

Authorised Version

**Crimes Amendment (Sexual Offences and Other
Matters) Act 2014**

No. 74 of 2014

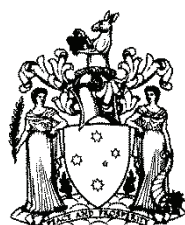
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Authorised Version



Victoria

**Crimes Amendment (Sexual Offences
and Other Matters) Act 2014[†]**

No. 74 of 2014

[Assented to 21 October 2014]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to amend the **Crimes Act 1958**—
 - (i) to reform the law relating to rape and sexual assault; and

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- (ii) to abolish in certain child sexual offences the exception for a person who is married to the victim; and
 - (iii) to further provide for the offence of grooming for sexual conduct with a child under the age of 16 years; and
 - (iv) to provide for exceptions to child pornography offences; and
- (b) to amend the **Criminal Procedure Act 2009** to remove the time limits on commencing proceedings for certain former sexual offences and to provide for a course of conduct charge; and
 - (c) to amend the **Jury Directions Act 2013** in relation to directions on consent in rape and certain other sexual offence cases; and
 - (d) to amend the **Summary Offences Act 1966** to insert offences relating to intimate images; and
 - (e) to amend the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** to provide for exceptions to an offence against section 57A of that Act; and
 - (f) to amend the **Working with Children Act 2005** to provide for offences relating to intimate images to be treated as category B offences for adults and category C offences for children, for the purposes of that Act; and
 - (g) to make minor amendments to certain Acts.

2 Commencement

- (1) This Part and sections 5, 6 and 10 come into operation on the day after the day on which this Act receives the Royal Assent.
 - (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
 - (3) If a provision referred to in subsection (2) does not come into operation before 1 July 2015, it comes into operation on that day.
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PART 2—AMENDMENT OF CRIMES ACT 1958

3 New section 34C inserted

See:
Act No.
6231.
Reprint No. 24
as at
1 July 2013
and
amending
Act Nos
16/2004,
27/2011,
60/2013,
70/2013,
72/2013,
77/2013,
7/2014, 8/2014,
17/2014,
25/2014,
26/2014,
36/2014 and
37/2014.
LawToday:
www.
legislation.
vic.gov.au

In Subdivision (8) of Division 1 of Part 1 of the
Crimes Act 1958, before section 35 insert—

"34C Consent

- (1) For the purposes of Subdivisions (8A) to (8D), 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 incapable of understanding the sexual nature of the act;
 - (g) the person is mistaken about the sexual nature of the act;
 - (h) the person is mistaken about the identity of any other person involved in the act;
 - (i) the person mistakenly believes that the act is for medical or hygienic purposes;

- (j) if the act involves an animal, the person mistakenly believes that the act is for veterinary, agricultural or scientific research purposes."

4 New Subdivision (8A) substituted in Division 1 of Part I of the Crimes Act 1958

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

"(8A) *Rape and sexual assault*

37C Definitions

In this Subdivision—

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

consent—see section 34C;

sexual, in relation to touching—see section 37E;

sexual penetration—see section 37D;

take part in a sexual act—see section 37F;

touching—see section 37E;

vagina includes—

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

37D 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 (A) also sexually penetrates another person (B) if—
- (a) A causes another person to sexually penetrate B; or
 - (b) A causes B to take part in an act of bestiality within the meaning given by paragraph (b) or (d) of section 59(2).
- (3) 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.

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- (4) A person sexually penetrates an animal if—
- (a) the person introduces (to any extent) a part of their body or an object into the animal's vagina; or
 - (b) the person introduces (to any extent) a part of their body or an object into the animal's anus; or
 - (c) the person introduces (to any extent) their penis into the animal's mouth; or
 - (d) having introduced a part of their body or an object into the animal's vagina, the person continues to keep it there; or
 - (e) having introduced a part of their body or an object into the animal's anus, the person continues to keep it there; or
 - (f) having introduced their penis into the animal's mouth, the person continues to keep it there.
- (5) For sexual penetration by the use of a penis, it does not matter whether or not there is emission of semen.

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. This does not mean that A and B in this section are the same persons as A and B in the offence provisions.

