

NORTHERN TERRITORY OF AUSTRALIA
CRIMINAL CODE AMENDMENT BILL 1994
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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the Criminal Code

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. CITATION

This Act may be cited as the *Criminal Code Amendment Act 1994*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. DEFINITIONS

Section 1 of the Criminal Code is amended -

- (a) by omitting the definition of "carnal knowledge";
- (b) by inserting after the definition of "Public Sector" the following:

"'sexual intercourse' means -

- (a) the insertion to any extent by a person of his penis into the vagina, anus or mouth of another person;

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(b) the insertion to any extent by a person of any part of the person's body or an object into the vagina or anus of another person, except for the purpose of performing a medical examination or administering medical treatment; or

(c) cunnilingus or fellatio,

and continues until the withdrawal of the part of the body or object from the mouth, vagina or anus into which it was inserted or the cessation of cunnilingus or fellatio, as the case may be;"; and

(c) by inserting, after the definition of "utter", the following:

"'vagina' means the internal and external female genitalia and includes a surgically constructed vagina;".

4. DEFINITIONS

Section 126 of the Criminal Code is amended by omitting the definition of "mentally ill or handicapped female" and substituting the following:

"'mentally ill or handicapped person' means a person who, because of abnormality of mind, is unable to manage himself or herself or to exercise responsible behaviour;".

5. SEXUAL INTERCOURSE OR GROSS INDECENCY INVOLVING MENTALLY ILL OR HANDICAPPED PERSON

Section 130 of the Criminal Code is amended -

(a) by omitting from subsection (1) "female" and substituting "person";

(b) by omitting from subsection (1)(a) "carnal knowledge of her" and substituting "sexual intercourse with the person";

(c) by omitting from subsection (2) "female" and substituting "person"; and

(d) by omitting from subsection (3) "female" and substituting "other person".

6. ATTEMPTS AT PROCURATION OF YOUNG PERSONS OR MENTALLY ILL OR HANDICAPPED PERSONS

Section 131 of the Criminal Code is amended -

(a) by omitting from subsection (1) "female" and substituting "person";

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- (b) by omitting from subsection (1)(a) "carnal knowledge" and substituting "sexual intercourse"; and
- (c) by omitting from subsection (3) "she" and substituting "the other person".

7. NEW SECTION

The Criminal Code is amended by inserting after section 131 the following:

"131A. UNLAWFUL SEXUAL RELATIONSHIP WITH CHILD

"(1) For the purposes of this section, 'offence of a sexual nature' means an offence defined by section 128, 129, 132, 134, 135, 188(1) and (2)(k), 192 or 192B.

"(2) Any adult who maintains an unlawful relationship of a sexual nature with a child under the age of 16 years is guilty of a crime and is liable to imprisonment for 7 years.

"(3) A person shall not be convicted of the crime defined by this section unless it is shown that the offender, as an adult, has, during the period in which it is alleged that he maintained the relationship in issue with the child, done an act defined to constitute an offence of a sexual nature in relation to the child on 3 or more occasions, and evidence of the doing of any such act shall be admissible and probative of the maintenance of the relationship notwithstanding that the evidence does not disclose the dates or the exact circumstances of those occasions.

"(4) If in the course of the relationship of a sexual nature the offender has committed an offence of a sexual nature for which he is liable to imprisonment for 5 years or more or 14 years or less, the offender is liable in respect of maintaining the relationship to imprisonment for 14 years.

"(5) If in the course of the relationship of a sexual nature the offender has committed an offence of a sexual nature for which he is liable to imprisonment for more than 14 years, the offender is liable in respect of maintaining the relationship to imprisonment for life.

"(6) It is a defence to a charge of a crime defined by this section to prove that the accused person believed, on reasonable grounds, that the other person was of or above the age of 16 years.

"(7) A person may be charged in one indictment with an offence defined by this section and with any other offence of a sexual nature alleged to have been committed by him in the course of the relationship in issue in the first-mentioned offence and he may be convicted of and punished for any or all of the offences so charged.

"(8) Where the offender is sentenced to a term of imprisonment for the offence defined by this section and a term of imprisonment for an offence of a sexual nature, an order shall not be made directing that one of those sentences take effect from the expiration of deprivation of liberty for the other offence.

"(9) An indictment for an offence against this section shall be signed by the Director of Public Prosecutions.

"(10) Section 12 does not apply to the child with whom an act herein prescribed is done."

8. REPEAL AND SUBSTITUTION

Section 132 of the Criminal Code is repealed and the following substituted:

"132. INDECENT DEALING WITH CHILD UNDER 16 YEARS

"(1) In this section, 'deals with' includes the doing of any act which, if done without consent, would constitute an assault within the meaning of sections 187 and 188.

"(2) Any person who -

- (a) unlawfully and indecently deals with a child under the age of 16 years;
- (b) unlawfully exposes a child under the age of 16 years to an indecent act by the offender or any other person;
- (c) unlawfully permits himself to be indecently dealt with by a child under the age of 16 years;
- (d) unlawfully procures a child under the age of 16 years to perform an indecent act;
- (e) without legitimate reason, intentionally and unlawfully exposes a child under the age of 16 years to an indecent object or indecent film, video tape, audio tape, photograph or book; or
- (f) without legitimate reason, intentionally and unlawfully takes or records, by means of any device, an indecent visual image of a child under the age of 16 years,

is guilty of a crime and is liable to imprisonment for 5 years.

