

# CONCURRENCE COPY

## CRIMES (SEXUAL OFFENCES) AMENDMENT BILL, 1981

### 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 ("The Act") so as to—

- (a) decriminalise, except in certain cases, sexual activity between consenting males of or over the age of 16 years; and
- (b) degender, as far as is practicable, certain other provisions of Part III of the Act, thereby bringing about, as far as is practicable, equality between females and males in respect of offences relating to sexual acts.

The Bill specifically amends the Act so as to—

- (a) apply the definition of "sexual intercourse" to certain offences under Part III of the Act in addition to the offences under sections 61B, 61C and 61D (Schedule 1 (2));
- (b) extend the application of section 61G to allow, in certain circumstances, a jury to find a person accused of an offence under 61D in relation to a male under the age of 16 years, but above the age of 10 years, guilty instead of an offence under section 61 (Schedule 1 (3));
- (c) extend the application of section 66 so that it will apply equally in all respects to females and males (Schedule 1 (5));
- (d) extend the application of section 67 so that it will apply to any person who has sexual intercourse with another person under the age of 10 years, instead of only to a male who has sexual intercourse, consisting of vaginal penetration, with a female under the age of 10 years (Schedule 1 (6));
- (e) extend the application of section 68 so that it will apply to any person who attempts to have sexual intercourse with another person under the age of 10 years, or assaults any other such person with intent to have sexual intercourse with the other person, instead of only to a male who attempts to have sexual intercourse, consisting of vaginal penetration, with a female under the age of 10 years, or assaults any such female with intent to have such sexual intercourse with her (Schedule 1 (7));
- (f) apply the provisions of section 69 (which enable a jury to find, in certain circumstances, a person accused of an offence under section 67 guilty instead of an offence under section 71) equally in all respects to females and males (Schedule 1 (8));

- (g) apply the provisions of section 70 (which enable a jury to find, in certain circumstances, a person accused of an offence under section 68 guilty instead of an offence under section 72) equally in all respects to females and males (Schedule 1 (9));
- (h) extend the application of section 71 so that it will apply to any person who unlawfully has sexual intercourse with another person of or above the age of 10 years, and under the age of 16 years, instead of only to a male who unlawfully has sexual intercourse, consisting of vaginal penetration, with a female of or above the age of 10 years and under the age of 16 years (Schedule 1 (10));
- (i) extend the application of section 72 so that it will apply to any person who attempts unlawfully to have sexual intercourse with another person of or above the age of 10 years, and under the age of 16 years, or assaults any other such person with intent unlawfully to have sexual intercourse with the other person, instead of only to a male who attempts unlawfully to have sexual intercourse, consisting of vaginal penetration, with a female of or above the age of 10 years, and under the age of 16 years, or assaults any such female with intent unlawfully to have such sexual intercourse with her (Schedule 1 (11));
- (j) extend the application of section 72A so that it applies to any person who has unlawful sexual intercourse with any other person who the first-mentioned person knows to be mentally defective, as presently specified in the section, instead of only to a male who has unlawful sexual intercourse, consisting of vaginal penetration, with a female who he knows to be mentally defective, as so specified (Schedule 1 (12));
- (k) extend the application of section 73 (which relates to male teachers and female pupils and to male parents and step-parents and female children and step-children) so that it applies equally in all respects to females and males (Schedule 1 (13));
- (l) extend the application of section 74 (which relates to male teachers and female pupils and to male parents and step-parents and female children and step-children) so that it applies equally in all respects to females and males (Schedule 1 (14));
- (m) extend the application of section 75 equally in all respects to females and males (Schedule 1 (15));
- (n) provide that in respect of certain offences involving sexual intercourse or attempted sexual intercourse the consent of the person, against whom the offence was committed, to the commission of the act which constitutes the offence is not a defence (Schedule 1 (16)—proposed section 77);
- (o) abolish the crime of buggery (Schedule 1 (18));
- (p) abolish the crimes of attempted buggery and assaulting a person with intent to commit buggery (Schedule 1 (19));

- (q) abolish certain crimes involving acts of indecency between males, procuring the commission of acts of indecency between males, and soliciting or inciting persons to commit such acts (Schedule 1 (20));
- (r) apply sections 418 and 476 equally in all respects to females and males (Schedule 1 (21) and (22));
- (s) provide that charges in respect of certain acts, that may have constituted offences at common law, shall not be brought (Schedule 1 (24)—proposed section 580).