37E 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) For the purposes of this Subdivision, if a person (A) causes another person (B) to be touched by a third person or an animal, A is the person doing the touching of B.
- (3) 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, the breasts; or
 - (b) the fact that the person doing the touching seeks or gets sexual gratification from the touching; or
 - (c) any other aspect of the touching, including the circumstances in which it is done.

37F Taking part in a sexual act

For the purposes of section 42 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.

37G Reasonable belief

- (1) For the purposes of this Subdivision, 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.

37H 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 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.

38 Rape

- (1) A person (A) commits an offence if—
- (a) A intentionally sexually penetrates another person (B); and
 - (b) B does not consent to the penetration; and
 - (c) A does not reasonably believe that B consents to the penetration.
- (2) A person who commits an offence against subsection (1) is liable to level 2 imprisonment (25 years maximum).
- (3) A person does not commit an offence against subsection (1) if the sexual penetration is done in the course of a procedure carried out in good faith for medical or hygienic purposes.

39 Rape by compelling sexual penetration

- (1) A person (A) commits an offence if—
- (a) A intentionally causes another person (B) to sexually penetrate—
 - (i) A; or
 - (ii) themselves; or
 - (iii) a third person; or
 - (iv) an animal; and
 - (b) B does not consent to doing the act of sexual penetration; and
 - (c) A does not reasonably believe that B consents to doing that act.
- (2) A person who commits an offence against subsection (1) is liable to level 2 imprisonment (25 years maximum).
- (3) A does not commit an offence against subsection (1) if—
- (a) the sexual penetration is of a person and is caused to be done by A in the course of a procedure being carried out by A in good faith for medical or hygienic purposes; or
 - (b) the sexual penetration is of an animal and is caused to be done by A in the course of a procedure being carried out by A in good faith for veterinary, agricultural or scientific research purposes.

40 Sexual assault

- (1) A person (A) commits an offence if—
- (a) A intentionally touches another person (B); and

- (b) the touching is sexual; and
 - (c) B does not consent to the touching; and
 - (d) A does not reasonably believe that B consents to the touching.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 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 touching was not sexual.
- (4) A person does not commit an offence against subsection (1) if the touching is done in the course of a procedure carried out in good faith for medical or hygienic purposes.

Note

An offence against subsection (1) may be heard and determined summarily by the Magistrates' Court if section 29 of the **Criminal Procedure Act 2009** is satisfied. See section 28 of the **Criminal Procedure Act 2009**.

41 Sexual assault by compelling sexual touching

- (1) A person (A) commits an offence if—
- (a) A intentionally causes another person (B) to touch—
 - (i) A; or
 - (ii) themselves; or
 - (iii) a third person; or
 - (iv) an animal; and
 - (b) the touching is sexual; and
 - (c) B does not consent to the touching; and

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- (d) A does not reasonably believe that B consents to the touching.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 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 touching was not sexual.
- (4) A person does not commit an offence against subsection (1) if—
- (a) the touching is of a person and is caused to be done by A in the course of a procedure being carried out by A in good faith for medical or hygienic purposes; or
 - (b) the touching is of an animal and is caused to be done by A in the course of a procedure being carried out by A in good faith for veterinary, agricultural or scientific research purposes.

Note

An offence against subsection (1) may be heard and determined summarily by the Magistrates' Court if section 29 of the **Criminal Procedure Act 2009** is satisfied. See section 28 of the **Criminal Procedure Act 2009**.

42 Assault with intent to commit a sexual offence

- (1) A person (A) commits an offence if—
- (a) A intentionally applies force to another person (B); and
 - (b) B does not consent to the application of that force; and

- (c) at the time of applying that force
A intends that B take part in a sexual
act; and
 - (d) A does not reasonably believe that
B would consent to taking part in that
sexual act.
- (2) A person who commits an offence against
subsection (1) is liable to level 4
imprisonment (15 years maximum).
- (3) A may commit an offence against
subsection (1) even if B is not aware of
the application of force by A.
- (4) Force for the purposes of subsection (1) may
be applied—
- (a) directly or indirectly; or
 - (b) to the body of, or to clothing or
equipment worn by, B.
- (5) In subsection (1)—
application of force includes—
- (a) application of heat, light, electric
current or any other form of
energy; and
 - (b) application of matter in solid,
liquid or gaseous form.

