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Reprint No. 11

Crimes Act 1958

Act
No. 6231/1958

Reprinted 15 September 1994 incorporating
amendments up to Act No. 43/1994 and S.R. No. 75/1987

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(95/D)

CRIMES ACT 1958 NO. 6231
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s. 31

No. 6103 * * * * *
ss 16-35.

Pt 1 Div. 1
Subdiv. (5)
(Heading and
ss 16-35B)
amended by
Nos 7088 s. 2,
(b), 7645 s. 2,
8280 s. 4,
9155 s. 2,
9576 s. 11 (1),
repealed by
No. 10233 s. 8
(2).

No. 6103 s. 36. * * * * *

Pt 1 Div. 1
Subdiv. (6)
(Heading and
ss 36-36A)
amended by
Nos 9155 s. 3,
9576 s. 11 (1),
repealed by
No. 10233 s. 8
(2).

No. 6103 * * * * *
ss 37-43.

Pt 1 Div. 1
Subdiv. (7)
(Heading and
ss 37-43)
amended by
Nos 6958 s. 8
(4) (b), 7546
s. 4, 7876 s. 2
(3), 8260 s. 5,
9576 s. 11 (1),
repealed by
No. 10233 s. 8
(2).

Pt 1 Div. 1
Subdiv. (8)
(Heading and
ss 44-46)
amended by
Nos 8280 s. 6,
9509 s. 5,
substituted
by No. 8/1991
s. 3.⁴

(8) Sexual Offences (General Provisions)

Pt 1 Div. 1
Subdiv. (8)
(Heading and
ss 36-39)
substituted by
No. 81/1991
s. 3.

35. Definitions

S. 35 inserted
by No.
81/1991 a. 3.

(1) In 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;

“**sexual penetration**” means—

- (a) the introduction (to any extent) 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 (to any extent) by a person of an object or a part of his or her body (other than the penis) into the vagina or anus of another person, other than in the course of a procedure carried out in good faith for medical or hygienic purposes;

“**vagina**” includes—

- (a) the external genitalia; and
- (b) a surgically constructed vagina.

(2) For the purposes of Subdivisions (8B) to (8E) both the person who sexually penetrates another person and the other person are taking part in an act of sexual penetration.

36. Meaning of consent⁶

S. 36
substituted by
No. 81/1991
s. 3.

For the purposes of Subdivisions (8A) to (8D) “**consent**” means free agreement. Circumstances in which a person does not freely agree to an act include the following:

- (a) the person submits because of force or the fear of force to that person or someone else;
- (b) the person submits because of the fear of harm of any type to that person or someone else;
- (c) the person submits because she or he is unlawfully detained;

- (d) the person is asleep, unconscious, or so affected by alcohol or another drug as to be incapable of freely agreeing;
- (e) the person is incapable of understanding the sexual nature of the act;
- (f) the person is mistaken about the sexual nature of the act or the identity of the person;
- (g) the person mistakenly believes that the act is for medical or hygienic purposes.

S. 37
substituted by
No. 81/1991
s. 3.

37. *Jury directions on consent*⁶

In a relevant case the judge must direct the jury that—

- (a) the fact that a person did not say or do anything to indicate free agreement to a sexual act is normally enough to show that the act took place without that person's free agreement;
- (b) a person is not to be regarded as having freely agreed to a sexual act just because—
 - (i) she or he did not protest or physically resist; or
 - (ii) she or he did not sustain physical injury; or
 - (iii) on that or an earlier occasion, she or he freely agreed to engage in another sexual act (whether or not of the same type) with that person, or a sexual act with another person;
- (c) in considering the accused's alleged belief that the complainant was consenting to the sexual act, it must take into account whether that belief was reasonable in all the relevant circumstances.

