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**Crimes Amendment (Sexual  
Offences) Bill 2003**

**by**

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**Briefing Paper No 10/03**

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## EXECUTIVE SUMMARY

This paper updates [Briefing Paper 21/97 \*The Age of Consent\*](#) by Rachel Simpson and Honor Figgis and focuses on the debate surrounding the issue of an equal age of consent. New South Wales is currently the only state in Australia to discriminate on the basis of sexuality in relation to the age of consent (Section 2: p 1). The *Crimes Act 1900* (NSW) currently establishes the age of consent for heterosexual sexual intercourse at 16 years. However, homosexual sexual intercourse is prohibited until both parties have attained the age of 18 (Section 3: p 2). The age of consent for a sample of countries is also presented, indicating a range of ages from 12 to 18 (Section 4: p 3).

Section 5 presents a summary of the issues surrounding a uniform age of consent, including the arguments for and against any reform (p 4).

The Australian Study of Health and Relationships is the largest study regarding sexual and reproductive health to have ever been conducted in Australia. Section 6 includes some of its findings in relation to the first homosexual experience of male respondents who identified as having had a homosexual experience at some point in their lives (p 8).

On 7 May 2003, the Hon Bob Debus MP tabled the *Crimes Amendment (Sexual Offences) Bill 2003*. The Bill seeks to provide for the equal treatment of sexual offences irrespective of the gender of the offender and victim. One of the results of the proposed reforms to the *Crimes Act 1900* would be an equal age of consent for all persons of 16 years. A feature of the Bill that separates it from earlier private members' bills of a similar nature is its focus on the seriousness of sexual offences committed against children. (Section 7: p 10).

## 1 INTRODUCTION

New South Wales is currently the only state in Australia to discriminate on the basis of sexuality in relation to the age of consent. The *Crimes Act 1900* (NSW) currently establishes the age of consent for heterosexual sexual intercourse at 16 years. However, homosexual sexual intercourse is prohibited until both parties have attained the age of 18.

On 7 May 2003, the Hon Bob Debus MP tabled the *Crimes Amendment (Sexual Offences) Bill 2003*. The Bill seeks to provide for the equal treatment of sexual offences irrespective of the gender of the offender and victim. One of the results of the proposed reforms to the *Crimes Act 1900* would be an equal age of consent for all persons of 16 years. A feature of the Bill that separates it from earlier private members' bills of a similar nature is its focus on the seriousness of sexual offences committed against children.

This paper updates [Briefing Paper 21/97 \*The Age of Consent\* by Rachel Simpson and Honor Figgis](#) and focuses on the debate surrounding the issue of an equal age of consent. The *Crimes Amendment (Sexual Offences) Bill 2003* is also discussed.

## 2 AGE OF CONSENT IN AUSTRALIA

The following table compares the age of consent in Australian states and territories.

Jurisdiction	Heterosexual/Lesbian	Homosexual
New South Wales	16	18
Victoria	16	16
South Australia	17	17
Northern Territory	16	18
Tasmania	17	17
Australian Capital Territory	16	16
Western Australia	16	16*
Queensland**	16	16

Source: Kendall C, *Lesbian and Gay Youth: Why Equality Matters*, Paper presented at the National Conference on Community Legal Centres, September 2001, p 15.

\* Section 322A of the *Criminal Code* (WA) prohibited homosexual intercourse where one of the parties was less than 21 years. However, the section was recently repealed by the *Acts Amendment (Lesbian and Gay Law Reform) Act 2002* which came into operation on proclamation on 21 September 2002 with the effect that there is now a uniform age of consent of 16 in Western Australia.

\*\* Queensland has a uniform age of consent of 16: section 215 *Criminal Code* (Qld). However, the age of consent for anal intercourse, regardless of gender is 18: section 208 *Criminal Code* (Qld).

### 3 NSW LEGISLATION

Division 10 of Part Three of the *Crimes Act 1900* contains various provisions relating to sexual assault offences. Section 66C determines the age of consent for heterosexual sex as being 16. The age of consent for homosexual sex is determined by section 78K to be 18 years.

