

CRIMES (AMENDMENT) ACT, 1984, No. 7

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 7, 1984.

An Act to amend the Crimes Act, 1900, in relation to certain sexual offences.
[Assented to, 31st May, 1984.]

Crimes (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:—

Short title.

1. This Act may be cited as the "Crimes (Amendment) Act, 1984".

Commencement.

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

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- (2) Except as provided by 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.

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

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE CRIMES ACT, 1900.

- (1) (a) Section 1, matter relating to Part III—
 - (i) Omit "78F", insert instead "80".
 - (ii) Omit "(10) *Unnatural offences.*—ss. 79–81B."

Crimes (Amendment).

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

(b) Section 1, matter relating to Part XVI—

Omit “579”, insert instead “580”.

(2) Section 4 (4)—

After section 4 (3), insert:—

(4) In this Act, except in so far as the context or subject-matter otherwise indicates or requires, a reference to an offence mentioned in a specified provision of this Act that has been amended or repealed is, or includes, a reference to an offence mentioned in the provision as in force before its amendment or repeal.

(3) Section 62 (2)—

At the end of section 62, insert:—

(2) In this Act, “carnal knowledge” includes 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.

(4) Sections 78G–78T—

After section 78F, insert:—

Definition of “homosexual intercourse” for sections 78H–78O.

78G. In sections 78H–78O, “homosexual intercourse” means—

- (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).

Crimes (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.***Homosexual intercourse with male under 10 (cf. s. 67).**

78H. A male person who has homosexual intercourse with a male person under the age of 10 years shall be liable to penal servitude for life.

Attempt, or assault with intent, to have homosexual intercourse with male under 10 (cf. s. 68).

78I. A male person who attempts to have homosexual intercourse with a male person under the age of 10 years, or assaults any such male person with intent to have homosexual intercourse with him, shall be liable to penal servitude for 14 years.

Trial for homosexual intercourse offence—male in fact between 10 and 18 (cf. ss. 69, 70).

78J. (1) Where on the trial of a male person for having homosexual intercourse with a male person under the age of 10 years, the jury is satisfied that the secondmentioned person was of or above that age, but under the age of 18 years, and that the accused had homosexual intercourse with that person, it may acquit him of the offence charged and find him guilty of an offence under section 78K, and he shall be liable to punishment accordingly.

(2) Where on the trial of a male person for having homosexual intercourse with a male person under the age of 10 years, the jury is satisfied that the secondmentioned person was of or above that age, but under the age of 18 years, but is not satisfied that the accused had homosexual intercourse with that person, and is satisfied that he was guilty of an offence under section 78L, it may acquit him of the offence charged and find him guilty of an offence under section 78L, and he shall be liable to punishment accordingly.

Crimes (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.***Homosexual intercourse with male between 10 and 18 (cf. s. 71).**

78K. 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 penal servitude for 10 years.

Attempt, or assault with intent, to have homosexual intercourse with male between 10 and 18 (cf. s. 72).

78L. A male person who attempts to have homosexual intercourse with a male person of or above the age of 10 years, and under the age of 18 years, or assaults any such male person with intent to have homosexual intercourse with him, shall be liable to penal servitude for 5 years.

Homosexual intercourse with idiot or imbecile (cf. s. 72A).

78M. A male person who, knowing a male person to be an idiot or imbecile, has or attempts to have homosexual intercourse with him shall be liable to penal servitude for 5 years.

Homosexual intercourse by teacher, &c. (cf. s. 73).

78N. A male person who, being a schoolmaster or other teacher, or a father, or step-father, has homosexual intercourse with any male person of or above the age of 10 years, and under the age of 18 years, being his pupil, son or step-son, shall be liable to penal servitude for 14 years.

Attempt, or assault with intent, to have homosexual intercourse with pupil, &c. (cf. s. 74).

78O. A male person who, being a schoolmaster or other teacher, or a father, or step-father, by any means attempts to have homosexual intercourse with any male person of or above the age of 10 years, and under the age of 18 years, being his pupil, son or step-son, shall be liable to penal servitude for 7 years.

Crimes (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.***Alternative charge (cf. s. 75).**

78P. Nothing in section 78N or 78O prevents a schoolmaster, teacher, father or step-father from being prosecuted under section 78K or 78L.

Acts of gross indecency (cf. s. 81A).

78Q. (1) Any male person who commits, or is a party to the commission of, an act of gross indecency with a male person under the age of 18 years shall be liable to imprisonment for 2 years.

(2) Any person who solicits, procures, incites or advises any male person under the age of 18 years to commit or to be a party to the commission of an act of homosexual intercourse, or an act of gross indecency, with a male person shall be liable to imprisonment for 2 years.

Consent no defence in certain cases (cf. s. 77).

78R. The consent of a male person the subject of the charge shall be no defence to any charge under section 78H, 78I, 78K, 78L, 78M, 78N, 78O or 78Q.

Proceedings in camera in certain cases (cf. s. 77A).

78S. Any proceedings or any part of any proceedings in respect of an offence under section 78H, 78I, 78K, 78L, 78M, 78N, 78O or 78Q or of an offence of attempting, or of conspiracy or incitement, to commit an offence under any of those sections shall, if the Court so directs, be held in camera.

Crimes (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.***Limitations (cf. ss. 78, 78F).**

78T. (1) No prosecution in respect of any offence under section 78K or 78L, shall, if the person upon whom the offence is alleged to have been committed was at the time of the alleged offence over the age of 16 years and under the age of 18 years, be commenced after the expiration of 12 months from the time of the alleged offence.

(2) No prosecution for an offence under section 78H, 78I, 78K, 78L, 78M, 78N, 78O or 78Q or for an offence of attempting, or of conspiracy or incitement, to commit an offence under any of those sections shall, if the accused was at the time of the alleged offence under the age of 18 years, be commenced without the sanction of the Attorney General.

(5) *Italicised heading before section 79—*

Omit the heading.

(6) Section 79—

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".

(7) Section 80—

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".

(8) Sections 81–81B—

Omit the sections.

Crimes (Amendment).

SCHEDULE 1—*continued.*

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

(9) Section 418 (1)—

After “inclusive,” insert “or under sections 78H to 78Q inclusive.”

(10) Section 476 (6) (d)—

After “61,” insert “78Q.”

(11) Section 578 (1)—

After “78B,” insert “78H, 78I, 78K, 78L, 78M, 78N, 78O, 78Q.”

(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 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 (Amendment) Act, 1984, have been the subject of a charge for an offence under any of those sections.
