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Reprint No. 10

Crimes Act 1958

**Act
No. 6231/1958**

**This reprint has been prepared in a
new simpler and easier to read style.**

**Reprinted 5 August 1991 incorporating amendments up to
Act No. 49/1991**

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substituted by
No. 8/1991
s. 3.

(8) Sexual Offences (General Provisions)⁵¹

S. 36 inserted
by No. 8/1991
s. 3.

36. *Additional conduct that constitutes rape*

- (1) Without affecting the conduct which constitutes rape at common law, it is also rape if a person—
 - (a) introduces his penis into the anus or mouth of another person in circumstances in which the introduction of the penis of a person into the vagina of another person would be rape at common law; or
 - (b) introduces a part of his or her body (other than the penis) into the vagina or anus of another person in the circumstances described in paragraph (a); or
 - (c) introduces an object into the vagina or anus of another person in the circumstances described in paragraph (a); or
 - (d) does not withdraw—
 - (i) his penis from the vagina, anus or mouth of another person; or
 - (ii) a part of his or her body (other than the penis) from the vagina or anus of another person; or
 - (iii) an object being manipulated by him or her from the vagina or anus of another person—

on becoming aware that the other person is not consenting to its being there or realising that the other person might not be so consenting.

- (2) For the purposes of paragraphs (a), (b) and (c) of sub-section (1) introduction to any extent is sufficient.
- (3) It is not necessary to prove the emission of semen in order to prove rape of any kind.

36A. *Consent of no effect if obtained by certain false representations*

**S. 36A
inserted by
No. 8/1991
s. 3.**

- (1) Consent to conduct which could otherwise constitute rape or indecent assault is of no effect if it was obtained by a false representation that the conduct was for medical or hygienic purposes.
- (2) Nothing in this section prevents consent to conduct which could otherwise constitute rape or indecent assault from being regarded at common law as having no effect because it was obtained under a mistake.

37. *Meaning of sexual penetration*

**S. 37 inserted
by No. 8/1991
s. 3.**

- (1) For the purposes of this Act an act of sexual penetration is—
 - (a) the introduction by a person of his penis into the vagina, anus or mouth of another person, whether or not there is emission of semen; or
 - (b) the introduction by a person of a part of his or her body (other than the penis) into the vagina or anus of another person, otherwise than in the course of an appropriate and generally accepted medical or hygienic procedure; or
 - (c) the introduction by a person of an object into the vagina or anus of another person, otherwise than in the course of an appropriate and generally accepted medical or hygienic procedure.
- (2) For the purposes of sub-section (1) introduction to any extent is sufficient.
- (3) Both persons are, for the purposes of this Act, taking part in an act of sexual penetration.

38. *Meaning of aggravating circumstances*

**S. 38 inserted
by No. 8/1991
s. 3.**

- (1) For the purposes of the law relating to rape and indecent assault there are aggravating circumstances only if—
 - (a) the offender has with him or her—
 - (i) a firearm; or
 - (ii) an imitation firearm; or

- (iii) an offensive weapon; or
 - (iv) an explosive; or
 - (v) an imitation explosive—
- as defined in section 77 (1); or
- (b) 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—
 - (i) the offender inflicts serious personal violence on the victim or another person; or
 - (ii) the offender does an act which is likely seriously and substantially to degrade or humiliate the victim; or
 - (iii) the offender is aided or abetted by another person who is present.
- (2) The judge presiding at a trial at which a person is found guilty of—
- (a) rape; or
 - (b) an attempt to commit rape; or
 - (c) assault with intent to commit rape; or
 - (d) indecent assault—
- may, in the circumstances described in sub-section (3), direct that a verdict of guilty of the offence with aggravating circumstances be entered in the records of the court.
- (3) A judge may give a direction under sub-section (2) if satisfied that the accused had previously been convicted (under this Act or any corresponding previous enactment or at common law) of—
- (a) rape (with or without aggravating circumstances); or
 - or
 - (b) rape with mitigating circumstances; or
 - (c) an attempt to commit rape (with or without aggravating circumstances); or
 - (d) assault with intent to commit rape (with or without aggravating circumstances); or

(e) indecent assault (with or without aggravating circumstances).

