

*Roe. A. Sullivan*



**Victoria**

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**Crimes Act 1958**

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**No. 6231**

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Part I.—  
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ss. 3–322.

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against the  
Person  
ss. 3–70.

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  - (8A) Sexual Offences against Young Persons ss. 47–50. Sub-divs. (8A)–(8G) inserted by No. 9509 s. 3 (1).
  - (8B) Acts of Sexual Penetration with Intellectually Defective Persons s. 51.
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  - (11) Attempts to procure Abortion ss. 65 and 66.
  - (12) Concealing Birth of Child s. 67.
- \* \* \*
- Sub-divs. (13) and (14) repealed by No. 9509 s. 3 (2).\*

\*Note: Transitional provisions in s. 18 (2) (3) (4) (5) of Act No. 9848 reads:

(2) Upon and from the commencement of this section—

- (a) the Director shall take over from the Attorney-General, Solicitor-General and Crown Solicitor the conduct of any criminal proceedings continuing immediately before the commencement of this section;

person, shall be guilty of an indictable offence, and shall be liable to imprisonment for a term of not more than two years.

(8) *Sexual Assaults*

Heading substituted by No. 9509 s. 5

Indecent assault. S. 44 amended by No. 8280 s. 6, substituted by No. 9509 s. 5.

**\*44.** (1) A person who indecently assaults another person is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

Indecent assault with aggravating circumstances.

(2) A person who indecently assaults another person is, if there are aggravating circumstances, guilty of the indictable offence of indecent assault with aggravating circumstances and liable to imprisonment for a term of not more than ten years.

Consent where victim under sixteen.

(3) Where a person is charged with an indecent assault, whether with or without aggravating circumstances, committed upon a person under the age of sixteen years, the consent of the person under sixteen is no defence to the charge unless, at the time the offence is alleged to have been committed—

- (a) the accused was, or believed on reasonable grounds that he was, married to the person;
- (b) the accused believed on reasonable grounds that the person was of or above the age of sixteen years; or
- (c) the accused was not more than two years older than the person.

Rape. S. 45 substituted by No. 9509 s. 5.

**45.** (1) A person who commits rape is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

Attempt. &c.

(2) A person who attempts to commit rape, or assaults another person with intent to commit rape, is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

Rape with aggravating circumstances.

(3) A person who commits rape is, if there are aggravating circumstances, guilty of the indictable offence of rape with aggravating circumstances and liable to imprisonment for not more than twenty years.

Attempt. &c.

(4) A person who attempts to commit rape, or assaults another person with intent to commit rape, is, if there are aggravating circumstances, guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

**\*46.** (1) Where a person rapes another, attempts to rape another, assaults another with intent to rape or indecently assaults another, there are aggravating circumstances if, but only if—

Aggravating circumstances.  
S. 46 substituted by No. 9509 s. 5.

- (a) immediately before or during or immediately after the commission of the offence, and at or in the vicinity of the place where the offence was committed, the offender inflicts serious personal violence upon the victim or another person;
- (b) the offender has with him an offensive weapon;
- (c) immediately before or during or immediately after the commission of the offence the offender does an act which is likely seriously and substantially to degrade or humiliate the victim; or
- (d) the offender is aided or abetted by another person who is present immediately before or during or immediately after the commission of the offence at or in the vicinity of the place where the offence is or was committed.

(2) In paragraph (b) of sub-section (1) “offensive weapon” means an offensive weapon, firearm, imitation firearm, explosive or imitation explosive within the meaning of section 77 (1).

(3) 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 person has previously been convicted (under this Act, a previous enactment or at common law) of—

Where offender previously convicted of certain offences.

- (a) rape (with or without aggravating circumstances);
- (b) rape with mitigating circumstances;
- (c) an attempt to rape (with or without aggravating circumstances);
- (d) assault with intent to rape (with or without aggravating circumstances); or
- (e) indecent assault (with or without aggravating circumstances).

(4) Where the trial judge is satisfied that a person who at the trial before him was found guilty of rape, an attempt to rape, assault with intent to rape or indecent assault has previously been convicted of an offence mentioned in paragraph (a), (b), (c), (d) or (e) of sub-section (3), he may direct that the entry made upon the record in respect of the offence of which the person was found guilty at the trial before him shall show that, by virtue of this sub-section, the person is guilty of the offence with aggravating circumstances.

