

## Authorised Version

### Crimes Amendment (Sexual Offences) Act 2016

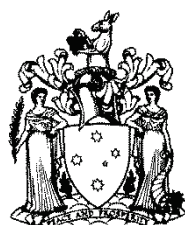
No. 47 of 2016

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Authorised Version



Victoria

**Crimes Amendment (Sexual Offences)  
Act 2016<sup>†</sup>**

**No. 47 of 2016**

[Assented to 6 September 2016]

**The Parliament of Victoria enacts:**

**Part 1—Preliminary**

**1 Purposes**

The purposes of this Act are—

- (a) to amend the **Crimes Act 1958** in relation to sexual and certain other offences; and
- (b) to amend the **Summary Offences Act 1966** in relation to sexual exposure and indecent, offensive and insulting behaviour; and

(c) to amend the **Jury Directions Act 2015** in relation to directions on consent, and reasonable belief in consent, in sexual offence cases; and

(d) to make minor amendments to certain Acts.

## **2 Commencement**

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

(2) If a provision of this Act does not come into operation before 1 July 2017, it comes into operation on that day.

## **Part 2—Amendment of Crimes Act 1958**

### **3 Subdivision (5) of Division 1 of Part I of the Crimes Act 1958 substituted**

For Subdivision (5) of Division 1 of Part I of the Crimes Act 1958 substitute—

#### **"(5) *Corpses***

#### **34B Sexual activity with the corpse of a human being**

- (1) A person (A) commits an offence if—
  - (a) A intentionally engages in an activity involving the corpse of a human being; and
  - (b) the activity is sexual.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
- (3) For the purposes of subsection (1)—
  - (a) an activity is sexual if it would involve sexual penetration as defined by section 35A were the corpse a person;
  - (b) an activity may be sexual due to—
    - (i) the area of A's body or of the corpse involved in the activity, including (but not limited to) the genital or anal region, the buttocks or, in the case of a female, the breasts; or
    - (ii) the fact that A seeks or gets sexual arousal or sexual gratification from the activity; or

- (iii) any other aspect of the activity, including the circumstances in which it takes place.

**Notes**

- 1 Exceptions apply to this offence—see section 34BD.
- 2 A mistaken but honest and reasonable belief that the activity was not sexual is not a defence to this offence—see section 34BE.

**34BA Removal of body parts from the corpse of a human being**

- (1) A person (A) commits an offence if A intentionally removes a body part from the corpse of a human being.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).

**Note**

Exceptions apply to this offence—see section 34BD.

**34BB Offensive conduct involving human remains**

- (1) A person (A) commits an offence if—
  - (a) A intentionally engages in conduct involving human remains; and
  - (b) the conduct is offensive.
- (2) A person who commits an offence against subsection (1) is liable to level 7 imprisonment (2 years maximum).
- (3) An offence against subsection (1) is a summary offence.
- (4) For the purposes of subsection (1), conduct is offensive if, in all the circumstances, it is likely to arouse significant anger, resentment, outrage, disgust or repulsion in the minds of reasonable persons.

(5) In this section—

*human remains* has the same meaning as  
in the **Cemeteries and Crematoria  
Act 2003**.

**Notes**

- 1 Exceptions apply to this offence—see section 34BD.
- 2 A mistaken but honest and reasonable belief that the conduct was not offensive is not a defence to this offence—see section 34BE.

**34BC Location of corpse or human remains  
immaterial**

- (1) For the purposes of sections 34B and 34BA, it is immaterial whether the corpse is in a public cemetery within the meaning of the **Cemeteries and Crematoria Act 2003** or at any other place.
- (2) For the purposes of section 34BB, it is immaterial whether the human remains are in a public cemetery within the meaning of the **Cemeteries and Crematoria Act 2003** or at any other place.

**34BD Exceptions**

A does not commit an offence against a provision of this Subdivision if A's conduct occurs in the course of—

- (a) a procedure carried out in good faith for the purpose of preparing the corpse or human remains for cremation or for interment within the meaning of the **Cemeteries and Crematoria Act 2003**; or

- (b) any other lawful procedure carried out in good faith for medical, hygienic, scientific, forensic or law enforcement purposes.

**Note**

The reference to A in this section is a reference to the same A referred to in the offence provisions in this Subdivision.

**34BE No defence of mistaken but honest and reasonable belief that activity was not sexual or conduct was not offensive**

It is not a defence to a charge that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that—

- (a) for an offence against section 34B(1)—the activity was not sexual; or
- (b) for an offence against section 34BB(1)—the conduct was not offensive.

**Note**

The reference to A in this section is a reference to the same A referred to in the offence provisions in this Subdivision."

**4 Consent**

Section 34C of the **Crimes Act 1958** is **repealed**.

**5 Section 35 substituted**

For section 35 of the **Crimes Act 1958** substitute—

**"35 Definitions**

- (1) In Subdivisions (8A) to (8FA)—

*animal* means any animal (other than a human being), whether vertebrate or not;



*care, supervision or authority*—see section 37;

*consent*—see section 36;

*domestic partner* of a person means—

- (a) a person who is in a registered domestic relationship with the person; or
- (b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender or gender identity);

**Note**

See also subsection (2).

*sexual*, in relation to an activity—see section 35D;

*sexual*, in relation to touching—see section 35B;

*sexual penetration*—see section 35A;

*take part in a sexual act*—see section 35C;

*touching*—see section 35B;

*vagina* includes—

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

(2) For the purposes of the definition of *domestic partner* in subsection (1)—

- (a) *registered domestic relationship* has the same meaning as in the **Relationships Act 2008**; and

- (b) in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

### **35A Sexual penetration**

- (1) A person (A) sexually penetrates another person (B) if—
  - (a) A introduces (to any extent) a part of A's body or an object into B's vagina; or
  - (b) A introduces (to any extent) a part of A's body or an object into B's anus; or
  - (c) A introduces (to any extent) their penis into B's mouth; or
  - (d) A, having introduced a part of A's body or an object into B's vagina, continues to keep it there; or
  - (e) A, having introduced a part of A's body or an object into B's anus, continues to keep it there; or
  - (f) A, having introduced their penis into B's mouth, continues to keep it there.
- (2) A person sexually penetrates themselves if—
  - (a) the person introduces (to any extent) a part of their body or an object into their own vagina; or
  - (b) the person introduces (to any extent) a part of their body or an object into their own anus; or

- (c) having introduced a part of their body or an object into their own vagina, they continue to keep it there; or
  - (d) having introduced a part of their body or an object into their own anus, they continue to keep it there.
- (3) A person (A) sexually penetrates an animal if A engages in conduct with the animal that would involve sexual penetration as defined by subsection (1) were the animal another person (B).
- (4) A person (B) is sexually penetrated by an animal if B engages in conduct with the animal that would involve sexual penetration as defined by subsection (1) were the animal another person (A).
- (5) In relation to sexual penetration of an animal, a reference to the vagina or anus includes a reference to any similar part.

**Note**

References to A and B are included to help readers understand the definition of sexual penetration. The same technique is used in the offence provisions involving sexual penetration. There is no connection between the A and B referred to in one section and the A and B referred to in another section.

**35B Touching**

- (1) Touching may be done—
- (a) with any part of the body; or
  - (b) with anything else; or
  - (c) through anything, including anything worn by the person doing the touching or by the person touched.

- (2) Touching may be sexual due to—
- (a) the area of the body that is touched or used in the touching, including (but not limited to) the genital or anal region, the buttocks or, in the case of a female or a person who identifies as a female, the breasts; or
  - (b) the fact that the person doing the touching seeks or gets sexual arousal or sexual gratification from the touching; or
  - (c) any other aspect of the touching, including the circumstances in which it is done.

### **35C Taking part in a sexual act**

A person takes part in a sexual act if—

- (a) the person is sexually penetrated or sexually touched—
  - (i) by another person; or
  - (ii) by an animal; or
- (b) the person sexually penetrates or sexually touches—
  - (i) another person; or
  - (ii) themselves; or
  - (iii) an animal.

### **35D Sexual activity**

An activity may be sexual due to—

- (a) the area of the body that is involved in the activity, including (but not limited to) the genital or anal region, the buttocks or, in the case of a female or a

person who identifies as a female, the breasts; or

- (b) the fact that the person engaging in the activity seeks or gets sexual arousal or sexual gratification from the activity; or
- (c) any other aspect of the activity, including the circumstances in which it is engaged in.

**Example**

A watches pornography in the presence of A's daughter (B) and her friend (C).

**36 Consent**

- (1) For the purposes of Subdivisions (8A) to (8E), consent means free agreement.
- (2) Circumstances in which a person does not consent to an act include, but are not limited to, the following—
  - (a) the person submits to the act because of force or the fear of force, whether to that person or someone else;
  - (b) the person submits to the act because of the fear of harm of any type, whether to that person or someone else or an animal;
  - (c) the person submits to the act because the person is unlawfully detained;
  - (d) the person is asleep or unconscious;
  - (e) the person is so affected by alcohol or another drug as to be incapable of consenting to the act;

- (f) the person is so affected by alcohol or another drug as to be incapable of withdrawing consent to the act;

**Note**

This circumstance may apply where a person gave consent when not so affected by alcohol or another drug as to be incapable of consenting.

- (g) the person is incapable of understanding the sexual nature of the act;
- (h) the person is mistaken about the sexual nature of the act;
- (i) the person is mistaken about the identity of any other person involved in the act;
- (j) the person mistakenly believes that the act is for medical or hygienic purposes;
- (k) if the act involves an animal, the person mistakenly believes that the act is for veterinary or agricultural purposes or scientific research purposes;
- (l) the person does not say or do anything to indicate consent to the act;
- (m) having given consent to the act, the person later withdraws consent to the act taking place or continuing.

**36A Reasonable belief in consent**

- (1) Whether or not a person reasonably believes that another person is consenting to an act depends on the circumstances.
- (2) Without limiting subsection (1), the circumstances include any steps that the person has taken to find out whether the other person consents or, in the case of an

offence against section 42(1), would consent to the act.

**36B Effect of intoxication on reasonable belief**

- (1) In determining whether a person who is intoxicated has a reasonable belief at any time—
  - (a) if the intoxication is self-induced, regard must be had to the standard of a reasonable person who is not intoxicated and who is otherwise in the same circumstances as that person at the relevant time; and
  - (b) if the intoxication is not self-induced, regard must be had to the standard of a reasonable person who is intoxicated to the same extent as that person and who is in the same circumstances as that person at the relevant time.
- (2) For the purposes of this section, intoxication is self-induced unless it came about—
  - (a) involuntarily; or
  - (b) because of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force; or
  - (c) from the use of a drug for which a prescription is required and that was used in accordance with the directions of the person who prescribed it; or
  - (d) from the use of a drug for which a prescription is not required and that was used for a purpose, and in accordance with the dosage level, recommended by the manufacturer.

- (3) However, intoxication that comes about in the circumstances referred to in subsection (2)(c) or (d) is self-induced if the person using the drug knew, or had reason to believe, when taking the drug that it would significantly impair the person's judgement or control.

### **37 Care, supervision or authority**

- (1) Without limiting the circumstances in which a child is under the care, supervision or authority of a person, a person (A) has a child (B) under their care, supervision or authority if A is—
- (a) B's parent or step-parent; or
  - (b) B's teacher; or
  - (c) B's employer; or
  - (d) B's youth worker; or
  - (e) B's sports coach; or
  - (f) B's counsellor; or
  - (g) B's health professional; or
  - (h) a person who has parental responsibility (within the meaning of the **Children, Youth and Families Act 2005**) for B; or
  - (i) a religious or spiritual guide, or a leader or official (including a lay member) of a church or religious body, however any such guide, leader, official, church or body is described, who provides care, advice or instruction to B or has authority over B; or



- (j) an out of home carer (within the meaning given by section 74 of the **Children, Youth and Families Act 2005**) of B; or
  - (k) a police officer acting in the course of their duty in respect of B; or
  - (l) employed in, or providing services in, a remand centre, youth residential centre, youth justice centre or prison and is acting in the course of their duty in respect of B.
- (2) In this section—
- parent* includes—
- (a) a parent by operation of the **Adoption Act 1984**; and
  - (b) a parent by operation of the **Status of Children Act 1974**;
- step-parent*, in relation to a person, includes the spouse or domestic partner of the person's parent."

## 6 Objectives of Subdivisions 8A to 8G

In section 37A(b) of the **Crimes Act 1958**, after "persons with a cognitive impairment" **insert** "or mental illness".

## 7 Guiding principles

In section 37B(c) of the **Crimes Act 1958**, after "persons with a cognitive impairment" **insert** "or mental illness".

**8 Heading to Subdivision (8A) of Division 1 of Part I of the Crimes Act 1958 substituted**

For the heading to Subdivision (8A) of Division 1 of Part I of the **Crimes Act 1958** substitute—

*"(8A) Rape, sexual assault and associated sexual offences".*

**9 Sections 37C to 37H repealed**

Sections 37C to 37H of the **Crimes Act 1958** are repealed.

**10 Rape**

(1) Section 38(3) of the **Crimes Act 1958** is repealed.

(2) At the foot of section 38 of the **Crimes Act 1958** insert—

**"Note**

An exception applies to this offence—see section 48A."

**11 Rape by compelling sexual penetration**

(1) For section 39(1) of the **Crimes Act 1958** substitute—

"(1) A person (A) commits an offence if—

(a) A intentionally causes another person (B)—

(i) to sexually penetrate A; or

(ii) to sexually penetrate themselves;  
or

(iii) to sexually penetrate another person (C) or an animal; or

(iv) to be sexually penetrated by C or by an animal; and

- (b) B does not consent to the sexual penetration; and
  - (c) A does not reasonably believe that B consents to the sexual penetration."
- (2) Section 39(3) of the **Crimes Act 1958** is **repealed**.
- (3) At the foot of section 39 of the **Crimes Act 1958** **insert**—

**"Note**

Exceptions apply to this offence—see section 48A."

## **12 Sexual assault**

- (1) Section 40(3) and (4) of the **Crimes Act 1958** is **repealed**.
- (2) For the note at the foot of section 40 of the **Crimes Act 1958** **substitute**—

**"Notes**

- 1 An exception applies to this offence—see section 48A.
- 2 A mistaken but honest and reasonable belief that the touching was not sexual is not a defence to this offence—see section 48B."

## **13 Sexual assault by compelling sexual touching**

- (1) For section 41(1)(a) of the **Crimes Act 1958** **substitute**—
- "(a) A intentionally causes another person (B)—
- (i) to touch A; or
  - (ii) to touch themselves; or
  - (iii) to touch another person (C) or an animal; or
  - (iv) to be touched by C or by an animal; and"
- (2) Section 41(3) and (4) of the **Crimes Act 1958** is **repealed**.

- (3) For the note at the foot of section 41 of the **Crimes Act 1958 substitute**—

**"Notes**

- 1 Exceptions apply to this offence—see section 48A.
- 2 A mistaken but honest and reasonable belief that the touching was not sexual is not a defence to this offence—see section 48B."

**14 Threat to commit a sexual offence**

- (1) In section 43(2) of the **Crimes Act 1958**—

(a) in paragraph (b)(v), for "animal." **substitute** "animal;"

(b) after paragraph (b) **insert**—

"(c) to cause B or C, without B or C's consent, to be sexually penetrated or sexually touched by another person or by an animal."

- (2) For section 43(4) of the **Crimes Act 1958 substitute**—

"(4) For the purposes of this section, a threat may be made by words or conduct and may be explicit or implicit."

- (3) The note at the foot of section 43 of the **Crimes Act 1958 is repealed.**

**15 Subdivision (8A) of Division 1 of Part I of the Crimes Act 1958 amended**

After section 43 of the **Crimes Act 1958 insert**—

**"44 Procuring sexual act by threat**

- (1) A person (A) commits an offence if—
- (a) A makes a threat to another person (B) that A will cause harm of any kind to B, another person or an animal; and

- (b) A intends that B will believe, or believes that B will probably believe, that A will cause that harm; and
  - (c) as a result of A's threat, B or another person takes part (whether at the time the threat is made or at a later time) in a sexual act with A or another person; and
  - (d) A intends that, as a result of A's threat, an outcome mentioned in paragraph (c) will occur.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
  - (3) For the purposes of subsection (1), a threat may be made by words or conduct and may be explicit or implicit.
  - (4) For the purposes of subsection (1)(c), a person who takes part in a sexual act with A or another person may or may not be the person to whom A has threatened to cause harm.

**Note**

See section 35C for the meaning of taking part in a sexual act.

**45 Procuring sexual act by fraud**

- (1) A person (A) commits an offence if—
  - (a) A makes a false or misleading representation; and
  - (b) A knows that—
    - (i) the representation is false or misleading; or
    - (ii) the representation is probably false or misleading; and

- (c) as a result of A's representation, another person (B) takes part (whether at the time the representation is made or at a later time) in a sexual act with A or another person; and
  - (d) A intends that, as a result of A's representation, an outcome mentioned in paragraph (c) will occur.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
  - (3) For the purposes of subsection (1), a false or misleading representation may be made by words or conduct (including by omission) and may be explicit or implicit.

**Note**

See section 35C for the meaning of taking part in a sexual act.

**46 Administration of an intoxicating substance for a sexual purpose**

- (1) A person (A) commits an offence if—
  - (a) A—
    - (i) administers an intoxicating substance to another person (B);  
or
    - (ii) causes B to take an intoxicating substance; or
    - (iii) causes another person (C) to administer an intoxicating substance to B; and

- (b) A intends that the intoxicating substance—
  - (i) will impair B's capacity to give, withhold or withdraw consent to taking part in a sexual act; and
  - (ii) will facilitate B taking part in a sexual act with A or another person.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) In this section—

*intoxicating substance* includes any substance that affects a person's senses or understanding.

**Note**

See section 35C for the meaning of taking part in a sexual act.

**47 Abduction or detention for a sexual purpose**

- (1) A person (A) commits an offence if—
  - (a) A—
    - (i) takes away or detains another person (B); or
    - (ii) causes B to be taken away or detained by another person; and
  - (b) B does not consent to being taken away or detained; and
  - (c) A knows that—
    - (i) B does not consent to being taken away or detained; or
    - (ii) B probably does not consent to being taken away or detained; and

- (d) A intends that—
- (i) B will take part in a sexual act with A or another person (C) or both; or
  - (ii) A or C will marry B (whether or not B consents to being married).
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) It is immaterial that the law prohibits or would not recognise (for whatever reason) a marriage between A and B or between C and B.

**Note**

See section 35C for the meaning of taking part in a sexual act.

**48 Sexual activity directed at another person**

- (1) A person (A) commits an offence if—
- (a) A engages in an activity; and
  - (b) the activity is sexual; and
  - (c) another person (B) sees the activity or a part of the activity; and
  - (d) A knows that B will see, or will probably see, the activity or a part of the activity; and
  - (e) A—
    - (i) intends that B will experience fear or distress from seeing the activity or a part of the activity; or
    - (ii) knows that B will experience, or will probably experience, fear or distress from seeing the activity or a part of the activity.



- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).

**Note**

A mistaken but honest and reasonable belief that the activity was not sexual is not a defence to this offence—see section 48B.

**48A Exceptions—medical, hygienic, veterinary, agricultural or scientific purposes**

- (1) A does not commit an offence against—
- (a) section 38(1) or 40(1)—if the sexual penetration or touching (as the case requires) is of a person and is done in the course of a procedure carried out in good faith for medical or hygienic purposes; or
  - (b) section 39(1) or 41(1)—if the sexual penetration or touching (as the case requires) is of a person and is caused by A to be done in the course of a procedure carried out in good faith for medical or hygienic purposes.
- (2) A does not commit an offence against section 39(1) or 41(1)—if the sexual penetration or touching (as the case requires) is of an animal and is caused by A to be done in the course of a procedure being carried out in good faith for veterinary or agricultural purposes or scientific research purposes.

**Note**

The reference to A in this section is a reference to the same A referred to in sections 38, 39, 40 and 41.

**48B No defence of mistaken but honest and reasonable belief that touching or activity was not sexual**

It is not a defence to a charge that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that—

- (a) for an offence against section 40(1) or 41(1)—the touching was not sexual; or
- (b) for an offence against section 48(1)—the activity was not sexual.

**Note**

The reference to A in this section is a reference to the same A referred to in sections 40, 41 and 48."

**16 Division 1 of Part I of the Crimes Act 1958 amended**

For Subdivisions (8B), (8C), (8D), (8E), (8EAA), (8EA) and (8F) of Division 1 of Part I of the **Crimes Act 1958 substitute—**

*"(8B) Sexual offences against children*

**49A Sexual penetration of a child under the age of 12**

- (1) A person (A) commits an offence if—
  - (a) A intentionally—
    - (i) sexually penetrates another person (B); or
    - (ii) causes or allows B to sexually penetrate A; or
    - (iii) causes B—
      - (A) to sexually penetrate themselves; or

(B) to sexually penetrate another person (C); or

(C) to be sexually penetrated by C; and

(b) B is a child under the age of 12 years.

(2) A person who commits an offence against subsection (1) is liable to level 2 imprisonment (25 years maximum).

**Notes**

- 1 An exception applies to this offence—see section 49T.
- 2 A mistaken but honest and reasonable belief that B was 12 years of age or more is not a defence to this offence—see section 49ZC.

**49B Sexual penetration of a child under the age of 16**

(1) A person (A) commits an offence if—

(a) A intentionally—

(i) sexually penetrates another person (B); or

(ii) causes or allows B to sexually penetrate A; or

(iii) causes B—

(A) to sexually penetrate themselves; or

(B) to sexually penetrate another person (C); or

(C) to be sexually penetrated by C; and

(b) B is a child under the age of 16 years.

- (2) A person who commits an offence against subsection (1) is liable to level 4 imprisonment (15 years maximum).