- (4) A judge may give a direction under sub-section (2) even if the accused pleaded guilty.
- (5) A person in respect of whom a direction is given under sub-section (2) must for all purposes be taken to have been found guilty of the offence with aggravating circumstances and is liable to punishment accordingly.

39. Meaning of other terms in Subdivisions (8) to (8G)

S. 39 inserted by No. 8/1991 s. 3.

In this Subdivision and Subdivisions (8A) to (8G)—

“**de facto spouse**” means a person who is living with a person of the opposite sex as if they were married although they are not.

“**vagina**” includes a surgically constructed vagina.

(8A) Rape and Indecent Assault⁵¹

Subdiv. (8A) heading and ss 47-50 amended by Nos 9509 s. 5, 10079 s. 8 (1), substituted by No. 8/1991 s. 3.

40. Rape

A person who commits rape is guilty of an indictable offence and liable to imprisonment for a term not exceeding 10 years.

S. 40 inserted by No. 8/1991 s. 3.

41. Rape with aggravating circumstances

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 a term not exceeding 20 years.

S. 41 inserted by No. 8/1991 s. 3.

42. Indecent assault

A person must not indecently assault another person.

Penalty: Imprisonment for 5 years.

S. 42 inserted by No. 8/1991 s. 3.

s. 43

S. 43 inserted
by No. 8/1991
s. 3.

43. *Indecent assault with aggravating circumstances*

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 not exceeding 10 years.

Subdiv. (8B)
heading
and s. 51
amended by
Nos 9509 s. 5
102/1986 s. 9
(a)–(c),
substituted by
No. 8/1991
s. 3.

(8B) Incest⁵¹

S. 44 inserted
by No. 8/1991
s. 3.

44. *Incest*

- (1) A person must not take part in an act of sexual penetration with a person whom he or she knows to be his or her child or other lineal descendant or his or her step-child.

Penalty: Imprisonment for 20 years.

- (2) A person must not take part in an act of sexual penetration with a person under the age of 18 whom he or she knows to be the child or other lineal descendant or the step-child of his or her de facto spouse.

Penalty: Imprisonment for 20 years.

- (3) A person who is aged 18 or older must not take part in an act of sexual penetration with a person whom he or she knows to be his or her father or mother or other lineal ancestor or his or her step-father or step-mother.

Penalty: Imprisonment for 5 years.

- (4) A person must not take part in an act of sexual penetration with a person whom he or she knows to be his or her sister, half-sister, brother or half-brother.

Penalty: Imprisonment for 7 years.

- (5) Consent is not a defence to a charge under this section.

- (6) It is a defence to a charge under this section for the

person charged to prove that he or she took part under the coercion of the other person.

- (7) In all proceedings for offences under this section (except under sub-section (2)) it shall be presumed in the absence of evidence to the contrary—
- (a) that the accused knew that he or she was related to the other person in the way alleged; and
 - (b) that people who are reputed to be related to each other in a particular way are in fact related in that way.

(8c) Sexual Offences against Children⁵¹

Subdiv. (8C) heading and ss 52, 53 amended by Nos 9509 s. 5, 9848 s. 18 (1), substituted by No. 8/1991 s. 3.
S. 45 inserted by No. 8/1991 s. 3.

45. *Sexual penetration of child under the age of 10*

- (1) A person must not take part in an act of sexual penetration with a child under the age of 10.

Penalty: Imprisonment for 20 years.

- (2) Consent is not a defence to a charge under sub-section (1).

46. *Sexual penetration of child aged between 10 and 16*

- (1) A person must not take part in an act of sexual penetration with a child aged between 10 and 16 to whom he or she is not married.