#### 66C Sexual intercourse - child between 10 and 16

(1) Any person who has sexual intercourse with another person who is of or above the age of 10 years, and under the age of 16 years, shall be liable to imprisonment for 8 years.

(2) Any person who has sexual intercourse with another person who:  
(a) is of or above the age of 10 years, and under the age of 16 years, and  
(b) is (whether generally or at the time of the sexual intercourse only) under the authority of the person, shall be liable to imprisonment for 10 years.

#### 78K - Homosexual intercourse with male between 10 and 18

A male person who has homosexual intercourse with a male person of or above the age of 10 years, and under the age of 18 years, shall be liable to imprisonment for 10 years.

‘Sexual intercourse’ is defined in section 61H as:

- (a) sexual connection occasioned by the penetration to any extent of the genitalia (including a surgically constructed vagina) of a female person or the anus of any person by:
  - (i) any part of the body of another person, or
  - (ii) any object manipulated by another person, except where the penetration is carried out for proper medical purposes, or
- (b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person, or
- (c) cunnilingus, or
- (d) the continuation of sexual intercourse as defined in paragraph (a), (b) or (c).

‘Carnal knowledge’ is defined in section 62(2) as:

sexual connection occasioned by the penetration of the anus of a female by the penis of any person, or the continuation of that sexual connection.

‘Homosexual sexual intercourse’ is defined in section 78G:

- (a) sexual connection occasioned by the penetration of the anus of any male person by the penis of any person,
- (b) sexual connection occasioned by the introduction of any part of the penis of a

person into the mouth of another male person, or  
 (c) the continuation of homosexual intercourse as defined in paragraph (a) or (b).

The *Crimes Act* was amended as recently as 2002 by the *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002* to remove sections 78H – homosexual intercourse with a male under 10, and 78I – attempt, or assault with intent, to have homosexual intercourse with a male under 10. Therefore, the gender of the offender is now deemed irrelevant to the seriousness of a sexual offence committed against a child under the age of ten. Sections 66A and 66B were also amended in 2002 to highlight the seriousness of child sex abuse by increasing the penalty for sexual intercourse, or attempted sexual intercourse with a child under the age of ten, from 20 to 25 years imprisonment.

#### 4 COMPARATIVE POSITION OVERSEAS

The table below compares the age of consent for a variety of countries. Where two ages are listed, sexual activity at the lower age is permissible provided that the younger person does not make a complaint.

Country	M/F Sex	M/M Sex	F/F Sex
Albania	14	14	14
Andorra	16	16	16
Argentina	12/15	12	12/15
Aruba	16	16	16
Austria	14	18	14
Belarus	16	16	16
Belgium	16	16	16
Bosnia	16	16	16
Brazil	14/18	14	14/18
Bulgaria	14/15	14	14/18
Burkina Faso	13	21	21
Canada	14	14	14
Colombia	12/14	14	14
Croatia	14	14	14/18
Czech Republic	15	15	15
Denmark	15	15	15
Estonia	14	16	16
France	15	15	15
Germany	14/16	14	14/16
Greece	15/17	17	15/17
Guadelope	15	15	15
Honduras	14	14	14
Iceland	14	14	14
Ireland	17	17	17
Israel	16	16	16
Italy	14	14	14
Japan	13	13	13
Korea	13	13	13
Kosovo	14	18	14
Liechtenstein	14	18	14
Luxembourg	16	16	16
Malta	12/18	12	12/18
Martinique	15	15	15
Mexico	12	18	18



Monaco	15	15	15
Montenegro	14	14	14
Netherlands	12/16	12	12/16
New Zealand	16	16	16
Norway	16	16	16
Poland	15	15	15
Russia	14/16	14	14/16
San Marino	14/16	14	14/16
Serbia	14	18	14
Slovakia	15	15	15
Slovenia	14	14	14
Spain	13	13	13
Switzerland	16	16	16
Turkey	15/16	18	18
Ukraine	16	16	16
UK	16	16	16

Source: Roberts R and Maplestone P, *The Age of Consent of Gay Men in New South Wales*, 2001, p 28.

