

Crimes Amendment (Sexual Offences) Bill 2003

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend and repeal certain provisions of the *Crimes Act 1900* (the **Principal Act**) to provide for the equal treatment of sexual offences irrespective of whether the victim or the perpetrator is male or female.

In particular, the Bill repeals certain provisions that apply solely to male homosexual acts. The result will be that, in future, certain types of sexual offences by any person, whether male or female, against any other person, whether male or female, will be dealt with on the same bases, including as to the age of the victim, the defences available to the accused and the penalties for the offence. The age of consent for all persons will be 16 years.

Consensual male homosexual acts that took place before the commencement of the amendments between persons who were not less than 16 years of age at the time will cease to be unlawful.

The Bill also makes other amendments with respect to sexual offences against children. The Bill increases the penalties for having sexual intercourse with a child between 10 and 16 years of age (currently 8 years imprisonment or, if under the authority of the offender, 10 years imprisonment) as follows:

- (a) where the child is between 10 and 14 years of age—16 years imprisonment (or 20 years imprisonment in circumstances of aggravation),
- (b) where the child is between 14 and 16 years of age—10 years imprisonment (or 12 years imprisonment in circumstances of aggravation).

The circumstances of aggravation are extended to those applicable to cases of sexual assault offences, including taking advantage of the intoxication of the victim.

The current penalty for having sexual intercourse with a child under 10 years of age is 25 years imprisonment. Sexual assault of a child under 16 years of age also carries a penalty of 20 years imprisonment.

The Bill also removes the current statutory defence of a person who has consensual sexual intercourse with a child under 16 years of age that the child was over 14 years of age and appeared to be over 16 years of age.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by the Governor by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the other Acts set out in Schedule 2.

Schedule 1 Amendment of Crimes Act 1900

Equal treatment of sexual offences

Schedule 1 [18] repeals a number of separate offences relating to homosexual acts with males between 10 and 18 years of age. The result will be that sexual assault and offences against children will be dealt with by the same set of provisions that apply irrespective of whether the victim or the perpetrator is male or female. It will also result in a uniform age of consent, namely 16 years.

Schedule 1 [12] recasts sections 73–75 of the Principal Act (which make it an offence for a male teacher or parent to have carnal knowledge of a female pupil or child under 17 years of age). The revised offence will apply to both males and females. The proposed offence will not apply if the persons concerned are married to each other. References to parents are omitted and dealt with in the revised incest offence—see **Schedule 1 [15]**.

Schedule 1 [15] recasts section 78A (Incest) of the Principal Act, which makes it an offence for a male to have carnal knowledge of a close female family member over 16 years of age, or a female to allow a close male family member to have carnal knowledge of her. The revised offence provides that any person who has sexual intercourse with a close family member of or above the age of 16 years will be guilty of incest. **Schedule 1 [16]** makes a consequential amendment.

Schedule 1 [20] provides for the equal treatment of offences relating to child prostitution, irrespective of the gender of the child concerned.

Sexual offences against children

Schedule 1 [9] replaces section 66C of the Principal Act to increase the penalty for having sexual intercourse with a child between 10 and 16 years of age, as set out in the Overview above. **Schedule 1 [2], [3], [10] and [11]** make consequential amendments concerning alternative verdicts.

Defences

Schedule 1 [14] amends section 77 of the Principal Act to remove the current statutory defence of a person who has consensual sexual intercourse with a child under 16 years of age that the child was over 14 years of age and appeared to be over 16 years of age. **Schedule 1 [13]** makes a consequential amendment.

Definition of “sexual intercourse”

Schedule 1 [1] amends the definition of *sexual intercourse* in section 61H to ensure that the definition applies for the purposes of all the sexual offences in the Principal Act. The amendment is consequential upon the replacement of the term *carnal knowledge* by other amendments contained in the Bill. **Schedule 1 [5], [12] and [15]** make consequential amendments.

Law revision

Schedule 1 [8] repeals an obsolete offence of men procuring “illicit carnal connection” by fraud and **Schedule 1 [4]** makes a consequential amendment.

Schedule 1 [17] and [19] repeal an obsolete provision relating to guardianship of certain incest victims and replace it with new section 80AA, a general provision that allows a court to refer the matter to an appropriate child protection agency where a person is convicted of any sexual offence and the victim is under the authority of the offender.

Savings and transitional

Schedule 1 [21] inserts a new Part 19 into the Eleventh Schedule to the Principal Act. The new Part contains a transitional provision (new clause 49) which provides that it is a defence to an offence of homosexual acts alleged to have occurred before the commencement of the amendments made by this Bill that both parties were not less than 16 years of age at the time of the alleged offence, that the act was consensual, and that the act would not otherwise be unlawful after that commencement. The new Part will also contain transitional provisions relating to former offences transferred from the main body of the Principal Act by **Schedule 1 [7]**. **Schedule 1 [6]** amends section 63 of the Principal Act to clarify the location of the transferred provisions.

Schedule 2 Amendment of other Acts

Schedule 2 contains amendments to the *Criminal Procedure Act 1986* and the *Young Offenders Act 1997* that are consequential upon the amendments to the Principal Act contained in Schedule 1.