

FIRST PRINT

**PRE-TRIAL DIVERSION OF OFFENDERS (AMENDMENT)
BILL 1992**

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill makes a series of miscellaneous amendments relating to a program established to provide treatment for certain persons involved in child sexual assault offences. The main amendments involve defining the persons to whom the Act applies and outlining the scope of the program.

The object of this Bill is to amend the Pre-Trial Diversion of Offenders Act 1985:

- (a) to provide that the operation of the Act is limited to a person charged with a child sexual assault offence against the person's own child or a child of the person's spouse or de facto partner; and
- (b) to include clear criteria for assessing a person's suitability for participation in the Pre-Trial Diversion of Offenders Program; and
- (c) to require information to be obtained before determining whether a person should be referred for assessment as to whether a place is available in the Program for the person; and
- (d) to include as a "child sexual assault offence" certain homosexual offences under the Crimes Act 1900 concerning children; and
- (e) to provide for the Supreme Court or the District Court to proceed to conviction of a person who pleads guilty to an offence to which the Act applies and gives an undertaking to participate in the Program; and
- (f) to clarify certain administrative matters and make savings and transitional provisions.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

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SCHEDULE 1—AMENDMENTS

Application and purpose of Act

Schedule 1 (2) inserts a purpose clause that makes it clear that the Act is intended to provide for the protection of children who have been victims of sexual assault by a parent or a parent's spouse or de facto partner. The clause also states that in the implementation of the Act, the interests of a child victim are to prevail over those of a person pleading guilty to a charge of sexual assault against the child.

Schedule 1 (4) makes it clear that the Act applies to a person who has been charged with a child sexual assault offence committed with or upon the person's child or the child of the person's spouse or de facto partner. Schedule 1 (5) makes a consequential amendment.

Schedule 1 (16) (proposed section 30A) specifies that the Pre-Trial Diversion of Offenders Program is a program for the treatment of persons who have committed such offences. The current requirement that the program be approved by the Minister for Health after consultation with the Attorney General is retained. Schedule 1 (3) (c) and (d), (6) and (10) change references in the Act to a special programme to references to the Program. Schedule 1 (1) and (11) contain consequential amendments.

Definition of "child sexual assault offence"

The Act is limited in its application to family situations outlined above involving child sexual assault offences. Schedule 1 (3) (a) substitutes the definition of "child sexual assault offence" so as to include offences under sections 78H, 78I, 78K and 78L of the Crimes Act 1900 which relate to homosexual intercourse or attempted homosexual intercourse between a male person and a male child. Some statute law revision of the definition is also effected.

Schedule 1 (3) (e) makes a consequential amendment.

Criteria for determining whether person should be referred for assessment for participation in the Program

Schedule 1 (7) requires the prosecutor in proceedings to which the Act applies to ascertain if a place in the Program would be available for the person (in addition to considering the prescribed guidelines) when determining whether a person should be referred for assessment as to the person's suitability for participation in the Program.

Schedule 1 (8) requires the prosecutor to inform the Justice before whom the person appears that the person is not to be referred for assessment if there would be no available place on the Program for the person.

Assessment of person's suitability for participation in the Program

Currently a person is to be assessed for suitability to participate in the Program in accordance with the regulations. Schedule 1 (9) inserts a provision stating that the Director of the Program or a person who is a delegate of the Director is to make the assessment. In doing so, certain specified matters can be taken into account. These include statements made by the person and members of the person's household and matters such as the attitude of the person and whether the person's spouse or de facto partner is willing to participate in the Program.

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The person making the assessment is to notify the prosecutor of the result of the assessment and to give written reasons if the assessment is that the person charged is unsuitable for participation in the Program.

Court to proceed to conviction after undertaking given by person to participate in the Program

The Act at present provides that if a person pleads guilty before the Supreme Court or the District Court before trial in proceedings to which the Act applies and enters into an undertaking on the request of the Court to participate in the Program, the Court is not to convict or sentence the person.

Schedule 1 (12) provides that once the undertaking is given, the Court is to proceed to conviction but is not to sentence the person. The person may only be sentenced for the offence concerned if the court releases the person from the undertaking (Schedule 1 (13)) or the person breaches the undertaking (Schedule 1 (15)).

