



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: RBGMM1306022

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Ms Madeleine Foley
Principal Council Officer
Standing Committee on Law and Justice
Parliament House Macquarie Street
SYDNEY NSW 2000

Dear Ms Foley,

Parliamentary Inquiry into spent convictions for juvenile offenders

The Law Society's Juvenile Justice Committee (Committee) has addressed the substantive issues raised during the Public Inquiry, including the questions taken on notice, in the attached document.

I trust that these comments will be of assistance to the Inquiry and I look forward to reviewing the final report.

Yours sincerely,

Mary Macken
President

1. General Comments

The Committee considers that juveniles are significantly disadvantaged in relation to the law's treatment of sex offences, for two main reasons. Firstly, because all sexual contact with a child under 16, even consensual contact, is an offence, even where both parties are under 16. Secondly, an offence involving two juveniles is automatically 'aggravated' because it is designated as a 'child sex offence' which places the offence in a more serious category, attracting higher penalties. In addition, child sex offences attract the provisions of the Child Protection Register set up under the *Child Protection (Offenders Registration) Act 2000*, even where the offender and the victim are both children.

The Law Society representative at the Committee's hearings was Ms Maher, who was in the hearing room when Mr and Mrs Cox gave evidence. It is important to note again that decisions on spent convictions will not solve the problems being faced by Mr Cox. Even if his conviction were allowed to become spent under a new regime, he would continue to be 'flagged' as a 'prohibited person' on any 'working with children' check under the *Commission for Children and Young People Act 1998*. He is also excluded under this Act from making a review application (because his offence was an offence involving sexual intercourse with a child – even though he also was a child at the time, and the child victim was his girlfriend, who became his wife and they have been married for over 40 years).

The problems faced by Mr Cox occur regularly, and now also attract the provisions of the Child Protection Register – set up ostensibly to identify and track paedophiles. This Register unfairly and inaccurately identifies child offenders as 'paedophiles' even where they are the same or similar age as the victim, because it is based solely on the age of the victim and disregards the age of the offender. The Register was not in effect at the time of Mr Cox's offence. However anyone in a similar situation to Mr Cox now would attract the provisions of that Register, and would have to provide police with many details such as accommodation, car registration, employment, any children they live with or have potentially unsupervised contact with, their telephone services and internet providers, email addresses, DNA profile, and be subject to all of the other restrictions and reporting requirements in place for registered persons. Any sexual intercourse with a child, even where both persons are children and there is consent (like the Mr and Mrs Cox example), is a 'class 1' offence attracting the most serious provisions of the Register.

Another problem for juveniles worth noting is that where a child takes out an ADVO or APVO against another child, this also attracts a 'flag' under the 'working with children check' as a reportable incident, pursuant to the *Commission for Children and Young People Act 1998*. The Committee believes this to be an unintended consequence of the Act, but one which severely disadvantages children and should be corrected.

2. Responses to questions raised

The Model Spent Convictions Bill sets out a more generous eligibility criteria for spent convictions than currently exist. Currently eligible offences include those where the prison sentence is less than 6 months, with a good behaviour period for an adult of 10 years and 3 years for a juvenile. Under the Model Bill, eligible offences include those where the sentence is less than 12 months for an adult and 24 months for a juvenile. The good behaviour period for an adult is 10 years and 5 years for a juvenile. Given the proposal to broaden the eligibility criteria for all

offences, does this impact on your view on whether sex offences should be included in the spent convictions scheme?

It is the view of the Committee that all offences meeting certain established criteria should become spent. This includes sex offences that meet the criteria. The Committee does not support the blanket exclusion, as the Committee believes that other criteria (such as the sentence imposed) will be sufficient to exclude serious sex offences, both for adults and juveniles.

Lapse of Time criteria

The Committee supports the criteria in the Model Bill, except for the increase in lapse of time relating to juveniles. The lapse of time requirement for juveniles is currently set at 3 years, and it appears that no basis has been put forward for an increase to 5 years. The Committee notes that there is no proposal to increase the lapse of time requirements for adult offenders. The Committee is of the view that the comparative times of 3 years and 10 years is a proper acknowledgment of the very different situation of juveniles (lack of maturity and development especially) and the greater focus the law gives to rehabilitation when dealing with juveniles.

Length of sentence criteria

The Committee supports the criteria of a conviction becoming spent where the sentence of imprisonment imposed is less than 12 months for an adult and less than 24 months for a juvenile. This is supported in relation to any offence, including a sex offence.

The Committee does not believe the previous 6 months level was realistic, for a number of reasons.

Offences defined as 'sex offences' carry significant custodial penalties¹, and custodial penalties are routinely imposed. For matters where a court has decided that a custodial sentence is appropriate, an examination of the Judicial Information Research System demonstrates that the sentences are consistently well over the 6 months mark.

For example, s 61I sexual assault (maximum penalty 14 yrs) - of the 94 offenders who received sentences of imprisonment (between February 2003 and December 2008 for all examples given here) the lowest penalty of imprisonment imposed was 18 months and the highest was 12 years, with 91% receiving 3 years or more, and over 60% receiving 5 years or more. For s 61J aggravated sexual assault (maximum penalty 20 years), of the 108 offenders who received sentences of imprisonment, the lowest was 24 months and the highest was 16 years, with 94% receiving 4 years or more and 75% receiving 6 years or more. For s 61M(1) aggravated indecent assault (maximum penalty 7 years) of the 47 offenders who received sentences of imprisonment the lowest was 12 months and the highest was 6 years. For 92% the penalty was 2 years or more and for 55% the penalty was 3 years or more.

The Committee has not been able to find a single example of a sentence of imprisonment of 6 months or less. The Committee believes that the reason for this is that, where a court has come to the view that imprisonment is required², it is normal practice to structure a sentence that has a non-parole period as well as a parole period.