(5) A person in respect of whom an entry is made upon the record under sub-section (4) shall for all purposes be deemed to have been found guilty of—

- (a) rape with aggravating circumstances;
- (b) an attempt to commit rape with aggravating circumstances;
- (c) assault with intent to commit rape with aggravating circumstances; or
- (d) indecent assault with aggravating circumstances—

as the case may be.

*(8A) Sexual Offences against Young Persons*

Sub-Heading inserted by No. 9509 s. 5.

Act of sexual penetration with child under ten.  
S. 47 substituted by No. 9509 s. 5.

47. (1) A person who takes part in an act of sexual penetration with a child under the age of ten years is guilty of an indictable offence and liable to imprisonment for a term of not more than twenty years.

Attempt. &c.

(2) A person who attempts to take part in an act of sexual penetration with a child under the age of ten years, or who assaults a child under the age of ten years with intent to take part in an act of sexual penetration, is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

Consent no defence.

(3) It is no defence to a charge under this section that the conduct alleged to constitute the offence was consented to by the child.

Act of sexual penetration with person aged between ten and sixteen.  
S. 48 substituted by No. 9509 s. 5.

\*48. (1) A person who takes part in an act of sexual penetration with a person who is of or above the age of ten years but under the age of sixteen years and to whom the first-mentioned person is not married is guilty of an indictable offence and, subject to sub-section (3), liable to imprisonment for a term of not more than ten years.

Attempt. &c.

(2) 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 but under the age of sixteen years and to whom the first-mentioned person is not married, or who assaults such a person with intent to take part in an act of sexual penetration, is guilty of an indictable offence and, subject to sub-section (3), liable to imprisonment for a term of not more than five years.

Sentence where victim under offender's care.

(3) Notwithstanding anything to the contrary in sub-section (1) or (2), where a person commits an offence against either of those sub-sections and the person with or upon who it is committed is, either generally or at the time the offence is committed, under the care, supervision or authority of the offender, the offender is liable to imprisonment—

- (a) in the case of an offence against sub-section (1), for a term of not more than fifteen years; and
- (b) in the case of an offence against sub-section (2), for a term of not more than seven years.

(4) The consent of a person with or upon whom an offence against this section is alleged to have been committed is no defence to a charge under this section unless at the time the offence is alleged to have been committed—

*Effect of consent.*

- (a) the accused believed on reasonable grounds that the person was of or above the age of sixteen years; or
- (b) the accused was not more than two years older than the person.

(5) It is a defence to a charge under this section if, at the time the offence is alleged to have been committed, the accused believed on reasonable grounds that he was married to the person with or upon whom the offence is alleged to have been committed.

(6) No prosecution of a person for an offence against this section committed with or upon a person of or above the age of twelve years shall be commenced more than twelve months after its commission.

*Time limit for certain prosecutions.*

49. (1) A person who takes part in an act of sexual penetration with a person who is of or above the age of 16 years but under the age of 18 years and to whom the first-mentioned person is not married is guilty of an indictable offence and, subject to sub-section (3), liable to imprisonment for a term of not more than two years.

*Act of sexual penetration with person between 16 and 18.*

*S. 49 substituted by No. 9509 s. 5.*

(2) A person who attempts to take part in an act of sexual penetration with such a person, or who assaults such a person with intent to take part in an act of sexual penetration, is guilty of an indictable offence and liable to imprisonment for a term of not more than one year.

(3) Notwithstanding anything to the contrary in sub-section (1), where a person commits an offence against that sub-section and the person with or upon whom it is committed is, either generally or at the time the offence is committed, under the care, supervision or authority of the offender, the offender is liable to imprisonment for a term of not more than three years.

(4) The consent of a person with or upon whom an offence against this section is alleged to have been committed is no defence to a charge under this section unless, at the time the offence is alleged to have been committed—

- (a) the accused believed on reasonable grounds that the person was of or above the age of 18 years;

- (b) the person had previously willingly taken part in an act of sexual penetration with a person other than the accused; or
- (c) the accused was not more than five years older than the person.