43 Threat to commit a sexual offence

- (1) A person (A) commits an offence if—
- (a) A makes to another person (B) a threat
to rape or sexually assault B or a third
person (C); and
 - (b) A intends that B will believe, or
believes that B will probably believe,
that A will carry out the threat.

-
- (2) Words or conduct may constitute a threat for the purposes of subsection (1) if by those words or that conduct an intention to do any of the following is conveyed—
- (a) to sexually penetrate or sexually touch B or C without B or C's consent;
 - (b) to cause B or C, without B or C's consent, to sexually penetrate or sexually touch—
 - (i) A; or
 - (ii) C or B (as the case requires); or
 - (iii) themselves; or
 - (iv) another person; or
 - (v) an animal.
- (3) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
- (4) For the purposes of this section, a threat may be made by any conduct and may be explicit or implicit.

Note

An offence against subsection (1) may be heard and determined summarily by the Magistrates' Court if section 29 of the **Criminal Procedure Act 2009** is satisfied. See section 28 of the **Criminal Procedure Act 2009**."

5 Removal of marriage exception

- (1) Section 45(3) of the **Crimes Act 1958** is **repealed**.
- (2) In section 47(1) of the **Crimes Act 1958**, omit "to whom he or she is not married".
- (3) In section 47A(1) of the **Crimes Act 1958**, omit "to whom he or she is not married".

6 Grooming for sexual conduct with child under the age of 16 years

- (1) In section 49B(5) and (6) of the **Crimes Act 1958**, for "the child was" **substitute** "the child or the person under whose care, supervision or authority the child was, or both were,".
- (2) In section 49B(7) of the **Crimes Act 1958**, for "both the accused and the child were" **substitute** "the accused, the child and the person under whose care, supervision or authority the child was, were all".

7 Minor amendments

- (1) In section 35(1) of the **Crimes Act 1958**, for "Subdivisions (8A) to (8G)" **substitute** "Subdivisions (8B) to (8G)".
- (2) Section 36 of the **Crimes Act 1958** is **repealed**.
- (3) Sections 37, 37AAA and 37AA of the **Crimes Act 1958** are **repealed**.
- (4) For section 53(3) of the **Crimes Act 1958** **substitute**—
 - "(3) In subsection (2), *indecent act* means—
 - (a) a sexual assault in any of the circumstances referred to in section 40(1) or 41(1); or
 - (b) an indecent act in any of the circumstances referred to in section 47, 49, 51(2) or 52(2)."
- (5) In section 61(1)(b)(i) of the **Crimes Act 1958**, for "sexual assault" **substitute** "sexual offence".
- (6) In section 62(2) of the **Crimes Act 1958**, for "an indecent assault" **substitute** "touching that is sexual".

(7) After section 62(2) of the **Crimes Act 1958** insert—

"(3) A reference in this section to sexual penetration means sexual penetration as defined by section 35 or 37D."

(8) In section 425(1) of the **Crimes Act 1958**, for paragraphs (a) and (b) substitute—

"(a) an offence against section 40(1) (sexual assault); or

(b) an offence against section 42(1) (assault with intent to commit a sexual offence); or"

(9) After item 11 of Schedule 8 to the **Crimes Act 1958** insert—

"11A An offence against section 38 or 39 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**.

11B An offence against section 40 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**."

8 New section 70AAA inserted

After section 70 of the **Crimes Act 1958** insert—

"70AAA Exceptions to child pornography offences

(1) Sections 68, 69 and 70 do not apply to a minor (A) if—

(a) the child pornography is an image; and

- (b) the image depicts A alone or with an adult; and
 - (c) the image is child pornography because of its depiction of A.
- (2) Sections 68, 69 and 70 do not apply to a minor (A) if—
- (a) the child pornography is an image; and
 - (b) the image depicts A with another minor; and
 - (c) the image is child pornography because of its depiction of A or another minor; and
 - (d) where the image is child pornography because of its depiction of a minor other than A, at the time at which the offence is alleged to have been committed—
 - (i) A is not more than 2 years older than the youngest minor whose depiction in the image makes it child pornography; or
 - (ii) A believes on reasonable grounds that they are not more than 2 years older than the youngest minor whose depiction in the image makes it child pornography; and
 - (e) the image does not depict an act that is a criminal offence punishable by imprisonment.