## 5 REFORM OF AGE OF CONSENT LAWS

The age of consent laws could be reformed in a number of ways:<sup>1</sup>

1. Retain different ages of consent for male-female and male-male sexual intercourse.
2. Lower age of consent for male-male sexual intercourse.
3. Raise age of consent for male-female sexual intercourse.
4. Introduce two ages of consent: one for parties of the same or a similar age; and one for parties where there is a considerable age difference between the parties, or a party is in a position of trust or authority over the other.

The Model Criminal Code Officers Committee recommended that a separate offence be established with a higher age of consent (an extra two years) in regard to sexual conduct between a young person and a person in a certain type of relationship with them such as schoolteachers, stepparents, foster parents, adoptive parents, legal guardians and custodians, religious instructors, health professionals, counsellors, police and correctional officers.<sup>2</sup>

### 5.1 Arguments for a uniform age of consent of 16 years<sup>3</sup>

The following arguments were noted by the Royal Commission into the NSW Police Service:

<sup>1</sup> [Briefing Paper No 21/97 \*The Age of Consent\*, by Rachel Simpson and Honor Figgis](#), p 13.

<sup>2</sup> [Update to Briefing Paper No 21/97 \*The Age of Consent: An Update\*, by Rachel Simpson](#), p 2.

<sup>3</sup> Unless otherwise stated, the arguments for and against a uniform age of consent have been copied from Briefing Paper No 21/97 *The Age of Consent*, by Rachel Simpson and Honor Figgis, pp 13-18. For further information see Royal Commission into the New South Wales Police Service, *Final Report Volume V: The Paedophile Inquiry*, August 1997, pp 1076-1078.

- The NSW Royal Commission could find not find a rational basis for a continued distinction between the age of consent for heterosexual and homosexual sexual acts. As the Hon Bob Debus MP stated, ‘there is no discernible benefit in maintaining an unequal age of consent. There is, however, a substantial social cost in allowing this inequity to be perpetuated’.<sup>4</sup>
- NSW law, as it currently exists, directly discriminates on the basis of sexuality as there is a higher age of consent for those engaging in homosexual as opposed to heterosexual sex. Such discrimination is inconsistent with the philosophy of anti-discrimination legislation in NSW. NSW is the only state to have an unequal age of consent as the Western Australian *Criminal Code* was reformed in 2002. However, the age of consent remains discriminatory in the Northern Territory where homosexual sex is only permitted where both parties are 18 whereas the age of consent for heterosexual sex is 16.
- *Crimes (Amendment) Act 1984*  
The *Crimes (Amendment) Act 1984* was introduced as a private members’ bill by then Premier Wran. It legalised homosexuality and was therefore drafted in a conservative manner with an expectation that the distinction regarding the age of consent would be subject to reform in the future. The Hon Jan Burnswood MLC has described the current state of the law as a ‘historical accident’.<sup>5</sup>
- It is argued that legislative prohibitions are unlikely to actually deter teenagers from being sexually active. The statutory age of consent has been viewed as arbitrary and unrealistic as many teenagers are sexually active before the age of 16.
- It is increasingly accepted that sexual preference is not determined by youthful encounters but is established by an earlier stage of life.
- Many view homosexuality as an acceptable and natural choice of sexuality.
- The higher age of consent has an adverse effect on public health and education policies as health professionals and social workers are restricted in the services they can provide to homosexual males under the age of 18 for fear of prosecution. The Aids Council of NSW has indicated their support for the *Crimes Amendment (Sexual Offences) Bill 2003* for this reason.<sup>6</sup>
- A higher age of consent leads to extortion and corruption by the police.
- Sexually active adolescent male homosexuals are stigmatised. Research has shown

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<sup>4</sup> ‘Age of consent for gay males falls to 16, under sex reforms’, *SMH*, 7/5/03, p 1.

