

New legislation to strengthen child sexual abuse laws

Factsheet: summary

The NSW Government has introduced reforms to strengthen child sexual abuse laws based on the Royal Commission's Criminal Justice Report.

Over five years, the Royal Commission into Institutional Responses to Child Sexual Abuse exposed the failures of governments and non-government organisations to protect children in their care, and the pain endured by victims and survivors of child sexual abuse.

The Royal Commission's Criminal Justice Report commended many of NSW's practices in combatting sexual offending against children but also highlighted areas where NSW's laws needed to be strengthened.

The NSW Government is committed to addressing these shortcomings and has reformed laws to better protect children and improve outcomes for survivors. These changes have been made with the passage of the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018* ('the Amendment Act') in June 2018. Two new offences, failure to protect against child abuse and failure to report child abuse, will come into operation from 31 August 2018. Also from that date, courts will apply current sentencing patterns and practices in child sexual abuse cases, rather than those that applied at the time of the abuse. The rest of the Amendment Act will commence shortly.

The reform package at a glance

- New offence of **failing to report** child abuse to Police, commencing on 31 August 2018
- New offence of a person in an organisation **failing to protect** a child from abuse, commencing on 31 August 2018
- New offence of **grooming a parent or carer** to access a child, and a broader offence of grooming children
- Strengthened offence of **persistent sexual abuse of a child**, which will be easier to prosecute and carry a maximum penalty of life imprisonment
- New rule that courts sentencing in historical matters **must apply current sentencing standards** and take into account current understanding of the lifelong impact and trauma of child sexual abuse, with effect from 31 August 2018
- New rule so an offender's **good character is not a mitigating factor** at sentencing
- Simplified offences and new terminology to make key offences easier to understand, transforming the offence of 'indecent assault' into '**sexual touching**' and the offence of 'act of indecency' into '**sexual act**'
- Retrospective **repeal of an old limitation period** that is preventing some survivors from seeking justice.

Failure to report offence

All adults in NSW will be required to report information to police if they know, believe or reasonably ought to know that a child has been abused.

Failing to report information to Police without a reasonable excuse will be an offence punishable by up to two years' imprisonment. The penalty will be five years' imprisonment if the person has accepted any benefit in exchange for failing to report.

A person will have a reasonable excuse for not reporting if the victim is now an adult and doesn't want the offence reported, if the offence has already been reported to the Child Protection Helpline, or if the person fears for his or her safety or another person's safety if he or she reports.

The offence will apply to members of the clergy and ministers of religion*.

**The issue of whether the offence will apply when a person received the information from a religious confession is covered by uniform evidence law that applies in multiple Australian jurisdictions. Accordingly, a national approach is desirable. The NSW Government has referred the issue to the Council of Attorneys-General for consideration.*

Failure to protect offence

An adult working in an organisation that employs adult workers to engage in child-related work will commit an offence if he or she knows that another adult working there poses a serious risk of abusing a child, he or she has the power to reduce or remove the risk, and he or she negligently fails to do so.

The offence will be punishable by up to two years' imprisonment.

Broader grooming offences

A broader grooming offence will cover any adult who offers a child a material or financial benefit with the intention of making it easier to access the child for unlawful sexual activity.

This broader offence will capture common grooming behaviour, like giving a child gifts or money, which can be used to gain a child's trust.

The maximum penalty for the offence will remain the same, at 12 years' imprisonment if the child is under 14 years of age, and 10 years' imprisonment if the child is 14 or 15 years of age.

A new offence of grooming an adult will cover situations where a person provides gifts or money to an adult with the intention of making it easier to access a child in that adult's care for unlawful sexual activity. The offence will be punishable by up to six years' imprisonment.

Simplified offences

The existing terminology of 'indecent assault' and 'act of indecency' makes these offences (and the difference between them) difficult to understand. The offences will be simplified and transformed into *sexual touching* (where the offender has had physical contact with the victim) and *sexual act* (where there is no physical contact between the offender and the victim).

Also, the maximum penalty for sexually touching a child under 10 years of age will be increased to 16 years' imprisonment.

Other reforms in the Amendment Act

The Amendment Act makes a number of other reforms to NSW's criminal laws, including:

- Introducing a new offence of sexual touching within a special care relationship, which will protect children aged 16 and 17 from inappropriate sexual contact with teachers, health professionals, authorised carers and others who have special care of the child;
- Giving judges power to give a jury information about how trauma can affect a person's memory, where a complainant has given different accounts of abuse;
- Making aggravating factors consistent across child sexual abuse offences;
- Introducing a similar age defence for children aged 14 or 15 who engage in consensual sexual activity with a peer within two years of their age;
- Introducing a limited 'sexting' defence to reduce the risk that children will be criminalised for this behaviour; and
- Reordering the provisions in the legislation so it is easier for legal practitioners to navigate.

What else is NSW doing?

The NSW Government has opted into a national redress scheme for survivors of institutional child sexual abuse and passed legislation to implement the scheme.

A single national redress scheme was a key recommendation of the Royal Commission. NSW and Victoria were the first states to join the scheme, which will provide survivors with a redress payment of up to \$150,000, counselling and direct personal responses from institutions.

The NSW Government has also removed the limitation period for survivors to launch civil claims for compensation, and improved the Model Litigant Policy to ensure a more compassionate approach to civil child abuse claims.

Support for survivors is available through:

- Lifeline 13 11 14
- 1800Respect 1800 737 732
- Blue Knot Foundation 1300 657 380
- MensLine Australia 1300 789 978

For more information

Visit the website at
www.justice.nsw.gov.au