Example

The image depicts the minor (A) taking part in an act of sexual penetration with another minor who is not more than 2 years younger. Both are consenting to the act. The offences in sections 68, 69 and 70 do not apply to A in respect of the image.

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- (3) Sections 68, 69 and 70 do not apply to a minor (A) if—
- (a) the child pornography is an image; and
 - (b) the image depicts A alone or with another person; and
 - (c) the image depicts an act that is a criminal offence; and
 - (d) A is a victim of that offence.

Example

The image depicts the minor (A) being raped by another person. The offences in sections 68, 69 and 70 do not apply to A in respect of the image.

- (4) Sections 68, 69 and 70 do not apply to a minor (A) if—
- (a) the child pornography is an image; and
 - (b) the image does not depict A; and
 - (c) 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 believes on reasonable grounds that it does not; and
 - (d) at the time at which the offence is alleged to have been committed—
 - (i) A is not more than 2 years older than the youngest minor whose depiction in the image makes it child pornography; or

- (ii) A believes on reasonable grounds that they are not more than 2 years older than the youngest minor whose depiction in the image makes it child pornography.

Example

The image depicts a minor being sexually penetrated. A believes on reasonable grounds that they are not more than 2 years older than the minor is at the time at which the image is produced. The offences in sections 68, 69 and 70 do not apply to A in respect of the image.

- (5) In subsection (4)—
 - (a) a reference to the age of the youngest minor whose depiction in the image makes it child pornography is—
 - (i) in relation to an offence against section 68 or 70—a reference to the age of that minor at the time at which the image was made or produced;
 - (ii) in relation to an offence against section 69—a reference to the age of that minor at the time at which the minor was invited, procured, caused or offered to be in any way concerned in the making or production of the image; and
 - (b) a reference to the image, in relation to an offence against section 69, is a reference to the image that A invites, procures, causes or offers the minor to be in any way concerned in its making or production.

- (6) In subsections (2) and (4), a reference to the time at which the offence is alleged to have been committed, in relation to an offence against section 70, is a reference to the time at which A first knowingly possesses the image.
- (7) The accused bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (2)(d)(ii) or (4)(c)(ii) or (d)(ii).

Note

Section 72 of the **Criminal Procedure Act 2009** applies to subsections (1), (2) (other than paragraph (d)(ii)), (3) and (4) (other than paragraphs (c)(ii) and (d)(ii))."

9 New section 626 inserted

At the end of Part 7 of the **Crimes Act 1958**
insert—

"626 Transitional provision—Crimes Amendment (Sexual Offences and Other Matters) Act 2014

- (1) The amendments made to this Act by sections 3 and 7(2) and (3) of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014** apply only to offences alleged to have been committed on or after the commencement of those sections.
- (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 sections 3 and 7(2) and (3) of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014**, the offence is alleged to have been committed before that commencement.

- (3) The amendments made to this Act by section 6 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014** apply only to an offence alleged to have been committed on or after the commencement of that section.
- (4) For the purposes of subsection (3), if an offence is alleged to have been committed between two dates, one before and one after the commencement of section 6 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014**, the offence is alleged to have been committed before that commencement.
- (5) The amendments made to this Act by section 8 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014** apply to a proceeding that commences before, on or after the commencement of that section, irrespective of when the offence to which the proceeding relates is alleged to have been committed.
- (6) Despite subsection (5), the amendments made to this Act by section 8 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014** do not apply to a proceeding in which the hearing or trial (as the case requires) has commenced before the commencement of that section.

Note

See section 210 of the **Criminal Procedure Act 2009** regarding when a trial commences."