Penalty: (a) Imprisonment for 15 years if the child was, at the time of the offence, under the care, supervision or authority of the defendant;

(b) Imprisonment for 10 years in any other case.

- (2) Consent is not a defence to a charge under sub-section (1) unless at the time of the alleged offence—

(a) the accused believed on reasonable grounds that the child was aged 16 or older; or

(b) the accused was not more than 2 years older than the child; or

S. 46 inserted by No. 8/1991 s. 3.

s. 47

- (c) the accused believed on reasonable grounds that he or she was married to the child.

S. 47 inserted
by No. 8/1991
s. 3.

47. *Indecent act with child under the age of 16*

- (1) A person must not wilfully commit, or wilfully be in any way a party to the commission of, an indecent act with or in the presence of a child under the age of 16 to whom he or she is not married.

Penalty: Imprisonment for 10 years.

- (2) Consent is not a defence to a charge under sub-section (1) unless at the time of the alleged offence—
- (a) the accused believed on reasonable grounds that the child was aged 16 or older; or
 - (b) the accused was not more than 2 years older than the child; or
 - (c) the accused believed on reasonable grounds that he or she was married to the child.

S. 47A
inserted by
No. 8/1991
s. 3.

47A. *Sexual relationship with child under the age of 16.*

- (1) A person who maintains a sexual relationship with a child under the age of 16 to whom he or she is not married and who is under his or her care, supervision or authority is guilty of an indictable offence.
- (2) To prove an offence under sub-section (1) it is necessary to prove—
- (a) that the accused during a particular period (while the child was under the age of 16 and under his or her care, supervision or authority) did an act in relation to the child which would constitute an offence under a particular provision of this Subdivision or Subdivision (8A) or (8B); and
 - (b) that such an act also took place between the accused and the child on at least two other occasions during that period.
- (3) It is not necessary to prove the dates or the exact circumstances of the alleged occasions.

- (4) A person who is guilty of an offence under sub-section (1) is liable to a penalty not exceeding the maximum penalty fixed or prescribed by law for the offence which the relevant act would constitute.
- (5) If on the trial of a person charged with an offence against sub-section (1) the jury are not satisfied that he or she is guilty of the offence charged but are satisfied that the accused did an act during that period which constitutes an offence against Subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I, the jury must acquit the accused of the offence charged but may find him or her guilty of that other offence and he or she is liable to punishment accordingly.
- (6) Sub-section (5) does not restrict the operation of section 421 or 422.
- (7) A prosecution for an offence under sub-section (1) must not be commenced without the consent of the Director of Public Prosecutions.

48. *Sexual penetration of 16 year old child*

S. 48 inserted
by No. 8/1991
s. 3.

- (1) A person must not take part in an act of sexual penetration with a 16 or 17 year old child to whom he or she is not married and who is under his or her care, supervision or authority.

Penalty: Imprisonment for 3 years.

- (2) Consent is not a defence to a charge under sub-section (1) unless at the time of the alleged offence the accused believed on reasonable grounds—
 - (a) that the child was aged 18 or older; or
 - (b) that he or she was married to the child.

49. *Indecent act with 16 year old child*

S. 49 inserted
by No. 8/1991
s. 3.

- (1) A person must not wilfully commit, or wilfully be in any way a party to the commission of, an indecent act with or in the presence of a 16 year old child to whom he or she is not married and who is under his or her care, supervision or authority.

Penalty: Imprisonment for 2 years.

- (2) Consent is not a defence to a charge under sub-section (1) unless at the time of the alleged offence the accused believed on reasonable grounds—
- (a) that the child was aged 17 or older; or
 - (b) that he or she was married to the child.

Subdiv. (8D)
heading and
ss 54–57
amended by
Nos 6761 s. 2
(a) (i) (ii) (b) (i)
(ii), 7332 s. 2,
7577 s. 2,
9509 s. 5,
substituted by
No. 8/1991
s. 3.