¹ except for the offence of 'obscene exposure' under the *Summary Offences Act 1988* which carries a maximum penalty of 6 months.

² There are on occasion non-custodial sentences imposed, or suspended sentences or periodic detention sentences – these are not included in the stats provided. The stats provided are for when the sentencing court has come to the view that a full-time sentence of imprisonment is required.

This allows for some of the sentence to be served on parole in the community under supervision.

The *Crimes (Sentencing Procedure) Act 1999* states at s 46: "A court may not set a non-parole period for a sentence of imprisonment if the term of the sentence is 6 months or less."

This means that a court must impose a sentence of more than 6 months if it wishes to structure the sentence to include a period on parole.

In summary on this point, sentences of imprisonment of 6 months and under do not occur for sex offences, and even sentences of 12 months are extremely rare. The vast majority of sentences of imprisonment for sex offences are over 2 years, and serious sex offences much higher than that. To limit the ability of juvenile offences to become spent to those where a sentence of imprisonment of less than 2 years was imposed would have the effect of screening out all but the very lower end of seriousness of sex offences. Limiting the ability of adult offences to become spent to 12 months would screen out nearly all sex offences where custody was imposed.

The 'actual sentence imposed' is the proper measure for screening criteria. Reference to the maximum penalty would not allow for proper screening criteria because of the range of offending behaviour that can be encompassed within an offence.

The submission from Professor Dianna Kenny argues that more research is needed into sentencing trends for juveniles before deciding on the benchmark sentence under which a sex offence should become spent. What is your view on the benchmark sentence of 24 months in the Model Bill, and the suggestion that further research is required?

As stated above, the Committee supports the benchmark of 24 months for juveniles in the Model Bill. From reading Professor Kenny's submission, it appears she is suggesting that research may result in increasing the length of sentence cut-off point for juveniles, i.e. greater than 24 months.

Some submissions oppose the court application model for sex offences because it would disadvantage young people who do not have access to legal information and resources. To address this, the Salvation Army recommends that legal aid be made available to applicants, and that the information on the application scheme be provided at the time of sentencing. Should young people be supported to access the court application process?

The Committee supports a court application process for juveniles whose sentences fall outside of the criteria (whose sentence of imprisonment was more than the 24 month cut-off point). This would allow applications for more serious matters committed as a juvenile to be taken before a court or tribunal. In this way, offences committed and mistakes made as a juvenile would not necessarily ruin the rest of a person's life, in circumstances where the person had been able to turn their life around and demonstrate significant rehabilitation. To be clear, the Committee's position is that the proposal of convictions becoming spent for sentences under 24 months and after a 3 year non-offending period should be put in place for juveniles, with a court application process for matters outside of that criteria. The application could be made to the sentencing court initially, and if refused then made again after a certain interval had passed, after an opportunity to demonstrate significant rehabilitation. This would mean a two stage approach.

It is certainly difficult for juveniles to access a court system, and they should be supported in order to do so. The Committee would not support a system based entirely on application to a court or tribunal.

The court application model for sex offences requires the Attorney General and the Police Commissioner to be notified of any application for an order for a sex offence to become spent, to give them an opportunity to intervene. What are your views on this provision?

Sex offences in the court system are almost exclusively conducted by solicitors from the Office of the Director of Public Prosecutions. Given the independence of this Office, they would be the most appropriate agency to be responsible, on behalf of the prosecution, for carriage of these sorts of applications. This would avoid any perceptions of politicisation or bias that would come from Police or the Attorney General.

The court application model for sex offences provides that an offender must wait two years after an unsuccessful application for a spent convictions order before re-applying to the courts. What are your views of this provision?

In a two-tiered approach, this would appear sensible.

3. Responses to Questions Taken on Notice

QUESTION 1 (at p 50 of Law Society evidence transcript)

How many sexual offences³ can the Children's Court deal with?

There are three broad categories:

1. Offences which the Children's Court cannot deal with because they are designated as 'serious children's indictable offences' and they must be finalised in the District Court. It is only those offences designated as 'serious children's indictable offences' that must be dealt with according to law.
2. Offences which the Children's Court may deal with to finality, but where it is open to the Magistrate to decide that the seriousness of the offending requires that the matter be sent to a higher court for determination. The Magistrate may come to this view following an application from the prosecution, or may come to that view of his/her own accord.
3. Offences that are strictly summary and must be finalised in the Children's Court.

Category 1 – sexual offences which Children's Court cannot deal with to finality, and which must be dealt with 'at law' in the District Court

The *Children (Criminal Proceedings) Act 1987* defines as 'children's serious indictable offences' a group of offences that must be dealt with according to law. This section is reproduced at Annexure A.

³ 'sexual offences' is defined in the *Criminal Records Act 1991* at section 7 (see annexure B) and also in the regulations at regulation 17 (see annexure C); 'prescribed sexual offences' is defined in the *Criminal Procedure Act 1986* in section 3 (see annexure D) – there are some differences between the two definitions, so the Committee has included offences from both definitions.

Any young person sent to the District Court must be dealt with 'at law', there is no option to deal with a young person any other way for an offence in this category.

The sexual offences from this group of offences are listed below:

Section 61J	Aggravated sexual assault (except where the only aggravation is 61J(2)(d) victim under the age of 16). This includes the offence of attempt.
Section 61JA	Aggravated sexual assault in company.
Section 61K	Assault with intent to have sexual intercourse. This includes the offence of attempt.
Section 66A(1)	Sexual intercourse child under 10
Section 66A(2)	Aggravated sexual intercourse child under 10
Section 66B	Attempting or assaulting with intent, to have sexual intercourse child under 10
Section 66EA	Assisted sexual abuse of a child

Category 2 – offences that may be dealt with to finality in the Children's Court

This category covers the broadest range of offences. This category includes:

- Table 1⁴ offences
- Table 2⁵ offences
- 'strictly indictable' offences

The *Criminal Procedure Act 1986* prescribes that certain indictable offences can be heard and determined by a Magistrate in the Local Court, if they are listed in Schedule 1 as a Table 1 or Table 2 offence (see annexure E).