**PART 3—AMENDMENT OF CRIMINAL PROCEDURE ACT
2009**

**10 New section 7A inserted in Criminal Procedure Act
2009**

After section 7 of the **Criminal Procedure Act
2009** insert—

**"7A Time limits on prosecuting certain former
sexual offences removed**

- (1) Any immunity from prosecution arising because of the time limit imposed by the following repealed provisions on commencing a proceeding for an offence is abolished—
- (a) section 47 of the **Crimes Act 1928**;
 - (b) section 51 of the **Crimes Act 1957**;
 - (c) section 51 of the **Crimes Act 1958** (repealed by section 5 of the **Crimes (Sexual Offences) Act 1980**);
 - (d) section 48(6) of the **Crimes Act 1958** (inserted by section 5 of the **Crimes (Sexual Offences) Act 1980** and repealed by section 3 of the **Crimes (Sexual Offences) Act 1991**);
 - (e) section 49(6) of the **Crimes Act 1958** (inserted by section 5 of the **Crimes (Sexual Offences) Act 1980** and repealed by section 3 of the **Crimes (Sexual Offences) Act 1991**).
- (2) Subsection (1) does not apply to an offence if the conduct constituting it would not constitute an offence under the law of Victoria immediately before the commencement of section 11 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014**.

See:
Act No.
7/2009.
Reprint No. 3
as at
1 March 2013
and
amending
Act Nos
12/2013,
22/2013,
32/2013,
56/2013,
67/2013,
77/2013,
17/2014,
26/2014,
37/2014 and
47/2014.
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- (3) Without limiting any other defence available to a person charged, because of subsection (1), with an offence of a kind described in column 1 of the Table in this subsection, the person may rely on a defence described in column 2 of that Table in relation to that offence.

Table

<i>Column 1</i>	<i>Column 2</i>
An offence against a child under the age of 16	A defence that would be available under section 45(4) of the Crimes Act 1958 if the person were charged with an offence under section 45(1) of that Act
An offence against a 16 or 17 year old child	A defence that would be available under section 48(2) of the Crimes Act 1958 if the person were charged with an offence under section 48(1) of that Act

"

11 New section 64A inserted

After section 64 of the **Criminal Procedure Act 2009 insert—**

"64A Pleading to course of conduct charge

- (1) In this section *course of conduct charge* has the same meaning as in clause 4A of Schedule 1.
- (2) This section applies if an accused, on being asked to plead to a course of conduct charge, informs the court that they—
 - (a) would plead guilty to the charge if it related only to a specified period falling within the period to which the charge set out in the charge-sheet relates; and
 - (b) would plead not guilty to the charge insofar as it relates to any other period within the period to which the charge set out in the charge-sheet relates.
- (3) If an accused informs the court in accordance with subsection (2) and the court is satisfied that, having regard to that information, it is not appropriate for the accused to be asked to plead to the charge, the court may adjourn the proceeding to allow a fresh charge-sheet to be filed relating only to the specified period referred to in subsection (2)(a).
- (4) If a fresh charge-sheet as described in subsection (3) is filed and the accused does not plead guilty to the charge as set out in that charge-sheet, a further fresh charge-sheet may be filed that sets out the original charge or an amended version of that charge.
- (5) If the accused does not plead to that charge, the Magistrates' Court may order that a plea of not guilty be entered on behalf of the

accused unless it considers that it is not in the interests of justice to do so."

12 New section 181A inserted

After section 181 of the **Criminal Procedure Act 2009** insert—

"181A Course of conduct charge

- (1) In this section *course of conduct charge* has the same meaning as in clause 4A of Schedule 1.
- (2) This section applies if the charge on an indictment is a course of conduct charge and the accused—
 - (a) would plead guilty to the charge if it related only to a specified period falling within the period to which the charge relates; and
 - (b) would plead not guilty to the charge insofar as it relates to any other period within the period to which the charge relates.
- (3) The accused must, at a directions hearing or otherwise, advise the court of the matters referred to in subsection (2) as soon as possible after deciding how to plead to the charge on the indictment.
- (4) If an accused advises the court in accordance with subsection (3) and the court is satisfied that, having regard to that advice, it is not appropriate for the accused to be arraigned, the accused must not be arraigned at a directions hearing pending the filing of a fresh indictment or the making of a decision to proceed with the indictment as already filed.

- (5) If a fresh indictment is filed against the accused containing a charge relating only to the specified period referred to in subsection (2)(a) and the accused does not plead guilty to the charge on that indictment, a further fresh indictment may be filed containing the original charge or an amended version of that charge.
- (6) The accused may be arraigned on that further fresh indictment unless the court considers that it is not in the interests of justice to do so."

