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## CRIMES (ADULT SEXUAL BEHAVIOUR) AMENDMENT BILL, 1981

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### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to provide that an offence involving certain sexual behaviour shall be deemed not to have been committed unless it is proved that—

- (a) the person upon or with whom the offence is alleged to have been committed—
  - (i) did not consent; or
  - (ii) had not attained the age of 18 years;
- (b) the accused had not attained the age of 18 years; or
- (c) the act constituting the alleged offence was committed otherwise than in private.

The offences concerned are buggery, attempted buggery, indecent assault upon a male and act of indecency with a male.

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**CRIMES (ADULT SEXUAL BEHAVIOUR) AMENDMENT  
BILL, 1981**

No.           , 1981.

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**A BILL FOR**

An Act to amend the Crimes Act, 1900, with respect to the matters to be proved in proceedings for offences relating to certain adult sexual behaviour; and for certain other purposes.

[MR EGAN—2 *December*, 1981.]

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*Crimes (Adult Sexual Behaviour) Amendment.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**5 Short title.**

1. This Act may be cited as the "Crimes (Adult Sexual Behaviour) Amendment Act, 1981".

**Commencement.**

2. (1) This section and section 1 shall commence on the date of assent to 10 this Act.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Amendment of Act No. 40, 1900.**

15 3. The Crimes Act, 1900, is amended in the manner set forth in Schedule 1.

**Transitional provision.**

4. Nothing in this Act applies to or in respect of offences committed, or alleged to have been committed, before the day appointed and notified under 20 section 2 (2).

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*Crimes (Adult Sexual Behaviour) Amendment.*

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SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE CRIMES ACT, 1900.

(1) Section 1, matter relating to Part III—

5 Omit “81B”, insert instead “81BA”.

(2) Section 80—

Omit “with or without the consent of such person”.

(3) Section 81—

Omit “of whatever age, with or without the consent of such person,”.

10 (4) Section 81BA—

After section 81B, insert:—

**Matters to be proved by prosecution in certain proceedings.**

81BA. (1) In this section, “prescribed offence” means—

- (a) an offence under section 79, 80 or 81;
- 15 (b) an offence under section 81A of committing, or of being a party to the commission of, an act of indecency with a male person; or
- (c) a common law offence that could be the subject of a charge for any such offence.

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*Crimes (Adult Sexual Behaviour) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(2) A prescribed offence shall be deemed not to have been committed by a person unless it is proved—

- 5 (a) that the person upon or with whom the offence is alleged to have been committed—
- (i) did not consent to the commission of the act constituting the alleged offence; or
  - 10 (ii) had not attained the age of 18 years at the time the alleged offence was committed;
- (b) that the accused had not attained the age of 18 years at that time; or
- (c) that the act constituting the alleged offence was committed otherwise than in private.

15 (3) Except as provided in this section, the consent of the person upon or with whom an offence under section 79, 80, 81 or 81A is alleged to have been committed shall be no defence to a charge under that section.

20 (4) For the purposes of this section and without limiting the grounds upon which it may be established that consent to the commission of an act is vitiated—

- 25 (a) a person who consents to the commission of an act upon or with another person under a mistaken belief as to the identity of the other person shall be deemed not to consent to the commission of the act;
- (b) a person who submits to the commission of an act by or with another person as a result of threats or terror, whether the threats are against, or the terror is instilled in, the

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*Crimes (Adult Sexual Behaviour) Amendment.*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

person who submits to the commission of the act or any other person, shall be regarded as not consenting to the commission of the act; and

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- (c) a person who does not offer actual physical resistance to the commission of an act shall not, by reason only of that fact, be regarded as consenting to the commission of the act.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981

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