

No. 55 of 1976

AN ORDINANCE

To Reform the Law of the Territory relating to Sexual Behaviour.

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 this fourth day of November, 1976.

JOHN R. KERR
Governor-General.

By His Excellency's Command,

R. ELLICOTT
Attorney-General.

LAW REFORM (SEXUAL BEHAVIOUR) ORDINANCE 1976

1. This Ordinance may be cited as the *Law Reform (Sexual Behaviour) Ordinance 1976*.* Short title.

2. (1) In this Ordinance—

“commits” includes attempts to commit, and “commission” Interpreta-
tion.
has a corresponding meaning;

“Crimes Act” means the Crimes Act, 1900, of the State of New South Wales in its application to the Territory.

(2) For the purposes of this Ordinance, two persons are related to each other only if one is the mother, sister, daughter, grand-daughter, father, brother, son or grandson of the other, whether the relationship is of the half-blood or the full-blood or is or is not traced through lawful wedlock.

(3) For the purposes of this Ordinance, an act done in a lavatory to which the public have or are permitted to have access, whether on payment or otherwise, shall be taken to have been done otherwise than in private.

3. (1) Subject to this Ordinance, a person who, with the consent of another person (whether of the same or different sex) and in private, commits an act of a sexual nature upon or with that person is not, by reason only of the commission of that act, guilty of an offence. Certain
sexual
behaviour
not to be an
offence.

* Notified in the *Australian Government Gazette* on 8 November, 1976.

(2) Sub-section (1) does not apply where a person commits an act upon or with a person to whom he is related.

Consent not effective in certain cases.

4. (1) The consent of a person who has not attained the age of 16 years is not effective for the purpose of section 3 or section 5.

(2) The consent of a person who has attained the age of 16 years but has not attained the age of 18 years is not effective for the purpose of section 3 or section 5 unless the defendant proves that he had reasonable grounds for believing, and did believe, that the first-mentioned person had attained the age of 18 years.

(3) The consent of a person is not effective for the purpose of section 3 or section 5 if the consent is induced by means of a threat, by force, by means of a false pretence or representation or by the use of intoxicating liquor or a drug.

(4) The consent of a person of unsound mind is not effective for the purpose of section 3 or section 5 if the person to whom it is given knows, or has reason to suspect, that the first-mentioned person is of unsound mind.

Burden of proof.

5. Where a person is charged with an offence against section 79, 80 or 81 of the Crimes Act, the court shall not find that the offence has been established unless it is proved—

- (a) that the person upon or with whom the act alleged to constitute the offence was committed did not give an effective consent to the commission of the act;
- (b) that the person was related to the defendant; or
- (c) that the act alleged to constitute the offence was committed otherwise than in private.

Limitation period.

6. Proceedings in respect of an offence against section 79, 80 or 81 of the Crimes Act shall not be instituted after the expiration of a period of 12 months after the date on which the offence was committed.

Ordinance to prevail over other laws.

7. (1) Subject to sub-section (2), this Ordinance has effect notwithstanding any other Ordinance, any regulations made under an Ordinance or any Act of the State of New South Wales in its application to the Territory.

(2) Nothing in this Ordinance affects the liability of a person to be prosecuted for, and convicted of, an offence against the *Police Offences Ordinance 1930*.