**Notes**

- 1 An exception applies to this offence—see section 49T.  
2 Defences apply to this offence—see sections 49V and 49W.

**49C Sexual penetration of a child aged 16 or 17 under care, supervision or authority**

- (1) A person (A) commits an offence if—
- (a) A intentionally—
    - (i) sexually penetrates another person (B); or
    - (ii) causes or allows B to sexually penetrate A; or
    - (iii) causes B—
      - (A) to sexually penetrate themselves; or
      - (B) to sexually penetrate another person (C); or
      - (C) to be sexually penetrated by C; and
  - (b) B is—
    - (i) a child aged 16 or 17 years; and
    - (ii) under A's care, supervision or authority.

- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

**Notes**

- 1 Exceptions apply to this offence—see sections 49T and 49Y.
- 2 Defences apply to this offence—see sections 49X, 49Z and 49ZA.

**49D Sexual assault of a child under the age of 16**

- (1) A person (A) commits an offence if—
- (a) A intentionally—
    - (i) touches another person (B); or
    - (ii) causes or allows B to touch A; or
    - (iii) causes B—
      - (A) to touch, or to continue to touch, themselves; or
      - (B) to touch, or to continue to touch, another person (C); or
      - (C) to be touched, or to continue to be touched, by C; and
  - (b) B is a child under the age of 16 years; and
  - (c) the touching is—
    - (i) sexual; and
    - (ii) contrary to community standards of acceptable conduct.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

- (3) Whether or not the touching is contrary to community standards of acceptable conduct depends on the circumstances.
- (4) For the purposes of subsection (3)—
  - (a) the circumstances include—
    - (i) the purpose of the touching; and
    - (ii) whether A seeks or gets sexual arousal or sexual gratification from the touching;
  - (b) the circumstances do not include—
    - (i) whether B consents to the touching; or
    - (ii) whether A believes that B consents to the touching.

**Notes**

- 1 An exception applies to this offence—see section 49U.
- 2 A defence applies to this offence—see section 49W.
- 3 A mistaken but honest and reasonable belief that the touching was not sexual or contrary to community standards of acceptable conduct is not a defence to this offence—see section 49ZC.

**49E Sexual assault of a child aged 16 or 17 under care, supervision or authority**

- (1) A person (A) commits an offence if—
  - (a) A intentionally—
    - (i) touches another person (B); or
    - (ii) causes or allows B to touch A; or
    - (iii) causes B—
      - (A) to touch, or to continue to touch, themselves; or

(B) to touch, or to continue to touch, another person (C); or

(C) to be touched, or to continue to be touched, by C; and

(b) B is—

(i) a child aged 16 or 17 years; and

(ii) under A's care, supervision or authority; and

(c) the touching is—

(i) sexual; and

(ii) contrary to community standards of acceptable conduct.

(2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).

(3) Whether or not the touching is contrary to community standards of acceptable conduct depends on the circumstances.

(4) For the purposes of subsection (3)—

(a) the circumstances include—

(i) the purpose of the touching; and

(ii) whether A seeks or gets sexual arousal or sexual gratification from the touching;

(b) the circumstances do not include—

(i) whether B consents to the touching; or

- (ii) whether A believes that B consents to the touching.

**Notes**

- 1 An exception applies to this offence—see section 49Y.
- 2 Defences apply to this offence—see sections 49X, 49Z and 49ZA.
- 3 A mistaken but honest and reasonable belief that the touching was not sexual or contrary to community standards of acceptable conduct is not a defence to this offence—see section 49ZC.

**49F Sexual activity in the presence of a child under the age of 16**

- (1) A person (A) commits an offence if—
  - (a) A intentionally engages in an activity; and
  - (b) the activity is sexual; and
  - (c) another person (B) is present when A engages in the activity; and
  - (d) A knows that B is, or probably is, present when A engages in the activity; and
  - (e) B is a child under the age of 16 years; and
  - (f) engaging in the activity in the presence of B is contrary to community standards of acceptable conduct.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) Whether or not engaging in the activity in the presence of B is contrary to community standards of acceptable conduct depends on the circumstances.



- (4) For the purposes of subsection (3)—
- (a) the circumstances include—
    - (i) the purpose of the activity; and
    - (ii) whether A seeks or gets sexual arousal or sexual gratification from engaging in the activity or from the presence of B;
  - (b) the circumstances do not include—
    - (i) whether B consents—
      - (A) to being present when A engages in the activity; or
      - (B) to A engaging in the activity; or
    - (ii) whether A believes that B consents—
      - (A) to being present when A engages in the activity; or
      - (B) to A engaging in the activity.
- (5) For the purposes of subsection (1), when A engages in an activity, B may be present—
- (a) in person; or
  - (b) by means of an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000** that is received by B in real time or close to real time.
- (6) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as B was in Victoria at the time at which that conduct occurred.

- (7) It is immaterial that B was outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as A was in Victoria at the time at which that conduct occurred.

**Notes**

- 1 An exception applies to this offence—see section 49U.
- 2 A defence applies to this offence—see section 49W.
- 3 A mistaken but honest and reasonable belief that the activity was not sexual or that engaging in the activity in the presence of B was not contrary to community standards of acceptable conduct is not a defence to this offence—see section 49ZC.

**49G Sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority**

- (1) A person (A) commits an offence if—
- (a) A intentionally engages in an activity; and
  - (b) the activity is sexual; and
  - (c) another person (B) is present when A engages in the activity; and
  - (d) A knows that B is, or probably is, present when A engages in the activity; and
  - (e) B is—
    - (i) a child aged 16 or 17 years; and
    - (ii) under A's care, supervision or authority; and
  - (f) engaging in the activity in the presence of B is contrary to community standards of acceptable conduct.

- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
- (3) Whether or not engaging in the activity in the presence of B is contrary to community standards of acceptable conduct depends on the circumstances.
- (4) For the purposes of subsection (3)—
  - (a) the circumstances include—
    - (i) the purpose of the activity; and
    - (ii) whether A seeks or gets sexual arousal or sexual gratification from engaging in the activity or from the presence of B;
  - (b) the circumstances do not include—
    - (i) whether B consents—
      - (A) to being present when A engages in the activity; or
      - (B) to A engaging in the activity; or
    - (ii) whether A believes that B consents—
      - (A) to being present when A engages in the activity; or
      - (B) to A engaging in the activity.
- (5) For the purposes of subsection (1), when A engages in an activity, B may be present—
  - (a) in person; or

- (b) by means of an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000** that is received by B in real time or close to real time.
- (6) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as B was in Victoria at the time at which that conduct occurred.
- (7) It is immaterial that B was outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as A was in Victoria at the time at which that conduct occurred.

**Notes**

- 1 An exception applies to this offence—see section 49Y.
- 2 Defences apply to this offence—see sections 49X, 49Z and 49ZA.
- 3 A mistaken but honest and reasonable belief that the activity was not sexual or that engaging in the activity in the presence of B was not contrary to community standards of acceptable conduct is not a defence to this offence—see section 49ZC.

**49H Causing a child under the age of 16 to be present during sexual activity**

- (1) A person (A) commits an offence if—
- (a) another person (B) engages in an activity; and
  - (b) the activity is sexual; and
  - (c) another person (C) is present when B engages in the activity; and

- (d) A intentionally causes or allows C to be present when B engages in the activity; and
  - (e) C is a child under the age of 16 years; and
  - (f) A's causing or allowing C to be present when B engages in the activity is contrary to community standards of acceptable conduct.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) Whether or not causing or allowing C to be present when B engages in the activity is contrary to community standards of acceptable conduct depends on the circumstances.
- (4) For the purposes of subsection (3)—
- (a) the circumstances include—
    - (i) the purpose of the activity; and
    - (ii) whether A seeks or gets sexual arousal or sexual gratification from B engaging in the activity or from the presence of C;
  - (b) the circumstances do not include—
    - (i) whether C consents—
      - (A) to being present when B engages in the activity; or
      - (B) to B engaging in the activity; or

- (ii) whether A believes that C consents—
  - (A) to being present when B engages in the activity; or
  - (B) to B engaging in the activity.
- (5) For the purposes of subsection (1), when B engages in an activity, C may be present—
  - (a) in person; or
  - (b) by means of an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000** that is received by C in real time or close to real time.
- (6) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as C was in Victoria at the time at which that conduct occurred.
- (7) It is immaterial that C was outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as A was in Victoria at the time at which that conduct occurred.

**Notes**

- 1 An exception applies to this offence—see section 49U.
- 2 A defence applies to this offence—see section 49W.
- 3 A mistaken but honest and reasonable belief that the activity was not sexual or that causing or allowing C to be present when B engages in the activity was not contrary to community standards of acceptable conduct is not a defence to this offence—see section 49ZC.

**49I Causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity**

- (1) A person (A) commits an offence if—
  - (a) another person (B) engages in an activity; and
  - (b) the activity is sexual; and
  - (c) another person (C) is present when B engages in the activity; and
  - (d) A intentionally causes or allows C to be present when B engages in the activity; and
  - (e) C is—
    - (i) a child aged 16 or 17 years; and
    - (ii) under A's care, supervision or authority; and
  - (f) A's causing or allowing C to be present when B engages in the activity is contrary to community standards of acceptable conduct.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
- (3) Whether or not causing or allowing C to be present when B engages in the activity is contrary to community standards of acceptable conduct depends on the circumstances.

- (4) For the purposes of subsection (3)—
- (a) the circumstances include—
    - (i) the purpose of the activity; and
    - (ii) whether A seeks or gets sexual arousal or sexual gratification from B engaging in the activity or from the presence of C;
  - (b) the circumstances do not include—
    - (i) whether C consents—
      - (A) to being present when B engages in the activity; or
      - (B) to B engaging in the activity; or
    - (ii) whether A believes that C consents—
      - (A) to being present when B engages in the activity; or
      - (B) to B engaging in the activity.
- (5) For the purposes of subsection (1), when B engages in an activity, C may be present—
- (a) in person; or
  - (b) by means of an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000** that is received by C in real time or close to real time.
- (6) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as C was in Victoria at the time at which that conduct occurred.



- (7) It is immaterial that C was outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as A was in Victoria at the time at which that conduct occurred.

**Notes**

- 1 An exception applies to this offence—see section 49Y.
- 2 Defences apply to this offence—see sections 49X, 49Z and 49ZA.
- 3 A mistaken but honest and reasonable belief that the activity was not sexual or that causing or allowing C to be present when B engages in the activity was not contrary to community standards of acceptable conduct is not a defence to this offence—see section 49ZC.

**49J Persistent sexual abuse of a child under the age of 16**

- (1) A person (A) commits an offence if—
  - (a) A sexually abuses another person (B) on at least 3 occasions during a particular period; and
  - (b) B is a child under the age of 16 years during the whole of that period.
- (2) A person who commits an offence against subsection (1) is liable to level 2 imprisonment (25 years maximum).
- (3) It is not necessary that the alleged acts be of a similar nature or constitute an offence under the same provision.
- (4) It is not necessary to prove conduct constituting sexual abuse with the same degree of specificity as to date, time, place, circumstances or occasion as would be required if the accused were charged with an offence constituted by that conduct instead of an offence against subsection (1).

- (5) For the purposes of subsection (1), A sexually abuses B if A engages in conduct that would involve the commission by A of any of the following—
- (a) an offence against a provision of Subdivision (8A) (rape, sexual assault and associated sexual offences);
  - (b) an offence against section 49A(1) (sexual penetration of a child under the age of 12);
  - (c) an offence against section 49B(1) (sexual penetration of a child under the age of 16);
  - (d) an offence against section 49D(1) (sexual assault of a child under the age of 16);
  - (e) an offence against section 49F(1) (sexual activity in the presence of a child under the age of 16);
  - (f) an offence against section 49H(1) (causing a child under the age of 16 to be present during sexual activity);
  - (g) an offence against a provision of Subdivision (8C) (incest).
- (6) Nothing in this section affects the operation of any exception or defence applicable or available to A in respect of the offence constituting the sexual abuse.
- (7) If, on the trial of A for an offence against subsection (1), the jury is not satisfied that A is guilty of that offence but is satisfied that A engaged in conduct during the particular period that constitutes one or more instances of an offence against a provision referred to in subsection (5)—

- (a) the jury—
  - (i) must find A not guilty of the offence against subsection (1); and
  - (ii) may find A guilty of the one or more instances of an offence against a provision referred to in subsection (5); and
- (b) A is liable to the penalty for any offence of which, in accordance with this subsection, A is found guilty.
- (8) Subsection (7) does not restrict the operation of section 239 of the **Criminal Procedure Act 2009**.
- (9) A prosecution for an offence under subsection (1) must not be commenced without the consent of the Director of Public Prosecutions.

**49K Encouraging a child under the age of 16 to engage in, or be involved in, sexual activity**

- (1) A person (A) commits an offence if—
  - (a) A is 18 years of age or more; and
  - (b) A encourages another person (B) to engage in, or be involved in, an activity; and
  - (c) the activity is sexual; and
  - (d) B is a child under the age of 16 years; and
  - (e) A seeks or gets sexual arousal or sexual gratification from—
    - (i) the encouragement; or
    - (ii) the sexual activity that is encouraged.

- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) For the purposes of subsection (1) encouraging may be done—
  - (a) in person; or
  - (b) by means of an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000**.
- (4) It is not necessary to prove—
  - (a) that B in fact engaged in, or was involved in, the sexual activity that was encouraged; or
  - (b) that any sexual activity that B engaged in, or was involved in, was the same activity that was encouraged; or
  - (c) if B in fact engaged in, or was involved in, sexual activity (whether or not the same activity that was encouraged)—that A was present during that activity.
- (5) Despite anything to the contrary in Division 12, it is not an offence for a person to attempt to commit an offence against subsection (1).
- (6) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as B was in Victoria at the time at which that conduct occurred.

- (7) It is immaterial that B was outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as A was in Victoria at the time at which that conduct occurred.
- (8) In this section—  
*encourage* includes suggest, request, urge and demand.

**Notes**

- 1 A defence applies to this offence—see section 49W.
- 2 A mistaken but honest and reasonable belief that the activity was not sexual is not a defence to this offence—see section 49ZC.

**49L Encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity**

- (1) A person (A) commits an offence if—
- (a) A is 18 years of age or more; and
  - (b) A encourages another person (B) to engage in, or be involved in, an activity; and
  - (c) the activity is sexual; and
  - (d) B is—
    - (i) a child aged 16 or 17 years; and
    - (ii) under A's care, supervision or authority; and
  - (e) A seeks or gets sexual arousal or sexual gratification from—
    - (i) the encouragement; or
    - (ii) the sexual activity that is encouraged.

- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
- (3) For the purposes of subsection (1) encouraging may be done—
  - (a) in person; or
  - (b) by means of an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000**.
- (4) It is not necessary to prove—
  - (a) that B in fact engaged in, or was involved in, the sexual activity that was encouraged; or
  - (b) that any sexual activity that B engaged in, or was involved in, was the same activity that was encouraged; or
  - (c) if B in fact engaged in, or was involved in, sexual activity (whether or not the same activity that was encouraged)—that A was present during that activity.
- (5) Despite anything to the contrary in Division 12, it is not an offence for a person to attempt to commit an offence against subsection (1).
- (6) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as B was in Victoria at the time at which that conduct occurred.

- (7) It is immaterial that B was outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as A was in Victoria at the time at which that conduct occurred.
- (8) In this section—  
*encourage* includes suggest, request, urge and demand.

**Notes**

- 1 An exception applies to this offence—see section 49Y.
- 2 Defences apply to this offence—see sections 49X, 49Z and 49ZA.
- 3 A mistaken but honest and reasonable belief that the activity was not sexual is not a defence to this offence—see section 49ZC.

**49M Grooming for sexual conduct with a child under the age of 16**

- (1) A person (A) commits an offence if—
- (a) A is 18 years of age or more; and
  - (b) A communicates, by words or conduct (whether or not a response is made to the communication), with—
    - (i) another person (B) who is a child under the age of 16 years; or
    - (ii) another person (C) under whose care, supervision or authority B is; and
  - (c) A intends that the communication facilitate B engaging or being involved in the commission of a sexual offence by A or by another person who is 18 years of age or more.

- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) A does not intend to facilitate B engaging or being involved in the commission of a sexual offence by A or by another person who is 18 years of age or more if, were the conduct constituting the sexual offence to occur, A or the other person would satisfy an exception, or have a defence, to that sexual offence.
- (4) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as B or C was, or B and C were, in Victoria at the time at which that conduct occurred.
- (5) It is immaterial that B or C was, or B and C were, outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as A was in Victoria at the time that conduct occurred.
- (6) It is immaterial that A, B and C were all outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as A intended that the sexual offence would occur in Victoria.
- (7) In this section—

*communication* includes an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000**;



*sexual offence* means—

- (a) an offence against a provision of Subdivision (8A), this Subdivision (other than section 49K(1) or this section), (8C), (8D), (8E), (8F) or (8FA); or
- (b) an attempt to commit an offence covered by paragraph (a); or
- (c) an assault with intent to commit an offence referred to in paragraph (a).

**49N Loitering near schools etc. by sexual offender**

- (1) A person (A) commits an offence if—
  - (a) A has been found guilty of a relevant offence; and
  - (b) A loiters at or near a place; and
  - (c) the place is—
    - (i) a school, a children's service centre or an education and care service premises; or
    - (ii) a public place within the meaning of the **Summary Offences Act 1966** regularly frequented by children and in which children are present at the time of the loitering; and
  - (d) A knows that the place is—
    - (i) a school, a children's service centre or an education and care service premises; or

- (ii) a public place within the meaning of the **Summary Offences Act 1966** regularly frequented by children and in which children are present at the time of the loitering.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
- (3) In this section—
- children's services centre* means a place at which a children's service within the meaning of the **Children's Services Act 1996** operates;
- education and care service premises* means a place at which an education and care service (other than a family day care service) within the meaning of the Education and Care Services National Law (Victoria) educates or cares for children;
- relevant offence* means—
- (a) a sexual offence; or
- (b) murder where there are reasonable grounds to believe that a sexual offence was also committed on the victim; or
- (c) an offence against—
- (i) section 5, 6, 7 or 11 of the **Sex Work Act 1994**; or
- (ii) section 6, 7, 8 or 9 of the **Prostitution Regulation Act 1986**; or

- (iii) section 59(1)(a) or (b) or 60 inserted in this Act on 1 March 1981 by section 5 of the **Crimes (Sexual Offences) Act 1980** and repealed on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991**; or
- (iv) section 19 of the **Summary Offences Act 1966**; or
- (v) any of the following provisions as in force at any time before its repeal—
  - (A) section 60A of the **Classification of Films and Publications Act 1990**;
  - (B) section 57A of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995**;
  - (C) section 168A, 168B or 168C of the **Police Offences Act 1958**; or
- (vi) a provision referred to in paragraphs (dam), (dama) or (dan) of clause 1 of Schedule 1 to the **Sentencing Act 1991** or of attempting to commit an offence against a provision

referred to in  
paragraph (dama); or

- (vii) section 51B(1), 51C(1),  
51D(1), 51G(1) or 51H(1)  
or of attempting to commit  
an offence against  
section 51C(1);

*sexual offence* means—

- (a) an offence against section 38(1),  
39(1), 40(1), 41(1), 47(1), 48(1),  
49A(1), 49B(1), 49C(1), 49D(1),  
49E(1), 49F(1), 49G(1), 49H(1),  
49I(1), 49J(1), 49O(1), 50C(1),  
50D(1) or 50F(1); or
- (b) an offence against a provision  
referred to in clause 7A, 7B, 8, 9,  
10, 11A 11B, 11D(b), 11D(c),  
11D(d), 11D(g), 11D(h), 11E, 11F  
or 12 of Schedule 8; or
- (c) an offence against section 44(1),  
(2) or (4) (incest) as inserted in the  
**Crimes Act 1958** on 5 August  
1991 by section 3 of the **Crimes  
(Sexual Offences) Act 1991** and  
repealed by section 16 of the  
**Crimes Amendment  
(Sexual Offences) Act 2016**; or
- (d) an offence of conspiracy to  
commit, incitement to commit or  
attempting to commit an offence  
referred to in paragraph (a), (b)  
or (c).
- (4) If A has at any time been found guilty 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, that finding of guilt must be taken for the purposes of this section to be a finding of guilt of a sexual offence.

**Note**

An exception applies to this offence—see section 49ZB.

**490 Failure by a person in authority to protect a child from a sexual offence**

- (1) A person (A) commits an offence if—
  - (a) A occupies a position within, or in relation to, a relevant organisation; and
  - (b) there is a substantial risk that a relevant child will become the victim of a sexual offence committed by another person who is—
    - (i) 18 years of age or more; and
    - (ii) a person associated with the relevant organisation; and
  - (c) A knows that the risk exists; and
  - (d) A, by reason of A's position, has the power or responsibility to reduce or remove that risk; and
  - (e) A negligently fails to reduce or remove that risk.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
- (3) For the purposes of subsection (1), a person negligently fails to reduce or remove a risk if that failure involves a great falling short of the standard of care that a reasonable person would exercise in the circumstances.

