

AUSTRALIAN CAPITAL TERRITORY

Crimes (Amendment) Ordinance (No. 5) 1985

No. 62 of 1985

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 21 November 1985.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

LIONEL BOWEN
Attorney-General

An Ordinance to amend the Crimes Act, 1900 of the State of New South Wales in its application to the Territory

Short title

1. This Ordinance may be cited as the *Crimes (Amendment) Ordinance (No. 5) 1985*.¹

Crimes Act

2. In this Ordinance, "the Crimes Act" means the Crimes Act, 1900 of the State of New South Wales in its application to the Territory.

3. Section 90 of the Crimes Act is repealed and the following section substituted:

Abduction of young persons

"90. A person who unlawfully takes, or causes to be taken, any unmarried person under the age of 16 years out of the possession and against the will of

any other person having lawful charge of the second-mentioned person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.”.

4. After Part III of the Crimes Act the following Part is inserted:

“PART IIIA

SEXUAL OFFENCES

Interpretation

“92. In this Part, ‘sexual intercourse’ means—

- (a) the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person, except where that penetration is carried out for a proper medical purpose or is otherwise authorized by law;
- (b) the penetration, to any extent, of the vagina or anus of a person by an object, being penetration carried out by another person, except where that penetration is carried out for a proper medical purpose or is otherwise authorized by law;
- (c) the introduction of any part of the penis of a person into the mouth of another person;
- (d) cunnilingus; or
- (e) the continuation of sexual intercourse as defined in paragraph (a), (b), (c) or (d).

Sexual assault in the first degree

“92A. (1) A person who inflicts grievous bodily harm upon another person with intent to engage in sexual intercourse with that other person, or with a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 17 years.

“(2) A person who, acting in company with any other person, inflicts, or assists in inflicting, grievous bodily harm upon a third person with the intent that the first-mentioned person, or any person with whom he or she is in company, should engage in sexual intercourse with that third person, or with any other person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

Sexual assault in the second degree

“92B. (1) A person who inflicts actual bodily harm upon another person with intent to engage in sexual intercourse with that other person, or with a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

“(2) A person who, acting in company with any other person, inflicts, or assists in inflicting, actual bodily harm upon a third person with the intent that the first-mentioned person, or any person with whom he or she is in company, should engage in sexual intercourse with that third person, or with any other person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 17 years.

Sexual assault in the third degree

“92C. (1) A person who unlawfully assaults, or threatens to inflict grievous or actual bodily harm upon, another person with intent to engage in sexual intercourse with that other person, or with a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 12 years.

“(2) A person who, acting in company with any other person, unlawfully assaults, or threatens to inflict grievous or actual bodily harm upon, a third person with the intent that the first-mentioned person, or any person with whom he or she is in company, should engage in sexual intercourse with that third person, or with any other person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

Sexual intercourse without consent

“92D. (1) A person who engages in sexual intercourse with another person without the consent of that other person and who knows that that other person does not consent, or who is reckless as to whether that other person consents, to the sexual intercourse is guilty of an offence punishable, on conviction, by imprisonment for 12 years.

“(2) A person who, acting in company with any other person, engages in sexual intercourse with another person without the consent of that other person and who knows that that other person does not consent, or who is reckless as to whether that other person consents, to the sexual intercourse is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

Sexual intercourse with young person

“92E. (1) A person who engages in sexual intercourse with another person who is under the age of 10 years is guilty of an offence punishable, on conviction, by imprisonment for 17 years.

“(2) A person who engages in sexual intercourse with another person who is of or above the age of 10 years but under the age of 16 years is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

“(3) It is a defence to a prosecution for an offence under sub-section (2) if the defendant establishes that—

- (a) he or she believed on reasonable grounds that the person upon whom the offence is alleged to have been committed was of or above the age of 16 years; or
- (b) at the time of the alleged offence, the defendant was not more than 2 years older than the person upon whom the offence is alleged to have been committed,

and that that person consented to the sexual intercourse.

