

Crimes (Sexual Offences) Bill

NOTES ON CLAUSES

PREAMBLE sets out the general policies embodied in the Bill.

Clause 1 is a provision in the usual form as to the short title, citation of the *Crimes Act 1958* as the Principal Act, and proclamation of the date of commencement.

Clause 2 is a provision in the usual form setting out the operation of the Principal Act during the period of transition from the time of the passing of the amending Bill to the date of its commencement.

Clause 3 is a consequential amendment of the Principal Act.

Sub-clause (1) substitutes a new list of sub-divisions in *Division 1* of *Part I*.

It inserts a series of new sections 44–62 set out under a new list of sub-divisions as follows:

- (8) Sexual Assaults, sections 44–46.
- (8A) Sexual Offences Against Young Persons, sections 47–50.
- (8B) Acts of Sexual Penetration with Intellectually Defective Persons, section 51.
- (8C) Incest, sections 52–53.
- (8D) Procurement, Abduction &c., sections 54–57.
- (8E) Unnatural Offences, section 58.
- (8F) Prostitution &c., sections 59–61.
- (8G) Abrogation of Obsolete Rules of Law, section 62.

Sub-clause (2) repeals sections 68, 69 and 70 of the Principal Act.

Clause 4 proposes amendments to *Section 2A* of the Principal Act.

Paragraph (a) proposes a new sub-section (1).

Paragraphs (b) and (c) insert general interpretation provisions which define “brothel”, “drug of addiction”, and “rape” for the purposes of the new provisions in the Bill.

Paragraph (d) inserts new sub-sections (2) and (3) in *Section 2A* of the Principal Act. The sub-sections provide general interpretation provisions which define “an act of sexual penetration”.

Clause 5 sets out the proposed new sub-divisions of *Division 1* of the Principal Act and the new sections to be in the Act.

Proposed Section 44—

Sub-section (1) provides that indecent assault is an indictable offence and carries a maximum penalty of five years’ imprisonment.

Sub-section (2) provides that indecent assault accompanied by aggravating circumstances is an indictable offence and subject to a maximum penalty of ten years’ imprisonment.

Sub-section (3) provides that where an indecent assault is committed, whether or not accompanied by aggravating circumstances, upon a person under 16 years that consent is no defence.

Paragraphs (a), (b) and (c) insert new exceptions to the defence rule where—

the accused was, or believed on reasonable grounds that he was, married to the person;

the accused believed on reasonable grounds that the person was of or above the age of 16 years; or the accused was not more than two years older than the person.

Proposed Section 45—

Sub-section (1) provides that rape is an indictable offence and carries a maximum penalty of ten years' imprisonment.

Sub-section (2) provides that attempted rape or assault with intent to commit rape is an indictable offence and carries a maximum penalty of five years' imprisonment.

Sub-section (3) provides that rape accompanied by aggravating circumstances is an indictable offence and subject to a maximum penalty of twenty years' imprisonment.

Sub-section (4) provides that attempted rape, or assault with intent to commit rape, accompanied by aggravating circumstances is an indictable offence and carries a maximum penalty of ten years' imprisonment.

Proposed Section 46—

Sub-section (1) is new. It sets out the circumstances which are defined as "aggravating circumstances" for the purposes of the Bill.

Sub-section (2) inserts a general interpretation provision which defines "offensive weapon" in relation to section 77 (1) of the Principal Act.

Sub-section (3) inserts a new provision that where a person is found guilty of rape, an attempt to rape, assault with intent to commit rape or indecent assault, evidence may be given that the convicted person has previously been convicted of one of those offences.

Sub-section (4) proposes that where the trial judge is satisfied that the convicted person has previously been found guilty of a sexual assault specified in sub-section (3) he may direct that an entry be made upon the conviction record that the convicted person was at trial just concluded found guilty of an offence with aggravating circumstances.

Sub-section (5) proposes that where an entry is made upon the conviction record under sub-section (2) the person shall be deemed to have been found guilty of the offence with aggravating circumstances.

Proposed Section 47—

Sub-section (1) provides that sexual penetration of a child under the age of ten years is an indictable offence and subject to a maximum penalty of twenty years' imprisonment.

Sub-section (2) provides that attempted sexual penetration of a child under ten years, or assault of a child under ten years with intent to take part in an act of sexual penetration is an indictable offence and carries a maximum penalty of ten years' imprisonment.

Sub-section (3) proposes that consent by a child is no defence to a charge under sub-sections (1) and (2).