(8A) *Rape and Indecent Assault*⁷

Pt 1 Div. 1
Subdiv. (8A)
(Heading and
ss 47–50)
amended by
Nos 9509 s. 5,
10079 s. 8 (1),
substituted
by No. 8/1991
s. 3.⁴

Pt 1 Div. 1
Subdiv. (8A)
(Heading and
ss 40–43)
substituted by
No. 81/1991
s. 3.

S. 38
substituted by
No. 81/1991
s. 3.

38. *Rape*

- (1) A person must not commit rape.

Penalty: Imprisonment for 25 years.

- (2) A person commits rape if—

- (a) he or she intentionally sexually penetrates another person without that person's consent while being aware that the person is not consenting or might not be consenting; or
- (b) after sexual penetration he or she does not withdraw from a person who is not consenting on becoming aware that the person is not consenting or might not be consenting.

39. *Indecent assault*

- (1) A person must not commit indecent assault.

Penalty: Level 5 imprisonment.

- (2) A person commits indecent assault if he or she assaults another person in indecent circumstances while being aware that the person is not consenting or might not be consenting.

S. 39
substituted by
No. 81/1991
s. 3, amended
by No.
49/1991 s. 119
(3) (Sch. 3
item 1) (as
amended by
No. 81/1991
s. 10 (Sch.
item 3.1)).

40. *Assault with intent to rape*

- (1) A person must not assault or threaten to assault another person with intent to commit rape.

Penalty: Level 5 imprisonment.

S. 40
inserted by
No. 41/1993
s. 20.

- (2) In sub-section (1), “assault” has the same meaning as in section 31 (1).

(8B) *Incest*⁴

Pt 1 Div. 1
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.

44. *Incest*

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

S. 44 (1)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 item
3A).

- (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: Level 2 imprisonment.

S. 44 (2)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 item
3A).

- (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: Level 2 imprisonment.

S. 44 (3)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 item 4).

- (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: Level 6 imprisonment.

S. 44 (4)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 item 4).

- (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: Level 6 imprisonment.

- (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 Children*⁴

Pt 1 Div. 1
Subdiv. (8C)
(Heading and
ss 52, 53)
amended by
Nos 9509 s. 5,
9848 s. 18 (1),
substituted by
No. 8/1991
s. 3.

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

S. 45
Inserted by
No. 8/1991
s. 3.

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

S. 45 (1)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 Item
4A).

Penalty: Level 2 imprisonment.

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

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

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

- (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.

S. 46 (1)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 Item 5).

- Penalty: (a) Level 3 imprisonment if the child was, at the time of the offence, under the care, supervision or authority of the defendant;
- (b) Level 5 imprisonment 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
- (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*

S. 47 (1)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 Item 6).

- (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: Level 5 imprisonment.

- (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.

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

S. 47A
Inserted by
No. 8/1981
s. 3.

- (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.

s. 48

- (7) A prosecution for an offence under sub-section (1) must not be commenced without the consent of the Director of Public Prosecutions.

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

48. *Sexual penetration of 16 year old child*

S. 48 (1)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 Item 7).

- (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: Level 8 imprisonment.

- (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.

See annotation next page

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

49. *Indecent act with 16 year old child*

S. 49 (1)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 Item 8).

- (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: Level 8 imprisonment.

- (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.

S. 49A.

INSERTED (as from 14/6/95) by s. 93 of 1994 No. 102 as follows:-

"49A. Facilitating sexual offences against children

(1) Subject to this section, a person who in Victoria makes travel arrangements for another person or does or omits to do any other act that aids, facilitates or contributes to in any way whatever the commission by another person of an offence against this Subdivision (other than this section) or against Division 2 of Part IIIA of the Crimes Act 1914 of the Commonwealth or against a law in force only in a place outside Victoria the necessary elements of which consist of or include elements which, if present or occurring in Victoria, would constitute an offence against this Subdivision (other than this section) is guilty of an indictable offence and liable to level 2 imprisonment.

