



ANNO VICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1976

No. 83 of 1976

An Act to amend the Criminal Law Consolidation Act,
1935-1975.

[Assented to 9th December, 1976]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Criminal Law Consolidation Act Amendment Act, 1976". Short titles.

(2) The Criminal Law Consolidation Act, 1935-1975, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Criminal Law Consolidation Act, 1935-1976".

2. Section 3 of the principal Act is amended by striking out the item "Childstealing (Section 80)" and inserting in lieu thereof the item "Abduction of Children (Section 80)". Amendment of principal Act, s. 3—
Arrangement of Act.

3. Section 5 of the principal Act is amended—

(a) by striking out the definition of "carnal knowledge";

and

(b) by striking out the definition of "rape" and inserting in lieu thereof the following definition:—

"sexual intercourse" includes—

(a) the introduction of the penis of one person into the anus of another;

and

(b) the introduction of the penis of one person into the mouth of another.

Amendment of principal Act, s. 5—
Interpretation.

Repeal of
ss. 48 to
55 of
principal Act
and enactment
of sections in
their place—

4. Sections 48 to 55 (inclusive) of the principal Act are repealed and the following sections are enacted and inserted in their place:—

Rape.

48. (1) A person who has sexual intercourse with another person without the consent of that other person—

(a) knowing that that other person does not consent to sexual intercourse with him;

or

(b) recklessly indifferent as to whether that other person consents to sexual intercourse with him,

shall be guilty of the felony of rape and liable to be imprisoned for life.

(2) Any person who attempts to commit rape shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

Unlawful sexual
intercourse.

49. (1) A person who has sexual intercourse with any person under the age of twelve years shall be guilty of a felony and liable to be imprisoned for life.

(2) A person who attempts to have sexual intercourse with a person under the age of twelve years shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

(3) A person who has sexual intercourse, or attempts to have sexual intercourse, with a person of or above the age of twelve years and under the age of seventeen years shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

(4) It shall be a defence to a charge under subsection (3) of this section to prove that—

(a) the person with whom the accused is alleged to have had, or to have attempted, sexual intercourse was, on the date on which the offence is alleged to have been committed, of or above the age of sixteen years;

and

(b) the accused—

(i) was, on the date on which the offence is alleged to have been committed, under the age of seventeen years;

or

(ii) believed on reasonable grounds that the person with whom he is alleged to have had, or to have attempted, sexual intercourse was of, or above, the age of seventeen years.

(5) A person who, being the guardian, schoolmaster, schoolmistress, or teacher of a person under the age of eighteen years who has sexual intercourse, or attempts to have sexual intercourse, with that person shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

(6) A person who has, or attempts to have, sexual intercourse with another person knowing that other person to be so mentally deficient as not to understand the nature or consequences of the act shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

(7) Consent to sexual intercourse is not a defence to a charge of an offence under this section.

(8) This section does not apply to sexual intercourse between persons who are married to each other.

5. Section 57a of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 57a of principal Act and enactment of section in its place.

57a. (1) When a person is charged with sexual intercourse with, or an indecent assault upon, a person under the age of seventeen years, the justice sitting to conduct the preliminary examination of the witnesses may, without taking any evidence, accept a plea of guilty and commit the defendant to gaol, or admit him to bail, to appear for sentence.

Power to take plea without evidence.

(2) The justice shall take written notes of any facts stated by the prosecutor as the basis of the charge and of any statement made by the defendant in contradiction or explanation of the facts stated by the prosecutor, and shall forward those notes to the Attorney-General, together with any proofs of witnesses tendered by the prosecutor to the justice.

(3) The Attorney-General shall cause the said notes and proofs of witnesses to be delivered to the proper officer of the court at which the defendant is to appear for sentence, before or at the opening of the said court on the first sitting thereof, or at such other time as the judge who is to preside in such court may order.

(4) This section shall not restrict or take away any right of the defendant to withdraw a plea of guilty and substitute a plea of not guilty.

6. Section 57b of the principal Act is repealed.

Repeal of s. 57b of principal Act.

7. Sections 59 to 62 (inclusive) of the principal Act are repealed and the following section is enacted and inserted in their place:—

Repeal of ss. 59 to 62 of principal Act and enactment of section in their place—

59. A person who takes away by force, or detains against his will, any other person—

Abduction of male or female person.

(a) with intent to marry, or to have sexual intercourse with, that other person;

or

(b) with intent to cause that other person to be married to, or to have sexual intercourse with, a third person,

shall be guilty of a felony and liable to be imprisoned for a term not exceeding fourteen years.

Amendment of principal Act, s. 64—
Procuring sexual intercourse.

8. Section 64 of the principal Act is amended—

- (a) by striking out from paragraph (a) the passage “to have unlawful carnal connection with any person” and inserting in lieu thereof the passage “to have sexual intercourse”;
 - (b) by striking out from paragraph (b) the passage “to have unlawful carnal connection with any person” and inserting in lieu thereof the passage “to have sexual intercourse”;
- and
- (c) by striking out paragraph (c).