Proposed Section 48—

Sub-section (1) is new. It prohibits sexual penetration outside marriage with a person who is of or above the age of ten years but under the age of sixteen years and provides that such an act is an indictable offence and, subject to sub-section (3), subject to a maximum penalty of ten years' imprisonment.

Sub-section (2) provides that attempted sexual penetration outside marriage with a person of or above the age of ten years but under the age of sixteen years, or assault of such a person with intent to take part in an act of sexual penetration outside marriage, is an indictable offence and subject to a maximum penalty of five years' imprisonment.

Sub-section (3) is new. It proposes that where a person commits an offence against sub-section (1) or (2) and the person on whom the offence is committed is either generally or at the time the offence is committed under the care, supervision or authority of the offender, the maximum penalty will be:

- in relation to an offence under sub-section (1), fifteen years; and
- in relation to an offence under sub-section (2), seven years.

Sub-section (4) provides that consent is no defence against sub-sections (1), (2) or (3).

Paragraphs (a) and (b) specify exceptions to the defence rule where the accused believed the person was of or over sixteen years or the accused was not more than two years older than the person.

Sub-section (5) provides a further exception to the defence rule where the accused believed on reasonable grounds that he was married to the person.

Sub-section (6) prohibits a prosecution under Section 48 more than twelve months after the commission of the offence where the victim is of or over the age of twelve years.

Proposed Section 49—

Sub-section (1) provides that it is an indictable offence for a person to take part in an act of sexual penetration outside marriage with a person who is of sixteen but under eighteen years. The offence carries a maximum penalty of two years' imprisonment.

Sub-section (2) provides that an attempted act of sexual penetration outside marriage with a person who is of sixteen but under eighteen years is an indictable offence carrying a maximum penalty of one year's imprisonment.

Sub-section (3) provides that where a person commits an offence under sub-section (1) and is in a position of care, supervision or authority over the young person, the offender is liable to a maximum penalty of three years' imprisonment.

Sub-section (4) provides that consent is no defence to an offence committed under the Section unless the accused believed on reasonable grounds that the person was of or above eighteen years; the person had previously experienced sexual penetration; or the accused is not more than five years older than the person.

Sub-section (5) inserts a further defence where the accused believed on reasonable grounds that he was married to the person.

Sub-section (6) provides that no prosecution may be brought more than twelve months after the offence.

Proposed Section 50—

Sub-section (1) provides that an act of gross indecency by, with or in the presence of a person under sixteen years or the procuring, inciting or attempting to procure an act of gross indecency by, with or in the presence of a person under sixteen years is an indictable offence and carries a maximum penalty of two years' imprisonment.

Sub-section (2) stipulates that where the victim was either generally or at the time of the commission of the offence under the care, supervision or authority of the offender or the offender had previously been convicted of gross indecency with or in relation to a person under sixteen years a different maximum penalty of three years' imprisonment will apply.

Sub-section (3) provides that consent is no defence to a charge under Section 49 unless one of the exceptions listed in paragraphs (a) or (b) apply:

—the accused believed on reasonable grounds that the person was of or over sixteen years; or

—the accused was not more than two years older than the person.

Sub-section (4) is new. It provides a further exception to the defence rule where the accused believed on reasonable grounds that he was married to the person on whom the offence was committed.

Sub-section (5) prohibits any prosecution under Section 50 without the consent of the Attorney-General.

Proposed Section 51—

Sub-section (1) provides that specified employees who take part or attempt to take part in an act of sexual penetration or assault with intent to take part in an act of sexual penetration with a person under care, treatment, supervision or control in a specified institution and who is mentally ill or intellectually defective is an indictable offence subject to a maximum penalty of five years' imprisonment.

Sub-section (2) proposes that attempted sexual penetration of or assault with intent to sexually penetrate a patient or person who is mentally ill or intellectually defective by a person who has the care or charge of such a person is an indictable offence and carries a maximum penalty of five years' imprisonment.

Sub-section (3) inserts definitions of certain words used in sub-sections (1) and (2).

Sub-section (4) provides that consent is no defence to a charge under Section 51 unless the accused was or believed on reasonable grounds that he was married to the victim.

Sub-section (5) stipulates that a person cannot be convicted of an offence against Section 51 upon the evidence of one witness without corroboration.

Proposed Section 52—

Sub-section (1) provides that the person who takes part in an act of sexual penetration with a person of or above the age of ten years and who he knows to be his child, other lineal descendent or step-child commits an indictable offence and is subject to a maximum penalty of twenty years' imprisonment.

