

**PRE-TRIAL DIVERSION OF OFFENDERS (AMENDMENT)
BILL 1993**

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.

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.

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 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.