<sup>5</sup> Hon Jan Burnswoods MLC, Second Reading Speech, *NSWPD*, 21/10/99, p 1725.

<sup>6</sup> ‘Age of consent for gay males falls to 16, under sex reforms’, *SMH*, 7/5/03, p 1.

that gay youth are 3.7 times more likely than their peers to attempt suicide.<sup>7</sup> Gay youth are most likely to attempt suicide between the ages of 15 and 17 when many are realising their sexual identity.<sup>8</sup> Nicholas and Howard conclude that 'more consistent efforts to educate young people, their parents and the wider community toward greater tolerance and inclusion may greatly alleviate the isolation that many gay youth endure during adolescence and, consequently, protect many of them from feeling that death is preferable to being gay'.<sup>9</sup>

- Reinforces homophobia and creates a stereotype that older homosexual males are likely to behave in a predatory manner toward adolescent males.
- Existing laws legitimise sexual harassment and assault within schools of older gay students.
- Lowering the age of consent may encourage young men to stay at home as it removes some of the difficulties associated with their parents viewing their behaviour as criminal.
- Roberts and Maplestone also suggest that legislation as it currently stands creates unnecessary divisions within an already oppressed group.<sup>10</sup> There is some concern that older gay men are reluctant to socialise on any level with younger gay men because of fear of paedophilia accusations. Therefore, young gay males suffer from a loss of support and sharing of valuable life experience.

The Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General released a Report in 1999 regarding sexual offences against the person.<sup>11</sup> The Report found that the age of consent 'effectively amounts to a determination about when young people should be allowed to exercise autonomy and freedom of choice in sexual relationships'.<sup>12</sup> The Model Criminal Code Officers Committee recommended that the age of consent for males and females should be uniform within each jurisdiction regardless of the type of sexual activity and that the age of consent should be uniform between Australian jurisdictions.<sup>13</sup> The Committee, whilst not recommending a precise age, proposed in an

<sup>7</sup> Nicholas J and Howard J, 'Better dead than gay? Depression, suicide ideation and attempt among a sample of gay and straight-identified males aged 18 to 24', *Youth Studies Australia*, 17(4), December 1998, p 28.

<sup>8</sup> Ibid, p 32.

<sup>9</sup> Ibid.

<sup>10</sup> Roberts R and Maplestone P, *The Age of Consent and Gay Men in New South Wales*, 2001, p 8.

<sup>11</sup> Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, Chapter 5, Sexual Offences Against the Person, *Report*, May 1999.

<sup>12</sup> Ibid, p 123.

<sup>13</sup> [Update to Briefing Paper No 21/97](#), n 2, p 1.

earlier discussion paper that an equal age of consent of 16 might be appropriate as that is the age of consent for heterosexual sexual intercourse in many jurisdictions.<sup>14</sup> Therefore it could be argued that 16 is seen as a generally acceptable age for young people to make a decision about sexual relationships.

The following are just some of the groups to have indicated their support for a uniform age of consent:<sup>15</sup>

1. Westmead Hospital and Community Health Services
2. The Federation of Community Legal Centres
3. The National Children and Youth Law Centre
4. Wood Royal Commission 1997
5. Model Criminal Code Officers Committee (1996)
6. Model Criminal Code Officers Committee (1999)
7. Queensland Parliamentary Criminal Justice Committee (1990)
8. Royal Commission on Human Relationships (1977)

## 5.2 Arguments against a uniform age of consent

- Protects young men from psychological or physical harm as physical and emotional development is said to occur two years later in boys. Therefore they need the extra time to determine their sexual identity and preference.
- A reduction in the age of consent could encourage predatory older males and also lead to a progressive relaxation of child sexual abuse laws. The *Crimes Amendment (Sexual Offences) Bill 2003* could be viewed as contradictory in its aims to lower the age of consent for homosexual males but at the same time protect children from abuse.<sup>16</sup>
- Some also argue that lowering the age of consent could increase the opportunities for an expansion of paedophile networks.
- It endorses promiscuous sexual behaviour amongst adolescent boys. The lowering of the age of consent may encourage adolescents to engage in homosexual activity at a younger age.<sup>17</sup>
- It protects vulnerable and impulsive adolescents from such diseases as HIV/AIDS.
- Young men are more likely to experiment with homosexual activity and

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<sup>14</sup> Ibid, p 1.