The Bill also makes other amendments of a minor, consequential or ancillary nature.

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- (d) abolish certain crimes involving acts of indecency between males, including the commission of acts of indecency between males and allowing contracting persons to commit such acts (Schedule 1 (20));
- (e) apply sections 41B and 41C equally in all respects to females and males (Schedule 1 (11) and (12));
- (f) provide that changes in respect of certain acts, that have been contained in section 41B, shall not be subject to section 1 (134) - provided section 41B;
- (g) the Bill also makes other amendments of a non-substantive or technical nature.

enacted

**CRIMES (SEXUAL OFFENCES) AMENDMENT BILL, 1981**

No. , 1981.

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**A BILL FOR**

**An Act to amend the Crimes Act, 1900, with respect to homosexual offences  
and for other purposes.**

[MR PETERSEN—11 November, 1981.]

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*Crimes (Sexual Offences) 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 (Sexual Offences) 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.

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**SCHEDULE 1.**

(Sec. 3.)

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

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

Omit "*Unnatural offences.—ss. 79–81B*", insert instead "*Bestiality.—ss. 79, 80*".

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*Crimes (Sexual Offences) Amendment.*

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

- (b) Section 1, matter relating to Part XVI—  
Omit “579”, insert instead “580”.
- 5 (2) (a) Section 61A (1)—  
Omit “this section and sections 61B, 61C and 61D”, insert instead  
“this Part”.
- (b) Section 61A (2)—  
Omit “sections 61B, 61C and 61D”, insert instead “this Part”.
- 10 (3) (a) Section 61G (2)—  
Omit “a girl”.
- (b) Section 61G (2)—  
Omit “carnal knowledge of her but is not satisfied that carnal  
15 knowledge was had without her consent”, insert instead “sexual  
intercourse with that person but is not satisfied that the sexual  
intercourse was had without that person’s consent”.
- (4) (a) Section 62—  
Omit “*carnal knowledge*”, insert instead “*Sexual intercourse*”.
- (b) Section 62—  
20 Omit “this Act”, insert instead “this Part”.
- (c) Section 62—  
After “penetration”, insert “or introduction”.
- (5) (a) Section 66—  
Omit “Whosoever”, insert instead “Any person who”.



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*Crimes (Sexual Offences) Amendment.*

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

## (b) Section 66—

Omit:—

- 5 By any false pretence, false representation, or other fraudulent means, or by the use of any intoxicating drug, induces, or procures, a woman to have illicit carnal connection with a man, or by any such means has such connection with a woman; or,
- 10 having by his language or conduct induced any woman to believe that he is her husband, when in fact he is not, has carnal knowledge of such woman with her consent while she is under such belief;

insert instead:—

- 15 (a) by any false pretence, false representation or other fraudulent means, or by the use of any intoxicating drug, induces or procures a person to have sexual intercourse with another person, or by any such means has sexual intercourse with another person; or
- 20 (b) having by language or conduct induced another person to believe that he or she, as the case may be, is the spouse of the other person, when in fact that is not the case, has sexual intercourse with the other person with the other person's consent while the other person
- 25 is under such belief,

## (6) Section 67—

Omit "Whosoever carnally knows any girl", insert instead "Any person who has sexual intercourse with another person".



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*Crimes (Sexual Offences) Amendment.*

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

## (7) Section 68—

5 Omit “Whosoever attempts carnally to know any girl under the age of ten years, or assaults any such girl with intent carnally to know her”, insert instead “Any person who attempts to have sexual intercourse with another person under the age of 10 years, or assaults another person under the age of 10 years with intent to have sexual intercourse with the other person”.

## 10 (8) (a) Section 69—

After “69.”, insert:—

15 (1) Where on the trial of a person for having sexual intercourse with another person under the age of 10 years the jury are satisfied that the other person was of or above that age, but under the age of 16 years, and the accused had sexual intercourse with the other person, they may find the accused not guilty of the offence charged but guilty of an offence under section 71, and the accused shall be liable to punishment accordingly.