13 Amendment of Schedule 1 to the Criminal Procedure Act 2009

After clause 4 of Schedule 1 to the **Criminal Procedure Act 2009** insert—

"4A Course of conduct charge

- (1) In this clause—

course of conduct charge is a charge for a relevant offence that involves more than one incident of the offence;

relevant offence means—

- (a) a sexual offence; or
- (b) an offence under any of the following provisions of the **Crimes Act 1958**—
 - (i) Division 2 of Part I (other than sections 75, 75A, 76, 77, 78, 80 and 91);
 - (ii) Division 2AA of Part I;
 - (iii) Division 2A of Part I;
 - (iv) Division 2B of Part I;

(v) Subdivision (6) of Division 3
of Part I.

Note

Sexual offence is defined in section 3 by reference to an offence under Subdivision (8A), (8B), (8C), (8D), (8E) or (8EAA) of Division 1 of Part I of the **Crimes Act 1958** or under any corresponding previous enactment.

- (2) More than one incident of the commission of the same relevant offence may be included in a single charge only if—
- (a) each incident constitutes an offence under the same provision; and
 - (b) for a charge for a sexual offence, each incident relates to the same complainant; and
 - (c) the incidents take place on more than one occasion over a specified period; and
 - (d) the incidents taken together amount to a course of conduct having regard to their time, place or purpose of commission and any other relevant matter.
- (3) More than one type of act may be alleged in the one charge to prove an element of the offence.

Example

A course of conduct charge for a sexual offence may allege acts of digital penetration as well as acts of penetration with an object.

- (4) In subclause (3), *act*, in relation to a sexual act, includes—
- (a) sexual penetration as defined by section 37D of the **Crimes Act 1958**; and

- (b) touching that is sexual within the meaning of Subdivision (8A) of Division 1 of Part I of the **Crimes Act 1958**.

Note

An act for the purposes of subclause (3) is not limited to an act that constitutes an offence inserted by the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014** but includes an act that falls within the definition of *sexual penetration* or *touching* inserted by section 4 of that Act in the **Crimes Act 1958** but is an offence that pre-dates the 2014 Act.

- (5) The charge must contain a statement that the charge is a course of conduct charge.
- (6) To avoid doubt, a course of conduct charge is a charge of a single offence.

Note

Because it is a single charge there is no scope for an order to be made under section 193 or 194 for a separate trial of any of the incidents.

- (7) To avoid doubt, on a course of conduct charge the accused may rely on any exception, exemption, proviso, excuse or qualification that applies to the offence covered by the charge.
- (8) The prosecution must prove beyond reasonable doubt that the incidents of an offence committed by the accused, taken together, amount to a course of conduct having regard to their time, place or purpose of commission and any other relevant matter.
- (9) However, to prove a course of conduct offence it is not necessary to prove an incident of the offence 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 only by that incident.
- (10) Without limiting subclause (9), it is not necessary to prove—
- (a) any particular number of incidents of the offence or the dates, times, places, circumstances or occasions of the incidents; or
 - (b) that there were distinctive features differentiating any of the incidents; or
 - (c) the general circumstances of any particular incident.
- (11) Without limiting clause 1(b), the particulars necessary to give reasonable information as to the nature of a course of conduct charge—
- (a) must be determined having regard to—
 - (i) the fact that the charge is a course of conduct charge; and
 - (ii) the limitations contained in subclause (2); and
 - (iii) the fact that the various incidents of the offence are alleged to have occurred over a period of time; and
 - (b) need not include particulars of any specific incident of the offence, including its date, time, place, circumstances or occasion; and
 - (c) do not need to distinguish any specific incident of the offence from any other.
- (12) A charge-sheet that contains a course of conduct charge for a sexual offence must not be filed or signed in accordance with

section 6 without the consent of the Director of Public Prosecutions.

- (13) This clause has effect despite any rule of law to the contrary."

