

Crimes (Amendment) Bill

No.

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LEGISLATIVE COUNCIL

Read 1° 24 September 1985

(Brought in by the Honourable J. H. Kennan)

A BILL

To amend and codify the law relating to the offence of attempt, to reform the law relating to certain offences against the person and for those and certain other purposes to amend the *Crimes Act* 1958 and Part VIII. of the *Magistrates' Courts Act* 1971 and for other purposes.

Crimes (Amendment) Act 1985

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purpose.

- 5 1. The purpose of this Act is to amend and codify the law relating to the offence of attempt, to reform the law relating to certain offences against the person and to make certain amendments to the *Crimes Act* 1958 and the *Magistrates' Courts Act* 1971.

Commencement.

2. This Act comes into operation on a day or days to be proclaimed.

10 **Principal Act.**

3. In this Act, the *Crimes Act* 1958 is called the Principal Act.

No. 6231.
Reprinted to No.
10094 and
amended by No.
10152.

PART 2—ATTEMPTS

New Division 12 inserted in Part I. of the *Crimes Act 1958.*

4. After Division 11 of Part I. of the Principal Act there shall be inserted the following Division:

“Division 12—Attempts”

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Attempt.

“321M. A person who attempts to commit an indictable offence is guilty of the indictable offence of attempting to commit that offence.”

Conduct constituting attempt.

“321N. (1) A person is not guilty of attempting to commit an offence unless the conduct of the person is— 10

(a) more than merely preparatory to the commission of the offence; and

(b) immediately and not remotely connected with the commission of the offence. 15

(2) For a person to be guilty of attempting to commit an offence, the person must—

(a) intend that the offence the subject of the attempt be committed; and

(b) intend or believe that any fact or circumstance the existence of which is an element of the offence will exist at the time the offence is to take place. 20

(3) A person may be guilty of attempting to commit an offence despite the existence of facts of which he or she is unaware which make the commission of the offence attempted impossible.” 25

Attempts to commit offence outside Victoria.

“321O. (1) A person in Victoria who attempts to commit outside Victoria an offence which, if committed in whole or in part in Victoria, would be an indictable offence against the law of Victoria is guilty of the indictable offence of attempting to commit that offence. 30

(2) A person outside Victoria who attempts to commit an indictable offence in Victoria is guilty of the indictable offence of attempting to commit that offence.”

Penalties for attempt.

“321P. (1) A person convicted of attempting to commit an offence is liable—

- 5 (a) unless the relevant offence is murder, to a penalty not exceeding the maximum penalty fixed or prescribed by law for the relevant offence; or
- (b) if—
- (i) a maximum penalty for the relevant offence is not fixed or prescribed by law; or
- 10 (ii) the relevant offence is murder—
to imprisonment for a term of not more than 15 years.

 (2) A person convicted under this Division of attempting to commit an offence for which, under another enactment, a penalty is provided that is lower than that provided under sub-section (1), the person is

15 liable only to that lower penalty.

 (3) In this section, a reference to a maximum penalty includes, in relation to an offence against the law of a place outside Victoria, a reference to a maximum penalty fixed or prescribed by a law of that place.”

20 Limitations on prosecution.

“321Q. (1) Any provision to which this section applies has the same effect with respect to an offence of attempting to commit an offence as it has with respect to the offence attempted.

 (2) This section applies to provisions of any of the following

25 descriptions made by or under any enactment:

- (a) Provisions concerning the power to institute proceedings;
- (b) Provisions conferring a power of search in respect of persons or property;
- 30 (c) Provisions conferring a power of seizure or detention of property;
- (d) Provisions whereby a person may not be convicted or committed for trial on the uncorroborated evidence of one witness (including any provision requiring the evidence of not less than two credible witnesses);
- 35 (e) Provisions conferring a power to fine or of forfeiture, including any power to deal with anything liable to be forfeited;
- (f) Provisions concerning the liability of a person for the commission of an offence by a body corporate.

40 (3) A person is not liable to be convicted in respect of the same conduct of both—

- (a) an offence under section 321M; and

(b) an offence under any other enactment of attempting to commit an offence.”

Application of Division.

“321R. (1) This Division applies to and in respect of an offence under any other enactment of attempting to commit an offence. 5

(2) The preceding provisions of this Division do not apply to an attempt—

(a) to aid, abet, counsel or procure the commission of an indictable offence; or

(b) to commit the offence of conspiracy whether that offence is a statutory offence or an offence at common law.” 10

Abolition of attempt at common law.

“321S. The offence of attempt at common law is abolished.”.

Repeal of section 14 of Crimes Act.

5. Section 14 of the Principal Act is repealed. 15

Amendment of Magistrates' Courts Act.

6. After section 70 of the *Magistrates' Courts Act* 1971 there shall be inserted the following section:

No. 8184.
Reprinted to No.
9902 and
amended by Nos.
9945, 9967,
10013, 10077,
10080, 10084,
10101, 10146,
10152 and
10167.

Verdict of attempt on certain trials.

