

CRIMES (AMENDMENT) ACT 1988 No. 81

NEW SOUTH WALES



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CRIMES (AMENDMENT) ACT 1988 No. 81

NEW SOUTH WALES



Act No. 81, 1988

An Act to amend the Crimes Act 1900 with respect to offences relating to public order, assaults and car stealing; to amend the Motor Traffic Act 1909 with respect to offences relating to the driving or use of motor vehicles; and for other purposes. [Assented to 6 December 1988]

*Crimes (Amendment) 1988***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Crimes (Amendment) Act 1988.

Commencement

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

Amendment of Crimes Act 1900 No. 40

3. The Crimes Act 1900 is amended as set out in Schedules 1–5.

Amendment of Motor Traffic Act 1909 No. 5

4. The Motor Traffic Act 1909 is amended as set out in Schedule 6.

Operation of Schedule 4

5. (1) An amendment to the Crimes Act 1900 effected by Schedule 4 to this Act applies only in respect of offences committed after the commencement of the amendment.

(2) The Crimes Act 1900 applies in respect of offences committed before the commencement of an amendment effected by Schedule 4 to this Act as if the amendment had not been made.

SCHEDULE 1—AMENDMENTS RELATING TO PUBLIC ORDER

(Sec. 3)

- (1) Section 1 (**Short title and contents of Act**)—

After the matter relating to Part 3, insert:

PART 3A—OFFENCES RELATING TO PUBLIC ORDER—
SS. 93A–93E

- (2) Part 3A—

After Part 3, insert:

PART 3A—OFFENCES RELATING TO PUBLIC ORDER

Definition

93A. In this Part—

“violence” means any violent conduct, so that—

- (a) except for the purposes of section 93C, it includes violent conduct towards property as well as violent conduct towards persons; and

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SCHEDULE 1—AMENDMENTS RELATING TO PUBLIC ORDER—
continued

- (b) it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct (for example, throwing at or towards a person a missile of a kind capable of causing injury which does not hit or falls short).

Riot

93B. (1) Where 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using unlawful violence for the common purpose is guilty of riot and liable to penal servitude for 10 years.

(2) It is immaterial whether or not the 12 or more persons use or threaten unlawful violence simultaneously.

(3) The common purpose may be inferred from conduct.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Riot may be committed in private as well as in public places.

Affray

93C. (1) A person who uses or threatens unlawful violence towards another and whose conduct is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety is guilty of affray and liable to penal servitude for 5 years.

(2) If 2 or more persons use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of subsection (1).

(3) For the purposes of this section, a threat cannot be made by the use of words alone.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Affray may be committed in private as well as in public places.

Mental element under ss. 93B and 93C

93D. (1) A person is guilty of riot only if the person intends to use violence or is aware that his or her conduct may be violent.

SCHEDULE 1—AMENDMENTS RELATING TO PUBLIC ORDER—
continued

(2) A person is guilty of affray only if the person intends to use or threaten violence or is aware that his or her conduct may be violent or threaten violence.

(3) Subsection (1) does not affect the determination for the purposes of riot of the number of persons who use or threaten violence.

Offences of riot, rout, affray abolished

93E. The common law offences of riot, rout and affray are abolished.

(3) **Section 476 (Indictable offences punishable summarily with consent of accused)—**

Section 476 (6) (d)—

After “81C,” insert “93B, 93C.”

**SCHEDULE 2—AMENDMENTS RELATING TO CULPABLE
DRIVING AND CULPABLE NAVIGATION**

(Sec. 3)

(1) **Section 52A (Culpable driving)—**

Section 52A (4)—

After “acquitted of murder or manslaughter or of any other offence”, insert “under this Act”.

(2) **Section 52B (Culpable navigation)—**

Section 52B (5) (b)—

After “or of any other offence”, insert “under this Act”.

SCHEDULE 3—AMENDMENTS RELATING TO CAR STEALING

(Sec. 3)

(1) **Section 1 (Short title and contents of Act)—**

From Item (d) of Chapter 1 of the matter relating to Part 4, omit “s. 154A”, insert instead “ss. 154A, 154AA”.

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SCHEDULE 3—AMENDMENTS RELATING TO CAR STEALING—
continued
(2) Section 154AA—

After section 154A, insert:

Car stealing etc.

154AA. (1) Any person who steals a motor car is liable to penal servitude for 10 years.

