

Serial 71
Criminal Reform Amendment Bill (No. 2) 2006
Dr Toyne

**A BILL
for
AN ACT**

to amend the Criminal Code and for related purposes

NORTHERN TERRITORY OF AUSTRALIA
CRIMINAL REFORM AMENDMENT ACT (NO. 2) 2006

Act No. [] of 2006

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2006

AN ACT

to amend the Criminal Code and for related purposes

[Assented to [] 2006]

[Second reading [] 2006]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY MATTERS

1. Short title

This Act may be cited as the *Criminal Reform Amendment Act (No. 2) 2006*.

2. Commencement

This Act commences on the day on which, but immediately after, the *Criminal Code Amendment (Criminal Responsibility Reform) Act 2005* commences.

PART 2 – AMENDMENT OF CRIMINAL CODE

3. Act amended

This Part amends the Criminal Code.

4. Amendment of section 1 (Definitions)

- (1) Section 1, definitions of "aggravated offence", "document", "police officer" and "provocation"

omit

- (2) Section 1

insert (in alphabetical order)

"aggravated offence", for Part VI, see section 149B;

"birth", see section 1C;

5. New sections 1B and 1C

After section 1A

insert

1B. Person against whom offence may be committed

A person against whom an offence may be committed under this Code is a person who has been born and who has not already died.

1C. Birth

(1) A person's birth occurs at the time the person is fully removed from the mother's body and has an independent existence from the mother.

(2) The following are relevant, but not determinative, as to whether a person has been born:

- (a) the person is breathing;
- (b) the person's organs are functioning of their own accord;
- (c) the person has an independent circulation of blood.

6. Amendment of section 3 (Division of offences)

Section 3(1), at the end

insert

Note for subsection (1)

Generally, an offence is a crime if the penalty for the offence is imprisonment for a period of more than 2 years – see section 38E of the Interpretation Act.

7. Amendment of section 33 (Sudden and extraordinary emergency)

Section 33

omit

, provocation, duress and coercion

substitute

and duress

8. Repeal of sections 34 and 37

Sections 34 and 37

repeal

9. Amendment of section 40 (Duress)

Section 40(2)

omit

murder, manslaughter or

10. Repeal of section 41

Section 41

repeal

11. Amendment of section 43AA (Application of this Part and relationship with Parts I and II)

(1) Section 43AA, heading

omit, substitute

Application of Part

(2) Section 43AA(3)

omit, substitute

(3) The following provisions of this Code do not apply in relation to Schedule 1 offences, or declared offences, committed on or after the commencement of this Part:

(a) Part II (Criminal Responsibility);

- (b) section 277 (Attempts to commit offences);
 - (c) section 278 (Punishment of attempts to commit offences);
 - (d) section 280 (Attempts to procure commission of criminal offences);
 - (e) section 282 (Conspiracy to commit crimes).
- (3) Section 43AA, note at the end

omit, substitute

Note for section 43AA

A term defined in this Part has the meaning given to it for the purposes of this Part and the Schedule 1 provisions. For example, the meaning given to the term "conduct" in section 43AD(1) applies for the purposes of the partial defence of provocation to a charge of murder (a Schedule 1 offence) – see the signpost definition of the term in section 1.

12. Amendment of section 43BJ (Conspiracy)

Section 43BJ(1), after "offence and"

insert

, unless otherwise provided,

13. New section 43BJA

After section 43BJ, in Division 4

insert

43BJA. References in Acts to offences

(1) A reference in an Act to an offence against an Act (including this Code) includes a reference to an offence against section 43BF, 43BI or 43BJ that relates to such an offence.

(2) A reference in an Act (including this Code) to a particular offence includes a reference to an offence against section 43BF, 43BI or 43BJ that relates to that offence.

(3) Subsection (1) or (2) does not apply if an Act is expressly or impliedly to the contrary effect.

Note for section 43BJA

Sections 43BG and 43BH operate as extensions of principal offences and accordingly are not mentioned in this section.

14. Amendment of section 72 (Definitions)

Section 72, definition of "act of piracy", paragraph (b)

omit

162

substitute

156

15. Repeal and substitution of Part VI, Division 1A heading

Part VI, Division 1A, heading

repeal, substitute

Division 1A – Preliminary matters

Subdivision 1 – Right of occupants etc. to safety from attack by intruders

16. New Part VI, Division 1, Subdivision 2

After section 149A

insert

Subdivision 2 – Interpretation

149B. Definitions

In this Part:

"aggravated offence" means an offence against section 174C or 174D that is an aggravated offence under section 174G.

149C. Causing death or harm

For an offence under this Part, a person's conduct causes death or harm if it substantially contributes to the death or harm.