(2) For a person to be guilty of an offence against sub-section (1) the person—

- (a) must make the travel arrangements or do or omit to do the other act with a view to personal gain or gain for another person; and
- (b) must—
 - (i) intend that the conduct would aid, facilitate or contribute to the commission of an offence of the type committed by the other person; or
 - (ii) be reckless as to whether or not the conduct would aid, facilitate or contribute to the commission of an offence of the type committed by the other person."

S. 50(1)(a) "residential facility".

REFER s. 65 (Sch. 1(3)) of 1995 No. 98.

Omit the words "a psychiatric in-patient service" and substitute:-
"an approved mental health service".

(8D) Sexual Offences against People with Impaired Mental Functioning^A

Pt 1 Div. 1
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.
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.

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

S. 51 (1)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 item 9).

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

- (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: Level 7 imprisonment.

- (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: Level 8 imprisonment.

- (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.

S. 51 (2)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 item 8).

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

S. 52 (1)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 item 9).

52. *Sexual offences against residents of residential facilities*

- (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: Level 7 imprisonment.

- (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.

S. 52 (2)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 Item 8).

Penalty: Level 8 imprisonment.

- (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.

(8E) Other Sexual Offences⁴

Pt 1 Div. 1
Subdiv. (8E)
(Heading and
s. 58)
amended by
Nos 8781 a. 2
(c) (i) (ii),
9509 a. 5,
substituted by
No. 8/1991
s. 3.

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—

S. 53
inserted by
No. 8/1991
s. 3, amended
by No.
49/1991 s. 119
(3) (Sch. 3
Item 10).

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: Level 5 imprisonment.

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.

S. 54
inserted by
No. 8/1991
s. 3, amended
by No.
49/1991 s. 119
(3) (Sch. 3
Item 13).

Penalty: (a) Level 5 imprisonment if the child is under the age of 13;

(b) Level 7 imprisonment if the child is aged between 13 and 17.

S. 55
inserted by
No. 8/1991
s. 3, amended
by No.
49/1991 s. 119
(3) (Sch. 3
Item 10).

55. *Abduction or detention*

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: Level 5 imprisonment.

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

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

S. 56 (1)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 Item
11).

(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: Level 6 imprisonment.

S. 56 (2)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 Item
11).

(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: Level 6 imprisonment.

57. Procuring sexual penetration by threats or fraud

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

Penalty: Level 6 imprisonment.

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

Penalty: Level 7 imprisonment.

S. 57
inserted by
No. 8/1991
s. 3.
S. 57 (1)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 item
11).

S. 57 (2)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 item 9).

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: Level 7 imprisonment.

- (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: Level 7 imprisonment.

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

S. 58 (1)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 item 9).

S. 58 (2)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 item 9).

59. Bestiality

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

Penalty: Level 7 imprisonment.

- (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;

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

S. 59 (1)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 item
12).

- (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.

S. 60 (1)
amended by
No. 49/1991
s. 119 (3)
(Sch. 3 Item
14).

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: Level 10 imprisonment or level 11 fine.

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

S. 60A
Inserted by
No. 41/1993
s. 21.

60A. *Sexual offence while armed with an offensive weapon*

- (1) A person who is found guilty of an offence under this Subdivision or under Subdivision (8A), (8B), (8C) or (8D) and who carried an offensive weapon when committing the offence is guilty of a summary offence and liable to level 8 imprisonment.
- (2) Despite anything to the contrary in the **Sentencing Act 1991** or in any other law, a court imposing a sentence under sub-section (1)—
- (a) must direct that the sentence be served cumulatively on any other sentence; and
- (b) must not make an order suspending the whole or any part of the sentence.
- (3) Despite anything to the contrary in this or any other Act or in any rule of law, the court by which the person has been found guilty of an offence

under this Subdivision or under Subdivision (8A), (8B), (8C) or (8D) may hear and determine the summary offence under this section without a jury and, subject to any rules of court, the practice and procedure applicable in the Magistrates' Court to the hearing and determination of summary offences shall apply so far as is appropriate to the hearing and determination of the offence under this section.