Act of indecency in the first degree

“92F. A person who inflicts grievous bodily harm upon another person with intent to commit an act of indecency upon, or in the presence of, that other person, or a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

Act of indecency in the second degree

“92G. A person who inflicts actual bodily harm upon another person with intent to commit an act of indecency upon, or in the presence of, that other person, or a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 12 years.

Act of indecency in the third degree

“92H. A person who unlawfully assaults, or threatens to inflict grievous or actual bodily harm upon, another person with intent to commit an act of indecency upon, or in the presence of, that other person, or a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Act of indecency with consent

“92J. (1) A person who commits an act of indecency upon, or in the presence of, another person without the consent of that person and who knows that that other person does not consent, or who is reckless as to whether that other person consents, to the committing of the act of indecency is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

“(2) A person who, acting in company with any other person, commits an act of indecency upon, or in the presence of, another person without the consent of that other person and who knows that that other person does not consent, or who is reckless as to whether that other person consent, to the committing of the act of indecency is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

Act of indecency with young persons

“92K. (1) A person who commits an act of indecency upon, or in the presence of, another person who is under the age of 10 years is guilty of an offence punishable, on conviction, by imprisonment for 12 years.

“(2) A person who commits an act of indecency upon, or in the presence of, another person who is of or above the age of 10 years but under the age of 16 years is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

“(3) It is a defence to a prosecution for an offence under sub-section (2) if the defendant establishes that—

- (a) he or she believed on reasonable grounds that the person upon whom the offence is alleged to have been committed was of or above the age of 16 years; or
- (b) at the time of the alleged offence, the defendant was not more than 2 years older than the person upon whom the offence is alleged to have been committed,

and that that person consented to the committing of the act of indecency.

Incest and similar offences

“92L. (1) A person who engages in sexual intercourse with another person, being a person who is under the age of 10 years and who is, to the knowledge of the first-mentioned person, his or her lineal descendant, sister, half-sister, brother, half-brother or step-child, is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

“(2) A person who engages in sexual intercourse with another person, being a person who is of or above the age of 10 years but under the age of 16 years and who is, to the knowledge of the first-mentioned person, his or her lineal descendant, sister, half-sister, brother, half-brother or step-child, is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

“(3) A person who engages in sexual intercourse with another person, being a person who is of or above the age of 16 years and who is, to the knowledge of the first-mentioned person, his or her lineal ancestor, lineal descendant, sister, half-sister, brother or half-brother, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

“(4) A prosecution for an offence under this section shall not be commenced except with the written consent of the Director of Public Prosecutions or a person authorized in writing by the Director of Public Prosecutions to give such consents.

“(5) A person shall not be convicted of an offence under sub-section (2) or (3) if there is evidence that he or she engaged in the act alleged to constitute the offence under the coercion of the person with whom the offence is alleged to have been committed unless that evidence is rebutted by the Crown.

“(6) A person charged with an offence under this section shall, unless there is evidence to the contrary, be presumed to have known at the time of the alleged offence that he or she and the person with whom the offence is alleged to have been committed were related in the manner charged.

“(7) In this section, ‘step-child’, in relation to a person, means a person in relation to whom the first-mentioned person stands *in loco parentis*.

Abduction

“92M. A person who abducts another person by force or by any other means or who unlawfully detains another person with the intent that the other person should engage in sexual intercourse with the first-mentioned person or with a third person (whether within the Territory or otherwise) is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Employment of young person for prostitution

“92N. A person who employs, or permits to be employed, a person who is under the age of 16 years for the purposes of prostitution is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Consent

“92P. (1) For the purposes of section 92D, paragraph 92E (3) (b), section 92J and paragraph 92K (3) (b) and without limiting the grounds upon which it may be established that consent is negated, the consent of a person to sexual intercourse with another person, or to the committing of an act of indecency by or with another person, is negated if that consent is caused—

- (a) by the infliction of violence or force on the person, or on a third person who is present or nearby;
- (b) by a threat to inflict violence or force on the person, or on a third person who is present or nearby;
- (c) by a threat to inflict violence or force on, or to use extortion against, the person or another person;
- (d) by a threat to publicly humiliate or disgrace, or to physically or mentally harass, the person or another person;
- (e) by the effect of intoxicating liquor, a drug or an anaesthetic;
- (f) by a mistaken belief as to the identity of that other person;
- (g) by a fraudulent misrepresentation of any fact made by the other person, or by a third person to the knowledge of the other person;
- (h) by the abuse by the other person of his position of authority over, or professional or other trust in relation to, the person;
- (i) by the person’s physical helplessness or mental incapacity to understand the nature of the act in relation to which the consent is given; or
- (j) by the unlawful detention of the person.