(5) It is a defence to a charge under this section if, at the time the offence is alleged to have been committed, the accused believed on reasonable grounds that he was married to the person with or upon whom the offence is alleged to have been committed.

(6) No prosecution of a person for an offence against this section shall be commenced more than 12 months after the commission of the offence.

Gross indecency with person under sixteen.  
S. 50 substituted by No. 9509 s. 5.

**50. (1) A person who in public or in private—**

- (a) commits, or is in any way a party to the commission of, an act of gross indecency by, with or in the presence of a person under the age of sixteen years; or
- (b) procures or attempts to procure the commission of an act of gross indecency by, with or in the presence of a person under the age of sixteen years—

Para. (b) amended by No. 10079 s. 8 (d).

is guilty of an indictable offence and, subject to sub-section (2), liable to imprisonment for a term of not more than two years.

(2) Notwithstanding anything to the contrary in sub-section (1), where a person is convicted of an offence against that sub-section and—

- (a) the person under the age of sixteen years was, either generally or at the time of the commission of the offence, under the care, supervision or authority of the offender; or
- (b) the offender has previously been convicted (under this section or under a corresponding previous enactment) of an offence of gross indecency with or in relation to a person under the age of sixteen years—

the offender is liable to imprisonment for a term of not more than three years.

(3) It is no defence to a charge under this section that the person under the age of sixteen years consented to the conduct alleged to constitute the offence unless at the time of the alleged conduct—

- (a) the accused believed on reasonable grounds that the person was of or above the age of sixteen years; or
- (b) the accused was not more than two years older than the person.

(4) It is a defence to a charge under this section if, at the time of the conduct alleged to constitute the offence the accused was, or believed

on reasonable grounds that he was, married to the person under the age of sixteen years.

\* \* \* \* \*

Ss. (5) repeated by No. 9848 s. 18 (1).

(8B) Acts of Sexual Penetration with Intellectually Handicapped Persons

Sub-Heading inserted by No. 9509 s. 5

51. (1) A person who is employed in any institution within the meaning of the *Mental Health Act 1959*, or in any benevolent asylum or charitable institution, who—

Act of sexual penetration with intellectually handicapped person.

- (a) takes part, or attempts to take part, in an act of sexual penetration with a person who is under care, treatment, supervision or control in any such institution or asylum as a person who is mentally ill or intellectually defective; or
- (b) assaults such a person with intent to take part in an act of sexual penetration—

S. 51 substituted by No. 9509 s. 5.

is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) A person who has the care or charge of any person being a patient or mentally ill or intellectually defective and who—

- (a) takes part, or attempts to take part in an act of sexual penetration with the person of whom he has the care or charge; or
- (b) assaults the person of whom he has the care or charge with intent to take part in an act of sexual penetration—

is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(3) In sub-sections (1) and (2) the expressions “patient”, “mentally ill” and “intellectually defective” have the same meanings as they have in the *Mental Health Act 1959*.

“Patient”, “mentally ill”, “intellectually defective.”

(4) It is no defence to a charge under this section that the conduct alleged to constitute the offence was consented to by the person with or upon whom the offence is alleged to have been committed unless, at the time of the conduct alleged to constitute the offence, the accused was, or believed on reasonable grounds that he was, married to the person.

Effect of consent.

(5) A person shall not be convicted of an offence against this section upon the evidence of one witness only unless the witness is corroborated in a material particular by evidence implicating the accused.

Corroboration.



Sub-heading inserted by No. 9509 s. 5.

(8c) *Incest*

Parent and child. S. 52 substituted by No. 9509 s. 5.

**\*52.** (1) A person who takes part in an act of sexual penetration with a person who is of or above the age of ten years and whom he knows to be his child or other lineal descendant or his step-child is guilty of an indictable offence and liable to imprisonment for a term of not more than twenty years.

Attempt. &c.

(2) 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 whom he knows to be his child or other lineal descendant or his step-child, or who assaults any such person with intent to take part in an act of sexual penetration, is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

Child. &c., who consents.

(3) A person of or above the age of eighteen years who permits a person whom he knows to be his father or mother or other lineal ancestor or his step-father or step-mother to take part in an act of sexual penetration with him is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

Brother and sister. &c.