- (4) Sub-section (3) is in addition to, and does not limit the operation of, section 359AA.

(8EA) *Loitering by sexual offender*

See annotation next page

60B. *Loitering near schools etc.*

- (1) In this section, "sexual offence" means an offence against section 38, 39, 40, 44 (1), 44 (2), 44 (4), 45, 46, 47, 47A, 48, 49, 55 or 56 or an offence of attempting to commit any such offence.
- (2) A person who—
- (a) has been found guilty of—
- (i) a sexual offence; or
 - (ii) murder where there are reasonable grounds to believe that a sexual offence was also committed on the victim; or
 - (iii) an offence against section 7 (1) (c) of the **Vagrancy Act 1966**; or
 - (iv) an offence against section 60A of the **Classification of Films and Publications Act 1990**; and
- (b) is found loitering without reasonable excuse in or near—
- (i) a school, kindergarten or child care centre; or

Pt 1 Div. 1
Subdiv. (8EA)
(Heading and
s. 60B)
Inserted by
No. 129/1993
s. 10.

S. 60B
inserted by
No. 129/1993
s. 10.

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S. 60B(2)(a)(iv).

AMENDED (as from 1/1/96) by s. 86 of 1995 No. 90.

Omit the expression "section 60A of the Classification of Films and Publications Act 1990" and substitute:-

"section 70".

- (ii) a public place within the meaning of the **Vagrancy Act 1966** regularly frequented by children and in which children are present at the time of the loitering—

is guilty of a summary offence punishable on conviction by level 10 imprisonment or a level 11 fine.

- (3) If a person has at any time been convicted of an offence against a law of another State or a Territory of the Commonwealth which creates an offence substantially similar to a sexual offence the conviction for the offence against that law must be taken for the purposes of this section to be a conviction of a sexual offence.

(8F) Jury Warnings⁴

Pt 1 Div. 1
Subdiv. (8F)
(Heading and
ss 59–61)
amended by
Nos 6761 s. 2
(d) (e), 9509
s. 5, 10094
s. 14, 124/1988
ss 74
(b)–(d), 80,
substituted by
No. 8/1991
s. 3.

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

61. Jury warnings

- (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.

(8G) Abrogation of Obsolete Rules of Law

Pt 1 Div. 1
Subdiv. (8G)
(Heading)
inserted by
No. 9509
s. 5.

62. Abrogation of obsolete rules of law

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

- (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.

S. 62 (2)
substituted
by No. 10233
s. 10.

* * * * *

S. 62 (3)
repealed by
No. 8/1991
s. 6 (c)⁴.

(9) Child Stealing

63. Child stealing

No. 6103 s. 63.

- (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

S. 63 (1)
amended by
Nos 9576 s. 11
(1), 49/1991
s. 119 (f)
(Sch. 2 Item 30
(a)).

321K. Limitations on prosecution

S. 321K
inserted by
No. 10079 s. 7
(2).

- (1) Where any enactment prohibits the institution or continuance of proceedings for an offence otherwise than by or with the consent of any person, the prohibition shall apply in relation to proceedings under section 321G for incitement to commit that offence.
- (2) Where—
 - (a) an indictable offence has been committed; and
 - (b) proceedings may not be instituted for that offence because a time limit applicable to the institution of such proceedings has expired—proceedings under section 321G for incitement to commit that offence shall not be instituted against any person.
- (3) A person shall not be liable to be convicted in respect of the same inciting of both—
 - (a) incitement under section 321G; and
 - (b) incitement under any enactment other than section 321G.

321L. Incitement at common law abolished

S. 321L
inserted by
No. 10079 s. 7
(2).

The offence of incitement at common law is hereby abolished.

Division 12—Attempts

Pt 1 Div. 12
(Heading and
(as 321M-
321S)
inserted by
No. 10233 s. 4.