Schedule 1 (17) removes a provision that requires the Commissioner of Police to maintain a record of persons who have pleaded guilty to a child sexual assault offence and given an undertaking to participate in the Program. Such a record will no longer be necessary if a conviction is recorded.

Administration of Program

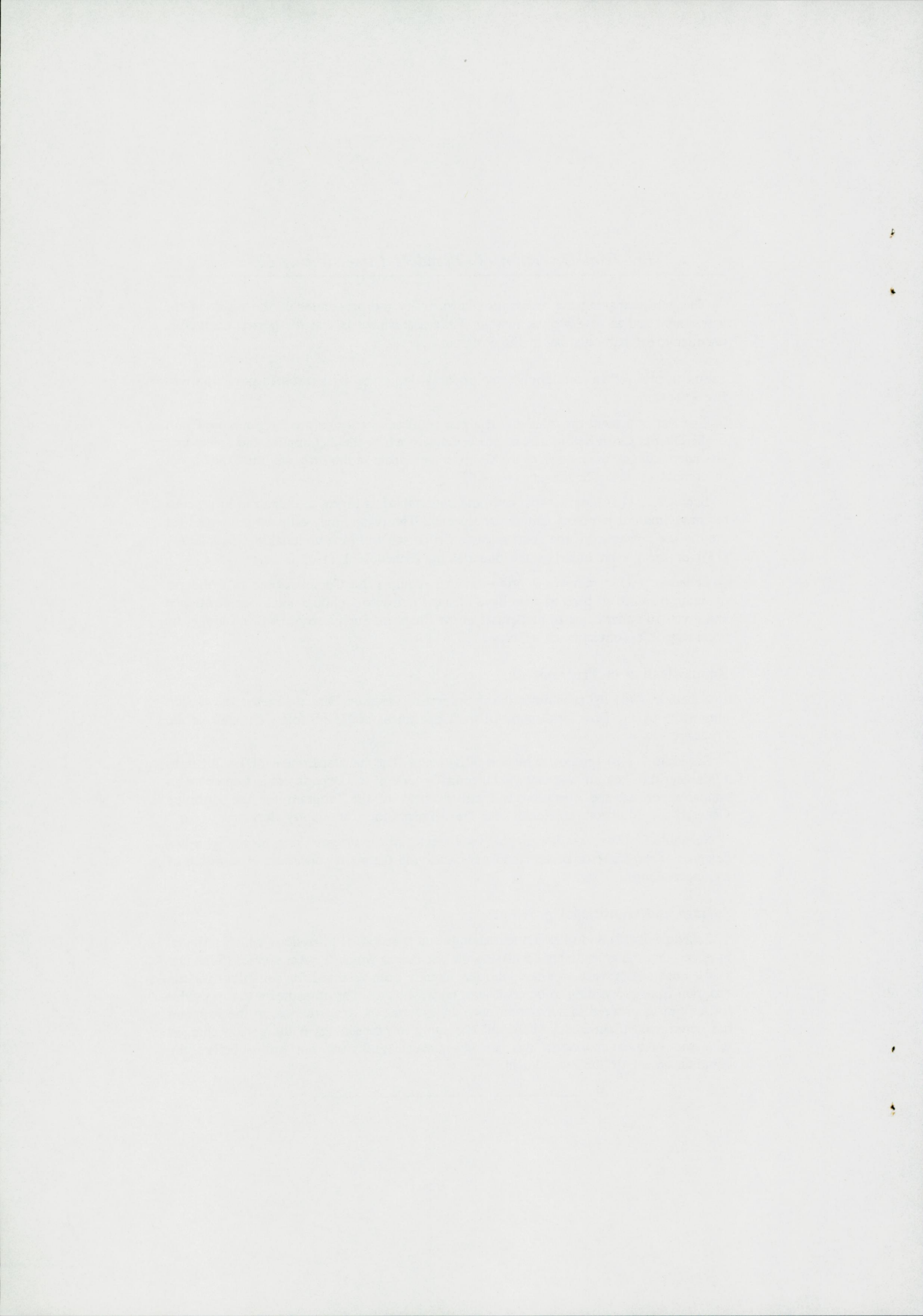
Schedule 1 (3) (b) substitutes the definition of Director. Director means the person nominated by the Director-General of the Department of Health to be Director of the Program.