## 20 (b) Section 69—

Omit “Where”, insert instead “(2) Where”.

## (c) Section 69—

25 Omit “for carnally knowing a girl under the age of ten years”, insert instead “for an offence under section 67 as in force immediately before the day appointed and notified under section 2 (2) of the Crimes (Sexual Offences) Amendment Act, 1981”.

## (d) Section 69—

Omit “she”, insert instead “the girl”.

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*Crimes (Sexual Offences) Amendment.*

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

## (e) Section 69—

Omit “that age”, insert instead “the age of 10 years”.

## 5 (f) Section 69—

After “section 71”, insert “as so in force”.

## (9) (a) Section 70—

After “70.”, insert:—

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(1) Where on the trial of a person for having sexual intercourse with another person under the age of 10 years the jury are satisfied that the other person was of or above that age, but under the age of 16 years, but are not satisfied that the accused had sexual intercourse with the other person, and are satisfied that the accused is guilty of an offence under section 72, they may find the accused not guilty of the offence charged but guilty of an offence under section 72, and the accused shall be liable to punishment accordingly.

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## (b) Section 70—

Omit “Where”, insert instead “(2) Where”.

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## (c) Section 70—

Omit “for carnally knowing a girl under the age of ten years”, insert instead “for an offence under section 67 as in force immediately before the day appointed and notified under section 2 (2) of the Crimes (Sexual Offences) Amendment Act, 1981”.

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## (d) Section 70—

Omit “she”, insert instead “the girl”.

## (e) Section 70—

Omit “that age”, insert instead “the age of 10 years”.

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*Crimes (Sexual Offences) Amendment.*

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

## (f) Section 70—

After “section 72”, insert “as so in force”.

## 5 (g) Section 70—

Omit “the said last-mentioned section”, insert instead “section 72 as so in force”.

## (10) Section 71—

10 Omit “Whosoever unlawfully and carnally knows any girl”, insert instead “Any person who unlawfully has sexual intercourse with another person”.

## (11) (a) Section 72—

15 Omit “Whosoever attempts unlawfully and carnally to know any girl”, insert instead “Any person who attempts unlawfully to have sexual intercourse with another person”.

## (b) Section 72—

Omit “such girl with intent carnally to know her”, insert instead “other such person with intent unlawfully to have sexual intercourse with the other person”.

## 20 (12) (a) Section 72A—

Omit “Whosoever knowing a woman or girl to be”, insert instead “Any person who knows that another person is”.

## (b) Section 72A—

25 Omit “has or attempts to have unlawful carnal knowledge of her”, insert instead “and has or attempts to have unlawful sexual intercourse with the other person”.



*Crimes (Sexual Offences) Amendment.*

SCHEDULE 1—*continued.*

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

(13) Section 73—

Omit “73. Whosoever, being a schoolmaster or other teacher, or a father, or step-father, unlawfully and carnally knows any girl of or above the age of ten years, and under the age of seventeen years, being his pupil, or daughter, or step-daughter,” insert instead:—

73. Any person who—

- (a) being a schoolmaster, schoolmistress or other teacher, unlawfully has sexual intercourse with another person of or above the age of 10 years and under the age of 17 years, being a pupil of the person; or
- (b) unlawfully has sexual intercourse with another person of or above the age of 10 years and under the age of 17 years, being a child or step-child of the person,

(14) Section 74—

Omit “74. Whosoever, being a schoolmaster or other teacher, or a father, or step-father, by any means attempts unlawfully and carnally to know any girl of or above the age of ten years, and under the age of seventeen years, being his pupil, or daughter, or step-daughter, or assaults any such girl with intent carnally to know her,” insert instead:—

74. Any person who—

- (a) being a schoolmaster, schoolmistress or other teacher, attempts unlawfully to have sexual intercourse with another person of or above the age of 10 years and under the age of 17 years, being a pupil of the person, or assaults any other such person with intent unlawfully to have sexual intercourse with such other person: or

*Crimes (Sexual Offences) Amendment.*SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

5 (b) attempts unlawfully to have sexual intercourse with another person of or above the age of 10 years and under the age of 17 years, being a child or step-child of the person, or assaults any other such person with intent unlawfully to have sexual intercourse with such other person,

## (15) Section 75—

10 Omit “section 74 shall prevent such schoolmaster, teacher, father or step-father”, insert instead “74 prevents a person”.