(4) A person who takes part in an act of sexual penetration with a person who is of or above the age of ten years and whom he knows to be his sister, half-sister, brother or half-brother is guilty of an indictable offence and liable to imprisonment for a term of not more than seven years.

Attempt. &c.

(5) 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 whom he knows to be his sister, half-sister, brother or half-brother, or who assaults any such person with intent to take part in an act of sexual penetration, is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

Consent no defence.

(6) Consent is no defence to a charge under this section.

Ss. (7) repealed by No. 9848 s. 18 (1).

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Coercion. S. 53 substituted by No. 9509 s. 5.

**\*53.** (1) Where a person is charged under section 52 it shall be a sufficient defence if he proves that he engaged in the conduct alleged to constitute the offence under the coercion of the person with or upon whom the offence is alleged to have been committed.

Proof of knowledge of relationship.

(2) In all proceedings under section 52, the person charged shall, unless he adduces evidence to the contrary, be presumed to know that he and the person with or upon whom the offence is alleged to have been committed are related in the manner charged.

\*Note: See footnote on page 36.

(3) In all proceedings under section 52 it shall, unless the accused adduces evidence to the contrary, be presumed that persons who are reputed to be related to each other in a particular way are in fact related to each other in that way.

Proof of relationship.

(8D) *Procuration, Abduction, &c.*

Sub-heading inserted by No. 9509 s. 5.

**\*54.** (1) A person who—

- (a) by threats or intimidation procures or attempts to procure any person to take part in an act of sexual penetration outside marriage; or
- (b) by any false pretence, false representation or other fraudulent means procures or attempts to procure any person to take part in an act of sexual penetration outside marriage—

Procuring persons by threats, or fraud. S. 54 amended by No. 7332 s. 2, substituted by No. 9509 s. 5.

is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) A person shall not be convicted of an offence against this section upon the evidence of one witness only unless the witness is corroborated in a material particular by evidence implicating the accused.

Corroboration.

**\*55.** (1) A person who—

- (a) administers any drug, matter or thing to another person; or
- (b) causes any drug, matter or thing to be taken by another person—

Administration of drugs, &c. S. 55 amended by No. 7577 s. 2, substituted by No. 9509 s. 5.

with intent to render the person incapable of resistance and thereby enable himself or a third person to take part in an act of sexual penetration outside marriage with the other person is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

(2) A person shall not be convicted of an offence against this section on the evidence of one witness only unless the witness is corroborated in a material particular by evidence implicating the accused.

Corroboration.

**\*56.** A person who takes away another person by force, or detains another person against his will—

- (a) with intent to marry the other person;
- (b) with intent to take part in an act of sexual penetration with the other person;
- (c) with intent that the other person should marry a third person; or

Abduction and detention. S. 56 amended by No. 6761 s. 2 (a) (i) (ii), substituted by No. 9509 s. 5.

\*Note: See footnote on page 36.

(d) with intent that the other person should take part in an act of sexual penetration with a third person—

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Abduction from possession of parent. &c.

S. 57 amended by No. 6761 s. 2 (b) (i) (ii), substituted by No. 9509 s. 5.

\*57. A person who, with intent that another person under the age of eighteen years should take part in an act of sexual penetration outside marriage with him or any third person or generally takes the other person, or causes the other person to be taken, out of the possession and against the will of his father, mother or other person having the lawful charge of him is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

Sub-heading inserted by No. 9509 s. 5.

(8E) *Unnatural Offences*

Bestiality.

S. 58 amended by No. 6761 s. 2 (c) (i) (ii), substituted by No. 9509 s. 5.

\*58. (1) A person who commits an act of bestiality is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) A person who attempts to commit an act of bestiality is guilty of an indictable offence and liable to imprisonment for a term of not more than two years.

(3) An act of bestiality is any of the following:

- (a) Buggery committed by a man upon an animal of either sex;
- (b) Buggery committed by an animal upon a man or woman;
- (c) Penetration of the vagina of a female animal by the penis of a man; and
- (d) Penetration of the vagina of a woman by the penis of a male animal.