Schedule 1 (16) (proposed section 30B) states that the Department of Health is to administer the Program and that the Director-General of the Department is to prepare an annual report on the operation and effectiveness of the Program for the Attorney General, the Minister for Health and the Minister for Community Services.

Schedule 1 (14) makes it clear that the Director of the Program or a person who is a delegate of the Director is responsible for notifying the court concerned of a breach of an undertaking.

Savings and transitional provisions

Schedule 1 (18) and (19) contain savings and transitional provisions which provide, in effect, that the amendment specifying the persons to which the Act applies (Schedule 1 (4)) does not prevent a person who has already been assessed for suitability for the Program from proceeding to be dealt with under the Act. The amendment that provides for a court to proceed to conviction once an undertaking to participate in the Program has been given (Schedule 1 (12)) will not apply to proceedings if the person charged with the offence concerned has already pleaded guilty or not guilty before the commencement of the amendment.



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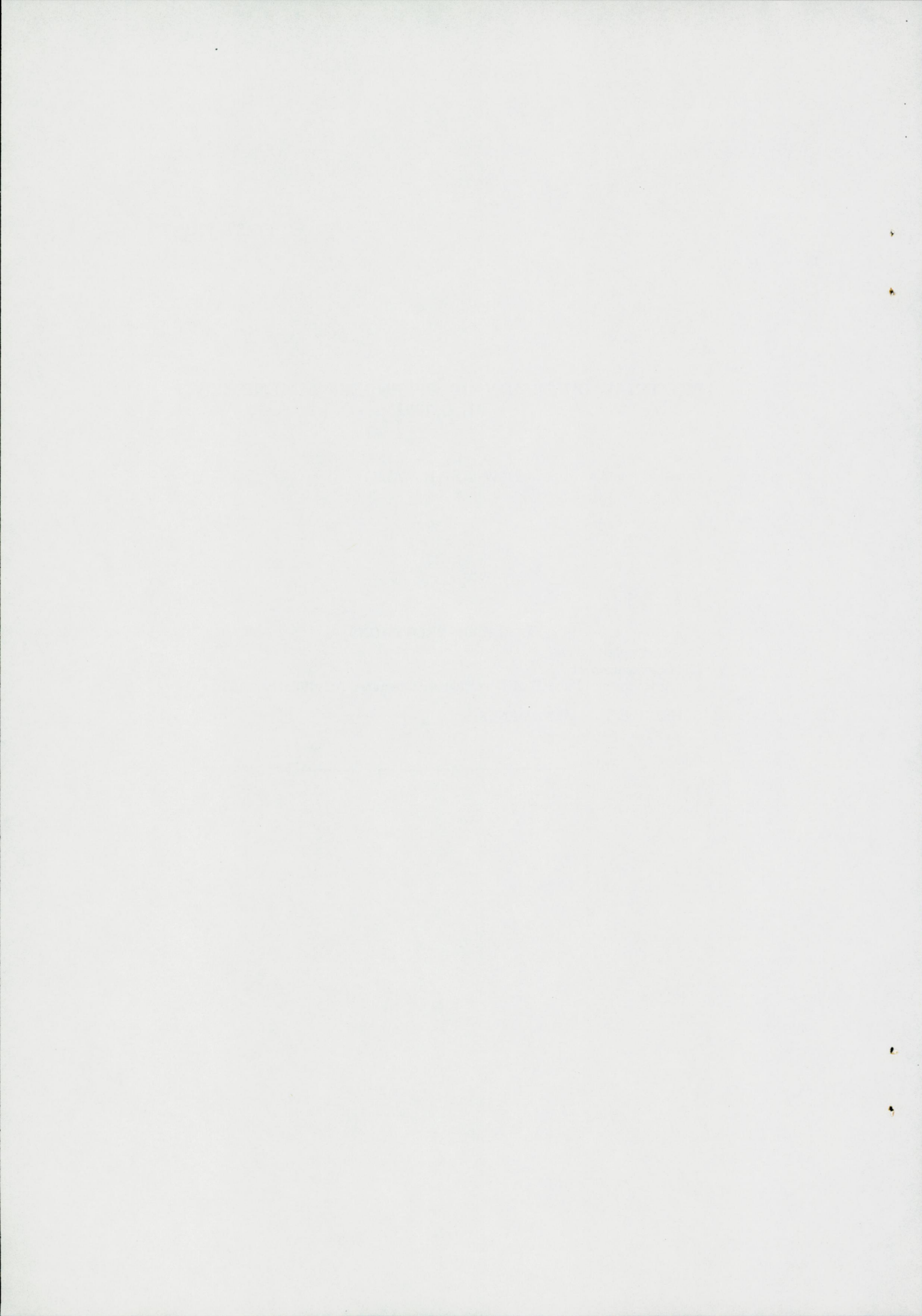
NEW SOUTH WALES



