



New South Wales

Crimes Amendment (Gang and Vehicle Related Offences) Act 2001 No 84

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Crimes Amendment (Gang and Vehicle Related Offences) Act 2001 No 84

Act No 84, 2001

An Act to amend the *Crimes Act 1900* in relation to the commission of certain offences in company, kidnapping, car-jacking, threatening witnesses, recruiting children to carry out criminal activity and the stealing, receiving and unlawful possession of motor vehicles and motor vehicle parts; and for other purposes. [Assented to 21 November 2001]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Gang and Vehicle Related Offences) Act 2001*.

2 Commencement

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

3 Amendment of Crimes Act 1900 No 40

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

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Crimes Act 1900

(Section 3)

[1] Section 33A Discharging loaded arms with intent

Insert at the end of the section:

- (2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for 20 years.

[2] Section 33B Use or possession of weapon to resist arrest etc

Insert at the end of the section:

- (2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for 15 years.

[3] Section 35 Malicious wounding or infliction of grievous bodily harm

Insert at the end of the section:

- (2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for 10 years.

[4] Section 59 Assault occasioning actual bodily harm

Insert at the end of the section:

- (2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for 7 years.

[5] Part 3, Division 13A

Insert after Part 3, Division 13:

Division 13A Kidnapping

85A Kidnapping

(1) **Basic offence**

A person who takes or detains a person, without the person's consent:

- (a) with the intention of holding the person to ransom, or
- (b) with the intention of obtaining any other advantage,

is liable to imprisonment for 14 years.

(2) **Aggravated offence**

A person is guilty of an offence under this subsection if:

- (a) the person commits an offence under subsection (1) in the company of another person or persons, or
- (b) the person commits an offence under subsection (1) and at the time of, or immediately before or after, the commission of the offence, actual bodily harm is occasioned to the alleged victim.

A person convicted of an offence under this subsection is liable to imprisonment for 20 years.

(3) **Specially aggravated offence**

A person is guilty of an offence under this subsection if the person commits an offence under subsection (1):

- (a) in the company of another person or persons, and
- (b) at the time of, or immediately before or after, the commission of the offence, actual bodily harm is occasioned to the alleged victim.

A person convicted of an offence under this subsection is liable to imprisonment for 25 years.

(4) **Alternative verdicts**

If on the trial of a person for an offence under subsection (2) or (3) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the

accused is guilty of a lesser offence under this section, it may find the accused not guilty of the offence charged but guilty of the lesser offence, and the accused is liable to punishment accordingly.

- (5) A person who takes or detains a child is to be treated as acting without the consent of the child.
- (6) A person who takes or detains a child does not commit an offence under this section if:
 - (a) the person is the parent of the child or is acting with the consent of a parent of the child, and
 - (b) the person is not acting in contravention of any order of a court relating to the child.
- (7) In this section:

child means a child under the age of 16 years.

detaining a person includes causing the person to remain where he or she is.

parent of a child means a person who has, in relation to the child, all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children.

taking a person includes causing the person to accompany a person and causing the person to be taken.

[6] Section 90A Kidnapping

Omit the section.

[7] Section 99 Demanding property with intent to steal

Insert at the end of the section:

- (2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for 14 years.

[8] Section 154AA Car stealing etc

Omit “motor car” from section 154AA (1). Insert instead “motor vehicle”.

[9] Section 154AA (2)

Omit the definition of *motor car*. Insert instead:

identification plate means a plate authorised to be placed on a vehicle, or taken to have been placed on a vehicle, under the *Motor Vehicle Standards Act 1989* of the Commonwealth.

motor vehicle means:

- (a) a motor vehicle within the meaning of the *Road Transport (General) Act 1999* (whether or not the vehicle contains the motor intended to form part of it), or
- (b) a motor intended to form part of, or capable of forming part of, any such vehicle, or
- (c) any part of any such motor vehicle containing, or consisting of, an identification plate.

