

**CRIMES (CHILD PROSTITUTION) AMENDMENT ACT  
1988 No. 115**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Crimes Act 1900 No. 40
4. Consequential amendment of Search Warrants Act 1985 No. 37, s. 10 (Definitions)

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900

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**CRIMES (CHILD PROSTITUTION) AMENDMENT ACT 1988 No.  
115**

**NEW SOUTH WALES**



**Act No. 115, 1988**

An Act to amend the Crimes Act 1900 for the purpose of preventing the participation of children in prostitution or pornography and to amend the Search Warrants Act 1985 consequentially. [Assented to 21 December 1988]

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See also Children (Care and Protection) (Prostitution) Amendment Act 1988; Summary Offences (Prostitution) Amendment Act 1988.

*Crimes (Child Prostitution) Amendment 1988*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Crimes (Child Prostitution) Amendment Act 1988.

**Commencement**

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

**Amendment of Crimes Act 1900 No. 40**

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

**Consequential amendment of Search Warrants Act 1985 No. 37, s. 10 (Definitions)**

4. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10 in alphabetical order the matter "section 357EA of the Crimes Act 1900;".

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**SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900**

(Sec. 3)

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

(a) In the matter relating to Part 3, insert in appropriate order:

(13A) *Child prostitution and pornography*—ss. 91C–91G

(b) In the matter relating to Part 10, insert in appropriate order:

(2AA) *Powers of entry and search in cases of child prostitution or pornography*—s. 357EA

(2) Section 77A (**Proceedings in camera in certain cases**)—

(a) Section 77A (1) (b)—

Omit "or 78Q", insert instead " , 78Q, 91D, 91E, 91F or 91G".

(b) Section 77A (6), definition of "complainant"—

After "committed", insert:

and includes—

(a) in relation to an offence under section 91D, 91E or 91F, the person under the age of 18 years who is alleged to have participated in an act of child prostitution; and

(b) in relation to an offence under section 91G, the person under the age of 18 years who is alleged to have been employed for pornographic purposes.

*Crimes (Child Prostitution) Amendment 1988*SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

## (3) Sections 91C–91G—

After section 91B, insert:

*Child prostitution and pornography***Definitions of “act of child prostitution”, “child”**

91C. For the purposes of sections 91C–91G—

“act of child prostitution” means any sexual service, whether or not involving an indecent act—

- (a) that is provided by a child for the payment of money or the provision of any other material thing (whether or not it is in fact paid or provided to the child or to any other person); and
- (b) that can reasonably be considered to be aimed at the sexual arousal or sexual gratification of a person or persons other than the child,

and includes (but is not limited to) sexual activity between persons of different sexes or the same sex, comprising sexual intercourse (as defined in section 61A) for payment or masturbation committed by one person on another for payment, engaged in by a child;

“child” means a person who is under the age of 18 years.

**Promoting or engaging in acts of child prostitution**

91D. (1) Any person who—

- (a) by any means, causes or induces a child to participate in an act of child prostitution; or
- (b) participates as a client with a child in an act of child prostitution,

is liable to penal servitude for 10 years or, if the child is under the age of 14 years, to penal servitude for 14 years.

(2) Except where the child and the other person alleged to have participated in the act of child prostitution are both male, a person is not guilty of an offence under this section if the person satisfies the court—

- (a) that the child was not under the age of 14 years when the offence is alleged to have been committed; and
- (b) that the child consented to the act of child prostitution; and
- (c) that the person had, when the offence is alleged to have been committed, reasonable cause to believe, and did in fact believe, that the child was a person of or above the age of 18 years.



*Crimes (Child Prostitution) Amendment 1988***SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—continued**

(3) The consent of a child is not a defence to a charge relating to an offence under this section, except as provided by subsection (2).

**Obtaining benefit from child prostitution**

91E. (1) Any person who receives money or any other material benefit knowing that it is derived directly or indirectly from an act of child prostitution is liable to penal servitude for 10 years.

(2) A person is not guilty of an offence under this section if the person satisfies the court that the money or other material benefit concerned—

- (a) was received by the person for the lawful provision of goods or services; or
- (b) was paid or provided in accordance with a judgment or an order of a court or a legislative requirement, whether or not under New South Wales law.

**Premises not to be used for child prostitution**

91F. (1) Any person who is capable of exercising lawful control over premises at which a child participates in an act of child prostitution is liable to penal servitude for 7 years.

(2) For the purposes of this section, each person—

- (a) who is an owner, lessee, licensee or occupier of premises; or
- (b) who is concerned in the management of premises or in controlling the entry of persons to, or their movement within, premises,

is to be considered as capable of exercising lawful control over the premises, whether or not any other person is capable of exercising lawful control over the premises.