14 Joinder of charges

After clause 5(2) of Schedule 1 to the **Criminal Procedure Act 2009** insert—

- "(3) A charge-sheet or indictment may contain, as an alternative charge to a course of conduct charge, a charge of a relevant offence of the kind covered by the course of conduct charge and alleged to have been committed within the period to which the course of conduct charge relates.
- (4) In the circumstances set out in subclause (3), for the purposes of section 220 an acquittal on the course of conduct charge does not constitute a previous acquittal in relation to the alternative charge.
- (5) A charge-sheet or indictment must not contain both a course of conduct charge and a charge for an offence against section 47A of the **Crimes Act 1958**.
- (6) In this clause, *course of conduct charge* has the same meaning as in clause 4A."

15 Minor amendments to Criminal Procedure Act 2009

- (1) In section 327M(2)(k) of the **Criminal Procedure Act 2009**, for "compelling sexual penetration (section 38A of the **Crimes Act 1958**)" substitute "rape by compelling sexual penetration (section 39 of the **Crimes Act 1958**)".

(2) After item 4.2 of Schedule 2 to the **Criminal Procedure Act 2009** insert—

"4.2A Offences under section 42 of the **Crimes Act 1958** (assault with intent to commit a sexual offence).".

16 New section 445 inserted

At the end of Chapter 10 of the **Criminal Procedure Act 2009** insert—

"445 Transitional provisions—Crimes Amendment (Sexual Offences and Other Matters) Act 2014

A person may be charged with a course of conduct charge (within the meaning of clause 4A of Schedule 1) irrespective of when the incidents of the commission of the offence are alleged to have taken place.".

PART 4—AMENDMENT OF SENTENCING ACT 1991

17 Sentencing for a course of conduct offence

After section 5(2E) of the **Sentencing Act 1991** insert—

- "(2F) In sentencing an offender for the incidents of the commission of an offence included in a course of conduct charge (within the meaning of clause 4A of Schedule 1 to the **Criminal Procedure Act 2009**) a court—
- (a) must impose a sentence that reflects the totality of the offending that constitutes the course of conduct; and
 - (b) must not impose a sentence that exceeds the maximum penalty prescribed for the offence if charged as a single offence.

Note

If a jury finds a person guilty of a course of conduct charge, in making finding of facts relevant to sentencing the sentencing judge determines the course of conduct in which the person engaged and by reference to which the person will be sentenced."

18 Serious sexual offender

After paragraph (ab) of the definition of *serious sexual offender* in section 6B(2) of the **Sentencing Act 1991** insert—

- "(ac) who has been convicted of committing the incidents of a sexual offence included in a course of conduct charge (within the meaning of clause 4A of Schedule 1 to the **Criminal Procedure Act 2009**) for which he or she has been sentenced to a term of imprisonment or detention in a youth justice centre; or"

See:
Act No.
49/1991.
Reprint No. 20
as at
1 July 2014
and
amending
Act Nos
32/2013,
77/2013,
17/2014 and
47/2014.
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19 Minor amendments

- (1) In section 3(1) of the **Sentencing Act 1991**, in the definition of *serious offence*, for paragraph (c)(iv) **substitute**—
 - "(iv) section 39(1) (rape by compelling sexual penetration);
 - (iva) section 42(1) (assault with intent to commit a sexual offence);".
- (2) For section 82AA(1)(b) of the **Sentencing Act 1991** **substitute**—
 - "(b) the offender has been found guilty of an offence against section 40(1) (sexual assault), or section 41(1) (sexual assault by compelling sexual touching), of the **Crimes Act 1958**."
- (3) In clause 1 of Schedule 1 to the **Sentencing Act 1991**—
 - (a) in paragraph (a)(ia), for "38A (compelling sexual penetration)" **substitute** "39 (rape by compelling sexual penetration)";
 - (b) in paragraph (a)(ii), for "39 (indecent assault)" **substitute** "40 (sexual assault) or 41 (sexual assault by compelling sexual touching)";
 - (c) in paragraph (a)(iii), for "40 (assault with intent to rape)" **substitute** "42 (assault with intent to commit a sexual offence) or 43 (threat to commit a sexual offence)";

(d) in paragraphs (a)(xvii) and (a)(xviii) , for "a sexual or indecent assault" **substitute** "an offence referred to in subparagraph (i), (ia), (ii), (iii), (iv), (v), (vi), (vii), (viii), (viiia), (viiib), (ix), (x), (xi), (xii), (xiiia), (xiii), (xiv), (xv), (xvi), (xvia), (xvib), (xvic), (xvid), (xvie) or (xvif)".