Sub-section (2) provides that a person who attempts to take part in an act of sexual penetration with a person of or above ten years whom he knows to be his child, lineal descendent or step-child or who assaults any such person with intent to have sexual intercourse commits an indictable offence and is subject to a maximum penalty of ten years' imprisonment.

Sub-section (3) provides that a person of or over eighteen years who takes part in an act of sexual intercourse with a person known to be his father, mother, other lineal ancestor, step-father or step-mother commits an indictable offence and is subject to a maximum penalty of five years' imprisonment.

Sub-section (4) provides that a person who takes part in an act of sexual penetration with a person of or over ten years who is his sister, half-sister, brother or half-brother commits an indictable offence which carries a maximum penalty of seven years' imprisonment.

Sub-section (5) provides that a person who attempts to take part in an act of sexual penetration with a person who is of or above the age of ten years and who is a sister, half-sister, brother or half-brother or who assaults such a person with intent to take part in an act of sexual penetration, commits an indictable offence that is subject to a maximum penalty of five years' imprisonment.

Sub-section (6) stipulates that consent is no defence to a charge under Section 52.

Sub-section (7) stipulates that no prosecution of a person under sixteen years for an offence against Section 52 may be commenced without the consent of the Attorney-General.

Proposed Section 53—

Sub-section (1) provides a defence against charges under Section 52 where coercion is involved.

Sub-section (2) inserts a presumption of knowledge of relationship for the purposes of a charge under Section 52.

Sub-section (3) inserts a presumption of relationship for the purposes of charges under Section 52.

Proposed Section 54—

Sub-section (1) provides that threat or intimidation to procure or attempt to procure a person to take part in an act of sexual penetration outside

marriage or false pretences, false representation or other fraudulent means used to procure or attempted to procure sexual penetration outside marriage is an indictable offence and carries a maximum penalty of five years' imprisonment.

Sub-section (2) stipulates that a person cannot be convicted under Section 54 upon the evidence of one witness without corroboration.

Proposed Section 55—

Sub-section (1) provides that the administration of any drug matter or thing or causing any drug matter or thing to be taken with the intent to render a person incapable of resistance so that the person will take part in an act of sexual penetration outside marriage is an indictable offence and carries a maximum penalty of ten years' imprisonment.

Sub-section (2) stipulates that a person cannot be convicted under Section 55 on the evidence of one witness without corroboration.

Proposed Section 56 provides that the taking away of another person by force or detaining a person against their will with the intent of marrying the person, of taking part in an act of sexual penetration, that the person should marry a third person or that the person should take part in an act of sexual penetration with a third person is an indictable offence and subject to a maximum penalty of ten years' imprisonment.

Proposed Section 57 provides that the taking of a person under the age of eighteen years out of the possession and against the will of his father, mother or other person having lawful charge of him with the intention that the person should take part in an act of sexual penetration outside marriage is an indictable offence and carries a maximum penalty of five years' imprisonment.

Proposed Section 58—

Sub-section (1) provides that bestiality is an indictable offence and carries a maximum penalty of five years' imprisonment.

Sub-section (2) provides that attempted bestiality is an indictable offence and subject to a maximum penalty of two years' imprisonment.

Sub-section (3) inserts in paragraphs (a), (b), (c) and (d) those acts which are deemed to be acts of bestiality for the purposes of Section 58.

Sub-section (4) stipulates that the law relating to buggery is only as prescribed by the Principal Act and that no prosecution may be otherwise instituted.

Proposed Section 59—

Sub-section (1) provides that the procurement or attempted procurement of a person under the age of eighteen to take part in an act of sexual penetration outside marriage with a third person or a person under the age of eighteen years or to become a prostitute or an inmate of a brothel is an indictable offence and carries a maximum penalty of five years' imprisonment.

Sub-section (2) provides that no person may be convicted of an offence under Section 59 on the evidence of one witness without corroboration.

Proposed Section 60 prohibits the owner, occupier or manager of any premises from inducing or allowing any unmarried person under the age of eighteen years to enter or remain upon such premises for the purposes of taking part in an act of sexual penetration. Such action will be an indictable offence and where the person is aged under eighteen years the maximum penalty proposed is ten years' imprisonment and where the person is of or over the age of thirteen but under the age of eighteen the maximum penalty will be five years' imprisonment.