(3) A person is not guilty of an offence under this section relating to an act of child prostitution if the person satisfies the court—

- (a) that the person did not know about the act; or
- (b) that the person did not know that a child was participating in the act or, for any other reason, did not know that the act was an act of child prostitution; or
- (c) that the person used all due diligence to prevent the child from participating in the act.

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued***Children not to be employed for pornographic purposes**

91G. (1) Any person—

- (a) who employs a child for pornographic purposes; or
- (b) who causes or procures a child to be so employed; or
- (c) who, having the care (but not necessarily entitled by law to have the custody) of a child, consents to the child being so employed or allows the child to be so employed,

is liable to penal servitude for 5 years or, if the child is under the age of 14 years, to penal servitude for 7 years.

(2) For the purposes of this section, a child is employed for pornographic purposes only if money or some other material thing is paid or provided (whether or not to the child) for the employment of the child and, in the course of the child's employment—

- (a) the child is engaged in an activity of a sexual nature (for example, actual or simulated sexual intercourse or a striptease) for the purpose of producing pornography; or
- (b) the child is in the presence of another person who is so engaged.

(4) Section 357EA—

After section 357E, insert:

*Powers of entry and search in cases of child prostitution or pornography*

**Police may enter and search**

357EA. (1) A member of the police force may apply to an authorised justice for the issue of a search warrant if the member of the police force has reasonable grounds for believing that an offence against section 91D, 91E, 91F or 91G has recently been or is being committed on or with respect to any premises.

(2) An authorised justice to whom an application is made under subsection (1) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any member of the police force—

- (a) to enter and search the premises concerned for evidence of an offence against section 91D, 91E, 91F or 91G; and
- (b) to make in the premises inquiries relating to such an offence; and
- (c) to seize any article that may be evidence of such an offence.

*Crimes (Child Prostitution) Amendment 1988*

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SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

- (3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.
- (4) In this section—  
“authorised justice” means—  
    (a) a Magistrate; or  
    (b) a justice employed in the Attorney General’s Department.
- (5) Section 476 (**Indictable offences punishable summarily with consent of accused**)—  
    Section 476 (6) (d)—  
    In appropriate order, insert “91A, 91B, 91D, 91E, 91F, 91G,”.
- (6) Section 578 (**Publication of evidence may be forbidden in certain cases**)—  
    Section 578 (1)—  
    Omit “or 91B”, insert instead “, 91B, 91D, 91E, 91F or 91G”.

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[Minister’s second reading speech made in—  
    Legislative Assembly on 10 November 1988  
    Legislative Council on 7 December 1988]



FIRST PRINT

## CRIMES (CHILD PROSTITUTION) AMENDMENT BILL 1988

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:

Children (Care and Protection) (Prostitution) Amendment Bill 1988;  
Summary Offences (Prostitution) Amendment Bill 1988.

The object of this Bill is to amend the Crimes Act 1900 so as—

- (a) to create offences of promoting or participating as a client in acts of child prostitution, of obtaining a benefit from child prostitution and of having control of premises and not preventing them from being used for child prostitution; and
- (b) to restate, and to increase penalties for, offences concerning the employment of children for pornographic purposes; and
- (c) to empower the issue of search warrants that authorise police to enter and search premises for evidence of any of the above offences; and
- (d) to allow offences relating to procuring persons for the purposes of prostitution and the offences described above to be dealt with summarily with the consent of the accused.

The Bill also amends the Search Warrants Act 1985 consequentially.

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**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 Schedule of amendments to the Principal Act.

**Clause 4** amends section 10 (Definitions) of the Search Warrants Act 1985 so as to apply the provisions of Part 3 of that Act to search warrants to be issued under proposed section 357EA of the Principal Act as referred to below.

*Crimes (Child Prostitution) Amendment 1988*

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**SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900**

**Offences relating to child prostitution**

Schedule 1 (3) inserts proposed sections 91C–91G into the Principal Act. Of the proposed sections:

Section 91C defines “act of child prostitution” and “child”. An act of child prostitution is not limited to an act of prostitution (within the meaning of section 20 of the Summary Offences Act 1988) that is engaged in by a child but would include such things as sexual favours granted by male or female children in return for the supply of drugs. A child is defined as a person under 18 years.

Section 91D makes it an offence to cause or induce a child to participate in an act of child prostitution or to participate in any such act as a client of the child. The maximum penalty for any such offence will be penal servitude for 10 years, or if the age of the child is under 14, for 14 years.