TABLE OF PROVISIONS

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SCHEDULE 1—AMENDMENTS



**PRE-TRIAL DIVERSION OF OFFENDERS (AMENDMENT)
BILL 1992**

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to amend the Pre-Trial Diversion of Offenders Act 1985 in relation to the application of that Act and procedures under that Act; and for other purposes.

Pre-Trial Diversion of Offenders (Amendment) 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Pre-Trial Diversion of Offenders (Amendment) Act 1992.

5 Commencement

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

Amendment of Pre-Trial Diversion of Offenders Act 1985 No. 153

3. The Pre-Trial Diversion of Offenders Act 1985 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Long title:

Omit “programme”, insert instead “program”.

15 (2) Section 2A:

After section 2, insert:

Purpose of Act

20 2A. The purpose of this Act is to provide for the protection of children who have been victims of sexual assault by a parent or a parent’s spouse or de facto partner. The Act provides for the establishment of a program administered by the Department of Health. In the implementation of the Act, it is intended that the interests of a child victim are to prevail over those of a person pleading guilty to a charge of sexual assault in relation to the child.

(3) Section 3 (**Definitions**):

(a) Omit the definition of “child sexual assault offence”, insert instead:

30 “**child sexual assault offence**” means an offence under section 61D, 61E, 63, 65, 66A, 66B, 66C, 66D, 67, 68, 71, 72, 73, 74, 76, 76A, 78A, 78B, 78H, 78I, 78K or 78L of the Crimes Act 1900;

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) Omit the definition of "Director", insert instead:
 "Director" means the person nominated by the
 Director-General of the Department of Health to be
 Director of the Program; 5
- (c) In alphabetical order, insert:
 "Program" means the Pre-Trial Diversion of Offenders
 Program approved in accordance with Part 3A;
- (d) Omit the definition of "special programme".
- (e) At the end of section 3, insert: 10
 (2) A reference in the definition of "child sexual assault
 offence" in subsection (1) to an offence under a specified
 provision of the Crimes Act 1900 that has been amended or
 repealed is, or includes, a reference to an offence mentioned
 in the provision as in force before the amendment or repeal. 15
- (4) Section 3A:
 After section 3, insert:
 Persons to whom Act applies
 3A. This Act applies to a person who is charged with a
 child sexual assault offence committed with or upon the
 person's child or the child of the person's spouse or de facto
 partner. 20
- (5) Section 6 (**Information relating to the Program etc. to be given
 to person charged**):
 After "person", insert "to whom this Act applies". 25
- (6) Sections 9, 11, 12, 13, 15, 16, 17, 20, 23, 28, 30 and 34:
 Omit "a special programme" wherever occurring, insert
 instead "the Program".
- (7) Section 10:
 Omit the section, insert instead: 30
 **Matters to be considered by prosecutor in deciding
 whether to refer person for assessment**
 10. In determining whether a person charged with a child
 sexual assault offence is to be referred for assessment in
 relation to the person's suitability for participation in the
 Program, the prosecutor must: 35

Pre-Trial Diversion of Offenders (Amendment) 1992

SCHEDULE 1—AMENDMENTS—*continued*

- 5
- (a) consider the guidelines set out in the regulations; and
 - (b) ascertain from the Director or a person to whom the Director delegates the function whether a place in the Program would be available for the person if the person were to give an undertaking to participate in the Program.

(8) Section 11 (**Prosecutor to notify Justice of decision**):

At the end of the section, insert:

- 10
- (2) The prosecutor is to inform the Justice that the person is not to be referred for assessment if the prosecutor has ascertained under section 10 that a place in the Program would not be available for the person if the person were to give an undertaking to participate in the Program.

15 (9) Section 14:

Omit the section, insert instead:

Assessment

- 20
14. (1) A person who is to be referred for assessment in relation to the person's suitability for participation in the Program must be referred for assessment, and be assessed, in accordance with the regulations.