(8D) Sexual Offences against People with Impaired Mental Functioning⁵¹

S. 50 inserted
by No. 8/1991
s. 3.

50. Definitions

- (1) In this Subdivision—
- “**impaired**” includes impaired because of mental illness, intellectual disability, dementia or brain injury.
 - “**indecent act**” does not include an act done in the course of an appropriate and generally accepted medical, therapeutic or hygienic procedure.
 - “**intellectual disability**” has the same meaning as in the **Intellectually Disabled Persons’ Services Act 1986**.
 - “**resident**”, in relation to a residential facility, means a person who resides there for the purpose of receiving services for impaired mental functioning.
 - “**residential facility**” means—
 - (a) a psychiatric in-patient service as defined in section 3 of the **Mental Health Act 1986**; or
 - (b) premises operated by any person or body (government or non-government) wholly or substantially for the purpose of providing residential services to intellectually disabled people.
 - “**worker**” means a person who provides services to residents at a residential facility (whether as an employee or as a voluntary worker or in any other

capacity) but does not include a person who also receives services for impaired mental functioning.

- (2) For the purposes of this Subdivision a person in respect of whom a declaration of eligibility has been issued under section 8 of the **Intellectually Disabled Persons' Services Act 1986** must be taken to be intellectually disabled.

51. *Sexual offences against people with impaired mental functioning*

S. 51 inserted
by No. 8/1991
s. 3.

- (1) A person who provides medical or therapeutic services to a person with impaired mental functioning who is not his or her spouse or de facto spouse must not take part in an act of sexual penetration with that person.

Penalty: Imprisonment for 5 years.

- (2) A person who provides medical or therapeutic services to a person with impaired mental functioning who is not his or her spouse or de facto spouse must not commit, or be in any way a party to the commission of, an indecent act with that person.

Penalty: Imprisonment for 3 years.

- (3) Consent is not a defence to a charge under this section unless at the time of the alleged offence the accused believed on reasonable grounds that he or she was the spouse or de facto spouse of the other person.
- (4) This section only applies if the services are related to the impaired mental functioning.

52. *Sexual offences against residents of residential facilities*

S. 52 inserted
by No. 8/1991
s. 3.

- (1) A worker at a residential facility must not take part in an act of sexual penetration with a resident of the facility who is not his or her spouse or de facto spouse.

Penalty: Imprisonment for 5 years.

- (2) A worker at a residential facility must not commit, or be in any way a party to the commission of, an indecent act with a resident of the facility who is not his or her spouse or de facto spouse.

Penalty: Imprisonment for 3 years.

- (3) Consent is not a defence to a charge under this section unless at the time of the alleged offence the accused believed on reasonable grounds that he or she was the spouse or de facto spouse of the resident.

Subdiv. (8E)
heading
and s. 58
amended by
Nos 6761 s. 2
(c) (i) (ii),
9509 s. 5,
substituted by
No. 8/1991
s. 3.
S. 53 inserted
by No. 8/1991
s. 3.

(8E) Other Sexual Offences⁵¹

53. *Administration of drugs, etc.*

A person must not—

- (a) administer a drug, matter or thing to a person; or
- (b) cause a drug, matter or thing to be taken by a person—

with the intention of rendering that person incapable of resistance and thereby enabling himself or herself or another person to take part in an act of sexual penetration with that person.

Penalty: Imprisonment for 10 years.

S. 54 inserted
by No. 8/1991
s. 3.

54. *Occupier, etc. permitting unlawful sexual penetration*

The owner or occupier of, or a person managing or assisting in the management of, any premises must not induce or knowingly allow a child under the age of 17 to enter or remain on the premises for the purpose of taking part in an unlawful act of sexual penetration.

Penalty: (a) Imprisonment for 10 years if the child is under the age of 13;

- (b) Imprisonment for 5 years if the child is aged between 13 and 17.