“70A. If a Court finds a person not guilty of any of the offences referred to in section 69 (1) (except section 69 (1) (l)), the Court may find the person guilty of having attempted to commit the offence charged.”. 20

Transitional provision.

7. The Principal Act, as amended by this Part, and the *Magistrates' Courts Act* 1971 as so amended, do not apply to or in respect of an offence of attempt alleged to have been committed before the commencement of section 4. 25

PART 3—OFFENCES AGAINST THE PERSON

Amendment of Part I. of Crimes Act.

8. (1) Sections 11, 12 and 13 of the Principal Act are repealed.

5 (2) For sub-divisions (4) to (7) (both inclusive) of Division 1 of Part I of the Principal Act there shall be substituted the following sub-division:

“(4) *Offences against the person*”

Definitions.

‘15. In this sub-division—

10 “**Injury**” includes unconsciousness, hysteria, pain and any substantial impairment of bodily function.

“**Serious injury**” includes a combination of injuries.’

Causing serious injury intentionally.

15 “16. A person who, without lawful excuse, intentionally causes serious injury to another person is guilty of an indictable offence.

Penalty: Imprisonment for fifteen years.”

Causing serious injury recklessly.

“17. A person who, without lawful excuse, recklessly causes serious injury to another person is guilty of a indictable offence.

20 Penalty: Imprisonment for ten years.”

Causing injury intentionally or recklessly.

“18. A person who, without lawful excuse, intentionally or recklessly causes injury to another person is guilty of an indictable offence.

Penalty: Imprisonment for seven years.”

25 **Offence to administer certain substances.**

“19. (1) A person who—

30 (a) without lawful excuse, administers to or causes to be taken by another person any substance which is capable, and which the first-mentioned person knows is capable, in the circumstances, of interfering substantially with the bodily functions of the other person; and

(b) knows that the other person has not consented to the administration or taking of the substance or is reckless as to whether or not the other person has so consented—

35 is guilty of an indictable offence.

Penalty: Imprisonment for seven years.

(2) For the purposes of sub-section (1)—

- (a) a person is not to be taken to have consented to the administration or taking of a substance if, had the person known the likely consequences, the person would not be likely to have consented to the administration or taking; and
- (b) a substance shall be taken to interfere substantially with bodily functions if the substance is capable of inducing unconsciousness or sleep.”

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Threats to kill.

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“20. A person who, without lawful excuse, makes to another person a threat intending that, or being reckless as to whether or not that other person would fear it would be carried out, to kill that other person or any other person is guilty of an indictable offence.

Penalty: Imprisonment for fifteen years.”

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Threats to inflict serious injury.

“21. A person who, without lawful excuse, makes to another person a threat intending that, or being reckless as to whether or not, that other person would fear it would be carried out, to inflict serious injury on that other person or any other person is guilty of an indictable offence.

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Penalty: Imprisonment for five years.”

Conduct endangering life.

“22. A person who, without lawful excuse, recklessly engages in conduct that places or may place another person in danger of death is guilty of an indictable offence.

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Penalty: Imprisonment for ten years.”

Conduct endangering persons.

“23. A person who, without lawful excuse, recklessly engages in conduct that places or may place another person in danger of serious injury is guilty of an indictable offence.

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Penalty: Imprisonment for seven years.”

Negligently causing serious injury.

“24. A person who by negligently doing or omitting to do an act causes serious injury to another person is guilty of an indictable offence.

Penalty: Imprisonment for three years.”

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Setting traps etc. to kill.

5 “25. A person who sets a trap or device with the intention of killing another person (whether a trespasser or not) or being reckless as to whether or not another person (whether a trespasser or not) is killed is guilty of an indictable offence.

Penalty: Imprisonment for fifteen years.”

Setting traps etc. to cause serious injury.

10 “26. A person who sets a trap or device with the intention of causing, or being reckless as to whether or not there is caused, serious injury to another person (whether a trespasser or not) is guilty of an indictable offence.

Penalty: Imprisonment for ten years.”

Extortions with threat to kill.

15 “27. A person who makes a demand of another person—
 (a) with a threat to kill or inflict injury on a person (other than the offender or an accomplice of the offender); or
 (b) with a threat in circumstances where, if the threat were carried out, the life of a person (other than the offender or an accomplice of the offender) would be endangered—
 20 is guilty of an indictable offence.

Penalty: Imprisonment for fifteen years.”

Extortion with threat to destroy property etc.

25 “28. A person who makes a demand of another person with a threat to destroy, or endanger the safety of, a building, structure in the nature of a building, bridge, mine, aircraft, vessel, motor vehicle, railway engine or railway carriage is guilty of an indictable offence.

Penalty: Imprisonment for ten years.”

Using firearm to resist arrest etc.

30 “29. (1) A person who makes or attempts to make any use of a firearm or imitation firearm with intent to resist or prevent the lawful apprehension or detention of himself or herself or any other person is guilty of an indictable offence.

Penalty: Imprisonment for fourteen years.