- (4) For the avoidance of doubt, in a prosecution for an offence against subsection (1), it is not necessary to prove that a sexual offence has been committed.
- (5) It is immaterial that some or all of the circumstances constituting an offence against subsection (1) occurred outside Victoria, so long as the relevant child was in Victoria at any time while the substantial risk referred to in subsection (1)(b) existed.
- (6) It is immaterial that both A and the relevant child were outside Victoria at the time at which some or all of the circumstances constituting an offence against subsection (1) occurred, so long as the sexual offence was at risk of occurring in Victoria.
- (7) In this section—

*person associated*, in relation to a relevant organisation, includes but is not limited to a person who is an officer, employee, manager, owner, volunteer, contractor or agent of the organisation but does not include a person only because the person receives services from the organisation;

*relevant child* means a child (whether identifiable or not) under the age of 16 years who is, or may come, under the care, supervision or authority of a relevant organisation;

*relevant organisation* means—

- (a) an organisation that exercises care, supervision or authority over children, whether as its primary function or otherwise, and includes but is not limited to—

- (i) a church; and
  - (ii) a religious body; and
  - (iii) a school; and
  - (iv) an education and care service within the meaning of the Education and Care Services National Law (Victoria); and
  - (v) a children's service within the meaning of the **Children's Services Act 1996**; and
  - (vi) an out of home care service within the meaning of the **Children, Youth and Families Act 2005**; and
  - (vii) a hospital; and
  - (viii) a government department; and
  - (ix) a government agency; and
  - (x) a municipal council; and
  - (xi) a public sector body; and
  - (xii) a sporting group; and
  - (xiii) a youth organisation; and
  - (xiv) a charity or benevolent organisation; or
- (b) an organisation that, in accordance with an agreement or arrangement with an organisation referred to in paragraph (a), is required or permitted to engage in activities associated with the care, supervision or authority over children exercised by the

organisation referred to in  
paragraph (a);

*sexual offence* means—

- (a) an offence against a provision of Subdivision (8A), this Subdivision (other than this section), (8C), (8D), (8E), (8F) or (8FA); or
- (b) an attempt to commit an offence covered by paragraph (a) (other than section 49K); or
- (c) an assault with intent to commit an offence covered by paragraph (a).

**49P Abduction or detention of a child under the age of 16 for a sexual purpose**

- (1) A person (A) commits an offence if—
  - (a) A—
    - (i) takes away or detains another person (B); or
    - (ii) causes B to be taken away or detained by another person; and
  - (b) B is a child under the age of 16 years; and
  - (c) the person who has lawful charge of B (C) does not consent to B being taken away or detained; and
  - (d) A knows that—
    - (i) B is a child under the age of 16 years; or
    - (ii) B is probably a child under the age of 16 years; and



- (e) A knows that—
    - (i) C does not consent to B being taken away or detained; or
    - (ii) C probably does not consent to B being taken away or detained; and
  - (f) A intends B will take part in a sexual act with A or another person or both; and
  - (g) B taking part in the sexual act would involve the commission by A, or the other person, or both, of an offence against section 38(1), 39(1), 40(1), 41(1) or a provision of this Subdivision (other than this section).
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

**Note**

See section 35C for the meaning of taking part in a sexual act.

**49Q Causing or allowing a sexual performance involving a child**

- (1) A person (A) commits an offence if—
- (a) A intentionally causes or allows another person (B) to take part in a sexual performance; and
  - (b) the sexual performance occurs in circumstances that involve any person receiving payment, reward or other benefit (whether before or after the performance) in respect of the performance; and
  - (c) B is a child under the age of 18 years.

(2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

(3) In this section—

*sexual performance* means a live performance (whether in person or by an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000**) that is, or could reasonably be considered to be, for the sexual arousal or sexual gratification of any person.

**Notes**

- 1 A defence applies to this offence—see section 49X.
- 2 A mistaken but honest and reasonable belief that the sexual performance did not occur in circumstances that involved payment, reward or other benefit to any person is not a defence to this offence—see section 49ZC.

**49R Inviting or offering a sexual performance involving a child**

- (1) A person (A) commits an offence if—
- (a) A intentionally—
    - (i) invites another person (B) to take part in a sexual performance; or
    - (ii) offers to a third person that B will take part in a sexual performance; and
  - (b) the invitation or offer involves any person receiving payment, reward or other benefit (whether before or after the performance) in respect of the performance; and
  - (c) B is a child under the age of 18 years.

(2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

(3) In this section—

*sexual performance* means a live performance (whether in person or by an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000**) that is, or could reasonably be considered to be, for the sexual arousal or sexual gratification of any person.

**Notes**

- 1 A defence applies to this offence—see section 49X.
- 2 A mistaken but honest and reasonable belief that the invitation or offer did not involve payment, reward or other benefit to any person is not a defence to this offence—see section 49ZC.

**49S Facilitating a sexual offence against a child**

- (1) A person (A) commits an offence if—
- (a) A engages in conduct that aids, facilitates or contributes in any way to another person (B) engaging in sexual conduct (whether or not in Victoria) in relation to a child; and
  - (b) A engages in the conduct with the intention of obtaining a benefit for A or another person (C); and
  - (c) A—
    - (i) intends that the conduct will aid, facilitate or contribute in any way to B engaging in sexual conduct in relation to a child; or

- (ii) knows that the conduct will, or probably will, aid, facilitate or contribute in any way to B engaging in sexual conduct in relation to a child; and
- (d) B's engaging in sexual conduct in relation to a child—
  - (i) constitutes an offence against section 38(1), 39(1), 40(1), 41(1) or a provision of this Subdivision (other than this section); or
  - (ii) constitutes an offence against a provision of Division 272 of Chapter 8 of the Criminal Code of the Commonwealth; or
  - (iii) takes place outside Victoria but would, if the conduct occurred in Victoria, constitute an offence against a provision covered by subparagraph (i) whether or not it constitutes an offence in the place in which it takes place.
- (2) A person who commits an offence against subsection (1) is liable to level 3 imprisonment (20 years maximum).
- (3) For the purposes of subsection (1), conduct that aids, facilitates or contributes in any way to another person engaging in sexual conduct in relation to a child includes—
  - (a) making travel arrangements; and

- (b) causing or allowing a child to enter or remain on premises which A owns, occupies, manages or assists in managing.

**Note**

A mistaken but honest and reasonable belief that B's engaging in sexual conduct in relation to a child did not constitute an offence or, if the conduct takes place outside Victoria, would not constitute an offence, is not a defence to this offence—see section 49ZC.

**49T Exception to sexual penetration offences—  
medical or hygienic purposes**

A does not commit an offence against section 49A(1), 49B(1) or 49C(1) if A's conduct occurs in the course of a procedure carried out in good faith for medical or hygienic purposes.

**Note**

The reference to A in this section is a reference to the same A referred to in sections 49A, 49B and 49C.

**49U Exceptions to offences against children  
under 16—similarity in age**

- (1) A does not commit an offence against section 49D(1) or 49F(1) if, at the time at which the offence is alleged to have been committed—
- (a) A is not more than 2 years older than B;  
and
  - (b) B is 12 years of age or more.
- (2) A does not commit an offence against section 49H(1) if, at the time at which the offence is alleged to have been committed—

- (a) A is not more than 2 years older than C;  
and
- (b) C is 12 years of age or more.

**Note**

References to A, B and C in this section are references to the same A, B and C referred to in sections 49D, 49F and 49H.

**49V Defence to offence against a child under 16—similarity in age**

It is a defence to a charge for an offence against section 49B(1) if, at the time of the conduct constituting the offence—

- (a) A was not more than 2 years older than B; and
- (b) B was 12 years of age or more; and
- (c) B consented to the sexual penetration.

**Note**

References to A and B in this section are references to the same A and B referred to in section 49B.

**49W Defences to offences against children under 16—reasonable belief as to age**

- (1) It is a defence to a charge for an offence against section 49B(1), 49D(1) or 49F(1) if, at the time of the conduct constituting the offence—
  - (a) B was 12 years of age or more; and
  - (b) A reasonably believed that B was 16 years of age or more.
- (2) It is a defence to a charge for an offence against section 49H(1) if, at the time of the conduct constituting the offence—
  - (a) C was 12 years of age or more; and
  - (b) A reasonably believed that C was 16 years of age or more.

- (3) It is a defence to a charge for an offence against section 49K(1) if, at the time of the conduct constituting the offence, A reasonably believed that B was 16 years of age or more.
- (4) A bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (1)(b), (2)(b) or (3).

**Notes**

- 1 References to A, B and C in this section are references to the same A, B and C referred to in sections 49B, 49D, 49F, 49H and 49K.
- 2 Whether or not A reasonably believed that B or C was 16 years of age or more depends on the circumstances. The circumstances include any steps that A took to find out B or C's age.
- 3 An evidential burden applies to the matters referred to in subsections (1)(a) and (2)(a).

**49X Defences to offences against children aged 16 or 17 or under 18—reasonable belief as to age**

- (1) It is a defence to a charge for an offence against section 49C(1), 49E(1), 49G(1) or 49L(1) if, at the time of the conduct constituting the offence, A reasonably believed that B was 18 years of age or more.
- (2) It is a defence to a charge for an offence against section 49I(1) if, at the time of the conduct constituting the offence, A reasonably believed that C was 18 years of age or more.
- (3) It is a defence to a charge for an offence against section 49Q(1) or 49R(1) if, at the time of the conduct constituting the offence—

- (a) B was 12 years of age or more; and
  - (b) A reasonably believed that B was 18 years of age or more.
- (4) A bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (1), (2) or (3)(b).

**Notes**

- 1 References to A, B and C in this section are references to the same A, B and C referred to in sections 49C, 49E, 49G, 49I, 49L, 49Q and 49R.
- 2 Whether or not A reasonably believed that B or C was 18 years of age or more depends on the circumstances. The circumstances include any steps that A took to find out B or C's age.
- 3 An evidential burden applies to the matter referred to in subsection (3)(a).

**49Y Exceptions to offences against children aged 16 or 17—marriage or domestic partnership**

- (1) A does not commit an offence against section 49C(1), 49E(1), 49G(1) or 49L(1) if, at the time at which the offence is alleged to have been committed—
- (a) A and B are married to each other and the marriage is recognised as valid under the Marriage Act 1961 of the Commonwealth; or
  - (b) A—
    - (i) is not more than 5 years older than B; and
    - (ii) is B's domestic partner and the domestic partnership commenced before B came under A's care, supervision or authority.



- (2) A does not commit an offence against section 49I(1) if, at the time at which the offence is alleged to have been committed—
- (a) A and C are married to each other and the marriage is recognised as valid under the Marriage Act 1961 of the Commonwealth; or
  - (b) A—
    - (i) is not more than 5 years older than C; and
    - (ii) is C's domestic partner and the domestic partnership commenced before C came under A's care, supervision or authority.

**Note**

References to A, B and C in this section are references to the same A, B and C referred to in sections 49C, 49E, 49G, 49I and 49L.

**49Z Defences to offences against children aged 16 or 17—reasonable belief as to marriage or domestic partnership**

- (1) It is a defence to a charge for an offence against section 49C(1), 49E(1), 49G(1) or 49L(1) if, at the time of the conduct constituting the offence—
- (a) A reasonably believed that A and B were married to each other and that the marriage was recognised as valid under the Marriage Act 1961 of the Commonwealth; or
  - (b) A—
    - (i) was not more than 5 years older than B; and

- (ii) reasonably believed that A was B's domestic partner and that the domestic partnership commenced before B came under A's care, supervision or authority.
- (2) It is a defence to a charge for an offence against section 49I(1) if, at the time of the conduct constituting the offence—
  - (a) A reasonably believed that A and C were married to each other and that the marriage was recognised as valid under the Marriage Act 1961 of the Commonwealth; or
  - (b) A—
    - (i) was not more than 5 years older than C; and
    - (ii) reasonably believed that A was C's domestic partner and that the domestic partnership commenced before C came under A's care, supervision or authority.
- (3) A bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (1)(a) or (b)(ii) or (2)(a) or (b)(ii).

**Notes**

- 1 References to A, B and C in this section are references to the same A, B and C referred to in sections 49C, 49E, 49G, 49I and 49L.
- 2 An evidential burden applies to the matters referred to in subsections (1)(b)(i) and (2)(b)(i).

**49ZA Defences to offences against children aged 16 or 17—reasonable belief as to care, supervision or authority**

- (1) It is a defence to a charge for an offence against section 49C(1), 49E(1), 49G(1) or 49L(1) if, at the time of the conduct constituting the offence, A reasonably believed that B was not under A's care, supervision or authority.
- (2) It is a defence to a charge for an offence against section 49I(1) if, at the time of the conduct constituting the offence, A reasonably believed that C was not under A's care, supervision or authority.
- (3) A bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (1) or (2).

**Note**

References to A, B and C in this section are references to the same A, B and C referred to in sections 49C, 49E, 49G, 49I and 49L.

**49ZB Exception to loitering offence**

A does not commit an offence against section 49N(1) if A has a reasonable excuse for loitering at or near a place referred to in section 49N(1)(c).

**Note**

The reference to A in this section is a reference to the same A referred to in section 49N.

**49ZC No defence of mistaken but honest and reasonable belief of certain matters**

It is not a defence to a charge that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that—

- (a) for an offence against section 49A(1)—  
B was 12 years of age or more; or
- (b) for an offence against section 49D(1)  
or 49E(1)—the touching was not—
  - (i) sexual; or
  - (ii) contrary to community standards  
of acceptable conduct; or
- (c) for an offence against section 49F(1)  
or 49G(1)—
  - (i) the activity was not sexual; or
  - (ii) engaging in the activity in the  
presence of B was not contrary to  
community standards of  
acceptable conduct; or
- (d) for an offence against section 49H(1)  
or 49I(1)—
  - (i) the activity was not sexual; or
  - (ii) A's causing or allowing C to be  
present when B engages in the  
activity was not contrary to  
community standards of  
acceptable conduct; or
- (e) for an offence against section 49K(1)  
or 49L(1)—the activity was not sexual;  
or
- (f) for an offence against section 49Q(1)—  
the sexual performance did not occur in  
circumstances that involved payment,  
reward or other benefit to any person in  
respect of the performance; or
- (g) for an offence against section 49R(1)—  
the invitation or offer did not involve  
payment, reward or other benefit to any  
person in respect of the performance; or

- (h) for an offence against section 49S(1)—  
B's engaging in sexual conduct in  
relation to a child did not constitute an  
offence or, if the conduct takes place  
outside Victoria, would not constitute  
an offence.

**Note**

References to A, B and C in this section are references to the same A, B and C referred to in sections 49A, 49D, 49E, 49F, 49G, 49H, 49I, 49K, 49L, 49Q, 49R and 49S.

**(8C) Incest**

**50A Definitions**

In this Subdivision—

*child*, in relation to a person, means—

- (a) the person's child by birth; or
- (b) the person's genetic child; or
- (c) the person's child by operation of  
the **Adoption Act 1984**; or
- (d) the person's child by operation of  
the **Status of Children Act 1974**;

*half-sibling*, in relation to a person, means a  
person who shares a common parent  
with the person;

*lineal ancestor*, in relation to a person,  
means a lineal ancestor of the person's  
parent;

*lineal descendant*, in relation to a person,  
means a lineal descendant of the  
person's child;

*parent*, in relation to a person, means—

- (a) the person's birth parent; or
- (b) the person's genetic parent; or

(c) the person's parent by operation of the **Adoption Act 1984**; or

(d) the person's parent by operation of the **Status of Children Act 1974**;

*sibling*, in relation to a person, means a person who has the same parents as the person;

*step-parent*, in relation to a person, means the spouse or domestic partner of the person's parent, being a person who is not the person's parent.

**50B Rebuttable presumption as to family relationship**

In a proceeding for an offence against a provision of this Subdivision, there is a rebuttable presumption that—

- (a) A knows that A is related to B in the way alleged; and
- (b) people who are reputed to be related to each other in a particular way are in fact related in that way.

**50C Sexual penetration of a child or lineal descendant**

- (1) A person (A) commits an offence if—
  - (a) A intentionally—
    - (i) sexually penetrates another person (B); or
    - (ii) causes or allows B to sexually penetrate A; and
  - (b) B is A's child or lineal descendant; and
  - (c) A knows that B is A's child or lineal descendant.

- (2) A person who commits an offence against subsection (1) is liable to level 2 imprisonment (25 years maximum).

**Notes**

- 1 An exception applies to this offence—see section 50G.
- 2 A defence applies to this offence—see section 50H.
- 3 B's consent is not a defence to this offence—see section 50K.

**50D Sexual penetration of a step-child**

- (1) A person (A) commits an offence if—
- (a) A intentionally—
    - (i) sexually penetrates another person (B); or
    - (ii) causes or allows B to sexually penetrate A; and
  - (b) B is a child or lineal descendant of A's spouse or domestic partner; and
  - (c) A knows that B is a child or lineal descendant of A's spouse or domestic partner.
- (2) A person who commits an offence against subsection (1) is liable to level 2 imprisonment (25 years maximum).

**Notes**

- 1 Exceptions apply to this offence—see sections 50G and 50I.
- 2 A defence applies to this offence—see section 50H.
- 3 B's consent is not a defence to this offence—see section 50K.

**50E Sexual penetration of a parent, lineal ancestor or step-parent**

- (1) A person (A) commits an offence if—
- (a) A intentionally—
    - (i) sexually penetrates another person (B); or
    - (ii) causes or allows B to sexually penetrate A; and
  - (b) A is 18 years of age or more; and
  - (c) B is A's parent, lineal ancestor or step-parent; and
  - (d) A knows that B is A's parent, lineal ancestor or step-parent.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).

**Notes**

- 1 Exceptions apply to this offence—see sections 50G and 50J.
- 2 A defence applies to this offence—see section 50H.
- 3 B's consent is not a defence to this offence—see section 50K.

**50F Sexual penetration of a sibling or half-sibling**

- (1) A person (A) commits an offence if—
- (a) A intentionally—
    - (i) sexually penetrates another person (B); or
    - (ii) causes or allows B to sexually penetrate A; and



(b) B is A's sibling or half-sibling; and

(c) A knows that B is A's sibling or half-sibling.

(2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).

**Notes**

- 1 An exception applies to this offence—see section 50G.
- 2 A defence applies to this offence—see section 50H.
- 3 B's consent is not a defence to this offence—see section 50K.

**50G Exception—medical or hygienic purposes**

A does not commit an offence against a provision of this Subdivision if A's conduct occurs in the course of a procedure carried out in good faith for medical or hygienic purposes.

**Note**

The reference to A in this section is a reference to the same A referred to in the offence provisions in this Subdivision.

**50H Defence—accused did not consent**

It is a defence to a charge for an offence against a provision of this Subdivision if A did not consent to the conduct constituting the offence.

**Notes**

- 1 The reference to A in this section is a reference to the same A referred to in the offence provisions in this Subdivision.
- 2 A person may intentionally engage in conduct but not consent to it—see section 36(2). For example, B threatens to hurt A if A does not allow B to sexually penetrate A. A intentionally allows B to sexually penetrate A because A is afraid of harm. A did not consent to the conduct constituting the offence.

**50I Exception to offences against section 50D**

A does not commit an offence against section 50D(1) if, at the time at which the offence is alleged to have been committed—

- (a) B is 18 years of age or more; and
- (b) A has not engaged in sexual activity with B when B was under 18 years of age; and
- (c) B has not at any time been under A's care, supervision or authority.

**Note**

References to A and B in this section are references to the same A and B referred to in section 50D.

**50J Exceptions to offences against section 50E**

- (1) A does not commit an offence against section 50E(1) if, at the time at which the offence is alleged to have been committed—
  - (a) B is A's step-parent; and
  - (b) A has not at any time been under B's care, supervision or authority.
- (2) A does not commit an offence against section 50E(1) if B engaged in sexual activity with A when A was under 18 years of age.

**Note**

References to A and B in this section are references to the same A and B referred to in section 50E.

### **50K Consent not a defence**

It is not a defence to a charge for an offence against a provision of this Subdivision that B consented to the conduct constituting the offence.

#### **Note**

The reference to B in this section is a reference to the same B referred to in the offence provisions in this Subdivision.

### **(8D) Child abuse material**

### **51A Definitions**

(1) In this Subdivision—

*administer*, in relation to a website, includes building, developing and maintaining the website but does not include hosting the website;

*authorised classifier* means a person, or a person who belongs to a class of person, prescribed by the regulations for the purposes of this definition;

*child* means a person under the age of 18 years;

*child abuse material* means material that—

(a) depicts or describes—

(i) a person who is, or who appears or is implied to be, a child—

(A) as a victim of torture, cruelty or physical abuse (whether or not the torture, cruelty or abuse is sexual); or

(B) as a victim of sexual abuse; or

- (C) engaged in, or apparently engaging in, a sexual pose or sexual activity (whether or not in the presence of another person); or
- (D) in the presence of another person who is engaged in, or apparently engaged in, a sexual pose or sexual activity; or
- (ii) the genital or anal region of a person who is, or who appears or is implied to be, a child; or
- (iii) the breast area of a person who is, or who appears or is implied to be, a female child; and
- (b) reasonable persons would regard as being, in the circumstances, offensive;

***child abuse material disposal order*** means an order made under section 51X(1);

***child abuse material offence*** means an offence against a provision of this Subdivision;

***classified*** means classified under the Commonwealth Act;

***Commonwealth Act*** means the Classification (Publications, Films and Computer Games) Act 1995 of the Commonwealth;

***deal***, in relation to child abuse material,  
includes any of the following—

- (a) viewing, uploading or  
downloading child abuse material;
- (b) making child abuse material  
available for viewing, uploading  
or downloading;
- (c) facilitating the viewing, uploading  
or downloading of child abuse  
material;

***electronic material*** includes data from  
which text, images or sound may be  
generated;

***encourage*** includes suggest, request, urge  
and demand;

***law enforcement agency*** means—

- (a) Victoria Police or the police force  
or police service of any other State  
or of the Northern Territory of  
Australia; or
- (b) the Australian Federal Police; or
- (c) the Australian Crime Commission  
established by the Australian  
Crime Commission Act 2002 of  
the Commonwealth; or
- (d) any other authority or person  
responsible for the enforcement of  
the laws of—
  - (i) Victoria or any other State;  
or
  - (ii) the Commonwealth; or

(iii) the Australian Capital Territory; or

(iv) the Northern Territory of Australia;

**material** means—

- (a) any film, audio, photograph, printed matter, image, computer game or text; or
- (b) any electronic material; or
- (c) any other thing of any kind;

**Note**

See also subsection (2).