(2) In this section—

“motor car” means any motor vehicle (as defined in the Motor Traffic Act 1909) but does not include a caravan, trailer or motor vehicle constructed principally for use in agricultural production.

(3) Section 476 (Indictable offences punishable summarily with consent of accused)—

Section 476 (6) (d)—

After “154A,” insert “154AA,”.

(4) Section 526A (Taking a conveyance without the consent of the owner)—

Section 526A (1)—

Omit “twelve months, or to pay a fine of \$1,000”, insert instead “2 years, or to a fine of \$5,000”.

SCHEDULE 4—AMENDMENTS RELATING TO ASSAULTS

(Sec. 3)

(1) Section 58 (Assault with intent to commit felony on certain officers)—

Omit “two years”, insert instead “5 years”.

(2) Section 476 (Indictable offences punishable summarily with consent of accused)—

Section 476 (6) (d)—

Omit “56,” and “58, 59, 61,”.

(3) Section 493 (Common assaults)—

Omit the section.

(4) Section 494 (Aggravated assaults)—

Omit the section.

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 SCHEDULE 4—AMENDMENTS RELATING TO ASSAULTS—
continued

(5) Section 495—

After section 494, insert:

Indictable offences punishable summarily without consent of accused: assaults

495. (1) Proceedings for an offence under section 56, 58, 59 or 61 may be disposed of in a summary manner before a Local Court constituted by a Magistrate sitting alone.

(2) The penalty that a Local Court may impose for an offence under section 56 or 61 disposed of under this section is imprisonment for a maximum period of 12 months, or a fine not exceeding \$1,000, or both.

(3) The penalty that a Local Court may impose for an offence under section 58 or 59 disposed of under this section is imprisonment for a maximum period of 2 years, or a fine not exceeding \$5,000, or both.

(4) The provisions of section 56 of the Justices Act 1902 do not apply to proceedings under this section.

(5) A reference in this section to an offence under a provision of this Act includes a reference to an attempt to commit an offence under the provision.

(6) Section 500 (**Exception from jurisdiction**)—

Omit “sections 493 to 499 both inclusive”, insert instead “section 495”.

SCHEDULE 5—MISCELLANEOUS AMENDMENTS

(Sec. 3)

(1) Section 1 (**Short title and contents of Act**)—

(a) From the matter relating to Part 14, omit “(A) ASSAULTS—*ss.* 493–500”, insert instead “(A) INDICTABLE OFFENCES PUNISHABLE SUMMARILY WITHOUT CONSENT—*ss.* 495–500”.

(b) From the matter relating to Part 14, omit “*ss.* 501–512”, insert instead “*ss.* 502–512”.

(2) Section 4 (**Definitions**)—

(a) Section 4 (1), definition of “Domestic violence offence”—
 Omit “, 61E, 493 or 494”, insert instead “or 61E”.

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SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued***(b) Section 4 (5)—**

After section 4 (4), insert:

(5) In this Act, a reference to—

(a) conviction before Justices; or

(b) conviction before two Justices,

includes a reference to conviction before a Local Court.

(3) Heading before section 493—

Omit the heading, insert instead:

**(A) INDICTABLE OFFENCES PUNISHABLE SUMMARILY
WITHOUT CONSENT**

(4) Section 496—

Re-number section 501 (**Indictable offences punishable summarily without consent of accused: larceny etc.**) as section 496, and insert after section 495 (being inserted by Schedule 4).

(5) Section 497—

Before section 498, insert:

General provisions regarding indictable offences punishable summarily without consent of accused

497. (1) A Local Court may, in its discretion, decline to deal with an offence under section 495 or 496.

(2) Nothing in this section or section 495 or 496 prevents an offence referred to in any of those sections from being dealt with on indictment.

(3) In this section, “Local Court” includes a Magistrate

(6) Section 498 (Certificate of dismissal)—

Omit the section.

(7) Section 499 (Certificate or conviction a bar to other proceedings)—

Omit the section.

SCHEDULE 6—AMENDMENT OF MOTOR TRAFFIC ACT 1909

(Sec. 4)

Section 8A (Motor vehicles not to be driven or used without consent of owner)—

After “an offence under this Act”, insert “and liable to a maximum penalty of \$2,000”.

*[Minister's second reading speech made in—
Legislative Assembly on 19 October 1988
Legislative Council on 16 November 1988]*