"(3) If the child is under the age of 12 years and the offender is an adult, the offender is liable to imprisonment for 10 years.

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"(4) If the child is, to the knowledge of the offender, a lineal descendant of the offender or if the offender, had, at the time of the offence, the child under his care, the offender is guilty of a crime and liable to imprisonment for 10 years.

"(5) It is a defence to a charge of a crime defined by this section to prove that the accused person believed, on reasonable grounds, that the other person was of or above the age of 16 years.

"(6) Subsection (5) does not apply if the child is the lineal descendant of the accused."

9. BESTIALITY

Section 138 of the Criminal Code is amended by omitting "has carnal knowledge of an animal" and substituting "inserts, to any extent, the person's penis into the genital passage or anus of an animal or permits an animal to insert its penis into the person's vagina or anus".

10. NEW SECTION

The Criminal Code is amended by inserting after section 139 the following:

"139A. CONSENT NO DEFENCE TO CRIME DEFINED BY THIS DIVISION

"It is not a defence to a charge of a crime defined by a section in this Division for the accused to prove that the person in respect of whom the crime was committed consented to the act constituting the crime."

11. COMMON ASSAULT

Section 188 of the Criminal Code is amended by adding at the end the following:

"(3) If the person assaulted is -

(a) indecently assaulted; and

(b) under the age of 16 years,

it is not a defence to a charge of the crime defined by subsection (1) that the person assaulted consented to the act constituting the crime."

12. REPEAL AND SUBSTITUTION

Section 192 of the Criminal Code is repealed and the following substituted:

"192. SEXUAL INTERCOURSE AND GROSS INDECENCY WITHOUT CONSENT

"(1) For the purposes of this section, 'consent' means free agreement.

"(2) Circumstances in which a person does not freely agree to sexual intercourse or an act of gross indecency include circumstances where -

- (a) the person submits because of force, fear of force, or fear of harm of any type, to himself or herself or another person;
- (b) the person submits because he or she is unlawfully detained;
- (c) the person is asleep, unconscious or so affected by alcohol or another drug as to be incapable of freely agreeing;
- (d) the person is incapable of understanding the sexual nature of the act;
- (e) the person is mistaken about the sexual nature of the act or the identity of the other person;
- (f) the person mistakenly believes that the act is for medical or hygienic purposes; or
- (g) the person submits because of a false representation as to the nature or purpose of the act.

"(3) Any person who has sexual intercourse with another person without the consent of the other person, is guilty of a crime and is liable to imprisonment for life.

"(4) Any person who commits an act of gross indecency upon another person without the consent of the other person, is guilty of a crime and is liable to imprisonment for 14 years.

"(5) Any person who attempts to commit the crime defined by subsection (3) is liable to imprisonment for 7 years.

"(6) Any person who, being an adult, attempts to commit the crime defined by subsection (3) upon another person who is under the age of 16 years is liable to imprisonment for 14 years.

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"(7) Any person who attempts to commit the crime defined by subsection (3) and in the course of such an attempt causes bodily harm to the other person is liable to imprisonment for 14 years.

"(8) Any person who attempts to commit the crime defined by subsection (3) and thereby causes grievous harm to the other person is liable to imprisonment for 17 years."

"192A. DIRECTION TO JURY IN CERTAIN SEXUAL OFFENCE TRIALS

"In a relevant case the judge shall direct the jury that a person is not to be regarded as having consented to an act of sexual intercourse or to an act of gross indecency only because the person -

- (a) did not protest or physically resist;
- (b) did not sustain physical injury; or
- (c) had, on that or an earlier occasion, consented to -
 - (i) sexual intercourse; or
 - (ii) an act of gross indecency,

whether or not of the same type, with the accused.

"192B. COERCED SEXUAL SELF-MANIPULATION

"(1) In this section, 'self-manipulation' means the insertion, into the vagina or anus of a person, of an object manipulated by that person.

"(2) Any person who coerces another person to engage in self-manipulation in circumstances where the person so coerced cannot reasonably be expected to resist, is guilty of a crime and is liable to imprisonment for 17 years."

13. CHARGE OF OFFENCE AGAINST MORALITY, SEXUAL INTERCOURSE OR GROSS INDECENCY WITHOUT CONSENT

Section 319 of the Criminal Code is amended by omitting subsection (2) and substituting the following:

"(2) Upon an indictment charging a person with a crime defined by section 192(3) the person may be convicted alternatively of -

- (a) an attempt to commit that crime; or
- (b) a crime defined by section 127, 128, 129, 130 or 132(2)(a) or an attempt to commit such a crime."

14. FURTHER AMENDMENTS

The Criminal Code is amended -

- (a) by omitting from sections 127(1)(a), 128(1)(a), 129(1)(a), 134(1), 135(1) and (2) and 201 "carnal knowledge of" and substituting "sexual intercourse with"; and
 - (b) by omitting from section 134(2) "carnal knowledge" and substituting "sexual intercourse".
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