**police officer** includes a member of the Australian Federal Police;

**relevant industry regulatory authority** means a person or body prescribed to be a relevant industry regulatory authority for the purposes of section 51S(2)(d);

**seized thing** means a thing that came into the possession of a police officer in the course of the exercise of functions as a police officer;

**website** includes a page, or a group of pages, on the Internet.

- (2) For the purposes of this Subdivision—
- (a) an image may be still, moving, recorded or unrecorded; and

- (b) the ways in which material is distributed may include—
  - (i) publishing, exhibiting, communicating, sending, supplying or transmitting the material to any other person; or
  - (ii) making the material available for access by any other person.

**51B Involving a child in the production of child abuse material**

- (1) A person (A) commits an offence if—
  - (a) A intentionally involves another person (B) in the production of material; and
  - (b) B is a child; and
  - (c) A knows that B is, or probably is, a child; and
  - (d) the material is child abuse material; and
  - (e) A knows that the material is, or probably is, child abuse material.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) For the purposes of subsection (1), the ways in which A involves B in the production of material may include—
  - (a) inviting or encouraging B to be involved, or offering B to be involved, in the production of the material; or

- (b) causing or allowing B to be involved in the production of the material; or
- (c) using B in the production of the material.

**Notes**

- 1 B need not be described or depicted in the material.
- 2 Exceptions apply to this offence—see sections 51J, 51K and 51M.
- 3 Defences apply to this offence—see sections 51L, 51N, 51O, 51P, 51Q and 51R.
- 4 A mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as offensive is not a defence to this offence—see section 51U.

**51C Producing child abuse material**

- (1) A person (A) commits an offence if—
  - (a) A intentionally produces material; and
  - (b) the material is child abuse material; and
  - (c) A knows that the material is, or probably is, child abuse material.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) For the purposes of subsection (1), the ways in which material is produced may include—
  - (a) filming, printing, photographing, recording, writing, drawing or otherwise generating material; or
  - (b) altering or manipulating material; or



(c) reproducing or copying material.

**Notes**

- 1 Exceptions apply to this offence—see sections 51J, 51K and 51M.
- 2 Defences apply to this offence—see sections 51L, 51N, 51O, 51P, 51Q and 51R.
- 3 A mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as offensive is not a defence to this offence—see section 51U.

**51D Distributing child abuse material**

- (1) A person (A) commits an offence if—
  - (a) A intentionally distributes material; and
  - (b) the material is child abuse material; and
  - (c) A knows that the material is, or probably is, child abuse material.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) It is not necessary to prove—
  - (a) the identity of any person to whom the material was distributed; or
  - (b) that another person in fact accessed the material.
- (4) It is immaterial that some or all of the child abuse material was distributed outside Victoria, so long as A was in Victoria at some or all of the time at which the material was distributed.

- (5) It is immaterial that A was outside Victoria at some or all of time at which the material was distributed, so long as some or all of the material was distributed in Victoria.

**Notes**

- 1 Section 51A(2)(b) provides for the ways in which material may be distributed.
- 2 Exceptions apply to this offence—see sections 51J, 51K and 51M.
- 3 Defences apply to this offence—see sections 51L, 51P, 51Q and 51R.
- 4 A mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as offensive is not a defence to this offence—see section 51U.

**51E Administering a website used to deal with child abuse material**

- (1) A person (A) commits an offence if—
- (a) A administers, or assists in the administration of, a website; and
  - (b) the website is used by another person to deal with child abuse material; and
  - (c) A—
    - (i) intends that the website be used by another person to deal with child abuse material; or

(ii) is aware that the website is being used by another person to deal with child abuse material.

**Examples**

- 1 A manages membership of a website. A intends that the website be used by other persons to view child abuse material.
  - 2 A monitors traffic through a website and ensures that the web server hardware and software are running correctly. A is aware that the website is being used by other persons to download child abuse material.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
  - (3) It is not necessary to prove the identity of the person using the website to deal with child abuse material.
  - (4) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria or that a computer or device used in connection with administering the website was outside Victoria, so long as—
    - (a) the person using the website to deal with child abuse material was in Victoria; or
    - (b) the computer or device used to deal with child abuse material was in Victoria.
  - (5) It is immaterial that the person using the website to deal with child abuse material was outside Victoria or that the computer or device used to deal with child abuse material was outside Victoria, so long as—

- (a) some or all of the conduct constituting an offence against subsection (1) occurred in Victoria; or
- (b) a computer or device used in connection with administering the website was in Victoria.

**Notes**

- 1 Exceptions apply to this offence—see sections 51J, 51K and 51S.
- 2 Defences apply to this offence—see section 51L.
- 3 A mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as offensive is not a defence to this offence—see section 51U.

**51F Encouraging use of a website to deal with child abuse material**

- (1) A person (A) commits an offence if—
  - (a) A is 18 years of age or more; and
  - (b) A encourages another person to use a website; and
  - (c) A intends that the other person use the website to deal with child abuse material.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) In determining whether A has encouraged another person to use a website to deal with child abuse material, it is not necessary to prove—
  - (a) the identity of the person encouraged to use the website to deal with child abuse material; or

- (b) that another person in fact used the website to deal with child abuse material; or
  - (c) if another person did in fact use the website to deal with child abuse material, that it was A's encouragement that caused the person to do so.
- (4) Despite anything to the contrary in Division 12, it is not an offence for a person to attempt to commit an offence against subsection (1).
- (5) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as the person being encouraged was in Victoria at the time at which that conduct occurred.
- (6) It is immaterial that the person being encouraged was outside Victoria at the time the conduct constituting an offence against subsection (1) occurred, so long as some or all of that conduct occurred in Victoria.

**Notes**

- 1 If an adult uses a child as an innocent agent to encourage another person to use a website, intending that the other person use the website to deal with child abuse material, the adult commits an offence against subsection (1).
- 2 Exceptions apply to this offence—see sections 51J and 51K.
- 3 A defence applies to this offence—see section 51L.
- 4 A mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as offensive is not a defence to this offence—see section 51U.

**51G Possession of child abuse material**

- (1) A person (A) commits an offence if A knowingly possesses child abuse material.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) For the purposes of subsection (1), A possesses child abuse material that is electronic material if A controls access to the material whether or not A has physical possession of the electronic material.
- (4) It is immaterial that the electronic material was outside Victoria, so long as A was in Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred.
- (5) It is immaterial that A was outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as the electronic material was in Victoria.

**Examples**

- 1 A has an online storage account for electronic material accessible with a username and password. A has control of what is stored in the account and can move material around within the account or delete material from the account. A has an electronic folder in the account that A has titled 'personal' in which A puts some electronic child abuse material. A knowingly has possession of child abuse material.
- 2 In an online chat A is given a password for a joint email account that is shared with multiple users that A doesn't know. A logs into the email account and views emails that contain child abuse material images. While logged in A has the ability to view, move or delete emails that contain child abuse material. A continues to access the email account to view images. A knowingly has possession of child abuse material.

**Notes**

- 1 Exceptions apply to this offence—see sections 51J, 51K and 51M.
- 2 Defences apply to this offence—see sections 51L, 51N, 51O, 51P, 51Q, 51R and 51T.
- 3 A mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as offensive is not a defence to this offence—see section 51U.

**51H Accessing child abuse material**

- (1) A person (A) commits an offence if—
  - (a) A intentionally accesses material; and
  - (b) the material is child abuse material; and
  - (c) A knows that the material is, or probably is, child abuse material.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) For the purposes of subsection (1), the ways in which A accesses material may include—
  - (a) viewing material; or
  - (b) displaying material by an electronic medium or any other output of the material by an electronic medium.

**Notes**

- 1 Exceptions apply to this offence—see sections 51J, 51K and 51M.
- 2 Defences apply to this offence—see sections 51L, 51N, 51O, 51P, 51Q and 51R.
- 3 A mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as offensive is not a defence to this offence—see section 51U.

## **51I Assisting a person to avoid apprehension**

- (1) A person (A) commits an offence if—
- (a) A intentionally provides information to another person (B); and
  - (b) A intends that B use the information for the purpose of avoiding or reducing the likelihood of apprehension for an offence committed by B against section 51B(1), 51C(1), 51D(1), 51E(1), 51F(1), 51G(1) or 51H(1).

### **Examples**

- 1 A provides information to B about how to use a website to deal with child abuse material anonymously or how to encrypt electronic material containing child abuse material.
  - 2 A provides information to B about how to delete electronic material that records information about B's identity.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) It is not necessary to prove—
- (a) the identity of the person to whom the information was provided; or
  - (b) that the information was actually used by the other person.
- (4) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as the other person was in Victoria at the time at which that conduct occurred.
- (5) It is immaterial that the other person was outside Victoria at the time at which some or all of the conduct constituting an offence



against subsection (1) occurred, so long as that conduct occurred in Victoria.

- (6) For the purposes of subsections (4) and (5), information is provided by A to B at the place where A is at the time of giving that information irrespective of where B is at the time of receiving that information.

**Note**

A mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as offensive is not a defence to this offence—see section 51U.

**51J Exception—administration of the law**

A does not commit a child abuse material offence (other than an offence against section 51I(1)) if the conduct is engaged in by A in good faith in the course of official duties of A—

- (a) connected with the administration of the criminal justice system, including the investigation or prosecution of offences; or
- (b) as an employee of the Department of Justice and Regulation who is authorised to engage in that conduct by the Secretary to that Department.

**Note**

The reference to A in this section is a reference to the same A referred to in the child abuse material offence provisions.

**51K Exception—classification**

A does not commit a child abuse material offence (other than an offence against section 51I(1)) in respect of material that, at the time at which the offence is alleged to have been committed, was classified other

than RC or would, if classified, have been classified other than RC.

**Notes**

- 1 The reference to A in this section is a reference to the same A referred to in the child abuse material offence provisions.
- 2 Under the Classification (Publications, Films and Computer Games) Act 1995 of the Commonwealth, a classification of RC means Refused Classification.

**51L Defence of artistic merit or public benefit**

- (1) It is a defence to a charge for a child abuse material offence (other than an offence against section 51I(1)) if—
  - (a) the material—
    - (i) was not produced with the involvement of a person who was, at the time it was produced, under the age of 18 years; and
    - (ii) possesses artistic merit; or
  - (b) the material is of public benefit.
- (2) For the purposes of subsection (1)(b), material that is of public benefit includes material that is for a genuine medical, legal, scientific or educational purpose.

**Examples**

- 1 A is a university lecturer in psychology. During a lecture on abnormal psychology, A shows a lecture slide with examples of textual child abuse material to illustrate the type of material associated with an abnormal psychological profile. The lecture slide is of public benefit.
- 2 A is a photojournalist in a war zone. A takes a photo of a child victim of torture and submits it to a news organisation for publication. The photo is of public benefit.

- (3) A bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (1)(a)(ii) or (b).

**Notes**

- 1 The reference to A in this section is a reference to the same A referred to in the child abuse material offence provisions.
- 2 An evidential burden applies to the matter referred to in subsection (1)(a)(i).

**51M Exceptions applying to children**

- (1) A does not commit an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—
- (a) A is a child; and
  - (b) the child abuse material is an image; and
  - (c) the image depicts A alone.

**Example**

A is 15 years old and takes a photograph of themselves. A stores the photograph on their mobile phone. The offences in 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) do not apply to A in respect of the image.

**Note**

Section 51O may apply if A is an adult.

- (2) A does not commit an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—
- (a) A is a child; and
  - (b) the child abuse material is an image; and

- (c) A is the victim of a criminal offence punishable by imprisonment and the image depicts that offence.

**Example**

The image depicts the child (A) being raped by another person. The offences in sections 51B(1), 51C(1), 51D(1), 51G(1) and 51H(1) do not apply to A in respect of the image.

- (3) In subsections (1) and (2), a reference to an image, in relation to an offence against section 51B(1), is a reference to the image that A involves the child in producing.

**Note**

References to A in this section are references to the same A referred to in sections 51B, 51C, 51D, 51G and 51H.

**51N Defence applying to children**

- (1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—
- (a) A is a child; and
  - (b) the child abuse material is an image; and
  - (c) the image depicts one or more persons (whether or not it depicts A); and
  - (d) the image—
    - (i) does not depict an act that is a criminal offence punishable by imprisonment; or
    - (ii) depicts an act that is a criminal offence punishable by imprisonment but A reasonably believes that it does not; and

- (e) at the time of the conduct constituting the offence—
- (i) A was not more than 2 years older than the youngest child depicted in the image; or
  - (ii) A reasonably believed that they were not more than 2 years older than the youngest child depicted in the image.

**Examples**

- 1 The image depicts A taking part in an act of sexual penetration with another child who is not more than 2 years younger. Both are consenting to the act. A is not guilty of an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) in respect of the image.
  - 2 The image depicts a child being sexually penetrated. A is a child and A reasonably believes that the image depicts a consensual sexual relationship between two 16 year olds and is therefore not a criminal offence. A also reasonably believes that A is not more than 2 years older than the youngest child depicted in the image. A is not guilty of an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) in respect of the image.
- (2) In subsection (1), a reference to an image, in relation to an offence against section 51B(1), is a reference to the image that A involves the child in producing.

- (3) A bears the burden of proving (on the balance of probabilities) the matters referred to in subsection (1)(d)(ii) and (e)(ii).

**Notes**

- 1 References to A in this section are references to the same A referred to in sections 51B, 51C, 51D, 51G and 51H.
- 2 An evidential burden applies to the matters referred to in subsection (1)(a), (b), (c), (d)(i) and (e)(i).

**510 Defence—image of oneself**

- (1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51G(1) or 51H(1) if—
- (a) the child abuse material is an image; and
  - (b) the image depicts A as a child; and
  - (c) the image does not depict A committing a criminal offence punishable by imprisonment; and
  - (d) A does not distribute the image to any other person.
- (2) In subsection (1) a reference to an image, in relation to an offence against section 51B(1), is a reference to the image that A involves the child in producing.
- (3) A bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (1)(b).

**Notes**

- 1 References to A in this section are references to the same A referred to in sections 51B, 51C, 51G and 51H.
- 2 An evidential burden applies to the matters referred to in subsection (1)(a), (c) and (d).
- 3 Sections 51M(1) or (2) or 51N may apply if A is a child.

**51P Defence—accused not more than 2 years older than 16 or 17 year old child and acts with child's consent**

- (1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—
- (a) the child abuse material is an image; and
  - (b) at the time at which the image was first made, the child (B) whose depiction in the image makes it child abuse material—
    - (i) was aged 16 or 17 years; and
    - (ii) was not, or had not been, under A's care, supervision or authority; and
  - (c) the image does not depict an act that is a criminal offence punishable by imprisonment; and
  - (d) A did not distribute the image to any person other than B; and
  - (e) A is not more than 2 years older than B; and
  - (f) at the time of the conduct constituting the offence, A reasonably believed that B consented to that conduct.
- (2) In subsection (1) a reference to an image, in relation to an offence against section 51B(1), is a reference to the image that A involves B in producing.

- (3) For the purposes of subsection (1)(b), the reference to the time at which the image was first made does not include a reference to any later time at which a copy, reproduction or alteration of the image is made.
- (4) A bears the burden of proving (on the balance of probabilities) the matters referred to in subsection (1)(e) and (f).

**Notes**

- 1 References to A and B in this section are references to the same A and B referred to in sections 51B, 51C, 51D, 51G and 51H.
- 2 An evidential burden applies to the matters referred to in subsection (1)(a), (b), (c) and (d).

**51Q Defence—marriage or domestic partnership**

- (1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—
  - (a) the child abuse material is an image; and
  - (b) the image is child abuse material because of its depiction of another person (B); and
  - (c) the image does not depict a criminal offence punishable by imprisonment; and
  - (d) A does not distribute the image to any person other than B; and
  - (e) at the time at which the image was first made—
    - (i) B was 16 or 17 years of age; and



- (ii) either A and B were married to each other and the marriage was recognised as valid under the Marriage Act 1961 of the Commonwealth or A was B's domestic partner and was no more than 2 years older than B; and
  - (iii) where A was B's domestic partner, if B was under A's care, supervision or authority, the domestic partnership commenced before B came under A's care, supervision or authority; and
- (f) at the time of the conduct constituting the offence—
- (i) either A and B were married to each other and the marriage was recognised as valid under the Marriage Act 1961 of the Commonwealth or A was B's domestic partner and was no more than 2 years older than B; and
  - (ii) A reasonably believed that B consented to the conduct constituting the offence.
- (2) In subsection (1) a reference to an image, in relation to an offence against section 51B(1), is a reference to the image that A involves the child in producing.
- (3) For the purposes of subsection (1)(e), the reference to the time at which the image was first made does not include a reference to any later time at which a copy, reproduction or alteration of the image is made.

- (4) A bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (1)(f)(ii).

**Notes**

- 1 References to A and B in this section are references to the same A and B referred to in sections 51B, 51C, 51D, 51G and 51H.
- 2 An evidential burden applies to the matters referred to in subsection (1)(a), (b), (c), (d), (e) and (f)(i).
- 3 See section 36 for the meaning of consent.

**51R Defence—reasonable belief in marriage or domestic partnership**

- (1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—
- (a) the child abuse material is an image; and
  - (b) the image is child abuse material because of its depiction of another person (B); and
  - (c) the image does not depict a criminal offence punishable by imprisonment; and
  - (d) A does not distribute the image to any person other than B; and
  - (e) at the time at which the image was first made, A reasonably believed that—
    - (i) B was 16 or 17 years of age; and

- (ii) either A and B were married to each other and that the marriage was recognised as valid under the Marriage Act 1961 of the Commonwealth or A was B's domestic partner and was no more than 2 years older than B; and
  - (iii) where A was B's domestic partner, if B was under A's care, supervision or authority, the domestic partnership commenced before B came under A's care, supervision or authority; and
- (f) at the time of the conduct constituting the offence, A reasonably believed that—
- (i) either A and B were married to each other and that the marriage was recognised as valid under the Marriage Act 1961 of the Commonwealth or A was B's domestic partner and was no more than 2 years older than B; and
  - (ii) B consented to that conduct.
- (2) In subsection (1) a reference to an image, in relation to an offence against section 51B(1), is a reference to the image that A involves the child in producing.
- (3) For the purposes of subsection (1)(e), the reference to the time at which the image was first made does not include a reference to any later time at which a copy, reproduction or alteration of the image is made.

- (4) A bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (1)(e) and (f).

**Notes**

- 1 References to A and B in this section are references to the same A and B referred to in sections 51B, 51C, 51D, 51G and 51H.
- 2 An evidential burden applies to the matters referred to in subsection (1)(a), (b), (c) and (d).
- 3 See section 36 for the meaning of consent.

**51S Defence—reasonable steps to prevent use of a website for child abuse material**

- (1) It is a defence to a charge for an offence against section 51E(1) if A, on becoming aware that the website is being used, or has been used, by another person to deal with child abuse material, takes all reasonable steps in the circumstances to prevent any person from being able to use the website to deal with child abuse material.
- (2) In determining whether A has taken all reasonable steps in the circumstances for the purposes of subsection (1), regard must be had to whether A did any of the following as soon as it was practicable to do so—
  - (a) shut the website down;
  - (b) modified the operation of the website so that it could not be used to deal with child abuse material;

- (c) notified a police officer that the website is being, or has been, used to deal with child abuse material and complied with any reasonable directions given to A by a police officer as to what to do in relation to that use of the website;
- (d) notified a relevant industry regulatory authority that the website is being, or has been, used to deal with child abuse material and complied with any reasonable directions given to A by that authority as to what to do in relation to that use of the website.

**Note**

The reference to A in this section is a reference to the same A referred to in section 51E.

**51T Defence—unsolicited possession**

It is a defence to a charge for an offence against section 51G(1) for A to prove on the balance of probabilities that—

- (a) A did not intentionally come into possession of child abuse material; and
- (b) on becoming aware of having come into possession of child abuse material, A, as soon as it was practicable to do so, took all reasonable steps in the circumstances to cease possessing the material.

**Note**

The reference to A in this section is a reference to the same A referred to in section 51G.

**51U No defence of mistaken but honest and reasonable belief that child abuse material not offensive**

It is not a defence to a charge for a child abuse material offence that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as being, in the circumstances, offensive.

**Note**

The reference to A in this section is a reference to the same A referred to in the child abuse material offence provisions.

**51V Use of random sample evidence in child abuse material cases**

- (1) An authorised classifier, in connection with any proceeding for a child abuse material offence, may conduct an examination of a random sample of seized material.
- (2) In the proceeding for the child abuse material offence concerned, evidence adduced by the prosecution of any of the authorised classifier's findings as to the nature and content of the random sample is admissible as evidence of the nature and content of the whole of the material from which the random sample was taken.
- (3) Accordingly, it is open to a court to find that any type of child abuse material found by an authorised classifier to be present in a particular proportion in the random sample is present in the same proportion in the material from which the random sample was taken.

- (4) A certificate of an authorised classifier that certifies the following is admissible in proceedings for a child abuse material offence as evidence of the matters certified—
- (a) that the authorised classifier conducted an examination of a random sample of seized material;
  - (b) the findings of the authorised classifier as to the nature and content of the random sample.
- (5) A certificate signed by a person purporting to be an authorised classifier is, in the absence of evidence to the contrary, taken to be a certificate of an authorised classifier.
- (6) Evidence is admissible under this section only if the court is satisfied that an Australian legal practitioner representing the accused, or the accused, has been given a reasonable opportunity to inspect the seized material.
- (7) This section does not affect the operation of any provision of the **Criminal Procedure Act 2009** that restricts inspection by an accused of evidence that is child abuse material.

**Note**

See sections 46(3), 125(3) and 185A of the **Criminal Procedure Act 2009**.