17. Repeal and substitution of sections 156 to 164

Sections 156 to 164

repeal, substitute

156. Murder

(1) A person is guilty of the crime of murder if:

- (a) the person engages in conduct; and
 - (b) that conduct causes the death of another person; and
 - (c) the person intends to cause the death of, or serious harm to, that or any other person by that conduct.
- (2) Section 43BF does not apply to the crime of murder.

Note for section 156

Under sections 158 and 159, murder may be reduced to manslaughter if the conduct causing the death concerned occurred under provocation or the defendant proves that the defendant's mental capacity was substantially impaired.

157. Punishment for murder, attempted murder and conspiracy to murder

- (1) A person who is guilty of the crime of murder is liable to imprisonment for life.
- (2) The penalty mentioned in subsection (1) is mandatory.
- (3) A person who is guilty of the offence of conspiracy to commit the crime of murder is liable to imprisonment for 14 years.

Notes for section 157

1. *Under sections 53 and 53A of the Sentencing Act, a sentencing court must fix a non-parole period when sentencing an offender found guilty of murder.*
2. *Under section 82(3) of the Youth Justice Act, the Supreme Court may, despite this section, sentence a youth found guilty of murder to life imprisonment or a shorter period of detention or imprisonment as it considers appropriate.*

158. Trial for murder – partial defence of provocation

- (1) A person (the "defendant") who would, apart from this section, be guilty of murder must not be convicted of murder if the defence of provocation applies.
- (2) The defence of provocation applies if:
- (a) the conduct causing death was the result of the defendant's loss of self-control induced by conduct of the deceased towards or affecting the defendant; and
 - (b) the conduct of the deceased was such as could have induced an ordinary person to have so far lost self-control as to have formed an intent to kill or cause serious harm to the deceased.
- (3) Grossly insulting words or gestures towards or affecting the defendant can be conduct of a kind that induces the defendant's loss of self-control.

(4) A defence of provocation may arise regardless of whether the conduct of the deceased occurred immediately before the conduct causing death or at an earlier time.

(5) However, conduct of the deceased consisting of a non-violent sexual advance or advances towards the defendant:

- (a) is not, by itself, a sufficient basis for a defence of provocation; but
- (b) may be taken into account together with other conduct of the deceased in deciding whether the defence has been established.

(6) For deciding whether the conduct causing death occurred under provocation, there is no rule of law that provocation is negated if:

- (a) there was not a reasonable proportion between the conduct causing death and the conduct of the deceased that induced the conduct causing death; or
- (b) the conduct causing death did not occur suddenly; or
- (c) the conduct causing death occurred with an intent to take life or cause serious harm.

(7) The defendant bears an evidential burden in relation to the defence of provocation.

Note for subsection (7)

Under section 43BR(2), the prosecution bears a legal burden of disproving a matter in relation to which the defendant has discharged an evidential burden of proof. The legal burden of proof on the prosecution must be discharged beyond reasonable doubt – see section 43BS(1).

(8) A defendant who would, apart from this section, be liable to be convicted of murder must be convicted of manslaughter instead.

159. Trial for murder – partial defence of diminished responsibility

(1) A person (the "defendant") who would, apart from this section, be guilty of murder must not be convicted of murder if:

- (a) the defendant's mental capacity was substantially impaired at the time of the conduct causing death; and
- (b) the impairment arose wholly or partly from an underlying condition; and
- (c) the defendant should not, given the extent of the impairment, be convicted of murder.

(2) Expert and other evidence may be admissible to enable or assist the tribunal of fact to determine the extent of the defendant's impairment at the time of the conduct causing death.

(3) If the defendant's impairment is attributable in part to an underlying condition and in part to self-induced intoxication, then, for deciding whether a defence of diminished responsibility has been established, the impairment must be ignored so far as it was attributable to self-induced intoxication.

(4) The burden of establishing a defence of diminished responsibility is a legal burden and lies on the defence.

(5) A defendant who would, apart from this section, be liable to be convicted of murder must be convicted of manslaughter instead.

(6) In this section:

"mental capacity", of a defendant, means the defendant's capacity to:

- (a) understand events; or
- (b) judge whether his or her actions are right or wrong; or
- (c) exercise self-control;

"underlying condition" means a pre-existing mental or physiological condition other than of a transitory kind.

160. Manslaughter

A person is guilty of the crime of manslaughter if:

- (a) the person engages in conduct; and
- (b) that conduct causes the death of another person; and
- (c) the person is reckless or negligent as to causing the death of that or any other person by the conduct.

161. Punishment for manslaughter

A person who is guilty of the crime of manslaughter is liable to imprisonment for life.