<sup>15</sup> Roberts and Maplestone, n 10, p 9.

<sup>16</sup> Stewart A, 'The danger of making men out of boys overnight', *Sydney Morning Herald*, 9/5/03, p 11.

<sup>17</sup> Roberts and Maplestone, n 10, p 37.

subsequently be 'seduced' or 'converted' to an unwanted homosexual lifestyle.<sup>18</sup>

- It may encourage male homosexual prostitution.
- The age of consent for females could be raised to 18 to remove the discriminatory aspect of the law. The Hon Gordon Moyes MLC of the Christian Democrats has argued that the age of consent for all people regardless of gender or sexuality should be raised to 18.<sup>19</sup>
- It may encourage a move to have the age of consent lowered further or even abolished.
- 16 year olds are treated as children in most aspects of their life – they cannot vote, hold a driver's licence or watch x-rated movies. Therefore, a move to lower the age of consent is inconsistent with a number of other norms of society.<sup>20</sup>

## 6 THE AUSTRALIAN STUDY OF HEALTH AND RELATIONSHIPS

The Australian Study of Health and Relationships surveyed 19 307 people aged between 16 and 59 years about a range of issues in regard to sexual and reproductive health. It is the largest study of sexual and reproductive health to have been conducted in Australia.<sup>21</sup> A homosexual experience is defined to mean a sexual experience/contact/activity with a person of the same sex. The study found that 5.9% of Australian men and 8.6% of Australian women have had a same-sex sexual experience at some point in their lives.<sup>22</sup> These figures are 5.7% and 5% respectively if non-genital sexual experience is excluded. The following table compares the age at first homosexual experience amongst those who identified as having had a homosexual experience at some point in their lives.

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<sup>18</sup> Ibid, p 34.

<sup>19</sup> 'Age of consent for gay males falls to 16, under sex reforms', *Sydney Morning Herald*, 7/5/03, p 1.

<sup>20</sup> Stewart A, 'The danger of making men out of boys overnight', *Sydney Morning Herald*, 9/5/03, p 11.

<sup>21</sup> Grulich A et al, 'Sex in Australia: Homosexual experience and recent homosexual encounters', *Australian and New Zealand Journal of Public Health*, 27(2), April 2003, p 103.

<sup>22</sup> Ibid, p 161.

**Age At First Homosexual Experience Among Respondents  
Who Reported Homosexual Experience**

	<b>Sexual Identity</b>			
	<b>Heterosexual %</b>	<b>Homosexual %</b>	<b>Bisexual %</b>	<b>Total %</b>
<b>Men</b>				
15 or younger	23.7	24.0	32.4	25.0
16	8.7	6.1	13.7	8.7
17	8.9	11.8	17.2	10.9
18	6.7	12.3	7.9	8.5
19	7.1	4.7	5.2	6.1
20	6.3	4.8	0.1	5.0
21 or older	38.6	36.3	23.5	35.8
Mean	20.1	19.1	18.2	19.6
95% CI	19.2-21.0	18.2-20.1	16.0-20.4	18.9-20.2
Median	19	18	17	18
Minimum	5	10	10	5
Maximum	50	45	44	50
	N=292	N=147	N=76	N=519
<b>Women</b>				
15 or younger	16.2	9.3	10.1	14.6
16	6.1	7.5	9.2	6.7
17	7.8	6.4	11.2	8.1
18	10.3	8.6	17.1	11.3
19	7.6	8.9	7.3	7.7
20	5.4	6.6	4.1	5.3
21 or older	46.6	52.8	41.0	46.3
Mean	21.3	22.3	20.8	21.3
95%CI	20.7-21.9	20.6-24.0	19.7-20.0	20.8-21.9
Median	20	21	19	20
Minimum	7	7	13	7
Maximum	50	46	44	50
	N=572	N=75	N=120	N=777

Source: Grulich A et al, 'Sex in Australia: Homosexual experience and recent homosexual encounters', *Australian and New Zealand Journal of Public Health*, 27(2), April 2003, p 160.

