



New South Wales

Crimes Amendment (Sexual Offences) Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to repeal certain provisions of the *Crimes Act 1900* that apply solely to male homosexual intercourse with the result that, in future, certain types of sexual misconduct by any person against any other person will be dealt with on the same bases, including as to the age of the victim, the defences available to the accused and the penalties for the offence, irrespective of the sex of the perpetrator or victim.

The Bill also makes other consequential amendments, including an amendment, because of the repeal of the provisions referred to above, to extend an offence relating to unlawful carnal knowledge, by teachers or others, of a female up to the age of 17 years and irrespective of consent, to males in similar circumstances.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the day that is 30 days after the date of assent, unless commenced sooner by proclamation.

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

Schedule 1 Amendments

Schedule 1 [7] repeals certain sections of the *Crimes Act 1900* (sections 78H, 78I, 78K, 78L, 78N, 78O and 78Q) that relate solely to sexual offences committed by a male on another male person. It is proposed that, in future, such offences will be prosecuted under the same provisions, and on the same bases, as apply to offences committed by any person on any other person, irrespective of the sex of the perpetrator or of the victim. This means that the same rules concerning the age of victims, the defences available to accused persons and penalties will apply to all such offences.

Certain procedural sections, linked to the provisions proposed for repeal, are retained to enable due prosecution of any offences committed against those provisions before the commencement of the proposed Act. **Schedule 1 [6]** makes a consequential amendment in this regard.

As a consequence of the proposed repeal of provisions dealing with homosexual intercourse by teachers, fathers or step-fathers with males up to the age of 18 years and irrespective of consent (and attempts to have such intercourse), a provision dealing with unlawful carnal knowledge by teachers, fathers and step-fathers of females up to the age of 17 years and irrespective of consent is amended to include offences against males. (See **Schedule 1 [1]–[3]**.) **Schedule 1 [4]** makes a consequential amendment to a provision dealing with attempts at carnal knowledge or assaults with intent to carnally know young persons in these circumstances.

Schedule 1 [5] and **[8]** make consequential amendments to ensure that the defences available to accused persons are the same, irrespective of their sex or that of the alleged victim.



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New South Wales

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No. , 2002

A Bill for

An Act to amend the *Crimes Act 1900* with respect to the equal treatment of sexual offences against males and females.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes Amendment (Sexual Offences) Act 2002</i> .	3
2 Commencement	4
This Act commences on the day that is 30 days after the date of assent, unless commenced sooner by proclamation.	5 6
3 Amendment of Crimes Act 1900 No 40	7
The <i>Crimes Act 1900</i> is amended as set out in Schedule 1.	8

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 73 Carnal knowledge by teacher etc	3
	Omit “girl”. Insert instead “person”.	4
[2]	Section 73	5
	Omit “daughter, or step-daughter”.	6
	Insert instead “child, or step-child”.	7
[3]	Section 73 (2)	8
	Insert at the end of the section:	9
	(2) In this section, <i>carnal knowledge</i> includes sexual connection occasioned by the penetration of the anus of a male by the penis of any person, or the continuation of that sexual connection.	10 11 12 13
[4]	Section 74	14
	Omit the section. Insert instead:	15
	74 Attempts	16
	Any person who attempts to commit an offence under section 73 is liable to the penalty provided for the commission of the offence.	17 18 19
[5]	Section 77 Consent no defence in certain cases	20
	Omit “the person charged and the child to whom the charge relates are not both male and” from section 77 (2).	21 22
[6]	Section 78G Definition of “homosexual intercourse” for s 78J	23
	Omit “sections 78H–78Q”. Insert instead “section 78J”.	24
[7]	Sections 78H, 78I, 78K, 78L, 78N, 78O and 78Q	25
	Omit the sections.	26

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Schedule 1 Amendments

[8]	Section 91D Promoting or engaging in acts of child prostitution	1
	Omit “Except where the child and the other person alleged to have participated in the act of child prostitution are both male, a person” from section 91D (2).	2 3 4
	Insert instead “A person”.	5