55. *Abduction or detention*

S. 55 inserted
by No. 8/1991
s. 3.

A person must not take away a person by force or detain a person against his or her will—

- (a) with the intention of getting married to, or taking part in an act of sexual penetration with, that person; or
- (b) with the intention that that person should marry, or take part in an act of sexual penetration with, another person.

Penalty: Imprisonment for 10 years.

56. *Abduction of child under the age of 16*

S. 56 inserted
by No. 8/1991
s. 3.

- (1) A person must not take away a child under the age of 16 against the will of a person who has lawful charge of the child with the intention that the child should take part in an act of sexual penetration outside marriage with him or her or any other person.

Penalty: Imprisonment for 5 years.

- (2) A person must not cause a child under the age of 16 to be taken away against the will of a person who has lawful charge of the child with the intention that the child should take part in an act of sexual penetration outside marriage with him or her or any other person.

Penalty: Imprisonment for 5 years.

57. *Procuring sexual penetration by threats or fraud*

S. 57 inserted
by No. 8/1991
s. 3.

- (1) A person must not by threats or intimidation procure a person to take part in an act of sexual penetration.

Penalty: Imprisonment for 5 years.

- (2) A person must not by any fraudulent means procure a person to take part in an act of sexual penetration.

Penalty: Imprisonment for 5 years.

s. 58

S. 58 inserted
by No. 8/1991
s. 3.

58. *Procuring sexual penetration of child under the age of 16*

- (1) A person must not procure a child under the age of 16 to take part in an act of sexual penetration outside marriage with another person.

Penalty: Imprisonment for 5 years.

- (2) A person must not procure another person to take part in an act of sexual penetration outside marriage with a child under the age of 16.

Penalty: Imprisonment for 5 years.

S. 59 inserted
by No. 8/1991
s. 3.

59. *Bestiality*

- (1) A person must not commit an act of bestiality.

Penalty: Imprisonment for 5 years.

- (2) An act of bestiality is any of the following—

- (a) buggery committed by a man on an animal of either sex;
- (b) buggery committed by an animal on a man or woman;
- (c) penetration of the vagina of an animal by the penis of a man;
- (d) penetration of the vagina of a woman by the penis of an animal.

- (3) The law relating to buggery is as set out in this Act and no prosecution shall be instituted for an offence of buggery unless it is for an offence under this section.

S. 60 inserted
by No. 8/1991
s. 3.

60. *Soliciting acts of sexual penetration or indecent acts*

- (1) A person must not solicit or otherwise actively encourage a child under the age of 18 to whom he or she is not married and who is under his or her care, supervision or authority to take part in an act of sexual penetration or an indecent act with him or her or another person or generally.

Penalty: 50 penalty units or imprisonment for 12 months.

- (2) An offence under sub-section (1) is a summary offence.

(8F) Jury Warnings⁵¹

Subdiv. (8F) heading and ss 59–61 amended by Nos 6761 s. 2 (d) (e), 9509 s. 5, 10094 s. 14, 124/1986 ss 74 (b)–(d) 80, substituted by No. 8/1991 s. 3.

61. Jury warnings

S. 61 inserted by No. 8/1991 s. 3.

- (1) On the trial of a person for an offence under Subdivision (8A), (8B), (8C), (8D) or (8E) or under any corresponding previous enactment or for an attempt to commit any such offence or an assault with intent to commit any such offence—
 - (a) the judge must not warn, or suggest in any way to, the jury that the law regards complainants in sexual cases as an unreliable class of witness; and
 - (b) if evidence is given or a question is asked of a witness or a statement is made in the course of an address on evidence which tends to suggest that there was delay in making a complaint about the alleged offence by the person against whom the offence is alleged to have been committed, the judge must—
 - (i) warn the jury that delay in complaining does not necessarily indicate that the allegation is false; and
 - (ii) inform the jury that there may be good reasons why a victim of a sexual assault may hesitate in complaining about it.
- (2) Nothing in sub-section (1) prevents a judge from making any comment on evidence given in the proceeding that it is appropriate to make in the interests of justice.

s. 62

(8G) Abrogation of Obsolete Rules of Law

Sub-heading
(8G) inserted
by No. 9509
s. 5.