“(2) A person who does not offer actual physical resistance to sexual intercourse shall not, by reason only of that fact, be regarded as consenting to the sexual intercourse.

“(3) Where it is established that a person who knows the consent of another person to sexual intercourse or the committing of an act of indecency has been caused by any of the means set out in paragraphs (1) (a) to (j) (inclusive), the person shall be deemed to know that the other person does not consent to the sexual intercourse or the act of indecency, as the case may be.

Sexual intercourse—persons not to be presumed incapable by reason of age

“92Q. (1) For the purposes of this Part, a person shall not, by reason only of his or her age, be presumed to be incapable of engaging in sexual intercourse with another person.

“(2) Sub-section (1) shall not be construed so as to affect the operation of any law relating to the age at which a child can be found guilty of an offence.

Marriage no bar to conviction

“92R. The fact that a person is married to a person upon whom an offence under section 92D is alleged to have been committed shall be no bar to the conviction of the first-mentioned person for the offence.

Alternative verdict

“92S. (1) Where, on the trial of a person for an offence under sub-section 92A (1) or (2) or section 92F, the jury is satisfied that the accused inflicted actual bodily harm with the intent charged but is not satisfied that the harm was grievous bodily harm, it may find the accused not guilty of the offence charged but guilty of an offence under sub-section 92B (1) or (2) or section 92G, as the case requires.

“(2) Where, on the trial of a person for an offence under sub-section 92A (2), 92B (2), 92C (2), 92D (2) or 92J (2), the jury is not satisfied that the accused is guilty of that offence but is satisfied that the accused is guilty of an offence under section 92A (1), 92B (1), 92C (1), 92D (1) or 92J (1), it may find the accused not guilty of the offence charged but guilty of an offence under sub-section 92A (1), 92B (1), 92C (1), 92D (1) or 92J (1), as the case requires.

“(3) Where, on the trial of a person for an offence under sub-section 92A (1) or (2) or section 92F, the jury is satisfied that the accused inflicted grievous bodily harm but is not satisfied that he or she did so with the intent charged, it may find the accused not guilty of the offence charged but guilty of an offence under section 35.

“(4) Where, on the trial of a person for an offence under sub-section 92B (1) or (2) or section 92G, the jury is satisfied that the accused inflicted actual bodily harm but is not satisfied that he or she did so with the intent charged, it may find the accused not guilty of the offence charged but guilty of an offence under section 59.

Adding count for act of indecency

“92T. In an indictment for an offence under section 92D a count may be added for an offence under section 92J.

Indictment for act of indecency

“92U. In an indictment for an offence under section 92J or 92K it shall not be necessary to describe the act constituting the act of indecency with which the accused is charged.”.

Abolition of common law offences

5. The common law offences of rape and attempted rape are abolished.

Saving

6. Section 38 of the *Interpretation Ordinance 1967* applies to and in relation to the abolition by this Ordinance of the common law offences of rape and attempted rape in the same manner as it applies to and in relation to the repeal of an Ordinance or part of an Ordinance.

Repeals

7. (1) Sections 62 to 81 (inclusive), 86 to 89 (inclusive), 91A to 91D (inclusive), 379 and 381 of the Crimes Act are repealed.

(2) The *Law Reform (Sexual Behaviour) Ordinance 1976* is repealed.

Amendment of *Seat of Government (Administration) Ordinance 1930*

8. The Second Schedule to the *Seat of Government (Administration) Ordinance 1930* is amended by omitting from Part 1 “*Law Reform (Sexual Behaviour) Ordinance 1976*”.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 28 November 1985.