The following table compares the characteristics of the respondents' first homosexual experience in terms of their age relative to their first partner and the status of their relationship with that same partner.

### Characteristics Of First Homosexual Experience

	Men (%) N=519	Women (%) N=778	OR (95% CI)*
<b>Relative age of respondent to partner</b>			
More than 5 years younger	26.5	10.2	0.33 (0.22-0.49)
1-5 years younger	22.6	26.7	1.01 (0.70-1.46)
Same age	40.9	47.9	-
1-5 years older	8.1	11.2	1.18 (0.71-1.94)
More than 5 years older	1.9	4.1	1.79 (0.78-4.10)
<b>Relationship to partner</b>			
Living together	<0.0	0.9	50.82 (5.90-437.69)
Steady partner	7.3	14.8	2.21 (1.3-3.70)
Casual partner/one-night stand	89.7	82.2	-
Sex worker	1.3	0.8	0.67 (0.15-2.92)
Don't remember	<0.1	0.0	-
Refused	1.6	1.3	-
<b>Prior duration of relationship</b>			
Less than 24 hours	18.4	6.7	0.28 (0.18-0.45)
1-7 days	3.7	1.6	0.33 (0.16-0.71)
1-4 weeks	5.4	5.0	0.72 (0.39-1.33)
1-12 months	23.1	23.8	0.79 (0.55-1.14)
1 or more years	47.1	61.1	-
Refused	2.4	1.9	-

Source: Grulich A et al, 'Sex in Australia: Homosexual experience and recent homosexual encounters', *Australian and New Zealand Journal of Public Health*, 27(2), April 2003, p 160.

\* 95% confidence intervals

The results of the study reveal that 44.6% of men who identify as having had a homosexual experience, had their first experience before they were 18 years old. 40.9% were the same age as their partner, and a further 22.6% were between one and five years younger than their partner. However, the study also found that 26.5% of men were more than five years younger than their first partner. The study concludes that 'for neither men nor women was there a significant association between sexual identity and age at first homosexual experience'.<sup>23</sup>

## 7 CRIMES AMENDMENT (SEXUAL OFFENCES) BILL 2003

The *Crimes Amendment (Sexual Offences) Bill 2003* is not the first bill to attempt to introduce an equal age of consent for males and females. The Hon Jan Burnswoods MLC previously introduced private members' bills in 1999 and 2002 – *Crimes Amendment (Sexual Offences) Bill 1999* ('the 1999 Bill') and the *Crimes Amendment (Sexual Offences) Bill 2002* ('the 2002 Bill') in the Legislative Council. The Hon Arthur Chesterfield-Evans MLC put forward a notice of motion for a *Crimes Amendment (Equal Age of Consent) Bill 2003*. The 1999 Bill introduced by Jan Burnswoods was defeated by one vote in a division

<sup>23</sup> Grulich A et al, n 23, p 160.

at the Second Reading stage on 18 November 1999. The 2002 Bill was referred to the Legislative Council Standing Committee on Social Issues. However, due to the dissolution of parliament for the March 2003 election a report has not been able to be produced.

The *Crimes Amendment (Sexual Offences) Bill 2003* was tabled in the Legislative Assembly by the Hon Bob Debus MP on 7 May 2003. The Bill has three main purposes:

- (1) to create a uniform age of consent irrespective of gender or sexuality;
- (2) to provide for the equal treatment of sexual offences regardless of gender or sexuality; and
- (3) to increase the penalties for child sex offences.