(4) The law relating to buggery is as prescribed by this Act and no prosecution shall be instituted for any offence of buggery unless it is for an offence against this Act.

Sub-Heading inserted by No. 9509 s. 5.

(8F) *Prostitution, &c.*

Procuration.

S. 59 amended by No. 6761 s. 2 (d), substituted by No. 9509 s. 5.

\*59. (1) A person who procures or attempts to procure—

- (a) a person under the age of eighteen years to take part in an act of sexual penetration outside marriage with a third person in any part of the world;
- (b) any other person to take part in an act of sexual penetration outside marriage with a person under the age of eighteen years;

- (c) a person to become a prostitute in any part of the world; or
- (d) a person who is not an inmate of a brothel to become an inmate of a brothel in any part of the world—

is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) No person shall be convicted of an offence under this section on the evidence of one witness only unless the witness is corroborated in a material particular by evidence implicating the accused.

Corroboration.

59A. A person shall not publish or cause to be published any statement which is intended or likely to induce a person to seek employment in a brothel.

Prohibition of advertisements for employment in brothels.  
S. 59A inserted by No. 10094 s. 14.

Penalty: 10 penalty units.

\*60. A person who, being the owner or occupier of any premises or managing or acting or assisting in the management of any premises, induces or knowingly allows any unmarried person under the age of eighteen years to enter or remain upon the premises for the purposes of taking part in an act of sexual penetration is guilty of an indictable offence and—

Householder permitting penetration of young persons.  
S. 60 amended by No. 6761 s. 2 (e), substituted by No. 9509 s. 5.

- (a) if the other person is under the age of thirteen years, liable to imprisonment for a term of not more than ten years; or
- (b) if the other person is of or above the age of thirteen years but under the age of eighteen years, liable to imprisonment for a term of not more than five years.

\*61. (1) A person who detains any other person against his will—

Unlawful detention for purposes of sexual penetration.  
S. 61 substituted by No. 9509 s. 5.

- (a) in or upon any premises with intent that the other person may take part in an act of sexual penetration outside marriage with the first-mentioned person or any third person or generally; or
- (b) in any brothel—

is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) A person shall, for the purposes of sub-section (1), be deemed to detain another person in or upon premises if, with intent that the other person should remain in or upon those premises, the first-mentioned person—

Acts deemed to constitute detention.

\*Note: See footnote on page 36.

- (a) withholds from the other person any of the other person's clothing or other property; or
- (b) having lent or otherwise supplied the other person with clothing, threatens the other person with legal proceedings if the other person takes away the clothing.

(3) Where a person has detained another person contrary to sub-section (1), no civil or criminal proceedings shall be taken against the other person for taking away or being found in possession of such clothing as was necessary to enable him to leave the premises in or upon which he was detained.

(4) A person shall, for the purposes of sub-section (1), be deemed to detain another person in or upon premises if—

- (a) knowing or believing that the other person is addicted to a drug of addiction; and
- (b) with intent to induce the other person to remain in or upon the premises—

he withholds or threatens to withhold from the other person supplies of a drug of addiction.

Sub-Heading  
inserted by No.  
9509 s. 5.

(8G) *Abrogation of Obsolete Rules of Law*

Abrogation of  
obsolete rules of  
law.  
S. 62 substituted  
by No. 9509 s. 5.

**\*62.** (1) The rule of law whereby a male person under the age of fourteen years is conclusively presumed to be impotent is hereby abrogated.

(2) Where a married person is living separately and apart from his spouse the existence of the marriage shall not constitute, or raise any presumption of, consent by one to an act of sexual penetration with the other or to an indecent assault (with or without aggravating circumstances) by the other.

Corroboration.

(3) Where a person is accused of a sexual offence, no rule of law or practice shall require the judge before whom the accused is tried to warn the jury that it is unsafe to convict the accused on the uncorroborated evidence of the person with or upon whom the offence is alleged to have been committed, but nothing in this sub-section restricts the operation of any enactment requiring that the evidence of a witness be corroborated.

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\*Note: Ss. 44, 46, 48, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62 were purportedly amended by No. 9576—to replace “felony” with “indictable offence”. Amendment ineffective—no S.L.R. required.