “referred to in section 409B”.

- 10 (10) Section 578 (**Publication of evidence may be forbidden in certain cases**)—

Section 578 (4)—

After section 578 (3), insert:

15 (4) A reference in this section to the Judge presiding at a trial includes a reference to a Justice presiding at committal proceedings.

- (11) Section 578A—

After section 578, insert:

20 **Prohibition of publication identifying victims of certain sexual offences**

578A. (1) In this section—

“complainant”, in relation to any proceedings, means the person, or any of the persons, upon whom a prescribed sexual offence with which the accused person stands charged in those proceedings is alleged to have been committed;

“matter” includes a picture;

“publish” includes broadcast by radio or television.

30 (2) A person shall not publish any matter which identifies the complainant in prescribed sexual offence proceedings or any matter which is likely to lead to the identification of the complainant.

Penalty: In the case of an individual—50 penalty units or imprisonment for 6 months, or both; in the case of a corporation—500 penalty units.

35 (3) This section applies even though the prescribed sexual offence proceedings have been finally disposed of.

(4) This section does not apply to—

SCHEDULE 3—AMENDMENTS RELATING TO PROCEDURE—
continued

- (a) a publication authorised by the Judge or Justice presiding in the proceedings concerned;
- 5 (b) a publication made with the consent of the complainant (being a complainant who is of or over the age of 14 years at the time of publication);
- (c) a publication authorised by the Attorney General under section 11 of the Children (Criminal Proceedings) Act 1987 in respect of a complainant who is under the age of 14 years at the time of publication;
- 10 (d) an official law report of the prescribed sexual offence proceedings or any official publication in the course of, and for the purposes of, those proceedings;
- (e) the supply of transcripts of the prescribed sexual offence proceedings to persons with a genuine interest in those proceedings or for genuine research purposes; or
- 15 (f) a publication made after the complainant's death.
- (5) A Judge or Justice shall not authorise a publication under subsection (4) (a) unless the Judge or Justice—
- 20 (a) has sought and considered any views of the complainant; and
- (b) is satisfied that the publication is in the public interest.
- (6) The prohibition contained in this section applies in addition to any other prohibition or restriction imposed by law on the publication of any matter relating to prescribed sexual offence proceedings.
- 25 (7) Proceedings for an offence against this section shall be dealt with summarily before—
- (a) a Local Court constituted by a Magistrate sitting alone; or
- (b) the Supreme Court in its summary jurisdiction.
- 30 (8) If proceedings for an offence against this Act are brought before a Local Court, the maximum penalty that the Local Court may impose on a corporation is 50 penalty units.

(12) Second Schedule—

Insert, in appropriate order, “, 77A”.