## 7.1 Child sexual assault

The child sexual assault provisions are what distinguish this Bill from the private members' bills. If the Bill is passed without amendment:

- Reasonable mistake of age would be removed as a defence to carnal knowledge;
- New aggravated child sexual assault offences would be established; and
- Penalties regarding child sexual assault would be made consistent.

This is in contrast to the 1999 Bill when some members of the Legislative Council argued that it did not adequately address child protection issues.<sup>24</sup>

Currently, the maximum penalty for the section 66A offence of sexual intercourse with a child under 10 years is 25 years imprisonment, whereas the maximum penalty for sexual intercourse with a child between the ages of 10 and 16 is only eight years imprisonment according to section 66C of the Crimes Act 1900 ('the Act'). Clause 9 of the Bill aims to remove this disparity by inserting a new section 66C into the Act. The penalty for sexual intercourse with a child between 10 and 14 would subsequently be increased to 16 years [20 for an aggravated offence], and 10 years if the child were between 14 and 16 [12 years for an aggravated offence]. Circumstances of aggravation include, amongst other things, taking advantage of a victim under the influence of alcohol or a drug.

Clause 14 of the Bill removes section 77(2) from the Act which provided a defence to the carnal knowledge of a child between the age of 14 and 16 years so long as the child consented to the act and the offender believed that the child was over the age of 16. Accordingly, the Bill aims to tighten perceived loopholes to the prohibition of sexual intercourse with a child under the age of 16.

The Bill aims to introduce a regime where sex offences committed against a child under the age of 16 are deemed equal regardless of the gender of either the offender or the victim. Consequently, the Bill repeals a number of sections of the *Crimes Act* that specifically refer to offences involving homosexual intercourse. Accordingly, sections 78G, 78J-L and 78N-R are to be repealed should the bill pass all stages. It is the repeal of sections 78K and 78L that would create an equal age of consent (see below).

<sup>24</sup>

See, for example, Hon J Ryan MLC, *NSWPD*, 18/11/99, p 3193.



Clause 12 of the Bill repeals sections 73-75 which refer to the carnal knowledge of a female by her teacher, schoolmaster, father or stepfather. A new section 73 is to be inserted that removes all references to gender so that any teacher who has sexual intercourse with a pupil aged 16 years is guilty of an offence. Section 78A – Incest is also amended by the Bill so that it no longer refers to an act between male and female family members. Gender-neutral language is adopted so that it is an offence for *any* person to have sexual intercourse with a close family member. Finally, section 91D of the *Crimes Act* is also amended so that the offence of promoting or engaging in acts of child prostitution is the same regardless of the gender of the victim and offender.

The Bill proposes to remove the outdated term ‘carnal knowledge’ from the *Crimes Act*.

Clause 19 inserts section 80AA into the *Crimes Act* to enable a child to be referred to a child protection agency should they be under the authority of a person who committed a sexual offence against them. This would replace section 78D which refers to the guardianship of female victims of incest.

## **7.2 Age of consent**

Clause 18 of the Bill repeals sections 78K and 78L of the *Crimes Act 1900*. The effect of the repeal of sections 78K and 78L – homosexual intercourse, or attempt thereof, with a male between 10 and 18, would be to ensure a uniform age of consent of 16. The bill also ensures the retrospective application of the reduced age of consent by inserting section 49 into the *Crimes Act*. Accordingly, a defence is introduced for consensual homosexual acts that occurred before the commencement of the proposed *Crimes Amendment (Sexual Offences) Act* where both parties are at least 16 years old.

## **8 CONCLUSION**

Similar bills to the *Crimes Amendment (Sexual Offences) Bill 2003* have been introduced in the NSW Parliament on previous occasions without success. Many of the arguments for and against a uniform age of consent have not significantly changed in recent years. However, in contrast to previous bills seeking to introduce a uniform age of consent, the *Crimes Amendment (Sexual Offences) Bill 2003* has been introduced by the Government rather than as a private members bill. The Bill also seeks to enhance the protection of children from sexual offences. The ALP and Liberal Party have indicated that they will permit a conscience vote on the Bill.