For children, these offences can all be dealt with to finality in the Children's Court, unless the Magistrate determines that the Children's Court cannot adequately deal with the matter.

Table 1

61M(1)	Aggravated indecent assault
61M(2)	Aggravated indecent assault under 16
61O(2)	Aggravated act of indecency under 10
61O(2A)	Aggravated act of indecency person under 16 being filmed for child pornography
66C(3)	Attempt Sexual intercourse child between 14-16
80	Attempt bestiality
91A	Procuring for prostitution

⁴ A Table 1 offence, for an adult, is an indictable offence that is to be dealt with summarily (in the Local Court), unless there the person charged, or the prosecutor, elects to send the matter to the District Court.

⁵ A Table 2 offence, for an adult, is an indictable offence that can be dealt with summarily (in the Local Court) unless the prosecutor elects to send the matter to the District Court

91B	Procuring for prostitution by drugs
91H	Production dissemination or possession of child pornography

Table 2

61L	Indecent assault
61N(1)	Act of indecency under 16
61N(2)	Act of indecency 16 or above
61O(1)	Aggravated act of indecency under 16
61O(1A)	Aggravated act of indecency 16 or above
66EB(2)(a)	Adult intentionally procure child under 14 unlawful sexual activity
66EB(2)(b)	Adult intentionally procure child under 16 unlawful sexual activity
66EB(3)(a)	Adult groom child under 14 to procure unlawful sexual activity
66EB(3)(b)	Adult groom child under 16 to procure unlawful sexual activity

For an adult offender, a Table 1 or Table 2 offence may also be dealt with summarily, unless an election is made.

Serious Indictable

61I	Sexual assault
61J	Aggravated sexual assault
61JA	Aggravated sexual assault in company
61K	Assault with intent to have sexual intercourse
66A(1)	Sexual intercourse child under 10
66A(2)	Aggravated sexual intercourse child under 10
66B	Attempting or assaulting with intent, to have sexual intercourse child under 10
66C(1)	Sexual intercourse child between 10 and 14
66C(2)	Attempt Sexual intercourse child between 10-14 aggravated
66C(4)	Attempt Sexual intercourse child between 14-16 aggravated
66D	Attempting or assaulting with intent, to have sexual intercourse child between 10 and 16
66EA	Assisted sexual abuse of a child
66F(2)	Sexual intercourse – cognitive impairment, person responsible for care
66F(3)	Sexual intercourse – cognitive impairment, taking advantage of
73(1)	Sexual intercourse with a child between 16 and 17 under special care
73(2)	Sexual intercourse with a child between 17 and 18 under special care
78A	Incest above the age of 16
78B	Incest attempts
79	Bestiality
80A(2)	Sexual assault by forced self manipulation
80A(2A)	Sexual assault by forced self manipulation aggravated
80D(1)	Causing sexual servitude
80D(2)	Causing sexual servitude aggravated
80E(1)	Conduct of a business involving sexual servitude
80E(2)	Conduct of a business involving sexual servitude aggravated
86(1)	Kidnapping
86(2)	Aggravated kidnapping
86(3)	Specially aggravated kidnapping
87(1)	Child abduction with intent to remove child from person with parental responsibility
87(2)	Child abduction with intent to steal from child
91D	Promoting or engaging in acts of child prostitution under 14 years

91E	Obtaining benefit from child prostitution
91F	Premises not to be used for child prostitution
91G(1)	Children not to be used for pornographic purposes under 14
91G(2)	Children not to be used for pornographic purposes above the age of 14 years

These offences may be dealt with to finality in the Children's Court. However, for an adult, an offence in this 'strictly indictable offence' group must be dealt with by the District Court.

Where a decision is made that a young person is to be committed to the District Court for sentencing, it is open to the District Court judge to deal with the young person either as 'a child' or 'at law'. If dealt with as 'a child' then the sentencing options available are those under the *Children (Criminal Proceedings) Act 1987*, which include a custodial sentence of 'control'. If dealt with 'at law' then adult sentencing options are used, and a custodial sentence is one of 'imprisonment'. Generally a decision to deal with the young person 'at law' is only made where a sentence of imprisonment is to be imposed. Section 18 of the *Children (Criminal Proceedings) Act 1987* prescribes the considerations a court is to have regard to in determining whether a young person should be dealt with 'according to law' for offences in this 'strictly indictable' group.

Category 3 – strictly summary offences

Section 5	Obscene exposure ⁶
Section 11G	Loitering by convicted child sexual offenders near premises frequented by children ⁷

The Committee has submitted (as a separate document) a table listing all of the offences referred to, whether they are a Table 1 or Table 2 or strictly indictable offence, the maximum summary penalty, the maximum indictable penalty in the District Court and whether the offence is a 'sexual offence' under the *Criminal Records Act 1991*, or a 'prescribed sexual offence' under the *Criminal Procedure Act 1986*, or both.

QUESTION 2 – (at p 51 of transcript of Law Society evidence)

How do suspended sentences work with a spent conviction?

Unfortunately this is very unclear from the *Criminal Records Act 1991* (the Act).

Section 7(1)(a) of the Act states that a conviction, for which a prison sentence of more than 6 months has been imposed, cannot become spent.

The Act defines 'prison sentence' as not including periodic detention or a control order. However it does not exclude a suspended sentence.

Although this lacks logic (as a suspended sentence is considered to be a lesser sentence than a sentence of periodic detention) it would seem that a suspended sentence of greater than 6 months cannot be spent under the existing legislation.