- (8) The regulations may make further provision for or with respect to the taking and admissibility of random sample evidence under this section, including by providing for—
- (a) the circumstances or classes of case in which the prosecutor may adduce evidence of the findings of an

authorised classifier under this section;  
and

- (b) the procedure for taking and examining random samples of material; and
  - (c) any further requirements as to the content of a certificate of an authorised classifier.
- (9) In this section—

*seized material*, in relation to a proceeding for a child abuse material offence, means material—

- (a) that came into the possession of a police officer in the course of the exercise of functions as a police officer; and
- (b) some of which is alleged to be child abuse material that is the subject of the proceeding.

**Note**

Section 177 of the **Evidence Act 2008** provides for the adducing of expert evidence by the tendering of a certificate.

**51W Application for child abuse material disposal order**

- (1) The Director of Public Prosecutions or a police officer may apply to a court for a child abuse material disposal order in respect of a seized thing, or of electronic material contained in a seized thing, that—
- (a) was the subject of a criminal proceeding for a child abuse material offence in relation to which—
    - (i) the charge was discontinued, withdrawn or permanently stayed;  
or



- (ii) the person charged was acquitted or found not guilty (including because of mental impairment) of the charge; or
  - (iii) the charge was dismissed; or
  - (iv) the person charged was released on an undertaking under section 75 of the **Sentencing Act 1991**; or
- (b) was not the subject of a criminal proceeding.

**Note**

Sections 77 and 78 of the **Confiscation Act 1997** apply to the disposal of child abuse material where a person is convicted of an offence set out in Schedule 1 to that Act.

- (2) The court to which an application under subsection (1) is to be made is—
- (a) the court in which the proceeding was at the time at which the event mentioned in subsection (1)(a)(i) to (iv) occurred; or
  - (b) the Magistrates' Court.
- (3) The applicant must give written notice of an application under subsection (1) to every person whom the applicant has reason to believe has an interest in the seized thing or in the electronic material contained in the seized thing.
- (4) A notice under subsection (3) must be given by ordinary service at least 14 days before the return date.
- (5) The court may waive the requirement under subsection (3) to give notice if satisfied either—

- (a) that all persons who have an interest mentioned in that subsection have appeared before the court; or
  - (b) that it is fair to waive the requirement despite a person who has such an interest not having appeared before the court.
- (6) At any time before the final determination of the application, the court may require the applicant to give notice of the application to any person, in any manner and within any period that the court thinks fit.
- (7) The following persons are entitled to appear and give evidence at the hearing of the application—
- (a) any person notified under subsection (3) or (6);
  - (b) any other person who claims an interest in the seized thing or in electronic material contained in the seized thing.
- (8) However, the fact that a person mentioned in subsection (7) has not appeared before the court does not prevent the court from making a child abuse material disposal order.
- (9) In this section, *ordinary service* and *return date* have the same meanings as in the **Criminal Procedure Act 2009**.

**51X Child abuse material disposal order**

- (1) On an application under section 51W, the court may order that the seized thing, or the electronic material contained in the seized thing, to which the application relates be—
- (a) forfeited to the State; and

- (b) destroyed or disposed of in a manner determined by the court and specified in the order.

**Note**

A child abuse material disposal order that relates to a seized thing that is child abuse material results in forfeiture of the seized thing. A child abuse material disposal order that relates to electronic material that is contained in a seized thing results in forfeiture of the electronic material only.

- (2) The court may only make a child abuse material disposal order—
  - (a) if satisfied, on the balance of probabilities, that—
    - (i) the seized thing is, or the electronic material contained in the seized thing includes, child abuse material; and
    - (ii) the return to a person of the seized thing, or of the electronic material contained in the seized thing, may result in the commission of a child abuse material offence; or
  - (b) if satisfied, on the balance of probabilities, that—
    - (i) the seized thing contains encrypted or password protected electronic material; and
    - (ii) there are reasonable grounds to believe that the electronic material includes child abuse material.
- (3) The court has power to give any direction necessary to give effect to a child abuse material disposal order made by it.

- (4) Without affecting any other right of appeal, a person who has an interest in a seized thing, or in electronic material contained in a seized thing, may appeal against a child abuse material disposal order made in respect of it.
- (5) An appeal is to be made by a person in the same manner as if the person had been convicted, by the court that made the order, of a child abuse material offence and the order were, or were part of, the sentence imposed in respect of that offence.
- (6) On appeal—
- (a) the child abuse material disposal order may be confirmed, discharged or varied; or
  - (b) the matter may be remitted for re-hearing to the court that made the order with or without any direction in law.
- (7) A child abuse material disposal order is stayed during the appeal period.
- (8) In this section—
- appeal period* means the period permitted under the **Criminal Procedure Act 2009** for commencing an appeal of a kind mentioned in subsection (5) or, if such an appeal is commenced within that period, the determination of the appeal.

**51Y Disposal of thing or material by consent**

Nothing in section 51W or 51X prevents the destruction or disposal of a seized thing that is, or of electronic material contained in a seized thing that includes, child abuse material with the consent of all persons who have an interest in the thing or material.

**(8E) *Sexual offences against persons with a cognitive impairment or mental illness***

**52A Definitions**

In this Subdivision—

*cognitive impairment* includes impairment because of intellectual disability, dementia, neurological disorder or brain injury;

*intellectual disability* has the same meaning as in the **Disability Act 2006**;

*mental illness* has the same meaning as in the **Mental Health Act 2014**;

*residential service* includes—

- (a) a residential service within the meaning of the **Disability Act 2006**; and
- (b) a supported residential service within the meaning of the **Supported Residential Services (Private Proprietors) Act 2010**; and
- (c) residential care within the meaning of the Aged Care Act 1997 of the Commonwealth;

*service provider* includes—

- (a) a disability service provider within the meaning of the **Disability Act 2006**; and
- (b) a residential service; and
- (c) a designated mental health service within the meaning of the **Mental Health Act 2014**; and

- (d) a person who, or a body that, delivers treatment or support services to persons with a cognitive impairment or mental illness;

***treatment or support services*** means any of the following delivered in a professional capacity—

- (a) mental health treatment;
- (b) medical treatment;
- (c) therapeutic services;
- (d) personal care or support services;

**Example**

A worker supporting a person with a cognitive impairment to undertake tasks such as bathing and dressing.

***worker*** means a person—

- (a) who delivers, assists in delivering, or who manages the delivery of, services to persons with a cognitive impairment or mental illness; and

**Example**

A cook at a supported residential service.

- (b) who does so for or on behalf of a service provider (whether paid or unpaid); and

**Example**

A volunteer bus driver for a mental health service.

- (c) who is not a person with a cognitive impairment or mental illness who receives treatment or support services from that service provider.

**52B Sexual penetration of a person with a cognitive impairment or mental illness**

- (1) A person (A) commits an offence if—
  - (a) A intentionally—
    - (i) sexually penetrates another person (B); or
    - (ii) causes or allows B to sexually penetrate A; or
    - (iii) causes B—
      - (A) to sexually penetrate themselves; or
      - (B) to sexually penetrate another person (C) or an animal; or
      - (C) to be sexually penetrated by C or by an animal; and
  - (b) B has a cognitive impairment or mental illness; and
  - (c) A—
    - (i) provides treatment or support services to B; or
    - (ii) is a worker for a service provider that provides treatment or support services to B.

- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

**Notes**

- 1 Exceptions apply to this offence—see sections 52F and 52G.
- 2 Defences apply to this offence—see sections 52H, 52I and 52J.
- 3 A mistaken but honest and reasonable belief of certain matters is not a defence against this offence—see section 52K.

**52C Sexual assault of a person with a cognitive impairment or mental illness**

- (1) A person (A) commits an offence if—
- (a) A intentionally—
    - (i) touches another person (B); or
    - (ii) causes or allows B to touch A; or
    - (iii) causes B—
      - (A) to touch, or to continue to touch, themselves; or
      - (B) to touch, or to continue to touch, another person (C) or an animal; or
      - (C) to be touched, or to continue to be touched, by C or by an animal; and
  - (b) B has a cognitive impairment or mental illness; and
  - (c) A—
    - (i) provides treatment or support services to B; or



- (ii) is a worker for a service provider that provides treatment or support services to B; and
- (d) the touching is—
  - (i) sexual; and
  - (ii) contrary to community standards of acceptable conduct.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
- (3) Whether or not the touching is contrary to community standards of acceptable conduct depends on the circumstances.
- (4) For the purposes of subsection (3)—
  - (a) the circumstances include—
    - (i) the purpose of the touching; and
    - (ii) whether A seeks or gets sexual arousal or sexual gratification from the touching;
  - (b) the circumstances do not include—
    - (i) whether B consents to the touching; or
    - (ii) whether A believes that B consents to the touching.

**Notes**

- 1 An exception applies to this offence—see section 52G.
- 2 Defences apply to this offence—see sections 52H, 52I and 52J.
- 3 A mistaken but honest and reasonable belief of certain matters is not a defence against this offence—see section 52K.

**52D Sexual activity in the presence of a person with a cognitive impairment or mental illness**

- (1) A person (A) commits an offence if—
  - (a) A intentionally engages in an activity;  
and
  - (b) the activity is sexual; and
  - (c) another person (B) is present when A engages in the activity; and
  - (d) A knows that B is, or probably is, present when A engages in the activity;  
and
  - (e) B has a cognitive impairment or mental illness; and
  - (f) A—
    - (i) provides treatment or support services to B; or
    - (ii) is a worker for a service provider that provides treatment or support services to B; and
  - (g) engaging in the activity in the presence of B is contrary to community standards of acceptable conduct.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
- (3) Whether or not engaging in the activity in the presence of B is contrary to community standards of acceptable conduct depends on the circumstances.

- (4) For the purposes of subsection (3)—
- (a) the circumstances include—
    - (i) the purpose of the activity; and
    - (ii) whether A seeks or gets sexual arousal or sexual gratification from engaging in the activity or from the presence of B;
  - (b) the circumstances do not include—
    - (i) whether B consents—
      - (A) to being present when A engages in the activity; or
      - (B) to A engaging in the activity; or
    - (ii) whether A believes that B consents—
      - (A) to being present when A engages in the activity; or
      - (B) to A engaging in the activity.

**Notes**

- 1 An exception applies to this offence—see section 52G.
- 2 Defences apply to this offence—see sections 52H, 52I and 52J.
- 3 A mistaken but honest and reasonable belief of certain matters is not a defence against this offence—see section 52K.

**52E Causing a person with a cognitive impairment or mental illness to be present during sexual activity**

- (1) A person (A) commits an offence if—
- (a) another person (B) engages in an activity; and

- (b) the activity is sexual; and
  - (c) another person (C) is present when B engages in the activity; and
  - (d) A intentionally causes or allows C to be present when B engages in the activity; and
  - (e) C has a cognitive impairment or mental illness; and
  - (f) A—
    - (i) provides treatment or support services to C; or
    - (ii) is a worker for a service provider that provides treatment or support services to C; and
  - (g) A's causing or allowing C to be present when B engages in the activity is contrary to community standards of acceptable conduct.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
- (3) Whether or not causing or allowing C to be present when B engages in the activity is contrary to community standards of acceptable conduct depends on the circumstances.
- (4) For the purposes of subsection (3)—
- (a) the circumstances include—
    - (i) the purpose of the activity; and

- (ii) whether A seeks or gets sexual arousal or sexual gratification from B engaging in the activity or from the presence of C;
- (b) the circumstances do not include—
  - (i) whether C consents—
    - (A) to being present when B engages in the activity; or
    - (B) to B engaging in the activity; or
  - (ii) whether A believes that C consents—
    - (A) to being present when B engages in the activity; or
    - (B) to B engaging in the activity.

**Notes**

- 1 An exception applies to this offence—see section 52G.
- 2 Defences apply to this offence—see sections 52H, 52I and 52J.
- 3 A mistaken but honest and reasonable belief of certain matters is not a defence against this offence—see section 52K.

**52F Exceptions to sexual penetration offence—  
medical, hygienic, veterinary, agricultural  
or scientific purposes**

A does not commit an offence against section 52B(1) if—

- (a) the sexual penetration is of a person and is done in the course of a procedure carried out in good faith for medical or hygienic purposes; or

- (b) the sexual penetration is of an animal and is caused by A to be done in the course of a procedure being carried out in good faith for veterinary or agricultural purposes or scientific research purposes.

**Example**

A is a support worker assisting B on a farm. B assists in birthing a calf. During this process, A causes B to insert B's hand into the cow's vagina. A has not committed an offence against section 52B(1).

**Note**

The reference to A in this section is a reference to the same A referred to in section 52B.

**52G Exception—marriage or domestic partnership**

A does not commit an offence against a provision of this Subdivision if, at the time at which the offence is alleged to have been committed—

- (a) A and the person who has a cognitive impairment or mental illness are married to each other and the marriage is recognised as valid under the Marriage Act 1961 of the Commonwealth; or
- (b) A is the domestic partner of the person who has a cognitive impairment or mental illness.

**Note**

The reference to A in this section is a reference to the same A referred to in the offence provisions in this Subdivision.

**52H Defence—reasonable belief in marriage or domestic partnership**

It is a defence to a charge for an offence against a provision of this Subdivision for A to prove on the balance of probabilities that, at the time of the conduct constituting the offence, A reasonably believed that—

- (a) A and the person who has a cognitive impairment or mental illness were married to each other and that the marriage was recognised as valid under the Marriage Act 1961 of the Commonwealth; or
- (b) A was the domestic partner of the person who has a cognitive impairment or mental illness.

**Note**

The reference to A in this section is a reference to the same A referred to in the offence provisions in this Subdivision.

**52I Defence—reasonable belief a person does not have a cognitive impairment or mental illness**

It is a defence to a charge for an offence against a provision of this Subdivision for A to prove on the balance of probabilities that, at the time of the conduct constituting the offence, A reasonably believed that the person who has a cognitive impairment or mental illness did not have a cognitive impairment or mental illness.

**Note**

The reference to A in this section is a reference to the same A referred to in the offence provisions in this Subdivision.

**52J Defence—reasonable belief the service provider does not provide treatment or support services to the person with a cognitive impairment or mental illness**

If A is a worker for a service provider, it is a defence to a charge for an offence against a provision of this Subdivision for A to prove on the balance of probabilities that, at the time of the conduct constituting the offence, A reasonably believed that the service provider was not providing treatment or support services to the person who has a cognitive impairment or mental illness.

**Notes**

- 1 The reference to A in this section is a reference to the same A referred to in the offence provisions in this Subdivision.
- 2 The prosecution is required to prove that A is a worker for a service provider—see sections 52B, 52C, 52D and 52E.

**52K No defence of mistaken but honest and reasonable belief of certain matters**

- (1) It is not a defence to a charge that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that—
  - (a) for an offence against section 52B(1), 52C(1) or 52D(1)—A did not provide treatment or support services to B or was not a worker for a service provider; or
  - (b) for an offence against section 52E(1)—A did not provide treatment or support services to C or was not a worker for a service provider.



- (2) It is not a defence to a charge that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that—
- (a) for an offence against section 52C(1)—the touching was not—
    - (i) sexual; or
    - (ii) contrary to community standards of acceptable conduct; or
  - (b) for an offence against section 52D(1)—
    - (i) the activity was not sexual; or
    - (ii) engaging in the activity in the presence of B was not contrary to community standards of acceptable conduct; or
  - (c) for an offence against section 52E(1)—
    - (i) the activity was not sexual; or
    - (ii) A's causing or allowing C to be present when B engages in the activity was not contrary to community standards of acceptable conduct.

**Note**

References to A, B and C in this section are references to the same A, B and C referred to in sections 52B, 52C, 52D and 52E.

**(8F) *Sexual servitude***

**53A Definitions**

In this Subdivision—

***commercial sexual services*** means services for commercial benefit involving the use or display of the body of the person

providing the services for the sexual arousal or sexual gratification of others;

***threat*** means—

- (a) threat of force; or
- (b) threat to cause a person's deportation; or
- (c) threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of commercial sexual services;

**Example**

A brothel manager may have reasonable grounds to threaten to dismiss a sex worker who is regularly late for work.

***use***, in relation to a debt or purported debt, includes impose, arrange, negotiate or refer to the debt or purported debt.

**53B Using force, threat etc. to cause another person to provide commercial sexual services**

- (1) A person (A) commits an offence if—
  - (a) A—
    - (i) uses force against another person (B) or any other person; or
    - (ii) makes a threat to, or against, B or any other person; or
    - (iii) unlawfully detains B or any other person; or
    - (iv) engages in fraud or misrepresentation (including by omission) in relation to B or any other person; or

- (v) uses a manifestly excessive debt owed, or purportedly owed, by B or any other person; and
- (b) A, by engaging in the conduct referred to in paragraph (a), causes B—
  - (i) to provide, or to continue to provide, commercial sexual services; or
  - (ii) to not be free to leave the place or area where B provides commercial sexual services; and
- (c) A—
  - (i) intends that engaging in the conduct referred to in paragraph (a) will cause B—
    - (A) to provide, or to continue to provide, commercial sexual services; or
    - (B) to not be free to leave the place or area where B provides commercial sexual services; or
  - (ii) knows that engaging in the conduct referred to in paragraph (a) will, or probably will, cause B—
    - (A) to provide, or to continue to provide, commercial sexual services; or
    - (B) to not be free to leave the place or area where B provides commercial sexual services.

- (2) A person who commits an offence against subsection (1) is liable to level 4 imprisonment (15 years maximum).

**53C Causing another person to provide commercial sexual services in circumstances involving sexual servitude**

- (1) A person (A) commits an offence if—
- (a) A causes or induces another person (B) to provide, or to continue to provide, commercial sexual services; and
  - (b) B is not free to stop providing those services, or to leave the place or area where B provides those services, because A or another person (C)—
    - (i) uses force against B or another person (D); or
    - (ii) makes a threat to, or against, B or D; or
    - (iii) unlawfully detains B or D; or
    - (iv) engages in fraud or misrepresentation (including by omission) in relation to B or D; or
    - (v) uses a manifestly excessive debt owed, or purportedly owed, by B or D; and
  - (c) A knows that engaging in the conduct referred to in paragraph (b) will, or probably will, cause B—
    - (i) to provide, or to continue to provide, commercial sexual services; or
    - (ii) to not be free to leave the place or area where B provides commercial sexual services.
-

- (2) A person who commits an offence against subsection (1) is liable to level 4 imprisonment (15 years maximum).

**53D Conducting a business in circumstances involving sexual servitude**

- (1) A person (A) commits an offence if—
- (a) A conducts a business that involves the provision of commercial sexual services by another person (B); and
  - (b) B is not free to stop providing those services, or to leave the place or area where B provides those services, because A or another person (C)—
    - (i) uses force against B or another person (D); or
    - (ii) makes a threat to, or against, B or D; or
    - (iii) unlawfully detains B or D; or
    - (iv) engages in fraud or misrepresentation (including by omission) in relation to B or D; or
    - (v) uses a manifestly excessive debt, or purported debt, owed by B or D; and
  - (c) A knows that engaging in the conduct referred to in paragraph (b) will, or probably will, cause B—
    - (i) to provide, or to continue to provide, commercial sexual services; or
    - (ii) to not be free to leave the place or area where B provides commercial sexual services.

- (2) A person who commits an offence against subsection (1) is liable to level 4 imprisonment (15 years maximum).
- (3) For the purposes of subsection (1), conducting a business includes—
  - (a) taking any part in the management of the business; or
  - (b) exercising control or direction over the business; or
  - (c) providing finance for the business.

**53E Aggravated sexual servitude**

- (1) A person (A) commits an offence if—
  - (a) A commits an offence against section 53B(1), 53C(1) or 53D(1); and
  - (b) the person against whom the offence is committed (B) is under the age of 18 years; and
  - (c) A knows that B is, or probably is, under the age of 18 years.
- (2) A person who commits an offence against subsection (1) is liable to level 3 imprisonment (20 years maximum).

**53F Deceptive recruiting for commercial sexual services**

- (1) A person (A) commits an offence if—
  - (a) A deceives another person (B) about the fact that an engagement will involve the provision of commercial sexual services by B; and
  - (b) A intends to induce B to enter into an engagement to provide commercial sexual services.

- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).

**53G Aggravated deceptive recruiting for commercial sexual services**

- (1) A person (A) commits an offence if—
- (a) A commits an offence against section 53F(1); and
  - (b) the person against whom the offence is committed (B) is under the age of 18 years; and
  - (c) A knows that B is, or probably is, under the age of 18 years.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

**(8FA) Other sexual offences**

**54A Bestiality**

- (1) A person (A) commits an offence if A intentionally—
- (a) sexually penetrates an animal; or
  - (b) causes or allows an animal to sexually penetrate A.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).

**Notes**

- 1 See section 35A(3) for the meaning of sexual penetration of an animal.
- 2 See section 35A(4) for the meaning of sexual penetration by an animal.
- 3 An exception applies to this offence—see section 54B.

**54B Exception—veterinary, agricultural or scientific research**

A does not commit an offence against section 54A(1) if A's conduct occurs in the course of a procedure being carried out by A in good faith for veterinary or agricultural purposes or scientific research purposes.

**Note**

The reference to A in this section is a reference to the same A referred to in section 54A.

**54C Abolition of common law offence of wilful exposure**

The offence of wilful exposure at common law is abolished."

**17 Abrogation of obsolete rules of law**

In section 62(3) of the **Crimes Act 1958**, for "section 35 or 37D" **substitute** "section 35A".

**18 Repeal of Subdivisions (13) and (14) of Division 1 of Part I**

Subdivisions (13) and (14) of Division 1 of Part I of the **Crimes Act 1958** are **repealed**.

**19 Maximum term of imprisonment for certain common law offences**

In the Table in section 320 of the **Crimes Act 1958** **omit**—

"Wilful exposure	Level 6 imprisonment (5 years maximum)."
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**20 Confidentiality**

After section 330(1) of the **Crimes Act 1958** **insert**—

"(1A) An offence against subsection (1) is a summary offence."