Section 91E makes it an offence for a person to receive money or any other material benefit if the person knows it is derived from an act of child prostitution. The maximum penalty for any such offence will be penal servitude for 10 years.

Section 91F makes it an offence if any person who is capable of exercising lawful control over premises does not use all due diligence to prevent acts of child prostitution (which the person knows about) from being committed on the premises. The maximum penalty for any such offence will be penal servitude for 7 years.

**Prohibition of employment of children for pornographic purposes**

Schedule 1 (3) also inserts proposed section 91G into the Principal Act. The section restates the substance of section 51 of the Children (Care and Protection) Act 1987 which makes it an offence if a person—

- employs a child for pornographic purposes; or
- causes or procures a child to be so employed; or
- being a person having the care of a child, consents to or allows such employment of the child.

It is made clear that a person may have the care of the child without having custody of the child and that the child may not necessarily be the person remunerated for the employment.

The maximum penalty for any such offence will be penal servitude for 5 years or, if the age of the child is under 14, for 7 years.

**Search warrants**

Schedule 1 (4) inserts proposed section 357EA into the Principal Act which empowers a member of the Police Force to apply for a search warrant authorising the entry and search of premises on which there are reasonable grounds to believe that an offence under proposed section 91D, 91E, 91F or 91G has been committed.

**Summary proceedings for procuring persons for the purposes of prostitution or for proposed offences concerning children**

Schedule 1 (5) amends section 476 of the Principal Act so as to allow an offence against section 91A or 91B (relating to procuring persons for the purposes of prostitution) or proposed section 91D, 91E, 91F or 91G to be dealt with by a Magistrate in a Local Court if the accused consents. If an offence is so dealt with, the maximum penalty is imprisonment for not more than 2 years or a fine of not more than \$2,000, or both.

*Crimes (Child Prostitution) Amendment 1988*

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**Consequential amendments**

Schedule 1 (2) amends section 77A of the Principal Act so as to allow proceedings for any of the proposed offences referred to above to be heard in the absence of the public.

Schedule 1 (6) amends section 578 of the Principal Act so as to allow prohibition of the publication of evidence given in such proceedings.

Schedule 1 (1) amends section 1 (Short title and contents of Act) of the Principal Act so as to appropriately amend the summary of its contents.

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# **CRIMES (CHILD PROSTITUTION) AMENDMENT BILL 1988**

NEW SOUTH WALES



## **TABLE OF PROVISIONS**

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4. Consequential amendment of Search Warrants Act 1985 No. 37, s. 10 (Definitions)

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900

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# **CRIMES (CHILD PROSTITUTION) AMENDMENT BILL 1988**

**NEW SOUTH WALES**



No. , 1988

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## **A BILL FOR**

An Act to amend the Crimes Act 1900 for the purpose of preventing the participation of children in prostitution or pornography and to amend the Search Warrants Act 1985 consequentially.

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See also Children (Care and Protection) (Prostitution) Amendment Bill 1988; Summary Offences (Prostitution) Amendment Bill 1988.

*Crimes (Child Prostitution) Amendment 1988*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Crimes (Child Prostitution) Amendment Act 1988.

**5 Commencement**

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

**Amendment of Crimes Act 1900 No. 40**

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

**10 Consequential amendment of Search Warrants Act 1985 No. 37, s. 10 (Definitions)**

4. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10 in alphabetical order the matter "section 357EA of the Crimes Act 1900;".

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**15 SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900**

(Sec. 3)

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

(a) In the matter relating to Part 3, insert in appropriate order:

(13A) *Child prostitution and pornography*—ss. 91C–91G

20 (b) In the matter relating to Part 10, insert in appropriate order:

(2AA) *Powers of entry and search in cases of child prostitution or pornography*—s. 357EA

(2) Section 77A (**Proceedings in camera in certain cases**)—

(a) Section 77A (1) (b)—

25 Omit "or 78Q", insert instead ", 78Q, 91D, 91E, 91F or 91G".

(b) Section 77A (6), definition of "complainant"—

After "committed", insert:

and includes—

30 (a) in relation to an offence under section 91D, 91E or 91F, the person under the age of 18 years who is alleged to have participated in an act of child prostitution; and

(b) in relation to an offence under section 91G, the person under the age of 18 years who is alleged to have been employed for pornographic purposes.