Proposed Section 61—

Sub-section (1) provides that detention of a person against his will with the intention that the person will take part in an act of sexual penetration or in any brothel is an indictable offence and subject to a maximum penalty of five years' imprisonment.

Sub-section (2) sets out the circumstances in which a person is deemed to be detained for the purposes of sub-section (1). Such circumstances are set out in paragraphs (a) and (b) and include the withholding of clothing or other property or the threat to remove clothing lent or supplied to the person.

Sub-section (3) inserts a protection from any consequential civil or criminal proceedings where the detained person takes necessary clothing in order to be able to leave the place where he has been detained.

Sub-section (4) provides that a person is deemed to be detained for the purposes of sub-section (1) if drugs of addiction are withheld or threatened to be withheld from a person known to be addicted to such a drug and with the intent to induce that person to remain.

Proposed Section 62—

Sub-section (1) abrogates the rule that a male person under the age of fourteen years is presumed to be impotent.

Sub-section (2) abrogates the common law presumption of consent to an act of sexual penetration by a wife where she and her husband are living separately and apart.

Sub-section (3) removes the rule that a judge must warn a jury against convicting a person of a sexual offence on the uncorroborated evidence of the victim.

Clause 6 repeals sub-divisions (13) and (14) of Division 1 of Part I. of the Principal Act.

Clause 7—

Sub-clause (1) substitutes a new Section 359A in the Principal Act. It proposes consequential amendments arising from the Bill in sub-section (1) of Section 359A.

The new *Sub-section (2)* provides that a judge of the Supreme Court may extend the time period for bringing a person to trial as set out in sub-section (1).

The new *Sub-section* (3) provides for more than one extension of time.

Clause 8 inserts a new Section 425 in the Principal Act. It provides that where a person is charged with a specified offence and the jury are unsatisfied that he is guilty of that offence or of an attempt to commit the offence but that the person is guilty of another specified offence the jury may convict the person of the alternative specified offence.

Clause 9 makes consequential amendments to Section 47A of the *Magistrates (Summary Proceedings) Act* 1975.

Clause 10 makes consequential amendments to Section 37A (1) of the *Evidence Act* 1958.

Clause 11—

Sub-clause (1) is an amendment to Section 17 (1) of the *Summary Offences Act* 1966. It substitutes new monetary penalties in the Act.

Sub-clause (2) is a consequential amendment to Sections 18 and 18A of the *Summary Offences Act*.

It inserts a new heading of "Soliciting in Public Places".

It substitutes new Sections 18 and 18A as follows:

Proposed Section 18 provides that it is an offence for any person to solicit or to loiter in a public place for the purpose of prostitution.

It further provides different penalties for first, second, third and subsequent offences.

Proposed Section 18A amends the present provision relating to inviting prostitution.

Paragraphs (a), (b) and (c) provide that it is an offence to loiter or frequent any place for the purpose of prostitution or of inviting prostitution or of being accosted by or on behalf of a prostitute.

The proposed section also carries different penalties for first, second, third and subsequent offences.

Proposed Section 18B is new. It is a consequential amendment and proposes that a reference to sections 18 and 18A and 20 (1) in the *Summary Offences Act* include references to a male or female prostitute and to the prostitution of a male or female person.

Proposed Section 18C is new. It provides that any person who is in a position of care, supervision or authority and who solicits or actively encourages any person under eighteen years to take part in an act of sexual penetration commits an offence.

Clause 12 is a consequential amendment to sections 10 (2) (b) and 12 of the *Vagrancy Act* 1966.

Paragraph (a) substitutes for the words "her prostitution" in S. 10 (2) (b) the words "the prostitute to prostitute himself".

Paragraph (b) substitutes for the word "woman" in S. 12 (1) (a) the word "person".

Paragraph (c) inserts a *new section* 12A. It proposes in *sub-section* (1) that a reference to prostitute and prostitution in sections 10, 11 and 12 include a male or female prostitute and the prostitution of a male or female person. It proposes, further, in *sub-section* (2) that in sections 11 and 12 the definition of brothel, bawdy-house or disorderly house is to be varied.

Clause 13 is a consequential amendment to S. 69 (1) of the *Magistrates' Courts Act* 1971 and amends references to sections in the Principal Act.

1. The first part of the document is a list of names and addresses of the members of the committee. The names are listed in alphabetical order, and the addresses are given in full. The list includes the names of the members of the committee, the names of the members of the sub-committee, and the names of the members of the advisory committee. The addresses are given in full, including the street name, the city, the state, and the zip code.