[10] Section 154C

Insert after section 154B:

154C Car-jacking

- (1) A person who:
 - (a) assaults another person with intent to take a motor vehicle and, without having the consent of the owner or person in lawful possession of it, takes and drives it, or takes it for the purpose of driving it, or
 - (b) without having the consent of the owner or person in lawful possession of a motor vehicle, takes and drives it, or takes it for the purpose of driving it, when a person is in or on it,is liable to imprisonment for 10 years.
- (2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 14 years.

(3) In this section:

circumstances of aggravation means circumstances involving any one or more of the following:

- (a) the alleged offender is in the company of another person or persons,
- (b) the alleged offender is armed with an offensive weapon or instrument,
- (c) the alleged offender maliciously inflicts actual bodily harm on any person.

motor vehicle means a motor vehicle within the meaning of the *Road Transport (General) Act 1999*.

[11] Section 188 Receiving stolen property where stealing a serious indictable offence

Omit “shall be liable to imprisonment for ten years.”. Insert instead:

is liable:

- (a) if the property is a motor vehicle or a motor vehicle part, to imprisonment for 12 years, or
- (b) in the case of any other property, to imprisonment for 10 years.

[12] Section 188 (2)

Insert at the end of section 188:

(2) In this section:

motor vehicle has the same meaning as it has in section 154AA.

[13] Section 315A

Insert after section 315:

315A Threatening or intimidating victims or witnesses

- (1) A person who threatens to do or cause, or who does or causes, any injury or detriment to any other person intending to influence any person not to bring material information about an indictable offence to the attention of a police officer or other appropriate authority is liable to imprisonment for 7 years.
- (2) In this section:
material information means information that a person has that might be of material assistance in securing the apprehension of a person who has committed an indictable offence, or the prosecution or conviction of any such person.

[14] Section 349 Punishment of accessories after the fact to murder etc

Omit “section 90A” from section 349 (2).

Insert instead “section 85A”.

[15] Section 351A

Insert after section 351:

351A Recruiting children to engage in criminal activity

- (1) A person (not being a child) who recruits a child to carry out or assist in carrying out a criminal activity is liable to imprisonment for 10 years.
- (2) In this section:
child means a person under the age of 18 years.
criminal activity means conduct that constitutes a serious indictable offence.
recruit means counsel, procure, solicit, incite or induce.

[16] Section 428B Offences of specific intent to which Part applies

Omit from item (a) of the Table the matter relating to section 90A.

Insert instead in appropriate order:

85A

Kidnapping

[17] Section 527C Persons unlawfully in possession of property

Omit “shall be liable on conviction before a Local Court constituted by a Magistrate sitting alone to imprisonment for 6 months, or to a fine of 5 penalty units.” from section 527C (1).

Insert instead:

is liable on conviction before a Local Court:

- (a) if the thing is a motor vehicle or a motor vehicle part, to imprisonment for 1 year, or to a fine of 10 penalty units, or both, or
- (b) in the case of any other thing, to imprisonment for 6 months, or to a fine of 5 penalty units, or both.

[18] Section 527C (3)

Omit the subsection. Insert instead:

- (3) In this section:

motor vehicle has the same meaning as it has in section 154AA.

premises includes any structure, building, vehicle, vessel, whether decked or undecked, or place, whether built on or not, and any part of any such structure, building, vehicle, vessel or place.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Bail Act 1978 No 161

Section 9 Presumption in favour of bail for certain offences—exceptions

Insert “85A,” before “90A” in section 9 (1) (c).

2.2 Child Protection (Offenders Registration) Act 2000 No 42

Section 3 Definitions

Insert “85A or” before “90A” in paragraph (b) of the definition of *Class 2 offence* in section 3 (1).

2.3 Criminal Procedure Act 1986 No 209

[1] Schedule 1 Indictable offences triable summarily

Insert “, 154C” after “154B (1)” in clause 9 of Table 1.

[2] Schedule 1, Table 1

Insert “, 315A” after “315” in clause 15 (2).

[3] Schedule 1, Table 1

Insert after clause 15:

15A Offence relating to recruiting children

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

[Minister's second reading speech made in—
Legislative Assembly on 17 October 2001
Legislative Council on 13 November 2001]