Amendment of principal Act, s. 65—
Householder, etc., not to permit unlawful sexual intercourse on premises.

9. Section 65 of the principal Act is amended by striking out the passage “being unlawfully and carnally known by any person, whether such carnal knowledge is intended to be with any particular person or generally” and inserting in lieu thereof the passage “having sexual intercourse”.

Repeal of ss. 66, 67 and 68 of principal Act.

10. Sections 66, 67 and 68 of the principal Act are repealed.

Repeal of s. 72 of principal Act and enactment of section in its place—

11. Section 72 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Incest.

72. Any persons being related either as parent and child or as brother and sister who have sexual intercourse with each other shall be guilty of the felony of incest and liable to be imprisoned for a term not exceeding seven years.

Repeal of s. 73 of principal Act and enactment of section in its place—

12. Section 73 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Offences involving sexual intercourse.

73. (1) For the purposes of this Act, sexual intercourse is sufficiently proved by proof of penetration.

(2) No person shall, by reason of his age, be presumed incapable of sexual intercourse.

(3) No person shall, by reason only of the fact that he is married to some other person, be presumed to have consented to sexual intercourse with that other person.

(4) No person shall, by reason only of the fact that he is married to some other person, be presumed to have consented to an indecent assault by that other person.

(5) Notwithstanding the foregoing provisions of this section, a person shall not be convicted of rape or indecent assault upon his spouse, or an attempt to commit, or assault with intent to commit, rape or indecent assault upon his spouse (except as an accessory) unless the alleged offence consisted of, was preceded or accompanied by, or was associated with—

- (a) assault occasioning actual bodily harm, or threat of such an assault, upon the spouse;
 - (b) an act of gross indecency, or threat of such an act, against the spouse;
 - (c) an act calculated seriously and substantially to humiliate the spouse, or threat of such an act;
- or
- (d) threat of the commission of a criminal act against any person.

13. Section 75 of the principal Act is amended by striking out the passage "mentioned in sections 48, 49, 50, 51, 52, 53, or 55," and inserting in lieu thereof the passage "under section 48 or 49 of this Act".

Amendment of principal Act, s. 75—
Power on information for rape, etc., to convict of indecent assault or common assault.

14. Section 76 of the principal Act is amended by striking out the passage "sections 63, 64, or 68," and inserting in lieu thereof the passage "section 63 or 64 of this Act".

Amendment of principal Act, s. 76—
Corroborative evidence in certain cases.

15. Section 76a of the principal Act is amended—

- (a) by striking out from subsection (1) the passage "any offence specified in subsection (3) of this section" and inserting in lieu thereof the passage "an offence to which this section applies";

Amendment of principal Act, s. 76a—
Limitation of time for laying information.

and

- (b) by striking out subsection (3) and inserting in lieu thereof the following subsection:—

(3) This section applies to an offence under section 48, 49, 56, 58, 59, 63, 64, 65, 69 or 72 of this Act.

16. Section 77 of the principal Act is amended—

- (a) by striking out from subsection (1) the passage "any offence mentioned in subsection (8) of this section" and inserting in lieu thereof the passage "an offence to which this section applies";

Amendment of principal Act, s. 77—
Indeterminate sentence where offender suffers from venereal disease.

and

- (b) by striking out subsection (8) and inserting in lieu thereof the following subsection:—

(8) This section applies to—

- (a) an offence under section 48, 49, 56, 58, 59, 63, 64, 65, 69, 72 or 255 of this Act;

and

- (b) an offence under section 23 of the Police Offences Act, 1953-1975.

Amendment of principal Act, s. 77a
 Detention of persons incapable of controlling sexual instincts.

17. Section 77a of the principal Act is amended—

(a) by striking out from subsection (1) the passage “mentioned in subsection (9) of this section” and inserting in lieu thereof the passage “to which this section applies”;

and

(b) by striking out paragraph (a) of subsection (9) and inserting in lieu thereof the following paragraphs:—

(a) an offence under section 48, 49, 56, 58, 59, 63, 64, 65, 69, 72 or 255 of this Act;

(ab) an offence under section 23 of the Police Offences Act, 1953-1975; .

Repeal of heading of principal Act and enactment of heading in its place.

18. The heading immediately preceding section 80 of the principal Act is repealed and the following heading is enacted and inserted in its place:—

Abduction of Children

Amendment of principal Act, s. 80—
 Abduction of child under 16 years.

19. Section 80 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “fourteen years” and inserting in lieu thereof the passage “sixteen years”;

(b) by inserting after subsection (1) the following subsection:—

(1a) Any person who unlawfully takes, or causes to be taken, a child under the age of sixteen years out of the possession and against the will of a parent of the child, or any other person having the lawful care of the child, shall be guilty of a misdemeanour and liable to imprisonment for a term not exceeding two years. ;

and

(c) by striking out from subsection (2) the passage “which is illegitimate”.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. NICHOLLS, Governor