- 25
- (2) The Director, or a person to whom the Director delegates the duty, is to assess a person's suitability for the purposes of subsection (1) and in doing so may take into account any or all of the following matters which appear to be relevant and any other matter which he or she considers to be relevant:

- 30
- (a) any statement made to a police officer in relation to the alleged offence (including statements of the person charged with the offence, the child concerned, a parent of the child or any other person with relevant information);
 - (b) relevant information held by other government agencies which are or have been involved in the treatment of the person charged with the offence or of a member of that person's family or household;
- 35

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SCHEDULE 1—AMENDMENTS—*continued*

- (c) interviews conducted by the Director or officer making the assessment with the person, the person's spouse or de facto spouse and the child concerned;
- (d) whether the person accepts responsibility for the sexual assault of the child; 5
- (e) whether the person demonstrates some understanding of the impact of the offence on the child and on other members of the child's family or household;
- (f) whether the person's spouse or de facto partner is prepared to participate in the Program as required by the Director; 10
- (g) whether the person and the person's spouse or de facto partner have sufficient interactive skills to be able to participate in any group therapy aspects of the Program; 15
- (h) whether the person and the person's spouse or de facto partner agree to participate in all aspects of the Program;
- (i) whether participation in the Program by the person, the person's spouse or de facto partner and the child concerned is in the best interests of the child. 20
- (3) The prosecutor is, in accordance with the regulations, to be notified as to the result of the assessment and to be provided with written reasons if the assessment made is that the person is not suitable for participation in the Program. 25
- (10) Section 17 (**Act ceases to apply if person does not plead guilty before Justice**):
- From section 17 (2) (b), omit "the special programme", insert instead "the Program". 30
- (11) Part 3, heading:
- Omit "PROGRAMME", insert instead "PROGRAM".
- (12) Section 24:
- Omit the section, insert instead:
- Procedure following giving of undertaking** 35
24. If a person gives an undertaking at the request of a court under section 23, the court is (subject to sections 25

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SCHEDULE 1—AMENDMENTS—*continued*

and 28) to proceed to conviction of the person for the offence concerned but is not to sentence or otherwise deal with the person in respect of the offence.

- 5 (13) Section 25 (**Person may be released from undertaking**):

From section 25 (2), omit “convict and”.

- (14) Section 26 (**Breach of undertaking etc.**):

In section 26 (2), after “notified”, insert “by the Director, or a person to whom the Director delegates the duty,”.

- 10 (15) Section 28 (**Powers of court on breach**):

From section 28 (a), omit “convict and”.

- (16) Part 3A:

After Part 3, insert:

15 **PART 3A—PRE-TRIAL DIVERSION OF
OFFENDERS PROGRAM**

The Program

30A. (1) The Pre-Trial Diversion of Offenders Program is a program for the treatment of a person who commits a child sexual assault offence with or upon the person’s child or the
20 child of the person’s spouse or de facto partner.

(2) The Program is one which is approved for the time being by the Minister for Health after consultation with the Attorney General and the Minister for Community Services.

Administration of the Program

25 30B. (1) The Department of Health is to administer the Program.

(2) The Director-General of that Department is to prepare an annual report on the operation and effectiveness of the Program being administered by the Department and is to
30 forward the report to the Attorney General, the Minister for Health and the Minister for Community Services.

- (17) Section 31 (**Police record to be kept**):

Omit the section.

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SCHEDULE 1—AMENDMENTS—*continued*

(18) Section 35:

After section 34, insert:

Savings and transitional provisions

35. Schedule 1 has effect.

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(19) Schedule 1:

At the end of the Act, insert:

**SCHEDULE 1—SAVINGS AND TRANSITIONAL
PROVISIONS**

(Sec. 35)

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**Application of amendments made by Pre-Trial Diversion
of Offenders (Amendment) Act 1992**

1. (1) Section 3A does not apply to proceedings pending at the commencement of that section if the person charged with the offence concerned was assessed under section 14 before that commencement.

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(2) Section 24 (as substituted by the Pre-Trial Diversion of Offenders (Amendment) Act 1992) does not apply to proceedings pending at the commencement of Schedule 1 (10) to that Act in which the person charged with the offence concerned pleaded guilty or not guilty before that commencement.

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