

CONCURRENCE COPY

CRIMES (HOMOSEXUAL BEHAVIOUR) AMENDMENT BILL, 1982

EXPLANATORY NOTE

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

The object of this Bill is to amend the Crimes Act, 1900, so as—

- (a) to bring about equality of penalty as far as is practicable in respect of certain sexual offences; and
 - (b) to decriminalise homosexual behaviour between consenting adults in private.
-

В соответствии с требованиями
к документам, подлежащим
хранению в архиве
и подлежащим передаче в архив
в соответствии с требованиями
к документам, подлежащим
хранению в архиве

С. А. СЕРГЕЕВ

С. А. СЕРГЕЕВ (И. И. СЕРГЕЕВ) УМОВИЩЕВИЧ ИИГ

СОИСПОУКЕИШЕ СОУА

**CRIMES (HOMOSEXUAL BEHAVIOUR) AMENDMENT BILL,
1982**

Legislative Council

—
No. , 1982

A BILL FOR

An Act to amend the Crimes Act, 1900, to decriminalise homosexual behaviour between consenting adults in private; and for certain other purposes.

[MR UNSWORTH—18 *February*, 1982.]

Crimes (Homosexual Behaviour) Amendment.

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 (Homosexual Behaviour) Amendment Act, 1982".

Commencement.

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

Crimes (Homosexual Behaviour) Amendment.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE CRIMES ACT, 1900.

- (1) (a) Section 1, matter relating to Part III—
- 5 (i) Omit “78F”, insert instead “81BB”.
- (ii) Omit “(10) *Unnatural offences.—ss. 79–81B.*”.
- (b) Section 1, matter relating to Part XVI—
- Omit “579”, insert instead “580”.
- (2) Heading before section 79—
- 10 Omit the heading.
- (3) Section 79—
- Omit “the abominable crime of buggery, or bestiality, with mankind, or with any animal,”, insert instead “an act of bestiality with any animal”.
- 15 (4) Section 79A—
- After section 79, insert:—
- Buggery.**
- 79A. Except as provided in section 81BA, any person who commits buggery with another person shall be liable—
- 20 (a) if the other person is under the age of 10 years—to penal servitude for 14 years;
- (b) if the other person is of or above the age of 10 years and under the age of 18 years—to penal servitude for 10 years;
- or
- 25 (c) if the other person is of or above the age of 18 years—to penal servitude for 7 years.

Crimes (Homosexual Behaviour) Amendment.

SCHEDULE 1—*continued.*

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

(5) Section 80—

Omit the section, insert instead:—

5 **Attempts, &c., to commit buggery.**

80. Except as provided in section 81BA, any person who attempts to commit buggery with another person, or assaults another person with intent to commit buggery with the other person, shall be liable—

- 10 (a) if the other person is under the age of 10 years—to penal servitude for 5 years;
- (b) if the other person is of or above the age of 10 years and under the age of 18 years—to penal servitude for 4 years; or
- 15 (c) if the other person is of or above the age of 18 years—to penal servitude for 3 years.

(6) Section 81—

Omit the section.

(7) Section 81A—

Omit the section, insert instead:—

20 **Outrages on decency.**

81A. Any male person who in public commits, or is a party to the commission of, an act of gross indecency with another male person shall be liable to imprisonment for 2 years.

(8) Section 81B—

25 Omit the section.

Crimes (Homosexual Behaviour) Amendment.

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

(9) Sections 81BA, 81BB—

After section 81B, insert:—

5 **Consenting adult homosexual behaviour, &c.**

81BA. (1) An offence under section 79A or 80 shall be deemed not to have been committed unless it is established that—

- 10 (a) the person with or upon whom the offence is alleged to have been committed did not consent to the commission of the act constituting the alleged offence;
- (b) that person or the person who is alleged to have committed the offence had not attained the age of 18 years; or
- (c) the act constituting the alleged offence—
- (i) was committed otherwise than in private; or
- 15 (ii) involved participation by more than 2 persons.

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

- 20 (a) 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 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
- 25 (b) 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.

Crimes (Homosexual Behaviour) Amendment.

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

5 (3) For the purposes of this section, the person with or upon whom an offence under section 79A or 80 was committed shall be treated as being of or above the age of 18 years if it is made to appear to the court or jury before which the charge is brought that—

- (a) the other person was of or above the age of 16 years;
- (b) the other person consented to the act constituting the alleged offence; and

10 (c) the person charged with the offence had, at the time of the commission of the alleged offence, reasonable cause to believe, and did in fact believe, that the other person was of or above the age of 18 years.

(4) For the purposes of this section—

- 15 (a) an act is committed otherwise than in private if—
- (i) it is committed in a public place;
 - (ii) without affecting the generality of subparagraph (i), it is committed in a lavatory to which the public have or are permitted to have access, whether on payment of money or otherwise; or
 - 20 (iii) it is committed in the presence of any person other than the participants in the act; and
- 25 (b) a reference to an offence under section 79A or 80 includes a reference to a common law offence constituted by an act that could also constitute an offence under either of those sections.

Limitation.

30 81BB. No prosecution in respect of any offence under section 79A or 80, or any common law offence constituted by an act that could also constitute an offence under either of those sections, shall be commenced after the expiration of 12 months from the time of the

Crimes (Homosexual Behaviour) Amendment.