⁶ Summary Offences Act 1988

⁷ Summary Offences Act 1988

QUESTION 3 – (at p 52)

What are the unintended consequences to children of AVOs and the Working With Children Check, and the automatic designation as ‘child sex offenders’?

This question is addressed in “1. General Comments” above.

ANNEXURE A

CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987 - SECT 3

3 Definitions

"serious children's indictable offence" means:

- (a) homicide,
- (b) an offence punishable by imprisonment for life or for 25 years,
- (c) an offence arising under section 61J (otherwise than in circumstances referred to in subsection (2) (d) of that section) or 61K of the *Crimes Act 1900* (or under section 61B of that Act before the commencement of Schedule 1 (2) to the *Crimes (Amendment) Act 1989*),
- (c1) an offence under the *Firearms Act 1996* relating to the manufacture or sale of firearms that is punishable by imprisonment for 20 years,
- (d) the offence of attempting to commit an offence arising under section 61J (otherwise than in circumstances referred to in subsection (2) (d) of that section) or 61K of the *Crimes Act 1900* (or under section 61B of that Act before the commencement of Schedule 1 (2) to the *Crimes (Amendment) Act 1989*), or
- (e) an indictable offence prescribed by the regulations as a serious children's indictable offence for the purposes of this Act.

ANNEXURE B

CRIMINAL RECORDS ACT 1991 - SECT 7

7 Which convictions are capable of becoming spent?

- (1) All convictions are capable of becoming spent in accordance with this Act, except the following:
- (a) convictions for which a prison sentence of more than 6 months has been imposed,
 - (b) convictions for sexual offences,
 - (c) convictions imposed against bodies corporate,
 - (d) convictions prescribed by the regulations.
- (2) A conviction may become spent in accordance with this Act whether it is a conviction for an offence against a law of New South Wales or a conviction for an offence against any other law.
- (3) A conviction may become spent in accordance with this Act whether it is a conviction imposed before, on or after the date of commencement of this section.
- (4) In this section:
- "prison sentence" does not include a sentence by way of periodic detention or the detaining of a person under a control order.
- "sexual offences" means the following offences:
- (a) the offences under sections 61B-61F, 65A-66D, 66F, 73, 74, 78A, 78B, 78H, 78I, 78K, 78L, 78N, 78O, 78Q, 79, 80, 91A, 91B and 91D-91G of the *Crimes Act 1900*,
 - (b) from the date of commencement of Schedule 1 (3) to the *Crimes (Amendment) Act 1989*, the offences under sections 61I-61P of the *Crimes Act 1900*,
 - (c) from the date of commencement of Schedule 1 (6) to the *Crimes (Amendment) Act 1989*, the offence under section 80A of the *Crimes Act 1900*,
 - (d) the offence under section 5 of the *Summary Offences Act 1988*,
 - (e) an offence (such as an offence under section 37 or 112 of the *Crimes Act 1900*) which includes the commission of, or an intention to commit, an offence referred to in paragraph (a), (b), (c) or (d),
 - (f) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a), (b), (c), (d) or (e),
 - (g) an offence committed:
 - (i) before the date of commencement of this section against a law of New South Wales or a law of a place outside New South Wales, or
 - (ii) after the date of commencement of this section against a law of a place outside New South Wales,which constituted or constitutes an offence of a similar nature to an offence referred to in paragraph (a), (b), (c), (d), (e) or (f),
 - (h) an offence prescribed by the regulations as a sexual offence for the purposes of this section.

ANNEXURE C

Criminal Records Regulation 2004

17 Offences prescribed as sexual offences for the purposes of section 7

For the purposes of paragraph (h) of the definition of *sexual offences* in section 7 (4) of the Act, the following offences are prescribed as sexual offences:

- (a) an offence under section 61JA, 66EA, 578B or 578C (2A) of the *Crimes Act 1900*,
- (b) an offence under section 11G of the *Summary Offences Act 1988*.

ANNEXURE D

CRIMINAL PROCEDURE ACT 1986 - SECT 3

3 Definitions

"prescribed sexual offence" means:

- (a) an offence under section 61B, 61C, 61D, 61E, 61I, 61J, 61JA, 61K, 61L, 61M, 61N, 61O, 63, 65, 65A, 66, 66A, 66B, 66C, 66D, 66EA, 66EB, 66F, 67, 68, 71, 72, 72A, 73, 74, 76, 76A, 78A, 78B, 78H, 78I, 78K, 78L, 78M, 78N, 78O, 78Q, 79, 80, 80A, 80D, 80E, 81, 81A, 81B, 86, 87, 89, 90, 90A, 91, 91A, 91B, 91D, 91E, 91F or 91G of the *Crimes Act 1900* , or
- (b) an offence that, at the time it was committed, was a prescribed sexual offence for the purposes of this Act or the *Crimes Act 1900* , or
- (c) an offence that includes the commission of, or an intention to commit, an offence referred to in paragraph (a) or (b), or
- (d) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a), (b) or (c).

ANNEXURE E

CRIMINAL PROCEDURE ACT 1986 - SCHEDULE 1

SCHEDULE 1 – Indictable offences triable summarily

Table 1 - Indictable offences that are to be dealt with summarily unless prosecutor or person charged elects otherwise

Part 1 - Offences against the person under Crimes Act 1900

1 Offences against the person where victim 14 years of age or over

An offence under section 61E, 66C (1) (as in force before the commencement of Schedule 1 [9] to the *Crimes Amendment (Sexual Offences) Act 2003*), 66C (3) (as in force after the commencement of Schedule 1 [9] to the *Crimes Amendment (Sexual Offences) Act 2003*), 66D, 71, 72, 76, 76A or 81 of the *Crimes Act 1900* where the person against whom the offence was committed was at the time of the commission of the offence of or above the age of 14 years.