## (16) Section 77—

Omit the section, insert instead:—

**Consent no defence except in certain cases.**

15 77. (1) Except as provided in subsection (2), the consent of—

(a) the person upon whom an offence under section 61E (2), 67, 68, 71, 72, 72A, 73 or 74 is alleged to have been committed; or

20 (b) a person under the age of 16 years upon whom an offence under section 61E (1) is alleged to have been committed,

shall be no defence to a charge under any of those provisions.

(2) It shall be a sufficient defence to any charge which renders a person liable to be found guilty of an offence under section 61E, 71 or 72 alleged to have been committed upon another person under the age of 16 years if it is made to appear to the court or jury before which the charge is brought that—

25 (a) the other person consented to the act constituting the offence;

30 (b) the other person was, at the time of the commission of the alleged offence, over the age of 14 years; and



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*Crimes (Sexual Offences) Amendment.*

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

5 (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 16 years.

(3) Subsections (1) and (2) have effect—

10 (a) in relation to a charge under section 76 as in force at any time before the day appointed and notified under section 2 (2) of the Crimes (Sexual Assault) Amendment Act, 1981, in the same way as they have effect in relation to a charge under section 61E (1); and

15 (b) in relation to a charge under section 76A as in force at any time before the day referred to in paragraph (a), in the same way as they have effect in relation to a charge under section 61E (2).

(17) Heading before section 79—

Omit "*Unnatural offences*", insert instead "*Bestiality*".

(18) Section 79—

20 Omit "Whosoever commits the abominable crime of buggery, or bestiality, with mankind, or with any animal, shall", insert instead "Any person who commits an act of bestiality with any animal shall".

(19) Section 80—

25 Omit "Whosoever attempts to commit the said abominable crime, or assaults any person with intent to commit the same with or without the consent of such person, shall", insert instead "Any person who attempts to commit an act of bestiality with any animal shall".



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*Crimes (Sexual Offences) Amendment.*

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

(20) Sections 81–81B—

Omit the sections.

5 (21) (a) Section 418 (1)—

After “inclusive”, insert “as respectively in force at any time”.

(b) Section 418 (1)—

10 After “81B”, insert “as respectively in force at any time before the day appointed and notified under section 2 (2) of the Crimes (Sexual Offences) Amendment Act, 1981”.

(22) (a) Section 476 (6) (c)—

After “81”, insert “as in force at any time before the day appointed and notified under section 2 (2) of the Crimes (Sexual Offences) Amendment Act, 1981”.

15 (b) Section 476 (6) (d)—

After “81A”, insert “as in force at any time before the day appointed and notified under section 2 (2) of the Crimes (Sexual Offences) Amendment Act, 1981”.

(c) Section 476 (6) (d)—

20 After “81B”, insert “as so in force”.

(23) Section 578 (1B)—

After section 578 (1A), insert:—

25 (1B) Subsection (1) has effect in relation to a trial for an offence under section 79, 80, 81, 81A or 81B as respectively in force at any time before the day appointed and notified under section 2 (2) of the Crimes (Sexual Offences) Amendment Act, 1981, in the same way as it has effect in relation to trials for the offences referred to in subsection (1).

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*Crimes (Sexual Offences) Amendment.*

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SCHEDULE 1—*continued.*

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

(24) Section 580—

After section 579, insert:—

5 **Certain charges not to be brought at common law.**

10 580. A person may not be charged with any common law offence in respect of any act committed upon or in relation to another person, being an act which could, but for the amendment of sections 79 and 80 and the repeal of sections 81, 81A and 81B by the Crimes (Sexual Offences) Amendment Act, 1981, have been the subject of a charge for an offence under any of those sections.

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BY AUTHORITY

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