321M. Attempt

S. 321M
inserted by
No. 10233 s. 4.

A person who attempts to commit an indictable offence is guilty of the indictable offence of attempting to commit that offence.

s. 321N

S. 321N
inserted by
No. 10233 s. 4.

321N. *Conduct constituting attempt*

- (1) A person is not guilty of attempting to commit an offence unless the conduct of the person is—
 - (a) more than merely preparatory to the commission of the offence; and
 - (b) immediately and not remotely connected with the commission of the offence.
- (2) For a person to be guilty of attempting to commit an offence, the person must—
 - (a) intend that the offence the subject of the attempt be committed; and
 - (b) intend or believe that any fact or circumstance the existence of which is an element of the offence will exist at the time the offence is to take place.
- (3) A person may be guilty of attempting to commit an offence despite the existence of facts of which he or she is unaware which make the commission of the offence attempted impossible.

S. 321O
inserted by
No. 10233 s. 4.

321O. *Attempts to commit offence outside Victoria*

- (1) A person in Victoria who attempts to commit in another State or in a Territory an offence which, if committed in whole or in part in Victoria, would be an indictable offence against the law of Victoria is guilty of the indictable offence of attempting to commit that offence.
- (2) A person outside Victoria who attempts to commit an indictable offence in Victoria is guilty of the indictable offence of attempting to commit that offence.
- (3) In sub-section (1), “**Territory**” means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory.

321P. Penalties for attempt

S. 321P
inserted by
No. 10233 s. 4.

S. 321P (1)
substituted by
No. 49/1991
s. 119 (1)
(Sch. 2 Item
64).

- (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.

s. 321Q

S. 321P (1A)
inserted by
No. 41/1993
s. 24.

- (1A) For the avoidance of doubt, it is declared that if a person is convicted of attempting to commit murder, treason or a piratical act, the person is liable to level 2 imprisonment.
- (2) A person convicted under this Division of attempting to commit an offence for which, under another enactment, a penalty is provided that is lower than that provided under sub-section (1), the person is liable only to that lower penalty.
- (3) In this section, a reference to a maximum penalty includes, in relation to an offence against the law of a place outside Victoria, a reference to a maximum penalty (not exceeding life imprisonment) fixed or prescribed by a law of that place and, if a maximum penalty so fixed or prescribed exceeds life imprisonment, is a reference to life imprisonment.

S. 321Q
inserted by
No. 10233 s. 4.

321Q. *Limitations on prosecution*

- (1) Any provision to which this section applies has the same effect with respect to an offence of attempting to commit an offence as it has with respect to the offence attempted.
- (2) This section applies to provisions of any of the following descriptions made by or under any enactment:
 - (a) Provisions concerning the power to institute proceedings;
 - (b) Provisions conferring a power of search in respect of persons or property;
 - (c) Provisions conferring a power of seizure or detention of property;
 - (d) Provisions whereby a person may not be convicted or committed for trial on the uncorroborated evidence of one witness (including any provision requiring the evidence of not less than two credible witnesses);

- (e) Provisions conferring a power to fine or of forfeiture, including any power to deal with anything liable to be forfeited;
 - (f) Provisions concerning the liability of a person for the commission of an offence by a body corporate.
- (3) A person is not liable to be convicted in respect of the same conduct of both—
- (a) an offence under section 321M; and
 - (b) an offence under any other enactment of attempting to commit an offence.

321R. *Application of Division*

S. 321R
inserted by
No. 10233 a. 4.

- (1) This Division applies to and in respect of an offence under any other enactment of attempting to commit an offence.
- (2) The preceding provisions of this Division do not apply to an attempt—
 - (a) to aid, abet, counsel or procure the commission of an indictable offence; or
 - (b) to commit the offence of conspiracy whether that offence is a statutory offence or an offence at common law.

321s. *Abolition of attempt at common law*

S. 321S
inserted by
No. 10233 a. 4.

The offence of attempt at common law is abolished.