35 (2) A person who commits an offence against sub-section (1) in respect of the lawful apprehension or detention of himself or herself for any other offence committed by him or her is liable to the penalty provided by that sub-section in addition to any penalty to which he or she may be liable for that other offence.

(3) In this section—

- (a) “**Firearm**” means a firearm within the meaning of section 3 of the *Firearms Act* 1958, a smooth bore shot-gun or a prohibited weapon within the meaning of that Act; and
- (b) “**Imitation firearm**” means anything which has the appearance of being a firearm whether or not it is capable of discharging any shot or other missile.’

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Threatening injury to prevent arrest.

“30. A person who threatens injury to any other person or to any property with intent—

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- (a) to prevent or hinder the lawful apprehension or detention of himself or herself or any other person; or
- (b) to prevent or hinder a member of the police force from investigating in a lawful manner any act or circumstance which reasonably calls for investigation by a member of the police force—

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is guilty of an indictable offence.

Penalty: Imprisonment for ten years.”

Assaults.

‘31. (1) A person who—

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- (a) assaults or threatens to assault another person with intent to commit an indictable offence; or
- (b) assaults or threatens to assault, resists or intentionally obstructs—
- (i) a member of the police force in the due execution of duty; or
- (ii) a person acting in aid of a member of the police force— knowing that the member or person is such a member or person; or
- (c) assaults or threatens to assault a person with intent to resist or prevent the lawful apprehension or detention of a person—

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is guilty of an indictable offence.

Penalty: Imprisonment for five years.

(2) In sub-section (1), “**assault**” means the direct or indirect application of force by a person to the body of, or to clothing or equipment worn by, another person where the application of force is—

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- (a) without lawful excuse; and

(b) with intent to inflict or being reckless as to the infliction of bodily injury, pain, discomfort, damage, insult or deprivation of liberty—

5 and results in the infliction of any such consequence (whether or not the consequence inflicted is the consequence intended or foreseen).

(3) In sub-section (2)—

“Application of force” includes—

(a) application of heat, light, electric current or any other form of energy; and

10 (b) application of matter in solid, liquid or gaseous form.’.

PART 4—MISCELLANEOUS AMENDMENTS

Amendment of Crimes Act—Procedure.

9. The Principal Act is amended as follows:

15 (a) After section 321 (3) there shall be inserted the following sub-section:

“(4) A presentment at the Supreme Court or the County Court of a person for an offence against this section shall not be made without the approval of the Director of Public Prosecutions or of a person authorized by the Director of Public Prosecutions to give approval for the purposes of this sub-section.”;

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(b) After section 321F (3) there shall be inserted the following sub-section:

“(4) A presentment at the Supreme Court or the County Court of a person for an offence of conspiracy to cheat and defraud or conspiracy to defraud shall not be made without the approval of the Director of Public Prosecutions or of a person authorized by the Director of Public Prosecutions to give approval for the purposes of this sub-section.”;

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30 (c) After section 353 (2) there shall be inserted the following sub-section:

“(2A) A copy of a presentment of a person for an indictable offence shall be served on the person in accordance with rules of court.”;

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35 (d) After section 391A there shall be inserted the following section:

Hearing of application for exclusion of evidence.

“391B. If an accused person arraigned on an indictment or presentment before the Supreme Court or the County Court seeks to satisfy the Court (whether before or after the empanelling of a jury) that it should exercise a discretion to exclude evidence, the Court may, in hearing and determining

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the question, hear evidence called on behalf of the accused person before it hears evidence called on behalf of the Crown.”;

(e) In the Sixth Schedule, in Rule 4 (1) after the word “charged” there shall be inserted the words “and an indication as to which of those witnesses, and the names of any other witnesses, the Crown proposes to call at the trial”; 5

(f) In the Sixth Schedule, after Rule 4 (2), there shall be inserted the following:

“(2A) There shall be endorsed on a presentment— 10

(a) a note to the effect that the accused person should take the presentment to the solicitor acting on behalf of the accused person or, if the accused person has not yet engaged a solicitor, to a solicitor or to the Legal Aid Commission; and 15

(b) a note to solicitors requesting them to inform the Criminal Trial Listing Directorate of their interest in the matter.”.

Amendment of Crimes Act—rape of married person.

10. For section 62 of the Principal Act, for sub-section (2) there shall be substituted the following sub-section: 20

“(2) The existence of a marriage does not constitute, or raise any presumption of, consent by a person to an act of sexual penetration with another person or to an indecent assault (with or without aggravating circumstances) by another person.”. 25

Amendment of Magistrates’ Courts Act.

11. In section 69 (1) of the *Magistrates’ Courts Act* 1971, for paragraphs (e) and (f) there shall be substituted the following paragraph:

“(e) with an offence against section 18, 19, 21, 23, 24 or 31 of the *Crimes Act* 1958;” 30

No. 8184.
Reprinted to No.
9902 and
amended by Nos.
9945, 9967,
10013, 10077,
10080, 10101,
10146, 10152,
10167.