2 Other offences against the person

An offence under section 31, 31C, 33B (1), 35, 35A (1), 39, 41, 41A, 43, 43A, 44, 49, 51A, 52A (other than an offence by which death was occasioned), 52B (other than an offence by which death was occasioned), 53, 54, 55, 57, 60 (2) or (2A), 60A (2), 60E (2), 61M, 61O (2) or (2A), 66EB, 78Q, 80, 81A, 81B, 81C, 82, 83, 84, 85 (where the person charged is the mother of the child and is not charged with any other person), 90, 91, 91A, 91B, 91H, 91J (3), 91K (3), 91L (3), 92 or 93 of the *Crimes Act 1900*.

Part 2 - Offences relating to property under Crimes Act 1900 or common law

3 Larceny and other offences exceeding \$5,000

Any of the following offences where the value of the property, matter or thing, or the damage, or the amount of money or reward, in respect of which the offence is charged exceeds \$5,000:

- (a) larceny, or
- (b) an offence of stealing any chattel, money or valuable security from another person (e.g. section 94 of the *Crimes Act 1900*), or
- (c) an offence under section 3B, 125, 126, 131, 132, 133, 139, 140, 148, 150, 151, 152, 156, 157, 158, 159, 160, 178A, 178B, 178BA, 178BB, 178C, 179, 184, 185, 185A, 186, 188, 189, 189A, 190, 192 or 195 of the *Crimes Act 1900*.

4 Offences taken to be, or punishable as, larceny or stealing

Any offence that under the *Crimes Act 1900* is taken to be, or is made punishable as, larceny or stealing (other than an offence under section 125, 139, 140 or 154A of that Act).

4A Fraud and related offences

An offence under Part 4AA of the *Crimes Act 1900*.

5 Breaking and entering place of Divine worship with intent to commit serious indictable offence

An offence under section 107 (1) of the *Crimes Act 1900* .

6 Entering with intent to commit serious indictable offence, or commit serious indictable offence, in dwelling-house and breaking out

An offence under section 109 (1) of the *Crimes Act 1900* where:

(a) the serious indictable offence intended is stealing or maliciously destroying or damaging property, or

(b) the serious indictable offence alleged is stealing or maliciously destroying or damaging property and the value of the property stolen or destroyed, or the value of the damage to the property, does not exceed \$15,000.

7 Entering dwelling-house in the night or breaking and entering any house or other building with intent to commit serious indictable offence

An offence under section 111 (1) or 113 (1) of the *Crimes Act 1900* where the serious indictable offence intended is stealing or maliciously destroying or damaging property.

8 Breaking and entering into, or being in, any house or other building and committing serious indictable offence

An offence under section 112 (1) of the *Crimes Act 1900* where:

(a) the serious indictable offence alleged is stealing or maliciously destroying or damaging property, and

(b) the value of the property stolen or destroyed, or the value of the damage to the property, does not exceed \$15,000.

9 Other property offences

An offence under section 99, 100, 100A, 102, 114 (1) (a), (c) and (d), 115, 135, 138, 153, 154AA, 154B (1), 154C, 154D, 154F, 165, 166, 168, 169, 170, 172, 173, 174, 175, 176, 176A, 181, 184A, 196, 197, 199, 200, 201, 202, 203 or 203C of the *Crimes Act 1900* .

9A Bushfires

An offence under section 203E of the *Crimes Act 1900* .

Part 3 - Other offences under Crimes Act 1900 or the common law

10 Offences relating to public order

An offence under section 93B or 93C of the *Crimes Act 1900* .

10A Offences relating to contamination of goods

An offence under section 93IB, 93IC or 93ID (or section 93K, 93L or 93M) of the *Crimes Act 1900* .

10B Offences relating to bomb and other hoaxes

An offence under section 93IH or 93II (or section 93Q or 93R) of the *Crimes Act 1900* .

10C Offences relating to participation in criminal groups

An offence under section 93IK (2) or (3) (or section 93T (2) or (3)) of the *Crimes Act 1900* .

10D Identity offences

An offence under Part 4AB of the *Crimes Act 1900* (other than under section 192L).

11 Offences relating to transport services

An offence under section 207, 208 (4), 209, 210, 212 or 213 of the *Crimes Act 1900* .

12 Corrupt practices

(1) An offence under section 249B, 249D or 249E of the *Crimes Act 1900* , or an offence under section 249F of that Act of aiding, abetting, counselling, procuring, soliciting or inciting such an offence, where the benefit in respect of which the offence is charged exceeds \$5,000.

(2) An offence under section 249C of the *Crimes Act 1900* or an offence under section 249F of that Act of aiding, abetting, counselling, procuring, soliciting or inciting such an offence.

12A Blackmail

An offence under section 249K of the *Crimes Act 1900* .

12B Forgery and related offences

An offence under Part 5 of the *Crimes Act 1900* (other than under section 256 (2) or (3)).

13 False instruments

An offence under section 300, 301 or 302 of the *Crimes Act 1900* (other than an offence listed in clause 4B of Table 2 to this Schedule) or an offence under section 302A of that Act.

14 Offences relating to computers

An offence under section 308C (where the serious indictable offence to be committed is punishable by imprisonment for 10 years or less), 308D, 308E, 308F or 308G of the *Crimes Act 1900* .

15 Public justice offences

(1) Public justice offences not involving intent to procure conviction or acquittal An offence under section 321, 322, 323 or 333 (1) of the *Crimes Act 1900* unless the person charged intended to procure the conviction or acquittal of any person of any serious indictable offence.

(2) Other public justice offences An offence under section 314, 315, 315A, 316, 317, 325, 326, 327, 330, 335, 336 or 337 of the *Crimes Act 1900* .

15A Offence relating to recruiting children

An offence under section 351A of the *Crimes Act 1900* .

16 Escape from lawful custody

(1) Escape from lawful custody.