S. 62
substituted by
No. 9509 s. 5.

62. Abrogation of obsolete rules of law

- (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) The existence of a marriage does not constitute, or raise any presumption of, consent by a person to an act of sexual penetration with another person or to an indecent assault (with or without aggravating circumstances) by another person.

Sub-s. (2)
substituted by
No. 10233
s. 10.

Sub-s. (3)
repealed by
No. 8/1991
s. 6 (c)⁵¹.

* * * * *

(9) Child Stealing

No. 6103 s. 63.

63. Child stealing

Sub-s. (1)
amended by
No. 9576 s. 11
(1).

- (1) Whosoever unlawfully either by force or fraud leads or takes away or decoys or entices away or detains any child under the age of sixteen years,⁸ with intent to deprive any parent or guardian or any other person having the lawful care or charge of such child of the possession of such child or with intent to steal any article upon or about the person of such child; and whosoever with any such intent receives or harbors any such child knowing the same to have been by force or fraud led taken decoyed enticed away or detained, shall be guilty of an indictable offence, and shall be liable to imprisonment for a term of not more than five years.

No person who has claimed any right to the possession of such child, or is the mother or has claimed to be the father of an illegitimate child, shall be liable to be prosecuted under this or the next succeeding sub-section on account of the getting possession of such child or taking such child out of the possession of any person having the lawful care or charge thereof.

NOTES—*continued*

64. For section 321F (1) **substitute**—

“(1) A person convicted of attempting to commit an offence is liable—

(a) if the penalty for the relevant offence is set out by reference to an expression specified in column 1 of the Table, to the penalty set out opposite it in column 2 of the Table:

TABLE

<i>Column 1</i>	<i>Column 2</i>
Level 1 imprisonment	Level 2 imprisonment
Level 2 imprisonment	Level 3 imprisonment
Level 2 fine	Level 3 fine
Level 3 imprisonment	Level 4 imprisonment
Level 3 fine	Level 4 fine
Level 4 imprisonment	Level 5 imprisonment
Level 4 fine	Level 5 fine
Level 5 imprisonment	Level 6 imprisonment
Level 5 fine	Level 6 fine
Level 6 imprisonment	Level 7 imprisonment
Level 6 fine	Level 7 fine
Level 7 imprisonment	Level 8 imprisonment
Level 7 fine	Level 8 fine
Level 8 imprisonment	Level 9 imprisonment
Level 8 fine	Level 9 fine
Level 9 imprisonment	Level 10 imprisonment
Level 9 fine	Level 10 fine
Level 10 imprisonment	Level 11 fine
Level 10 fine	Level 11 fine
Level 11 imprisonment	Level 12 fine
Level 11 fine	Level 12 fine
Level 12 fine	Level 13 fine
Level 13 fine	Level 14 fine
Level 14 fine	Level 14 fine

; or

(b) if the penalty for the relevant offence is not set out by reference to an expression specified in column 1 of the Table in paragraph (a), to a penalty not exceeding 60% of the maximum penalty fixed or prescribed by law for the relevant offence; or

(c) if the maximum penalty for the relevant offence is not fixed or prescribed by law, to level 7 imprisonment.”.

65. In section 325 (4)—

(a) for paragraph (a) **substitute**—

“(a) if the principal offence is one for which the penalty is level 1 imprisonment, to level 2 imprisonment; or”;

(b) in paragraph (b), for “five years” **substitute** “60 months”.

66. In section 326 (1), for all words after “liable to” **substitute** “level 10 imprisonment”.

67. In section 343, for the penalty set out at the foot of the section **substitute** “Penalty: Level 11 fine.”.