162. Assisting and encouraging suicide

(1) A person is guilty of an offence if the person:

- (a) assists another person to kill or attempt to kill himself or herself; or

- (b) encourages another person to kill or attempt to kill himself or herself.

Maximum penalty: Imprisonment for life.

- (2) For a person to be guilty of an offence against subsection (1)(a):
 - (a) the person must have intended his or her conduct would assist the other person to commit suicide; and
 - (b) the other person commits or attempts to commit suicide and was assisted to do so by that conduct.
- (3) For a person to be guilty of an offence against subsection (1)(b):
 - (a) the person must have intended his or her conduct would encourage the other person to commit suicide; and
 - (b) the other person commits or attempts to commit suicide and was encouraged to do so by that conduct.
- (4) It is not an offence to attempt to commit an offence against this section.

163. Concealment of birth

A person is guilty of an offence if the person disposes of the dead body of a child (whether or not the child was born alive) with the intention of concealing the child's birth.

Maximum penalty: Imprisonment for 2 years.

18. Repeal of sections 167, 168, 171 to 174 and 174A

Sections 167, 168, 171 to 174 and 174A

repeal

19. New Part VI, Divisions 8 and 9

After section 208

insert

Division 8 – Abortion

208A. Definition

In this Division:

"drug" includes a poison.

208B. Procuring abortion

- (1) A person is guilty of an offence if:
 - (a) the person:
 - (i) administers a drug to a woman or causes a drug to be taken by a woman; or
 - (ii) uses an instrument or other thing on a woman; and
 - (b) the person intends by that conduct to procure the woman's miscarriage.

Maximum penalty: Imprisonment for 7 years.

- (2) It is immaterial that the woman is not pregnant.

Note for section 208B

Under section 11 of the Medical Services Act, in certain circumstances it is lawful for a medical practitioner to give medical treatment with the intention of terminating a woman's pregnancy.

208C. Supplying things for procuring abortion

- (1) A person is guilty of an offence if the person:
 - (a) supplies to, or obtains for, a woman a drug, instrument or other thing; and
 - (b) knows the drug, instrument or other thing is intended to be used with the intention of procuring the woman's miscarriage.

Maximum penalty: Imprisonment for 7 years.

- (2) It is immaterial that the woman is not pregnant.

Note for section 208C

Under section 11 of the Medical Services Act, in certain circumstances it is lawful for a medical practitioner to give medical treatment with the intention of terminating a woman's pregnancy.

Division 9 – Defences

208D. Activities involving serious harm or risk of death or serious harm

A person is not criminally responsible for an offence against this Part that is constituted by conduct that causes serious harm to another person or gives rise to a danger of death or serious harm to another person if:

- (a) the conduct concerned is engaged in by the person for the purpose of benefiting the other person or pursuant to a socially acceptable function or activity; and
- (b) having regard to the purpose, function or activity, the conduct was reasonable.

208E. Law enforcement officers

A person is not criminally responsible for an offence against this Part if:

- (a) the person is, at the time of the offence, a public officer acting in the course of his or her duty as a police officer, prison officer or other law enforcement officer; and
- (b) the conduct of the person is reasonable in the circumstances for performing that duty.

208F. Evidential burden of proof

A defendant who wishes to deny criminal responsibility by relying on a provision of this Division bears an evidential burden in relation to that matter.

20. Repeal of section 287

Section 287

repeal

21. Amendment of section 317 (Charge of homicide of child)

Section 317

omit

all the words after "killed the child,"

substitute

or of the offence of disposing of the dead body of a child with the intention of concealing the child's birth.

22. Repeal and substitution of Schedule 1

Schedule 1

repeal, substitute

SCHEDULE 1

Section 1, definition "Schedule 1 provision"

PROVISIONS OF CODE TO WHICH PART IIAA APPLIES

Part VI (Offences against the person and related matters), Division 1 (Preliminary matters), Subdivision 2 (Interpretation)

Part VI (Offences against the person and related matters), Division 3 (Homicide: Suicide: Concealment of Birth: Abortion) (other than sections 165, 166 and 170)

Part VI (Offences against the person and related matters), Division 3A (Recklessly endangering life and serious harm, negligently causing serious harm and death or serious harm involving motor vehicles)

Section 192 (Sexual intercourse and gross indecency without consent)

Part VI (Offences against the person and related matters), Division 8 (Abortion)

Part VI (Offences against the person and related matters), Division 9 (Defences)

PART 3 – AMENDMENT OF *YOUTH JUSTICE ACT*

23. Act Amended

This Part amends the *Youth Justice Act*.

24. Amendment of section 82 (Powers of Supreme Court in sentencing)

Section 82(3)

omit

164

substitute

157(2)