*Crimes (Child Prostitution) Amendment 1988*SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

## (3) Sections 91C–91G—

After section 91B, insert:

*Child prostitution and pornography***Definitions of “act of child prostitution”, “child”**

91C. For the purposes of sections 91C–91G—

“act of child prostitution” means any sexual service, whether or not involving an indecent act—

(a) that is provided by a child for the payment of money or the provision of any other material thing (whether or not it is in fact paid or provided to the child or to any other person); and

(b) that can reasonably be considered to be aimed at the sexual arousal or sexual gratification of a person or persons other than the child,

and includes (but is not limited to) sexual activity between persons of different sexes or the same sex, comprising sexual intercourse (as defined in section 61A) for payment or masturbation committed by one person on another for payment, engaged in by a child;

“child” means a person who is under the age of 18 years.

**Promoting or engaging in acts of child prostitution**

91D. (1) Any person who—

(a) by any means, causes or induces a child to participate in an act of child prostitution; or

(b) participates as a client with a child in an act of child prostitution,

is liable to penal servitude for 10 years or, if the child is under the age of 14 years, to penal servitude for 14 years.

(2) Except where the child and the other person alleged to have participated in the act of child prostitution are both male, a person is not guilty of an offence under this section if the person satisfies the court—

(a) that the child was not under the age of 14 years when the offence is alleged to have been committed; and

(b) that the child consented to the act of child prostitution; and

(c) that the person had, when the offence is alleged to have been committed, reasonable cause to believe, and did in fact believe, that the child was a person of or above the age of 18 years.

*Crimes (Child Prostitution) Amendment 1988*SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(3) The consent of a child is not a defence to a charge relating to an offence under this section, except as provided by subsection (2).

**Obtaining benefit from child prostitution**

91E. (1) Any person who receives money or any other material benefit knowing that it is derived directly or indirectly from an act of child prostitution is liable to penal servitude for 10 years.

(2) A person is not guilty of an offence under this section if the person satisfies the court that the money or other material benefit concerned—

- (a) was received by the person for the lawful provision of goods or services; or
- (b) was paid or provided in accordance with a judgment or an order of a court or a legislative requirement, whether or not under New South Wales law.

**Premises not to be used for child prostitution**

91F. (1) Any person who is capable of exercising lawful control over premises at which a child participates in an act of child prostitution is liable to penal servitude for 7 years.

(2) For the purposes of this section, each person—

- (a) who is an owner, lessee, licensee or occupier of premises; or
- (b) who is concerned in the management of premises or in controlling the entry of persons to, or their movement within, premises,

is to be considered as capable of exercising lawful control over the premises, whether or not any other person is capable of exercising lawful control over the premises.

(3) A person is not guilty of an offence under this section relating to an act of child prostitution if the person satisfies the court—

- (a) that the person did not know about the act; or
- (b) that the person did not know that a child was participating in the act or, for any other reason, did not know that the act was an act of child prostitution; or
- (c) that the person used all due diligence to prevent the child from participating in the act.

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued***Children not to be employed for pornographic purposes**

91G. (1) Any person—

- (a) who employs a child for pornographic purposes; or
- (b) who causes or procures a child to be so employed; or
- (c) who, having the care (but not necessarily entitled by law to have the custody) of a child, consents to the child being so employed or allows the child to be so employed,

is liable to penal servitude for 5 years or, if the child is under the age of 14 years, to penal servitude for 7 years.

(2) For the purposes of this section, a child is employed for pornographic purposes only if money or some other material thing is paid or provided (whether or not to the child) for the employment of the child and, in the course of the child's employment—

- (a) the child is engaged in an activity of a sexual nature (for example, actual or simulated sexual intercourse or a striptease) for the purpose of producing pornography; or
- (b) the child is in the presence of another person who is so engaged.

(4) Section 357<sup>EA</sup>—

After section 357<sup>E</sup>, insert:

*Powers of entry and search in cases of child prostitution or pornography*

**Police may enter and search**

357<sup>EA</sup>. (1) A member of the police force may apply to an authorised justice for the issue of a search warrant if the member of the police force has reasonable grounds for believing that an offence against section 91D, 91E, 91F or 91G has recently been or is being committed on or with respect to any premises.

(2) An authorised justice to whom an application is made under subsection (1) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any member of the police force—

- (a) to enter and search the premises concerned for evidence of an offence against section 91D, 91E, 91F or 91G; and
- (b) to make in the premises inquiries relating to such an offence; and
- (c) to seize any article that may be evidence of such an offence.



*Crimes (Child Prostitution) Amendment 1988*

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SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) In this section—

“authorised justice” means—

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

(5) Section 476 (**Indictable offences punishable summarily with consent of accused**)—

10           Section 476 (6) (d)—

In appropriate order, insert “91A, 91B, 91D, 91E, 91F, 91G,”.

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

Section 578 (1)—

15           Omit “or 91B”, insert instead “, 91B, 91D, 91E, 91F or 91G”.