## **21 Alternative verdicts for certain charges of sexual offences**

(1) For section 425(1)(c) and (e) of the **Crimes Act 1958** substitute—

- "(c) an offence against section 49A(1) (sexual penetration of a child under the age of 12); or
- (d) an offence against section 49B(1) (sexual penetration of a child under the age of 16); or
- (e) an offence against section 49D(1) (sexual assault of a child under the age of 16); or
- (ea) an offence against section 49F(1) (sexual activity in the presence of a child under the age of 16); or".

(2) In section 425(3) of the **Crimes Act 1958**, for "44 or 45(1)" substitute "49A(1), 49B(1), 50C(1), 50D(1) or 50F(1)".

(3) For section 425(3)(b) of the **Crimes Act 1958** substitute—

- "(b) an offence against section 49D(1) (sexual assault of a child under the age of 16); or
- (ba) an offence against section 49F(1) (sexual activity in the presence of a child under the age of 16); or".

## **22 New section 629 inserted**

After section 628 of the **Crimes Act 1958** insert—

### **"629 Transitional provision—Crimes Amendment (Sexual Offences) Act 2016**

The amendments made to this Act by section 21 of the **Crimes Amendment (Sexual Offences) Act 2016** apply only to a trial that commences (within the meaning of section 210 of the **Criminal Procedure**

**Act 2009**) on or after the day on which that section comes into operation."

### **23 Schedule 8—forensic sample offences**

In Schedule 8 to the **Crimes Act 1958**, after item 11B insert—

- "11C An offence against section 34B(1) of the **Crimes Act 1958** (offence to interfere with corpse of a human being) inserted in the **Crimes Act 1958** on 1 July 2005 by section 185 of the **Cemeteries and Crematoria Act 2003** and repealed by section 3 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11D An offence against any of the following provisions of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**:
- (a) section 44(1), (2), (3) or (4) (incest);
  - (b) section 47(1) (indecent act with child under the age of 16);
  - (c) section 47A(1) (persistent sexual abuse of child under the age of 16);
  - (d) section 48(1) (sexual penetration of 16 or 17 year old child);
  - (e) section 53(1) (administration of drugs etc.);
  - (f) section 54 (occupier etc. permitting unlawful sexual penetration);
  - (g) section 55 (abduction or detention);
  - (h) section 56(1) or (2) (abduction of child under the age of 16);

- (i) section 57(1) or (2) (procuring sexual penetration by threats or fraud);
  - (j) section 59(1) (bestiality).
- 11E An offence against section 45(1) of the **Crimes Act 1958** (sexual penetration of child under the age of 16) inserted in the **Crimes Act 1958** on 22 November 2000 by section 5 of the **Crimes (Amendment) Act 2000** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11F An offence against section 49(1) of the **Crimes Act 1958** (indecent act with 16 or 17 year old child) inserted in the **Crimes Act 1958** on 1 December 2006 by section 13 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11G An offence against section 49A(1) of the **Crimes Act 1958** (facilitating sexual offences against children) inserted in the **Crimes Act 1958** on 13 June 1995 by section 93 of the **Sex Work Act 1994** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11H An offence against section 49B(2) of the **Crimes Act 1958** (grooming for sexual conduct with child under the age of 16 years) inserted in the **Crimes Act 1958** on 9 April 2014 by section 3 of the **Crimes Amendment (Grooming) Act 2014** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.

- 11I An offence against section 49C(2) of the **Crimes Act 1958** (failure by person in authority to protect child from sexual offence) inserted in the **Crimes Act 1958** on 1 July 2015 by section 3 of the **Crimes Amendment (Protection of Children) Act 2014** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11J An offence against section 51(1) or (2) of the **Crimes Act 1958** (sexual offences against persons with a cognitive impairment by providers of medical or therapeutic services) inserted in the **Crimes Act 1958** on 1 December 2006 by section 16 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11K An offence against section 52(1) or (2) of the **Crimes Act 1958** (sexual offences against persons with a cognitive impairment by workers) inserted in the **Crimes Act 1958** on 1 December 2006 by section 17 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11L An offence against section 53(2) of the **Crimes Act 1958** (administration of drugs etc.) inserted in the **Crimes Act 1958** on 11 February 2009 by section 3 of the **Crimes Legislation Amendment (Food and Drink Spiking) Act 2009** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.

- 11M An offence against section 58(1), (2) or (3) of the **Crimes Act 1958** (procuring sexual penetration of a child) inserted in the **Crimes Act 1958** on 1 December 2006 by section 18 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11N An offence against section 60AB(2), (3) or (4) (sexual servitude), 60AC(1) (aggravated sexual servitude), 60AD(1) (deceptive recruiting for commercial sexual services) or 60AE(1) (aggravated deceptive recruiting for commercial sexual services) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 19 May 2004 by section 3 of the **Justice Legislation (Sexual Offences and Bail) Act 2004** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11O An offence against section 68(1) (production of child pornography) or 69(1) (procurement etc. of minor for child pornography) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 1 January 1996 by section 88 of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11P An offence against section 70(1) of the **Crimes Act 1958** (possession of child pornography) inserted in the **Crimes Act 1958** on 22 November 2000 by section 6 of the **Crimes (Amendment) Act 2000** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.

- 11Q An offence against section 70AAAB(1) (administering a child pornography website), 70AAAC(1) (encouraging use of a website to deal with child pornography) or 70AAAD(1) (assisting a person to avoid apprehension) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 1 December 2015 by section 6 of the **Crimes Amendment (Child Pornography and Other Matters) Act 2015** and repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11R An offence against section 70AC of the **Crimes Act 1958** (sexual performance involving a minor) inserted in the **Crimes Act 1958** on 19 May 2004 by section 7 of the **Justice Legislation (Sexual Offences and Bail) Act 2004** and repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**."

## **Part 3—Amendment of Summary Offences Act 1966**

### **24 Obscene, indecent, threatening language and behaviour etc. in public**

After section 17(1) of the **Summary Offences  
Act 1966** insert—

"(1A) For the purposes of subsection (1)(d),  
behaviour that is indecent offensive or  
insulting includes behaviour that involves a  
person exposing (to any extent) the person's  
anal or genital region.

#### **Example**

Mooning or streaking."

### **25 Section 19 substituted**

For section 19 of the **Summary Offences  
Act 1966** substitute—

#### **"19 Sexual exposure**

- (1) A person (A) commits an offence if—
- (a) A exposes (to any extent) A's genitals;  
and
  - (b) A intends to expose (to any extent) A's  
genitals; and
  - (c) the exposure is sexual; and
  - (d) the exposure is in, or is within the view  
of, a public place.
- (2) A person who commits an offence against  
subsection (1) is liable to level 7  
imprisonment (2 years maximum).

- (3) It is not a defence to a charge for an offence against subsection (1) that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that the exposure was not sexual.
- (4) It is a defence to a charge for an offence against subsection (1) that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that the exposure was not in, or within the view of, a public place.
- (5) For the purposes of subsection (1), A's exposure of A's genitals may be sexual due to—
  - (a) the fact that A seeks or gets sexual arousal or sexual gratification from the exposure; or
  - (b) any other aspect of the exposure, including the circumstances in which it takes place and whether it is contrary to community standards of acceptable conduct.
- (6) A's exposure of A's genitals is not sexual only because it is the genitals that are exposed."



## **Part 4—Amendment of Jury Directions Act 2015**

### **26 Application of Division**

At the foot of section 45 of the **Jury Directions Act 2015** insert—

**"Note**

Subdivision (8A) provides for rape, sexual assault and associated sexual offences.

Subdivision (8B) provides for sexual offences against children.

Subdivision (8C) provides for incest offences.

Subdivision (8D) provides for child abuse material offences."

### **27 Direction on consent**

(1) In the note at the foot of section 46(2) of the **Jury Directions Act 2015**, for "section 34C" substitute "section 36".

(2) For section 46(3)(c) of the **Jury Directions Act 2015** substitute—

"(c) inform the jury that experience shows that—

(i) there are many different circumstances in which people do not consent to a sexual act; and

(ii) people who do not consent to a sexual act may not be physically injured or subjected to violence, or threatened with physical injury or violence; or

(d) inform the jury that experience shows that—

(i) people may react differently to a sexual act to which they did not consent and that there is no typical, proper or normal response; and

- (ii) people who do not consent to a sexual act may not protest or physically resist the act; or

**Example**

The person may freeze and not do or say anything.

- (e) inform the jury that experience shows that people who do not consent to a sexual act with a particular person on one occasion, may have on one or more other occasions engaged in or been involved in consensual sexual activity—
  - (i) with that person or another person; or
  - (ii) of the same kind or a different kind."
- (3) In the note at the foot of section 46(4)(a) of the **Jury Directions Act 2015**, for "Section 34C" **substitute** "Section 36".
- (4) In section 46(4)(b) of the **Jury Directions Act 2015**, for "section 34C" **substitute** "section 36".

**28 Direction on reasonable belief in consent**

- (1) In section 47(3)(a) of the **Jury Directions Act 2015**, for "section 34C" **substitute** "section 36".
- (2) In section 47(3)(b)(ii) of the **Jury Directions Act 2015**, for "time." **substitute** "time; or".
- (3) After section 47(3)(b) of the **Jury Directions Act 2015** **insert**—
  - "(c) direct the jury that—
    - (i) a belief in consent based solely on a general assumption about the circumstances in which people consent to a sexual act (whether or not that assumption is informed by any particular culture, religion or other

influence) is not a reasonable belief;  
and

- (ii) a belief in consent based on a combination of matters including such a general assumption is not a reasonable belief to the extent that it is based on such an assumption; or
  - (d) direct the jury that in determining whether the accused had a reasonable belief in consent, the jury must consider what the community would reasonably expect of the accused in the circumstances in forming a reasonable belief in consent; or
  - (e) direct the jury that in determining whether the accused had a reasonable belief in consent, the jury may take into account any personal attribute, characteristic or circumstance of the accused."
- (4) After section 47(3) of the **Jury Directions Act 2015** insert—
- "(4) A good reason for not giving the direction set out in subsection (3)(e) is that the personal attribute, characteristic or circumstance—
- (a) did not affect, or is not likely to have affected, the accused's perception or understanding of the objective circumstances; or
  - (b) was something that the accused was able to control; or
  - (c) was a subjective value, wish or bias held by the accused, whether or not that value, wish or bias was informed by any particular culture, religion or other influence."

## **29 What must be proved beyond reasonable doubt**

In section 61 of the **Jury Directions Act 2015**, in note 2 at the foot of that section, for "of this Act and section 45 of the **Crimes Act 1958** refer" substitute "refers".

## **30 New clause 2 of Schedule 1 inserted**

After clause 1 of Schedule 1 to the **Jury Directions Act 2015** insert—

### **"2 Crimes Amendment (Sexual Offences) Act 2016**

- (1) The amendments made to this Act by sections 27 and 28 of the **Crimes Amendment (Sexual Offences) Act 2016** apply only to a trial that commences (within the meaning of section 210 of the **Criminal Procedure Act 2009**) on or after the day on which those sections come into operation if the offence to which the trial relates is alleged to have been committed on or after the commencement of Division 1 of Part 5.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between 2 dates, one before and one on or after the commencement of Division 1 of Part 5, it is alleged to have been committed before that commencement."

## **Part 5—Amendment of certain Acts**

### **31 Accident Towing Services Act 2007**

In clause 1(b) of Schedule 2 to the **Accident Towing Services Act 2007**, for "(within the meaning given by section 35(1)" **substitute** "(as defined by section 35A".

### **32 Bus Safety Act 2009**

In section 3(1) of the **Bus Safety Act 2009**, in the definition of *tier 1 offence*—

- (a) in paragraph (a), for "(within the meaning given by section 35(1)" **substitute** "(as defined by section 35A";
- (b) in paragraph (c), after "cognitive impairment" **insert** "or mental illness";
- (c) in paragraph (g), for "child pornography" **substitute** "child abuse material".

### **33 Child Wellbeing and Safety Act 2005**

In section 3 of the **Child Wellbeing and Safety Act 2005**, in paragraph (a)(ii) of the definition of *child abuse*, for "section 49B(2)" **substitute** "section 49M(1)".

### **34 Classification (Publications, Films and Computer Games) (Enforcement) Act 1995**

Section 57A of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** is repealed.

### **35 Confiscation Act 1997**

- (1) In section 7C(a)(ii) of the **Confiscation Act 1997**, for "production or dissemination of child pornography" **substitute** "production or distribution of child abuse material".

(2) In section 7C(a)(iia) of the **Confiscation Act 1997**, for "section 70AAAB, 70AAAC or 70AAAD" **substitute** "section 51E(1), 51F(1) or 51I(1)".

(3) For section 77(1)(ca) of the **Confiscation Act 1997 substitute**—

"(ca) child abuse material as defined in section 51A of the **Crimes Act 1958**; or

(cb) electronic material as defined in section 51A of the **Crimes Act 1958** that contains child abuse material as defined in that section; or

**Note**

A disposal order in respect of child abuse material results in the destruction or disposal of the child abuse material. A disposal order in respect of electronic material that contains child abuse material results in the destruction or disposal of the electronic material."

(4) Item 16 of Schedule 1 to the **Confiscation Act 1997 is repealed**.

(5) For clause 2(ba) of Schedule 2 to the **Confiscation Act 1997 substitute**—

"(ba) section 53B(1) (using force, threat etc. to cause another person to provide commercial sexual services) where—

(i) only one offence is charged and the value of the commercial sexual services provided is \$50 000 or more; or

(ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the combined value of the commercial sexual services provided is \$75 000 or more;

- (bab) section 53C(1) (causing another person to provide commercial sexual services in circumstances involving sexual servitude) where—
- (i) only one offence is charged and the value of the commercial sexual services provided is \$50 000 or more; or
  - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the combined value of the commercial sexual services provided is \$75 000 or more;
- (bac) section 53D(1) (conducting a business in circumstances involving sexual servitude) where—
- (i) only one offence is charged and the value of the commercial sexual services provided is \$50 000 or more; or
  - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the combined value of the commercial sexual services provided is \$75 000 or more;"
- (6) In clause 2(bb) of Schedule 2 to the **Confiscation Act 1997**, for "section 60AC" **substitute** "section 53E(1)".
- (7) In clause 2(bc) of Schedule 2 to the **Confiscation Act 1997**, for "section 60AD" **substitute** "section 53F(1)".
- (8) In clause 2(bd) of Schedule 2 to the **Confiscation Act 1997**, for "section 60AE" **substitute** "section 53G(1)".
-

(9) For clause 4(b) of Schedule 2 to the **Confiscation Act 1997** substitute—

"(b) being involved in the commission of—".

(10) At the foot of clause 4 of Schedule 2 to the **Confiscation Act 1997** insert—

"Note

Subdivision (1) of Division 1 of Part II of the **Crimes Act 1958** deals with complicity in the commission of offences."

### **36 Confiscation Act 1997—new section 191 inserted**

At the end of Part 18 of the **Confiscation Act 1997** insert—

**"191 Transitional provision—Crimes Amendment (Sexual Offences) Act 2016**

- (1) Despite the amendment of section 7C(a)(iia) by section 35 of the **Crimes Amendment (Sexual Offences) Act 2016**, section 7C(a)(iia), as in force immediately before the commencement of section 35, continues to apply in respect of any offence referred to in section 7C(a)(iia) that is alleged to have been committed before the commencement of section 35.
- (2) Despite the amendment of clause 2(bb), (bc) and (bd) of Schedule 2 by section 35 of the **Crimes Amendment (Sexual Offences) Act 2016**, clause 2(bb), (bc) and (bd), as in force immediately before the commencement of section 35, continue to apply in respect of any offence referred to in clause 2(bb), (bc) and (bd) that is alleged to have been committed before the commencement of section 35."



### 37 Criminal Procedure Act 2009

- (1) In section 3 of the **Criminal Procedure Act 2009**—
  - (a) for the definition of *child pornography substitute*—

"*child abuse material* has the same meaning as in section 51A of the **Crimes Act 1958**";
  - (b) for paragraph (a) of the definition of *sexual offence substitute*—

"(a) an offence under Subdivision (8A), (8B), (8C), (8D), (8E), (8F) or (8FA) of Division 1 of Part I of the **Crimes Act 1958** or under any corresponding previous enactment; or".
- (2) In the heading to section 43A of the **Criminal Procedure Act 2009**, for "child pornography" substitute "child abuse material".
- (3) In section 43A(1)(a) of the **Criminal Procedure Act 2009**, for "child pornography" substitute "child abuse material".
- (4) In the example at the foot of section 43A(2) of the **Criminal Procedure Act 2009**, for "child pornography" substitute "child abuse material".
- (5) In section 45(1)(g) of the **Criminal Procedure Act 2009**, for "child pornography" substitute "child abuse material".
- (6) In the note at the foot of section 115 of the **Criminal Procedure Act 2009**, for "child pornography" substitute "child abuse material".

- (7) In the note at the foot of section 122(2) of the **Criminal Procedure Act 2009**, for "child pornography" **substitute** "child abuse material".
- (8) In the heading to section 185A of the **Criminal Procedure Act 2009**, for "child pornography" **substitute** "child abuse material".
- (9) In section 185A(1) of the **Criminal Procedure Act 2009**, for "child pornography" **substitute** "child abuse material".
- (10) In section 366(1) of the **Criminal Procedure Act 2009**—
- (a) in paragraph (b), for "person; or" **substitute** "person.";
  - (b) paragraph (c) is **repealed**.
- (11) In the note at the foot of clause 4A(1) of Schedule 1 to the **Criminal Procedure Act 2009**, for "(8E) or (8EAA)" **substitute** "(8E), (8F) and (8FA)".
- (12) Clause 4A(4) of Schedule 1 to the **Criminal Procedure Act 2009** is **repealed**.
- (13) For item 4.3 of Schedule 2 to the **Criminal Procedure Act 2009 substitute**—
- "4.3 Offences under section 54 of the **Crimes Act 1958** (occupier etc. permitting unlawful sexual penetration) inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**."

### 38 Education and Training Reform Act 2006

In section 1.1.3(1) of the **Education and Training Reform Act 2006**, in the definition of *sexual offence*—

(a) for paragraph (a) **substitute**—

"(a) an offence against section 49A(1), 49B(1), 49C(1), 49D(1), 49E(1), 49F(1), 49G(1), 49H(1), 49I(1), 49J(1), 49K(1), 49L(1), 49M(1), 49P(1), 49S(1), 51B(1), 51C(1), 51D(1), 51E(1), 51F(1), 51G(1), 51H(1), 51I(1) or 54A(1) of the **Crimes Act 1958** or under any corresponding previous enactment; or";

(b) after paragraph (cc) **insert**—

"(cd) an offence against any of the following provisions of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**:

- (i) section 44(1) (incest involving a person under the age of 18);
- (ii) section 44(2) (incest);
- (iii) section 47(1) (indecent act with child under the age of 16);
- (iv) section 47A(1) (persistent sexual abuse of child under the age of 16);
- (v) section 48(1) (sexual penetration of 16 or 17 year old child);

- (vi) section 53(1) (administration of drugs etc.) involving a person under the age of 18;
- (vii) section 54 (occupier etc. permitting unlawful sexual penetration);
- (viii) section 55 (abduction or detention) involving a person under the age of 18;
- (ix) section 56(1) or (2) (abduction of child under the age of 16);
- (x) section 57(1) or (2) (procuring sexual penetration by threats or fraud) involving a person under the age of 18;
- (xi) section 59(1) (bestiality); or
- (ce) an offence against section 45(1) of the **Crimes Act 1958** (sexual penetration of child under the age of 16) inserted in the **Crimes Act 1958** on 22 November 2000 by section 5 of the **Crimes (Amendment) Act 2000** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**; or
- (cf) an offence against section 49(1) of the **Crimes Act 1958** (indecent act with 16 or 17 year old child) inserted in the **Crimes Act 1958** on 1 December 2006 by section 13 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**; or

- (cg) an offence against section 49A(1) of the **Crimes Act 1958** (facilitating sexual offences against children) inserted in the **Crimes Act 1958** on 13 June 1995 by section 93 of the **Sex Work Act 1994** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**; or
- (ch) an offence against section 49B(2) of the **Crimes Act 1958** (grooming for sexual conduct with child under the age of 16 years) inserted in the **Crimes Act 1958** on 9 April 2014 by section 3 of the **Crimes Amendment (Grooming) Act 2014** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**; or
- (ci) an offence against section 53(2) of the **Crimes Act 1958** (administration of drugs etc.) inserted in the **Crimes Act 1958** on 11 February 2009 by section 3 of the **Crimes Legislation Amendment (Food and Drink Spiking) Act 2009** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**; or
- (cj) an offence against section 58(1), (2) or (3) of the **Crimes Act 1958** (procuring sexual penetration of a child) inserted in the **Crimes Act 1958** on 1 December 2006 by section 18 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**; or

- (ck) an offence against section 68(1) (production of child pornography) or 69(1) (procurement etc. of minor for child pornography) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 1 January 1996 by section 88 of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** and repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**; or
  - (cl) an offence against section 70(1) of the **Crimes Act 1958** (possession of child pornography) inserted in the **Crimes Act 1958** on 22 November 2000 by section 6 of the **Crimes (Amendment) Act 2000** and repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**; or
  - (cm) an offence against section 70AAAB(1) (administering a child pornography website), 70AAAC(1) (encouraging use of a website to deal with child pornography) or 70AAAD(1) (assisting a person to avoid apprehension) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 1 December 2015 by section 6 of the **Crimes Amendment (Child Pornography and Other Matters) Act 2015** and repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**; or";
- (c) in paragraph (d), for "53, 55, 57 or 59" **substitute** "45(1), 46(1), 47(1), 50C(1) or 50D(1)".

### **39 Evidence (Miscellaneous Provisions) Act 1958**

In section 3(1) of the **Evidence (Miscellaneous Provisions) Act 1958**, the definition of *sexual offence* is repealed.