(2) An offence under section 358C of the *Crimes Act 1900* .

(3) Any offence under Part 6A (other than an offence arising under section 310B of the *Crimes Act 1900*).

16A Failing to stop and assist after road accident

An offence under section 52AB of the *Crimes Act 1900* .

16B Impersonating police officers

An offence under section 546D (2) of the *Crimes Act 1900* .

16C False imprisonment

The common law offence of false imprisonment.

Part 4 - Offences under certain other Acts

17 Bail Act 1978

An offence under section 58 of the *Bail Act 1978* .

18 Children and Young Persons (Care and Protection) Act 1998

An offence under section 105 (2) or 175 (1) of the *Children and Young Persons (Care and Protection) Act 1998* .

18A Crimes (Criminal Organisations Control) Act 2009

An offence under section 26 or 26A of the *Crimes (Criminal Organisations Control) Act 2009* .

19 Electricity Commission Act 1950

An offence under section 76 or 81 of the *Electricity Commission Act 1950* .

19A Electricity Supply Act 1995

An offence under section 64 of the *Electricity Supply Act 1995* committed by an individual.

20 Financial Institutions Commission Act 1992

An offence under section 21 of the *Financial Institutions Commission Act 1992* .

20A Jury Act 1977

An offence under section 68A of the *Jury Act 1977* .

21 Justices Act 1902

An offence under section 48H of the *Justices Act 1902* .

21A Law Enforcement and National Security (Assumed Identities) Act 1998

An offence under section 15 of the *Law Enforcement and National Security (Assumed Identities) Act 1998* .

22 Oaths Act 1900

An offence under section 13 (2), 20, 25, 25A, 29 or 30 of the *Oaths Act 1900* .

23 Petroleum (Offshore) Act 1982

An offence under section 120 of the *Petroleum (Offshore) Act 1982* .

23A Police Powers (Drug Premises) Act 2001

A second or subsequent offence under section 12, 13 or 14 of the *Police Powers (Drug Premises) Act 2001* .

23AA Royal Commissions Act 1923

An offence under section 21, 22 or 23A of the *Royal Commissions Act 1923* .

23AB Special Commissions of Inquiry Act 1983

An offence under section 27, 28 or 30 of the *Special Commissions of Inquiry Act 1983* .

23B Sydney Opera House Trust Act 1961

An offence under section 28B of the *Sydney Opera House Trust Act 1961* , or an offence under section 28C of that Act where the value of the damage exceeds \$5,000.

24 Unlawful Gambling Act 1998

A second or subsequent offence under section 9, 11, 15, 19 (1), 31, 32, 33, 35 or 36 of the *Unlawful Gambling Act 1998* .

24A Witness Protection Act 1995

An offence under section 32 of the *Witness Protection Act 1995* .

25 Legal Profession Act 2004

An offence under section 643 (Improperly destroying property etc) or 675 (Destruction of evidence) of the *Legal Profession Act 2004* .

Part 5 - Ancillary offences

26 Attempts

Attempting to commit any offence mentioned in a preceding Part of this Table.

27 Accessories

Being an accessory before or after the fact to any offence mentioned in a preceding Part of this Table (if the offence is a serious indictable offence).

28 Abettors

Aiding, abetting, counselling or procuring the commission of any offence mentioned in a preceding Part of this Table (if the offence is a minor indictable offence).

28A Conspiracies

Conspiring to commit any offence mentioned in a preceding Part of this Table.

28B Incitement

Inciting the commission of any offence mentioned in a preceding Part of this Table.

Part 6 - Offences under Drug Misuse and Trafficking Act 1985

29 Offences involving more than small quantity but not more than indictable quantity

An offence to which section 31 (1) of the *Drug Misuse and Trafficking Act 1985* applies where the number or amount of the prohibited plant or prohibited drug concerned is more than the applicable small quantity but not more than the applicable indictable quantity.

30 Offences involving more than indictable quantity but less than commercial quantity (cannabis plant and cannabis leaf)

An offence referred to in section 32 (1) (a)-(f) of the *Drug Misuse and Trafficking Act 1985* where the offence relates to cannabis plant or cannabis leaf and the quantity of cannabis plant or cannabis leaf concerned is more than the applicable indictable quantity but less than the applicable commercial quantity.

30A Offence involving possession of precursors for manufacture or production of prohibited drugs

An offence referred to in section 24A of the *Drug Misuse and Trafficking Act 1985* .

30B Offences involving possession of prohibited drug precursors

An offence referred to in section 24B of the *Drug Misuse and Trafficking Act 1985* .

Part 7 - Offences relating to mining

31 Mining Act 1992

(1) An offence of mining in contravention of a provision of Division 1 of Part 2 of the *Mining Act 1992* , where the value of the minerals to which the alleged offence relates is \$5,000 or more.

(2) An offence under Division 2 of Part 2 of the *Mining Act 1992* .

Table 2 - Indictable offences that are to be dealt with summarily unless prosecutor elects otherwise

Part 1 - Offences against the person under Crimes Act 1900 or Crimes (Domestic and Personal Violence) Act 2007

1 Offences against the person

An offence under section 35A (2), 49A, 51B, 56, 58, 59, 59A, 60 (1) or (1A), 60A (1), 60B, 60C, 60E (1) and (4), 61, 61L, 61N or 61O (1) or (1A) of the *Crimes Act 1900* .

2 Stalking and intimidation

An offence under section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* or section 545AB or 562AB of the *Crimes Act 1900* .