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

5 alleged offence if the person with or upon whom the offence is alleged to have been committed was at the time of the alleged offence of or above the age of 17 years.

(10) (a) Section 476 (6) (c)—

After “81”, insert “as in force at any time before the commencement of Schedule 1 to the Crimes (Homosexual Behaviour) Amendment Act, 1982,”.

10 (b) Section 476 (6) (d)—

Omit “, 81A, 81B,”, insert instead “or 81A, in section 81B as in force at any time before the commencement of Schedule 1 to the Crimes (Homosexual Behaviour) Amendment Act, 1982, or in section”.

15 (11) (a) Section 578 (1)—

After “79,”, insert “79A,”.

(b) Section 578 (1)—

Omit “81,”.

(c) Section 578 (1)—

20 Omit “81B,”.

(d) Section 578 (1B)—

After section 578 (1A), insert:—

25 (1B) Subsection (1) has effect in relation to a trial for an offence under section 81 or 81B as respectively in force at any time before the commencement of Schedule 1 to the Crimes

Crimes (Homosexual Behaviour) Amendment.

SCHEDULE 1—*continued.*

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

(Homosexual Behaviour) Amendment Act, 1982, in the same way as it has effect in relation to trials for the offences referred to in that subsection.

5

(12) Section 580—

After section 579, insert:—

Certain charges not to be brought at common law.

580. A person may not be charged with any common law offence in respect of—

10

(a) an act which could have been the subject of a charge for an offence under section 81 or 81B had that section not been repealed by the Crimes (Homosexual Behaviour) Amendment Act, 1982; or

15

(b) an act which could have been the subject of a charge for an offence under section 81A had that section not been substituted by the Crimes (Homosexual Behaviour) Amendment Act, 1982, but which could not have been the subject of a charge for an offence under section 81A as inserted by that Act.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982

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3. Заключение

И. И. ИВАНОВ

СОДЕРЖАНИЕ

СОДЕРЖАНИЕ

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, March, 1982.*

New South Wales



ANNO TRICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. , 1982.

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Crimes (Homosexual Behaviour) Amendment.

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Transitional provision.

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- 79A. Except as provided in section 81BA, any person who commits buggery with another person shall be liable—
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Omit the section, insert instead:—

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(b) if the other person is of or above the age of 10 years and under the age of 18 years—to penal servitude for 4 years;
or

15 (c) if the other person is of or above the age of 18 years—to penal servitude for 3 years.

(6) Section 81—

Omit the section.

(7) Section 81A—

Omit the section, insert instead:—

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81A. Any male person who in public commits, or is a party to the commission of, an act of gross indecency with another male person shall be liable to imprisonment for 2 years.

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Crimes (Homosexual Behaviour) Amendment.

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

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After section 81B, insert:—

5 **Consenting adult homosexual behaviour, &c.**

81BA. (1) An offence under section 79A or 80 shall be deemed not to have been committed unless it is established that—

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

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

- 20 (a) 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 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
- 25 (b) 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.

Crimes (Homosexual Behaviour) Amendment.

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

5 (3) For the purposes of this section, the person with or upon whom an offence under section 79A or 80 was committed shall be treated as being of or above the age of 18 years if it is made to appear to the court or jury before which the charge is brought that—

- (a) the other person was of or above the age of 16 years;
- (b) the other person consented to the act constituting the alleged offence; and
- 10 (c) the person charged with the offence had, at the time of the commission of the alleged offence, reasonable cause to believe, and did in fact believe, that the other person was of or above the age of 18 years.

(4) For the purposes of this section—

- 15 (a) an act is committed otherwise than in private if—
- (i) it is committed in a public place; or
- (ii) without affecting the generality of subparagraph (i), it is committed in a lavatory to which the public have or are permitted to have access, whether
- 20 on payment of money or otherwise; and
- (b) a reference to an offence under section 79A or 80 includes a reference to a common law offence constituted by an act that could also constitute an offence under either of those sections.

25 **Limitation.**

81BB. No prosecution in respect of any offence under section 79A or 80, or any common law offence constituted by an act that could also constitute an offence under either of those sections, shall be commenced after the expiration of 12 months from the time of the

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- 15 (11) (a) Section 578 (1)—
After “79,”, insert “79A,”.
- (b) Section 578 (1)—
Omit “81,”.
- (c) Section 578 (1)—
20 Omit “81B,”.
- (d) Section 578 (1B)—
After section 578 (1A), insert:—
(1B) Subsection (1) has effect in relation to a trial for an offence under section 81 or 81B as respectively in force at any
25 time before the commencement of Schedule 1 to the Crimes

Crimes (Homosexual Behaviour) Amendment.

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

(Homosexual Behaviour) Amendment Act, 1982, in the same way as it has effect in relation to trials for the offences referred to in that subsection.

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After section 579, insert:—

Certain charges not to be brought at common law.

580. A person may not be charged with any common law offence in respect of—

- (a) an act which could have been the subject of a charge for an offence under section 81 or 81B had that section not been repealed by the Crimes (Homosexual Behaviour) Amendment Act, 1982; or
- (b) an act which could have been the subject of a charge for an offence under section 81A had that section not been substituted by the Crimes (Homosexual Behaviour) Amendment Act, 1982, but which could not have been the subject of a charge for an offence under section 81A as inserted by that Act.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982