### **40 Judicial Proceedings Reports Act 1958**

In section 4(1) of the **Judicial Proceedings Reports Act 1958**, in the definition of *sexual offence*, for "(8D) or (8E)" **substitute** "(8E), (8F) or (8FA)".

### **41 Sentencing Act 1991**

(1) In the definition of *serious offence* in section 3(1) of the **Sentencing Act 1991**—

(a) for paragraph (c)(v) **substitute**—

"(v) section 50C(1) (sexual penetration of a child or lineal descendant), 50D(1) (sexual penetration of a step-child) or 50F(1) (sexual penetration of a sibling or half-sibling) in circumstances other than where both people are aged 18 or older and each consented (as defined by section 36 of the **Crimes Act 1958**) to the sexual penetration;"

(b) in paragraph (c)(vi), for "45 (sexual penetration of child under the age of 16)" **substitute** "49A(1) (sexual penetration of a child under the age of 12) or 49B(1) (sexual penetration of a child under the age of 16)";

(c) in paragraph (c)(viii), for "47A (persistent sexual abuse of child under the age of 16)" **substitute** "49J(1) (persistent sexual abuse of a child under the age of 16)";

(d) in paragraph (c)(ix), for "55 (abduction or detention)" **substitute** "47 (abduction or detention for a sexual purpose)";

- (e) in paragraph (c)(x), for "56 (abduction of child under the age of 16)" **substitute** "49P (abduction or detention of a child under the age of 16 for a sexual purpose)";
- (f) after paragraph (cb) **insert**—
- "(cc) an offence against any of the following provisions of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**—
- (i) section 44(1), (2) or (4) (incest) in circumstances other than where both people are aged 18 or older and each consented to the sexual penetration;
  - (ii) section 47A(1) (persistent sexual abuse of child under the age of 16);
  - (iii) section 55 (abduction or detention);
  - (iv) section 56(1) or (2) (abduction of child under the age of 16); or
- (cd) an offence against section 45(1) of the **Crimes Act 1958** (sexual penetration of child under the age of 16) inserted in the **Crimes Act 1958** on 22 November 2000 by section 5 of the **Crimes (Amendment) Act 2000** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**; or".



- (2) In section 85A(1) of the **Sentencing Act 1991**—
- (a) in the definition of *medical expenses*, for "expenses;" **substitute** "expenses.";
  - (b) the definition of *sexual offence* is **repealed**.
- (3) In the definition of *relevant offence* in section 89DC of the **Sentencing Act 1991**, for paragraph (c)(xvi) to (xxxiii) **substitute**—
- "(xvi) section 39(1) (rape by compelling sexual penetration);
  - (xvii) section 40(1) (sexual assault);
  - (xviii) section 41(1) (sexual assault by compelling sexual touching);
  - (xviiii) section 42(1) (assault with intent to commit a sexual offence);
  - (xviiiia) section 43(1) (threat to commit a sexual offence);
  - (xviiiib) section 46(1) (administration of an intoxicating substance for a sexual purpose);
  - (xix) section 49A(1) (sexual penetration of a child under the age of 12);
  - (xixa) section 49B(1) (sexual penetration of a child under the age of 16);
  - (xx) section 49D(1) (sexual assault of a child under the age of 16);
  - (xxa) section 49F(1) (sexual activity in the presence of a child under the age of 16);
  - (xxb) section 49H(1) (causing a child under the age of 16 to be present during sexual activity);
  - (xxi) section 49C(1) (sexual penetration of a child aged 16 or 17 under care, supervision or authority);

- (xxii) section 49E(1) (sexual assault of a child aged 16 or 17 under care, supervision or authority);
- (xxiia) section 49G(1) (sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority);
- (xxiib) section 49I(1) (causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity);
- (xxv) section 44(1) (procuring sexual act by threat);
- (xxvi) section 45(1) (procuring sexual act by fraud);
- (xxvii) section 49K(1) (encouraging a child under the age of 16 to engage in, or be involved in, sexual activity);
- (xxviii) section 49L(1) (encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity);
- (xxxi) section 63A (kidnapping);
- (xxxii) section 51C(1) (producing child abuse material);
- (xxxiia) section 51E(1) (administering a website used to deal with child abuse material);
- (xxxiib) section 51F(1) (encouraging use of a website to deal with child abuse material);
- (xxxiic) section 51I(1) (assisting a person to avoid apprehension);
- (xxxiii) section 49Q(1) (causing or allowing a sexual performance involving a child);
- (xxxiiia) section 49R(1) (inviting or offering a sexual performance involving a child)."

- (4) In clause 1 of Schedule 1 to the **Sentencing Act 1991**, for paragraphs (a)(iv) to (xviii) **substitute**—
- "(iv) section 50C(1) (sexual penetration of a child or lineal descendant);
  - (iva) section 50D(1) (sexual penetration of a step-child);
  - (ivb) section 50F(1) (sexual penetration of a sibling or half-sibling) in circumstances other than where both people are aged 18 years or older and each consented (as defined by section 36 of the **Crimes Act 1958**) to engage in the sexual penetration;
  - (v) section 49A(1) (sexual penetration of a child under the age of 12);
  - (va) section 49B(1) (sexual penetration of a child under the age of 16);
  - (vii) section 49D(1) (sexual assault of a child under the age of 16);
  - (viia) section 49F(1) (sexual activity in the presence of a child under the age of 16);
  - (viib) section 49H(1) (causing a child under the age of 16 to be present during sexual activity);
  - (viii) section 49J(1) (persistent sexual abuse of a child under the age of 16);
  - (viiia) section 49C(1) (sexual penetration of a child aged 16 or 17 under care, supervision or authority);
  - (viiiab) section 49E(1) (sexual assault of a child aged 16 or 17 under care, supervision or authority);

- (viiib) section 49G(1) (sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority);
- (viiiiba) section 49I(1) (causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity);
  - (ix) section 49S(1) (facilitating a sexual offence against a child);
  - (ixa) section 49M(1) (grooming for sexual conduct with a child under the age of 16);
  - (x) section 52B(1) (sexual penetration of a person with a cognitive impairment or mental illness);
  - (xa) section 52C(1) (sexual assault of a person with a cognitive impairment or mental illness);
  - (xb) section 52D(1) (sexual activity in the presence of a person with a cognitive impairment or mental illness);
  - (xc) section 52E(1) (causing a person with a cognitive impairment or mental illness to be present during sexual activity);
- (xii) section 46(1) (administration of an intoxicating substance for a sexual purpose);
- (xiii) section 47(1) (abduction or detention for a sexual purpose);
- (xiv) section 49P(1) (abduction or detention of a child under the age of 16 for a sexual purpose);
- (xv) section 44(1) (procuring sexual act by threat);
- (xva) section 45(1) (procuring sexual act by fraud);

- (xvb) section 49K(1) (encouraging a child under the age of 16 to engage in, or be involved in, sexual activity);
- (xvc) section 49L(1) (encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity);
- (xvia) section 53B(1) (using force, threat etc. to cause another person to provide commercial sexual services);
- (xviab) section 53C(1) (causing another person to provide commercial sexual services in circumstances involving sexual servitude);
- (xviac) section 53D(1) (conducting a business in circumstances involving sexual servitude);
- (xvib) section 53E(1) (aggravated sexual servitude);
- (xvic) section 53F(1) (deceptive recruiting for commercial sexual services);
- (xvid) section 53G(1) (aggravated deceptive recruiting for commercial sexual services);
- (xvie) section 54A(1) (bestiality);
- (xvig) section 51C(1) (producing child abuse material) except if the offence only relates to child abuse material of a kind described in paragraph (a)(i)(A) of the definition of *child abuse material* in section 51A of the **Crimes Act 1958**, where the torture, cruelty or abuse is not sexual;
- (xviih) section 51B(1) (involving a child in the production of child abuse material) except if the offence only relates to child abuse material of a kind described in paragraph (a)(i)(A) of the definition of *child abuse material* in section 51A of the **Crimes Act 1958**, where the torture, cruelty or abuse is not sexual;

- (xviha) section 51D(1) (distributing child abuse material) except if the offence only relates to child abuse material of a kind described in paragraph (a)(i)(A) of the definition of *child abuse material* in section 51A of the **Crimes Act 1958**, where the torture, cruelty or abuse is not sexual;
- (xvihb) section 51H(1) (accessing child abuse material) except if the offence only relates to child abuse material of a kind described in paragraph (a)(i)(A) of the definition of *child abuse material* in section 51A of the **Crimes Act 1958**, where the torture, cruelty or abuse is not sexual;
- (xvihc) section 51G(1) (possession of child abuse material) except if the offence only relates to child abuse material of a kind described in paragraph (a)(i)(A) of the definition of *child abuse material* in section 51A of the **Crimes Act 1958**, where the torture, cruelty or abuse is not sexual;
- (xviia) section 51E(1) (administering a website used to deal with child abuse material) except if the offence only relates to child abuse material of a kind described in paragraph (a)(i)(A) of the definition of *child abuse material* in section 51A of the **Crimes Act 1958**, where the torture, cruelty or abuse is not sexual;
- (xviib) section 51F(1) (encouraging use of a website to deal with child abuse material) except if the offence only relates to child abuse material of a kind described in paragraph (a)(i)(A) of the definition of *child abuse material* in section 51A of the **Crimes Act 1958**, where the torture, cruelty or abuse is not sexual;

- (xviic) section 51I(1) (assisting a person to avoid apprehension) except if the offence only relates to child abuse material of a kind described in paragraph (a)(i)(A) of the definition of *child abuse material* in section 51A of the **Crimes Act 1958**, where the torture, cruelty or abuse is not sexual;
  - (xvij) section 49Q(1) (causing or allowing a sexual performance involving a child);
  - (xvija) section 49R(1) (inviting or offering a sexual performance involving a child);
  - (xvii) section 76 (burglary) in circumstances where the offender entered the building or part of the building as a trespasser with intent to commit an offence referred to in subparagraph (i) to (ix) or (x) to (xvie);
  - (xviii) section 77 (aggravated burglary) in circumstances where the offender entered the building or part of the building as a trespasser with intent to commit an offence referred to in subparagraph (i) to (ix) or (x) to (xvie);".
- (5) For clause 1(da) of Schedule 1 to the **Sentencing Act 1991** substitute—
- "(dab) an offence against any of the following provisions of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**:
- (i) section 44(1) (incest);
  - (ia) section 44(2) (incest);

- (ib) section 44(4) (incest) in circumstances other than where both people are aged 18 years or older and each consented to the sexual penetration;
- (ii) section 47(1) (indecent act with child under the age of 16);
- (iii) section 47A(1) (persistent sexual abuse of child under the age of 16);
- (iv) section 48(1) (sexual penetration of 16 or 17 year old child);
- (v) section 53(1) (administration of drugs etc.);
- (vi) section 54 (occupier etc. permitting unlawful sexual penetration);
- (vii) section 55 (abduction or detention);
- (viii) section 56(1) (abduction of child under the age of 16);
- (viii a) section 56(2) (abduction of child under the age of 16);
- (ix) section 57(1) (procuring sexual penetration by threats or fraud);
- (ix a) section 57(2) (procuring sexual penetration by threats or fraud);
- (x) section 59(1) (bestiality);
- (dac) an offence against section 45(1) of the **Crimes Act 1958** (sexual penetration of child under the age of 16) inserted in the **Crimes Act 1958** on 22 November 2000 by section 5 of the **Crimes (Amendment) Act 2000** and repealed



by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;

- (dad) an offence against section 49(1) of the **Crimes Act 1958** (indecent act with 16 or 17 year old child) inserted in the **Crimes Act 1958** on 1 December 2006 by section 13 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;
- (dae) an offence against section 49A(1) of the **Crimes Act 1958** (facilitating sexual offences against children) inserted in the **Crimes Act 1958** on 13 June 1995 by section 93 of the **Sex Work Act 1994** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;
- (daf) an offence against section 49B(2) of the **Crimes Act 1958** (grooming for sexual conduct with child under the age of 16 years) inserted in the **Crimes Act 1958** on 9 April 2014 by section 3 of the **Crimes Amendment (Grooming) Act 2014** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;
- (dag) an offence against section 51(1) of the **Crimes Act 1958** (sexual offences against persons with a cognitive impairment by providers of medical or therapeutic services) inserted in the **Crimes Act 1958** on 1 December 2006 by section 16 of the **Crimes (Sexual Offences) Act 2006** and repealed by

section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;

- (daga) an offence against section 51(2) of the **Crimes Act 1958** (sexual offences against persons with a cognitive impairment by providers of medical or therapeutic services) inserted in the **Crimes Act 1958** on 1 December 2006 by section 16 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;
- (dah) an offence against section 52(1) of the **Crimes Act 1958** (sexual offences against persons with a cognitive impairment by workers) inserted in the **Crimes Act 1958** on 1 December 2006 by section 17 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;
- (daha) an offence against section 52(2) of the **Crimes Act 1958** (sexual offences against persons with a cognitive impairment by workers) inserted in the **Crimes Act 1958** on 1 December 2006 by section 17 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;
- (dai) an offence against section 53(2) of the **Crimes Act 1958** (administration of drugs etc.) inserted in the **Crimes Act 1958** on 11 February 2009 by section 3 of the **Crimes Legislation Amendment (Food and Drink Spiking) Act 2009** and repealed by

section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;

(daj) an offence against section 58(1) of the **Crimes Act 1958** (procuring sexual penetration of a child) inserted in the **Crimes Act 1958** on 1 December 2006 by section 18 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;

(daja) an offence against section 58(2) of the **Crimes Act 1958** (procuring sexual penetration of a child) inserted in the **Crimes Act 1958** on 1 December 2006 by section 18 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;

(dajb) an offence against section 58(3) of the **Crimes Act 1958** (procuring sexual penetration of a child) inserted in the **Crimes Act 1958** on 1 December 2006 by section 18 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;

(dak) an offence against section 60A(1) of the **Crimes Act 1958** (sexual offence while armed with an offensive weapon) inserted in the **Crimes Act 1958** on 15 August 1993 by section 21 of the **Sentencing (Amendment) Act 1993** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;

- (dal) an offence against section 60AB(2) of the **Crimes Act 1958** (sexual servitude) inserted in the **Crimes Act 1958** on 19 May 2004 by section 3 of the **Justice Legislation (Sexual Offences and Bail) Act 2004** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;
- (dala) an offence against section 60AB(3) of the **Crimes Act 1958** (sexual servitude) inserted in the **Crimes Act 1958** on 19 May 2004 by section 3 of the **Justice Legislation (Sexual Offences and Bail) Act 2004** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;
- (dalb) an offence against section 60AB(4) of the **Crimes Act 1958** (sexual servitude) inserted in the **Crimes Act 1958** on 19 May 2004 by section 3 of the **Justice Legislation (Sexual Offences and Bail) Act 2004** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;
- (dalc) an offence against section 60AC(1) of the **Crimes Act 1958** (aggravated sexual servitude) inserted in the **Crimes Act 1958** on 19 May 2004 by section 3 of the **Justice Legislation (Sexual Offences and Bail) Act 2004** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;

- (dald) an offence against section 60AD(1) of the **Crimes Act 1958** (deceptive recruiting for commercial sexual services) inserted in the **Crimes Act 1958** on 19 May 2004 by section 3 of the **Justice Legislation (Sexual Offences and Bail) Act 2004** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;
- (dale) an offence against section 60AE(1) of the **Crimes Act 1958** (aggravated deceptive recruiting for commercial sexual services) inserted in the **Crimes Act 1958** on 19 May 2004 by section 3 of the **Justice Legislation (Sexual Offences and Bail) Act 2004** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**;
- (dam) an offence against section 68(1) of the **Crimes Act 1958** (production of child pornography) inserted in the **Crimes Act 1958** on 1 January 1996 by section 88 of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** and repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**;
- (dama) an offence against section 69(1) of the **Crimes Act 1958** (procurement etc. of minor for child pornography) inserted in the **Crimes Act 1958** on 1 January 1996 by section 88 of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** and

repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**;

- (dan) an offence against section 70(1) of the **Crimes Act 1958** (possession of child pornography) inserted in the **Crimes Act 1958** on 22 November 2000 by section 6 of the **Crimes (Amendment) Act 2000** and repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**;
- (dao) an offence against section 70AAAB(1) of the **Crimes Act 1958** (administering a child pornography website) inserted in the **Crimes Act 1958** on 1 December 2015 by section 6 of the **Crimes Amendment (Child Pornography and Other Matters) Act 2015** and repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**;
- (daoa) an offence against section 70AAAC(1) of the **Crimes Act 1958** (encouraging use of a website to deal with child pornography) inserted in the **Crimes Act 1958** on 1 December 2015 by section 6 of the **Crimes Amendment (Child Pornography and Other Matters) Act 2015** and repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**;
- (daob) an offence against section 70AAAD(1) of the **Crimes Act 1958** (assisting a person to avoid apprehension) inserted in the **Crimes Act 1958** on 1 December 2015 by section 6 of the **Crimes Amendment (Child Pornography and**

**Other Matters) Act 2015** and repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**;

- (dap) an offence against section 70AC of the **Crimes Act 1958** (sexual performance involving a minor) inserted in the **Crimes Act 1958** on 19 May 2004 by section 7 of the **Justice Legislation (Sexual Offences and Bail) Act 2004** and repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**;
- (daq) an offence against section 57A of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** (publication or transmission of child pornography) inserted in the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** on 8 November 2001 by section 16 of the **Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2001** and repealed by section 34 of the **Crimes Amendment (Sexual Offences) Act 2016**;
- (dar) an offence referred to in paragraph (a)(xvii) or (xviii) as in force immediately before the commencement of section 41 of the **Crimes Amendment (Sexual Offences) Act 2016**."

**42 Serious Sex Offenders (Detention and Supervision)  
Act 2009**

(1) For items 1 and 2 in Schedule 1 to the **Serious Sex Offenders (Detention and Supervision) Act 2009** substitute—

"1 An offence against a provision of Subdivisions (8A) to (8FA) of Division 1 of Part I of the **Crimes Act 1958** that involves sexual penetration."

(2) For items 7 to 26 in Schedule 1 to the **Serious Sex Offenders (Detention and Supervision) Act 2009** substitute—

"7 An offence against section 44(1) of the **Crimes Act 1958** (procuring sexual act by threat).

7A An offence against section 45(1) of the **Crimes Act 1958** (procuring sexual act by fraud).

8 An offence against section 46(1) of the **Crimes Act 1958** (administration of an intoxicating substance for a sexual purpose).

8A An offence against section 47(1) of the **Crimes Act 1958** (abduction or detention for a sexual purpose).

9 An offence against section 49D(1) of the **Crimes Act 1958** (sexual assault of a child under the age of 16).

9A An offence against section 49E(1) of the **Crimes Act 1958** (sexual assault of a child aged 16 or 17 under care, supervision or authority).

10 An offence against section 49F(1) of the **Crimes Act 1958** (sexual activity in the presence of a child under the age of 16).



- 10A An offence against section 49G(1) of the **Crimes Act 1958** (sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority).
- 11 An offence against section 49H(1) of the **Crimes Act 1958** (causing a child under the age of 16 to be present during sexual activity).
- 11A An offence against section 49I(1) of the **Crimes Act 1958** (causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity).
- 12 An offence against section 49J(1) of the **Crimes Act 1958** (persistent sexual abuse of a child under the age of 16).
- 12A An offence against section 49K(1) of the **Crimes Act 1958** (encouraging a child under the age of 16 to engage in, or be involved in, sexual activity).
- 13 An offence against section 49L(1) of the **Crimes Act 1958** (encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity).
- 13A An offence against section 49M(1) of the **Crimes Act 1958** (grooming for sexual conduct with a child under the age of 16).
- 14 An offence against section 49N(1) of the **Crimes Act 1958** (loitering near schools etc. by sexual offender).
- 14A An offence against section 49P(1) of the **Crimes Act 1958** (abduction or detention of a child under the age of 16 for a sexual purpose).

- 15 An offence against section 49Q(1) of the **Crimes Act 1958** (causing or allowing a sexual performance involving a child).
- 15A An offence against section 49R(1) of the **Crimes Act 1958** (inviting or offering a sexual performance involving a child).
- 16 An offence against section 49S(1) of the **Crimes Act 1958** (facilitating a sexual offence against a child).
- 16A An offence against section 51B(1) of the **Crimes Act 1958** (involving a child in the production of child abuse material).
- 17 An offence against section 51C(1) of the **Crimes Act 1958** (producing child abuse material).
- 17A An offence against section 51D(1) of the **Crimes Act 1958** (distributing child abuse material).
- 18 An offence against section 51E(1) of the **Crimes Act 1958** (administering a website used to deal with child abuse material).
- 18A An offence against section 51F(1) of the **Crimes Act 1958** (encouraging use of a website to deal with child abuse material).
- 19 An offence against section 51G(1) of the **Crimes Act 1958** (possession of child abuse material).
- 19A An offence against section 51H(1) of the **Crimes Act 1958** (accessing child abuse material).
- 20 An offence against section 51I(1) of the **Crimes Act 1958** (assisting a person to avoid apprehension).

- 20A An offence against section 52C(1) of the **Crimes Act 1958** (sexual assault of a person with a cognitive impairment or mental illness).
- 21 An offence against section 52D(1) of the **Crimes Act 1958** (sexual activity in the presence of a person with a cognitive impairment or mental illness).
- 21A An offence against section 52E(1) of the **Crimes Act 1958** (causing a person with a cognitive impairment or mental illness to be present during sexual activity).
- 22 An offence against section 53B(1) of the **Crimes Act 1958** (using force, threat etc. to cause another person to provide commercial sexual services).
- 22A An offence against section 53C(1) of the **Crimes Act 1958** (causing another person to provide commercial sexual services in circumstances involving sexual servitude).
- 23 An offence against section 53D(1) of the **Crimes Act 1958** (conducting a business in circumstances involving sexual servitude).
- 23A An offence against section 53E(1) of the **Crimes Act 1958** (aggravated sexual servitude).
- 24 An offence against section 53F(1) of the **Crimes Act 1958** (deceptive recruiting for commercial sexual services).
- 25 An offence against section 53G(1) of the **Crimes Act 1958** (aggravated deceptive recruiting for commercial sexual services).
- 26 An offence against section 54A(1) of the **Crimes Act 1958** (bestiality).".