Part 2 - Offences relating to property under Crimes Act 1900 or common law

3 Larceny and certain other property offences

Any of the following offences where the value of the property or the damage, or the amount of money or reward, in respect of which the offence is charged does not exceed \$5,000:

(a) larceny,

(b) an offence of stealing any chattel, money or valuable security from another person (e.g. section 94 of the *Crimes Act 1900*),

(c) an offence under section 3B, 125, 126, 131, 132, 133, 139, 140, 148, 150, 151, 152, 156, 157, 158, 159, 160, 178A, 178B, 178BA, 178BB, 178C, 179, 184, 185, 185A, 186, 188, 189, 189A, 190, 192, 195, 249B, 249D or 249E of the *Crimes Act 1900* ,

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(d) an offence under section 249F of the *Crimes Act 1900* of aiding, abetting, counselling, procuring, soliciting or inciting an offence under section 249B, 249D or 249E of that Act.

3A Possession of implement of housebreaking

An offence under section 114 (1) (b) of the *Crimes Act 1900* .

4 Other property offences

An offence under section 154A, 154H, 154I or 154J of the *Crimes Act 1900* .

4A Identity offences

An offence under section 192L of the *Crimes Act 1900* .

4AA Offences related to forgery

An offence under section 256 (2) or (3) of the *Crimes Act 1900* .

4B False instruments

An offence under section 300, 301 or 302 of the *Crimes Act 1900* where the value of the property, or amount of remuneration, greater remuneration or financial advantage, in respect of which the offence is charged does not exceed \$5,000.

Part 2A - Other offences under Crimes Act 1900

4C Animal cruelty

An offence under section 530 or 531 of the *Crimes Act 1900* .

4D Offences relating to participation in criminal groups

An offence under section 93IK (1) (or section 93T (1)) of the *Crimes Act 1900* .

Part 3 - Offences under Sydney Opera House Trust Act 1961

Part 4 - Offences relating to firearms and dangerous weapons

6 Crimes Act 1900

An offence under section 93FA (1) or (2), 93G, 93H or 93I of the *Crimes Act 1900* .

7 Firearms Act 1996

An offence under section 7, 7A, 36, 43, 44A, 50, 50AA, 50A (1), 51 (1) or (2), 51A, 51BA, 51D (1), 51E, 58 (2), 62, 63, 64, 66, 70, 71A, 72 (1) or 74 of the *Firearms Act 1996* .

8 Weapons Prohibition Act 1998

An offence under section 7, 20, 23, 31 or 34 of the *Weapons Prohibition Act 1998* .

Part 5 - Offences relating to fires

9 Rural Fires Act 1997

An offence under section 100 (1) of the *Rural Fires Act 1997* .

Part 6 - Miscellaneous offences

10 Publishing of child pornography

An offence under section 578C (2A) of the *Crimes Act 1900* .

10A Frauds concerning liens on crops and wool or stock mortgages

An offence under section 10 or 20 of the *Liens on Crops and Wool and Stock Mortgages Act 1898* .

10B Unauthorised disclosure of information

An offence under section 20R (2) of the *Law Enforcement (Controlled Operations) Act 1997* .

10C Trafficking in fish

An offence under section 21B of the *Fisheries Management Act 1994* .

Part 7 - Ancillary offences

11 Attempts

Attempting to commit any offence mentioned in a preceding Part of this Table.

12 Accessories

Being an accessory before or after the fact to any offence mentioned in a preceding Part of this Table (if the offence is a serious indictable offence).

13 Abettors

Aiding, abetting, counselling or procuring the commission of any offence mentioned in a preceding Part (other than Part 3) of this Table (if the offence is a minor indictable offence).

14 Conspiracies

Conspiring to commit any offence mentioned in a preceding Part of this Table.

15 Incitement

Inciting the commission of any offence mentioned in a preceding Part of this Table.

Part 8 - Offences relating to drugs

16 Drug Misuse and Trafficking Act 1985

An offence to which section 30 (1) of the *Drug Misuse and Trafficking Act 1985* applies where the number or amount of the prohibited plant or prohibited drug concerned is not more than the applicable small quantity.

Part 9 - Offences relating to mining

17 Mining Act 1992

(1) An offence of mining in contravention of a provision of Division 1 of Part 2 of the *Mining Act 1992* , where the value of the minerals to which the alleged offence relates is less than \$5,000.

(2) An offence under Division 2 of Part 2 of the *Mining Act 1992* , where the value of the minerals to which the alleged offence relates is less than \$5,000.

(3) An offence, under section 374A of the *Mining Act 1992* , of contravening a condition of a lease, licence or mineral claim under that Act that is identified in the lease, licence or claim as a condition related to environmental management.

18 Petroleum (Onshore) Act 1991

(1) An offence of mining petroleum in contravention of section 7 of the *Petroleum (Onshore) Act 1991* , where the value of the petroleum to which the alleged offence relates is less than \$5,000.

(2) An offence, under section 136A of the *Petroleum (Onshore) Act 1991* , of contravening a condition of a petroleum title that is identified in the title as a condition related to environmental management.

Part 10 - Offences relating to surveillance devices

19 Surveillance Devices Act 2007

An offence under Part 2 or 5 (other than section 40 (2)) of the *Surveillance Devices Act 2007* .

Part 11 - Offences under Child Protection (Offenders Registration) Act 2000

20 Reporting obligations

An offence under section 17 or 18 of the *Child Protection (Offenders Registration) Act 2000* .