- (3) In items 27 and 28 of Schedule 1 to the **Serious Sex Offenders (Detention and Supervision) Act 2009**, for "(8EA)" substitute "(8FA)".
- (4) For item 33 of Schedule 1 to the **Serious Sex Offenders (Detention and Supervision) Act 2009** substitute—
- "33A An offence against section 60B(2) of the **Crimes Act 1958** (loitering near schools etc.) inserted in the **Crimes Act 1958** on 21 December 1993 by section 10 of the **Crimes (Amendment) Act 1993** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**."
- (5) After item 35 of Schedule 1 to the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—
- "35A Without limiting item 34 or 35, an offence referred to in paragraphs (dab) to (dar) of clause 1 of Schedule 1 to the **Sentencing Act 1991** that involves sexual penetration.
- 35B Without limiting item 34, 35 or 35A, an offence referred to in paragraph (a)(iv) to (xviii) of clause 1 of Schedule 1 to the **Sentencing Act 1991** as in force immediately before their repeal."

#### **43 Sex Offenders Registration Act 2004**

- (1) In section 34(1) of the **Sex Offenders Registration Act 2004**—
- (a) in paragraph (b)(i), after "item 2" insert "or item 4";
- (b) in paragraph (c)(ia), after "item 2" insert "or item 4".

- (2) In section 70(2)(e) of the **Sex Offenders Registration Act 2004** for "with a cognitive impairment within the meaning of Subdivision (8D)" **substitute** "with a cognitive impairment or mental illness within the meaning of Subdivision (8E)".
- (3) For items 1 and 1A of Schedule 1 to the **Sex Offenders Registration Act 2004 substitute—**
- "1 An offence against a provision of Subdivisions (8A) to (8FA) of Division 1 of Part I of the **Crimes Act 1958** that involves sexual penetration where the person against whom the offence is committed is a child."
- (4) For items 2 and 3 of Schedule 1 to the **Sex Offenders Registration Act 2004 substitute—**
- "2 An offence against section 49J(1) of the **Crimes Act 1958** (persistent sexual abuse of a child under the age of 16).
- 3 An offence against section 49S(1) of the **Crimes Act 1958** (facilitating a sexual offence against a child).
- 4 An offence against section 47A(1) of the **Crimes Act 1958** (persistent sexual abuse of child under the age of 16) inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 5 An offence against section 49A(1) of the **Crimes Act 1958** (facilitating sexual offences against children) inserted in the **Crimes Act 1958** on 13 June 1995 by section 93 of the **Sex Work Act 1994** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**."
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- (5) In item 6 of Schedule 1 to the **Sex Offenders Registration Act 2004**, for "items 1 to 3" substitute "items 1 to 5".
- (6) For item 6AA of Schedule 1 to the **Sex Offenders Registration Act 2004** substitute—
- "6AA An offence against section 53E(1) of the **Crimes Act 1958** (aggravated sexual servitude).
- 6AB An offence against section 60AC(1) of the **Crimes Act 1958** (aggravated sexual servitude) inserted in the **Crimes Act 1958** on 19 May 2004 by section 3 of the **Justice Legislation (Sexual Offences and Bail) Act 2004** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**".
- (7) After item 6A(e) of Schedule 1 to the **Sex Offenders Act 2004** insert—
- "(ea) paragraph (dab) to (dar) (other than (dab)(iii), (dae) and (dalc)) that involves sexual penetration;".
- (8) For items 3 to 18A of Schedule 2 to the **Sex Offenders Registration Act 2004** substitute—
- "3 An offence against section 44(1) of the **Crimes Act 1958** (procuring sexual act by threat) if the person against whom the offence is committed is a child.
- 3A An offence against section 45(1) of the **Crimes Act 1958** (procuring sexual act by fraud) if the person against whom the offence is committed is a child.

- 4 An offence against section 46(1) of the **Crimes Act 1958** (administration of an intoxicating substance for a sexual purpose) if the person against whom the offence is committed is a child.
- 4A An offence against section 47(1) of the **Crimes Act 1958** (abduction or detention for a sexual purpose) if the person against whom the offence is committed is a child.
- 5 An offence against section 48(1) of the **Crimes Act 1958** (sexual activity directed at another person) if the person against whom the sexual activity is directed is a child.
- 5A An offence against section 49D(1) of the **Crimes Act 1958** (sexual assault of a child under the age of 16).
- 6 An offence against section 49E(1) of the **Crimes Act 1958** (sexual assault of a child aged 16 or 17 under care, supervision or authority).
- 6A An offence against section 49F(1) of the **Crimes Act 1958** (sexual activity in the presence of a child under the age of 16).
- 7 An offence against section 49G(1) of the **Crimes Act 1958** (sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority).
- 7A An offence against section 49H(1) of the **Crimes Act 1958** (causing a child under the age of 16 to be present during sexual activity).
- 8 An offence against section 49I(1) of the **Crimes Act 1958** (causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity).

- 8A An offence against section 49K(1) of the **Crimes Act 1958** (encouraging a child under the age of 16 to engage in, or be involved in, sexual activity).
- 9 An offence against section 49L(1) of the **Crimes Act 1958** (encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity).
- 9A An offence against section 49M(1) of the **Crimes Act 1958** (grooming for sexual conduct with a child under the age of 16).
- 10 An offence against section 49N(1) of the **Crimes Act 1958** (loitering near schools etc. by sexual offender).
- 10A An offence against section 49P(1) of the **Crimes Act 1958** (abduction or detention of a child under the age of 16 for a sexual purpose).
- 11 An offence against section 49Q(1) of the **Crimes Act 1958** (causing or allowing a sexual performance involving a child).
- 11A An offence against section 49R(1) of the **Crimes Act 1958** (inviting or offering a sexual performance involving a child).
- 12 An offence against section 51B(1) of the **Crimes Act 1958** (involving a child in the production of child abuse material) except if the offence only relates to child abuse material of a kind described in paragraph (a)(i)(A) of the definition of *child abuse material* in section 51A of the **Crimes Act 1958**, where the torture, cruelty or abuse is not sexual.



- 13 An offence against section 51C(1) of the **Crimes Act 1958** (producing child abuse material) except if the offence only relates to child abuse material of a kind described in paragraph (a)(i)(A) of the definition of *child abuse material* in section 51A of the **Crimes Act 1958**, where the torture, cruelty or abuse is not sexual.
- 13A An offence against section 51D(1) of the **Crimes Act 1958** (distributing child abuse material) except if the offence only relates to child abuse material of a kind described in paragraph (a)(i)(A) of the definition of *child abuse material* in section 51A of the **Crimes Act 1958**, where the torture, cruelty or abuse is not sexual.
- 14 An offence against section 51E(1) of the **Crimes Act 1958** (administering a website used to deal with child abuse material) except if the offence only relates to child abuse material of a kind described in paragraph (a)(i)(A) of the definition of *child abuse material* in section 51A of the **Crimes Act 1958**, where the torture, cruelty or abuse is not sexual.
- 14A An offence against section 51F(1) of the **Crimes Act 1958** (encouraging use of a website to deal with child abuse material) except if the offence only relates to child abuse material of a kind described in paragraph (a)(i)(A) of the definition of *child abuse material* in section 51A of the **Crimes Act 1958**, where the torture, cruelty or abuse is not sexual.
- 15 An offence against section 51G(1) of the **Crimes Act 1958** (possession of child abuse material) except if the offence only relates to

- child abuse material of a kind described in paragraph (a)(i)(A) of the definition of *child abuse material* in section 51A of the **Crimes Act 1958**, where the torture, cruelty or abuse is not sexual.
- 15A An offence against section 51H(1) of the **Crimes Act 1958** (accessing child abuse material) except if the offence only relates to child abuse material of a kind described in paragraph (a)(i)(A) of the definition of *child abuse material* in section 51A of the **Crimes Act 1958**, where the torture, cruelty or abuse is not sexual.
- 16 An offence against section 51I(1) of the **Crimes Act 1958** (assisting a person to avoid apprehension) except if the offence only relates to child abuse material of a kind described in paragraph (a)(i)(A) of the definition of *child abuse material* in section 51A of the **Crimes Act 1958**, where the torture, cruelty or abuse is not sexual.
- 16A An offence against section 52C(1) of the **Crimes Act 1958** (sexual assault of a person with a cognitive impairment or mental illness).
- 17 An offence against section 52D(1) of the **Crimes Act 1958** (sexual activity in the presence of a person with a cognitive impairment or mental illness) if the person in the presence of whom the sexual activity is engaged in is a child.
- 17A An offence against section 52E(1) of the **Crimes Act 1958** (causing a person with a cognitive impairment or mental illness to be present during sexual activity) if the person in the presence of whom the sexual activity is engaged in is a child.
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- 18 An offence against section 53G(1) of the **Crimes Act 1958** (aggravated deceptive recruiting for commercial sexual services).
- 18A An offence against section 54A(1) of the **Crimes Act 1958** (bestiality)."
- (9) In items 19 and 20 of Schedule 2 to the **Sex Offenders Registration Act 2004**, for "(8EA)" substitute "(8FA)".
- (10) Item 25 of Schedule 2 to the **Sex Offenders Registration Act 2004** is repealed.
- (11) In item 26A of Schedule 2 to the **Sex Offenders Registration Act 2004**—
- (a) for "(ab), (ac), (b), (c), (d) or (e)" substitute "(ab) to (dar) (other than (dab)(iii), (dae) and (dalc)) or (e)";
  - (b) for "item 6A" substitute "item 4, 5, 6AB or 6A".
- (12) For items 1 and 1A of Schedule 3 to the **Sex Offenders Registration Act 2004** substitute—
- "1 An offence against a provision of Subdivisions (8A) to (8FA) of Division 1 of Part I of the **Crimes Act 1958** that involves sexual penetration."
- (13) In item 2A of Schedule 3 to the **Sex Offenders Registration Act 2004**, after paragraph (c) insert—
- "(ca) paragraphs (dab)(i), (ia) and (ib), (dag) and (dah);".
- (14) For items 3 to 7B of Schedule 4 to the **Sex Offenders Registration Act 2004** substitute—
- "3 An offence against section 44(1) of the **Crimes Act 1958** (procuring sexual act by threat).

- 3A An offence against section 45(1) of the **Crimes Act 1958** (procuring sexual act by fraud).
- 4 An offence against section 46(1) of the **Crimes Act 1958** (administration of an intoxicating substance for a sexual purpose).
- 4A An offence against section 47(1) of the **Crimes Act 1958** (abduction or detention for a sexual purpose).
- 5 An offence against section 52C(1) of the **Crimes Act 1958** (sexual assault of a person with a cognitive impairment or mental illness).
- 5A An offence against section 52D(1) of the **Crimes Act 1958** (sexual activity in the presence of a person with a cognitive impairment or mental illness).
- 6 An offence against section 52E(1) of the **Crimes Act 1958** (causing a person with a cognitive impairment or mental illness to be present during sexual activity).
- 6A An offence against section 53B(1) of the **Crimes Act 1958** (using force, threat etc. to cause another person to provide commercial sexual services).
- 7 An offence against section 53C(1) of the **Crimes Act 1958** (causing another person to provide commercial sexual services in circumstances involving sexual servitude).
- 7A An offence against section 53D(1) of the **Crimes Act 1958** (conducting a business in circumstances involving sexual servitude).
- 7B An offence against section 53F(1) of the **Crimes Act 1958** (deceptive recruiting for commercial sexual services)."

- (15) In items 8 and 9 of Schedule 4 to the **Sex Offenders Registration Act 2004**, for "(8EA)" substitute "(8FA)".
- (16) In item 10A of Schedule 4 to the **Sex Offenders Registration Act 2004**—
- (a) for "(ab), (ac), (b), (c), (d) or (e)" substitute "(ab) to (dar) or (e)";
  - (b) in paragraph (a), for "item 6A" substitute "item 4, 5, 6AB or 6A".

#### **44 Sex Work Act 1994**

In section 3(1) of the **Sex Work Act 1994**, in the definition of *sexual penetration*, for "section 35" substitute "section 35A".

#### **45 Summary Offences Act 1966**

- (1) For note 1 at the foot of section 41D(2) of the **Summary Offences Act 1966** substitute—
- "1 Subdivision (8D) of Division 1 of Part I of the **Crimes Act 1958** sets out offences in relation to child abuse material."
- (2) In section 41DA(3)(a) of the **Summary Offences Act 1966**, for "a minor" substitute "a person under the age of 18 years".

#### **46 Transport (Compliance and Miscellaneous) Act 1983**

- (1) In section 86(1) of the **Transport (Compliance and Miscellaneous) Act 1983**, in the definition of *category 1 offence*—
- (a) in paragraph (a), omit "(within the meaning given by section 35(1) of the **Crimes Act 1958**)";
  - (b) in paragraph (e), for "child pornography" substitute "child abuse material".

- (2) In section 130A(1) of the **Transport (Compliance and Miscellaneous) Act 1983**, in paragraph (d) of the definition of *tier 1 offence*, for "child pornography" substitute "child abuse material".

#### **47 Victims of Crime Assistance Act 1996**

In section 3(1) of the **Victims of Crime Assistance Act 1996**, in paragraph (b) of the definition of *relevant offence*, for "(8D) or (8E)" substitute "(8E) or (8FA)".

#### **48 Victoria Police Act 2013**

For item 2.2 of Schedule 4 to the **Victoria Police Act 2013** substitute—

"2.2 Sexual offences

An offence under section 39(1), 40(1), 41(1), 43(1), 44(1), 45(1), 46(1), 47(1), 49A(1), 49B(1), 49C(1), 49D(1), 49E(1), 49F(1), 49G(1), 49H(1), 49I(1), 49K(1), 49L(1), 49P(1), 50E(1), 50F(1), 51B(1), 51C(1), 51D(1), 51E(1), 51F(1), 51G(1), 51H(1), 51I(1), 52B(1), 52C(1), 52D(1), 52E(1) or 54A(1) of the **Crimes Act 1958**.

An offence under section 39(1) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 1 January 1992 by section 3 of the **Crimes (Rape) Act 1991** and repealed by section 4 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014**.

An offence under section 40(1) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 15 August 1993 by section 20 of the **Sentencing (Amendment) Act 1993** and repealed by section 4 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014**.

An offence against any of the following provisions of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**:

- (a) section 44(3) or (4) (incest);
- (b) section 47(1) (indecent act with child under the age of 16);
- (c) section 48(1) (sexual penetration of 16 or 17 year old child);
- (d) section 53(1) (administration of drugs etc.);
- (e) section 54 (occupier etc. permitting unlawful sexual penetration);
- (f) section 55 (abduction or detention);
- (g) section 56(1) or (2) (abduction of child under the age of 16);
- (h) section 57(1) or (2) (procuring sexual penetration by threats or fraud);
- (i) section 59(1) (bestiality).

An offence against section 45(1) of the **Crimes Act 1958** (sexual penetration of child under the age of 16) inserted in the **Crimes Act 1958** on 22 November 2000 by section 5 of the **Crimes (Amendment) Act 2000** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.

An offence against section 49(1) of the **Crimes Act 1958** (indecent act with 16 or 17 year old child) inserted in the **Crimes Act 1958** on 1 December 2006 by section 13 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.

An offence against section 51(1) or (2) of the **Crimes Act 1958** (sexual offences against persons with a cognitive impairment by providers of medical or therapeutic services) inserted in the **Crimes Act 1958** on 1 December 2006 by section 16 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.

An offence against section 52(1) or (2) of the **Crimes Act 1958** (sexual offences against persons with a cognitive impairment by workers) inserted in the **Crimes Act 1958** on 1 December 2006 by section 17 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.

An offence against section 53(2) of the **Crimes Act 1958** (administration of drugs etc.) inserted in the **Crimes Act 1958** on 11 February 2009 by section 3 of the **Crimes Legislation Amendment (Food and Drink Spiking) Act 2009** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.



An offence against section 58(1), (2) or (3) of the **Crimes Act 1958** (procuring sexual penetration of a child) inserted in the **Crimes Act 1958** on 1 December 2006 by section 18 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.

An offence against section 60A(1) of the **Crimes Act 1958** (sexual offence while armed with an offensive weapon) inserted in the **Crimes Act 1958** on 15 August 1993 by section 21 of the **Sentencing (Amendment) Act 1993** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.

An offence against section 68(1) (production of child pornography) or section 69(1) (procurement etc. of minor for child pornography) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 1 January 1996 by section 88 of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** and repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**.

An offence against section 70(1) of the **Crimes Act 1958** (possession of child pornography) inserted in the **Crimes Act 1958** on 22 November 2000 by section 6 of the **Crimes (Amendment) Act 2000** and repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**.

An offence against section 70AAAB(1) (administering a child pornography website), 70AAAC(1) (encouraging use of a website to deal with child pornography)

or 70AAAD(1) (assisting a person to avoid apprehension) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 1 December 2015 by section 6 of the **Crimes Amendment (Child Pornography and Other Matters) Act 2015** and repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**."

#### **49 Working with Children Act 2005**

(1) In section 3(1) of the **Working with Children Act 2005**, for the definition of *child pornography offence substitute*—

"*child abuse material offence* means—

- (a) an offence against any of the following provisions of the **Crimes Act 1958**—
  - (i) section 51B(1) (involving a child in the production of child abuse material);
  - (ii) section 51C(1) (producing child abuse material);
  - (iii) section 51D(1) (distributing child abuse material);
  - (iv) section 51E(1) (administering a website used to deal with child abuse material);
  - (v) section 51F(1) (encouraging use of a website to deal with child abuse material);
  - (vi) section 51G(1) (possession of child abuse material);
  - (vii) section 51H(1) (accessing child abuse material);
  - (viii) section 51I(1) (assisting a person to avoid apprehension); or

- (b) an offence against section 233BAB(5) or 233BAB(6) of the Customs Act 1901 of the Commonwealth (special offence relating to tier 2 goods) where the goods are goods covered by section 233BAB(1)(h) of that Act; or
  - (c) an offence referred to in paragraphs (dam), (dama), (dan), (dao), (daoa), (daob), (daq) or (df)(ii), (iii), (iv), (v), (vi) or (vii), of clause 1 of Schedule 1 to the **Sentencing Act 1991**;"
- (2) In sections 13(1)(a) and (b), 14(1)(b), 21AC(1)(a) and (b) and 21AD(1)(b) of the **Working with Children Act 2005**, for "9 or 14A" substitute "9, 14A or 17".
  - (3) In section 40(2)(b) of the **Working with Children Act 2005**, for "a person with impaired mental functioning within the meaning of Subdivision (8D)" substitute "a person with a cognitive impairment or mental illness within the meaning of Subdivision (8E)".
  - (4) In clauses 1 and 2 of Schedule 1 to the **Working with Children Act 2005**, for "child pornography" substitute "child abuse material".
  - (5) In clause 1 of Schedule 2 to the **Working with Children Act 2005**, for "child pornography" substitute "child abuse material".
  - (6) In clause 9 of Schedule 2 to the **Working with Children Act 2005**, for "60B" (where twice occurring) substitute "49N(1)".
  - (7) In clause 9A of Schedule 2 to the **Working with Children Act 2005**, for "49C" (where twice occurring) substitute "49O(1)".

- (8) After clause 12(a) of Schedule 2 to the **Working with Children Act 2005** insert—
- "(ab) against section 19 of the **Summary Offences Act 1966** if the offence was committed before the commencement of section 25 of the **Crimes Amendment (Sexual Offences) Act 2016**; or".
- (9) After clause 16 of Schedule 2 to the **Working with Children Act 2005** insert—
- "17 An offence against section 49C(2) of the **Crimes Act 1958** (failure by person in authority to protect child from sexual offence) inserted in the **Crimes Act 1958** on 1 July 2015 by section 3 of the **Crimes Amendment (Protection of Children) Act 2014** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016** or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 49C(2) of the **Crimes Act 1958**.
- 18 An offence against section 60B(2) of the **Crimes Act 1958** (loitering near schools etc.) inserted in the **Crimes Act 1958** on 21 December 1993 by section 10 of the **Crimes (Amendment) Act 1993** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016** or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 60B(2) of the **Crimes Act 1958**".
- (10) In clause 2.8 of Schedule 3 to the **Working with Children Act 2005**, for "60B" (where twice occurring) substitute "49N(1)".
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(11) After clause 2.8 of Schedule 3 to the **Working with Children Act 2005** insert—

"2.9 An offence against section 60B(2) of the **Crimes Act 1958** (loitering near schools etc.) inserted in the **Crimes Act 1958** on 21 December 1993 by section 10 of the **Crimes (Amendment) Act 1993** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016** or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 60B(2), in circumstances where the person committing the offence is an adult."

## **Part 6—Repeal of amending Act**

### **50 Repeal of amending Act**

This Act is **repealed** on 1 July 2018.

#### **Note**

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

<sup>†</sup> *Minister's second reading speech—*

*Legislative Assembly: 9 June 2016*

*Legislative Council: 23 June 2016*

The long title for the Bill for this Act was "A Bill for an Act to amend the **Crimes Act 1958** in relation to sexual offences and certain other offences, to amend the **Summary Offences Act 1966** in relation to sexual exposure and indecent, offensive and insulting behaviour, to amend the **Jury Directions Act 2015** in relation to directions on consent, and reasonable belief in consent, in sexual offence cases, to make minor amendments to certain Acts and for other purposes."