SEXUAL OFFENCES AS DEFINED IN THE CRIMINAL RECORDS ACT / CRIMINAL PROCEDURE ACT

Crimes Act 1900 offences	Description of offence	'Table 1' or 'Table 2' or 'Strictly Indictable'	Maximum penalty on indictment	Summary penalty	Sexual offence (Criminal Records Act)	Prescribed sexual offence (Criminal Procedure Act)
61B-61F	Repealed					
61I	Sexual assault	SI	14 years		✓	✓
61J	Aggravated sexual assault	SI	20 years		✓	✓
61JA	Aggravated sexual assault in company	SI	Life imprisonment		✓	✓
61K	Assault with intent to have sexual intercourse	SI	20 years		✓	✓
61L	Indecent assault	Table 2	5 years	2 years	✓	✓
61M(1)	Aggravated indecent assault	Table 1	7 years	2 years	✓	✓
61M(2)	Aggravated indecent assault under 16	Table 1	10 years	2 years	✓	✓
61N(1)	Act of indecency under 16	Table 2	2 years	12 months	✓	✓
61N(2)	Act of indecency 16 or above	Table 2	18 months	12 months	✓	✓
61O(1)	Aggravated act of indecency under 16	Table 2	5 years	2 years	✓	✓
61O(1A)	Aggravated act of indecency 16 or above	Table 2	3 years	2 years	✓	✓
61O(2)	Aggravated act of indecency under 10	Table 1	7 years	2 years	✓	✓
61O(2A)	Aggravated act of indecency person under 16 being filmed for child pornography	Table 1	10 years	2 years	✓	✓
61P	Attempt any offence 61I-61O		Same penalty as for actual offence		✓	
65A	Repealed					
66A(1)	Sexual intercourse child under 10	SI	25 years		✓	✓
66A(2)	Aggravated sexual intercourse child under 10	SI	Life imprisonment		✓	✓
66B	Attempting or assaulting with intent, to	SI	25 years		✓	✓

Crimes Act 1900 offences	Description of offence	'Table 1' or 'Table 2' or 'Strictly Indictable'	Maximum penalty on indictment	Summary penalty	Sexual offence (Criminal Records Act)	Prescribed sexual offence (Criminal Procedure Act)
	have sexual intercourse child under 10					
66C(1)	Sexual intercourse child between 10 and 14	SI	16 years		✓	✓
66C(2)	Attempt Sexual intercourse child between 10-14 aggravated	SI	20 years		✓	✓
66C(3)	Attempt Sexual intercourse child between 14-16	Table 1	10 years	2 years	✓	✓
66C(4)	Attempt Sexual intercourse child between 14-16 aggravated	SI	12 years		✓	✓
66D	Attempting or assaulting with intent, to have sexual intercourse child between 10 and 16	SI	Same as substantive offence		✓	✓
66EA	Assisted sexual abuse of a child	SI	25 years		✓	✓
66EB(2)(a)	Adult intentionally procure child under 14 unlawful sexual activity	Table 2	15 years	2 years		✓
66EB(2)(b)	Adult intentionally procure child under 16 unlawful sexual activity	Table 2	12 years	2 years		✓
66EB(3)(a)	Adult groom child under 14 to procure unlawful sexual activity	Table 2	12 years	2 years		✓
66EB(3)(b)	Adult groom child under 16 to procure unlawful sexual activity	Table 2	10 years	2 years		✓
66F(2)	Sexual intercourse – cognitive impairment, person responsible for care	SI	10 years		✓	✓
66F(3)	Sexual intercourse – cognitive impairment, taking advantage of	SI	8 years		✓	✓
66F(4)	Attempt – same as 66F(2) and 66F(3)				✓	✓

Crimes Act 1900 offences	Description of offence	'Table 1' or 'Table 2' or 'Strictly Indictable'	Maximum penalty on indictment	Summary penalty	Sexual offence (Criminal Records Act)	Prescribed sexual offence (Criminal Procedure Act)
73(1)	Sexual intercourse with a child between 16 and 17 under special care	SI	8 years		✓	✓
73(2)	Sexual intercourse with a child between 17 and 18 under special care	SI	4 years		✓	✓
74	Repealed					
78A	Incest above the age of 16	SI	8 years		✓	✓
78B	Incest attempts	SI	2 years		✓	✓
78G-S	Repealed					
79	Bestiality	SI	14 years		✓	✓
80	Attempt bestiality	Table 1	5 years	2 years	✓	✓
80A(2)	Sexual assault by forced self manipulation	SI	14 years			✓
80A(2A)	Sexual assault by forced self manipulation aggravated	SI	20 years			✓
80D(1)	Causing sexual servitude	SI	15 years		✓	✓
80D(2)	Causing sexual servitude aggravated	SI	20 years		✓	✓
80E(1)	Conduct of a business involving sexual servitude	SI	15 years		✓	✓
80E(2)	Conduct of a business involving sexual servitude aggravated	SI	19 years		✓	✓
86(1)	Kidnapping	SI	14 years			✓
86(2)	Aggravated kidnapping	SI	20 years			✓
86(3)	Specially aggravated kidnapping	SI	25 years			✓
87(1)	Child abduction with intent to remove child from person with parental responsibility	SI	10 years			✓

Crimes Act 1900 offences	Description of offence	'Table 1' or 'Table 2' or 'Strictly Indictable'	Maximum penalty on indictment	Summary penalty	Sexual offence (Criminal Records Act)	Prescribed sexual offence (Criminal Procedure Act)
87(2)	Child abduction with intent to steal from child	SI	10 years			✓
91A	Procuring for prostitution	Table 1	7 years	2 years	✓	✓
91B	Procuring for prostitution by drugs	Table 1	10 years	2 years	✓	✓
91D	Promoting or engaging in acts of child prostitution	SI	10 years		✓	✓
	under 14 years		14 years			
91E	Obtaining benefit from child prostitution	SI	14 years		✓	✓
91F	Premises not to be used for child prostitution	SI	7 years		✓	✓
91G(1)	Children not to be used for pornographic purposes under 14	SI	14 years		✓	✓
91G(2)	Children not to be used for pornographic purposes above the age of 14 years	SI	10 years		✓	
91H	Production dissemination or possession of child pornography	Table 1	10 years	2 years	✓	
578B	Repealed					
578C	Repealed					
Summary Offences Act	Section 5 – indecent exposure Section 11G – loitering by child sex offender 21G and 21H repealed			6 months 10 pu 2 years 100 pu	✓ ✓	