PART 5—AMENDMENT OF JURY DIRECTIONS ACT 2013

20 Part 14 substituted and new Part 15 inserted

See:
Act No.
12/2013.
LawToday:
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For Part 14 of the **Jury Directions Act 2013**
substitute—

"PART 14—RAPE AND SEXUAL ASSAULT

60 Application of Part

This Part applies to a criminal proceeding that relates (wholly or partly) to a charge for an offence against any provision in Subdivision (8A) to (8D) of Division 1 of Part I of the **Crimes Act 1958**.

61 Direction on consent

- (1) The prosecution or defence counsel may request under section 11 that the trial judge direct the jury on—
 - (a) consent; or
 - (b) reasonable belief in consent.
- (2) In making a request referred to in subsection (1), the prosecution or defence counsel (as the case requires) must specify—
 - (a) in the case of a request for a direction on the meaning of consent—one or more of the directions set out in subsection (3); or
 - (b) in the case of a request for a direction on the circumstances in which a person is taken not to have consented to an act—one or more of the directions set out in subsection (4); or

- (c) in the case of a request for a direction in relation to reasonable belief—one or more of the directions set out in subsection (5).

Note

Section 34C of the **Crimes Act 1958** provides that consent means free agreement. That section also sets out circumstances in which a person has not consented to an act.

- (3) For the purposes of subsection (2)(a), the prosecution or defence counsel may request that the trial judge—
- (a) inform the jury that a person can consent to an act only if the person is capable of consenting and free to choose whether or not to engage in or allow the act; or
 - (b) inform the jury that where a person has given consent to an act, the person may withdraw that consent either before the act takes place or at any time while the act is taking place; or
 - (c) inform the jury that the fact that a person did not say or do anything to indicate consent to an act at the time at which the act took place is enough to show that the act took place without the person's consent; or
 - (d) warn the jury that evidence of the following alone is not enough to regard a person as having consented to an act—
 - (i) evidence that the person did not protest or physically resist; or
 - (ii) evidence that the person did not sustain physical injury; or

- (iii) evidence that on any particular occasion the person consented to another act that is sexual in nature (whether or not of the same type) with the accused or with another person.
 - (4) For the purposes of subsection (2)(b), the prosecution or defence counsel may request that the trial judge—
 - (a) inform the jury of the relevant circumstances in which the law provides that a person does not consent to an act; or
- Note**
- Section 34C of the **Crimes Act 1958** sets out these circumstances.
- (b) direct the jury that if the jury is satisfied beyond reasonable doubt that a circumstance referred to in section 34C of the **Crimes Act 1958** existed in relation to a person, the jury must find that the person did not consent to the act.
 - (5) For the purposes of subsection (2)(c), the prosecution or defence counsel may request that the trial judge—
 - (a) direct the jury that if the jury concludes that the accused knew or believed that a circumstance referred to in section 34C of the **Crimes Act 1958** existed in relation to a person, that knowledge or belief is enough to show that the accused did not reasonably believe that the person was consenting to the act; or

-
- (b) direct the jury that in determining whether the accused who was intoxicated had a reasonable belief at any time—
- (i) if the intoxication was 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 the accused at the relevant time; and
 - (ii) if the intoxication is not self-induced, regard must be had to the standard of a reasonable person intoxicated to the same extent as the accused and who is in the same circumstances as the accused at the relevant time.

Note

Section 14 requires the trial judge to give this direction, if requested, unless there are good reasons for not doing so. Section 15 requires the trial judge to give a direction if the trial judge considers that there are substantial and compelling reasons for doing so.

PART 15—TRANSITIONAL PROVISIONS

62 Transitional provisions

The Schedule continues to have effect.

_____".

21 Minor amendment

For note 2 at the foot of section 19A of the **Jury Directions Act 2013** substitute—

"2 Section 61(4)(b) of this Act and section 45 of the **Crimes Act 1958** refer to specific matters that must be proved beyond reasonable doubt."

22 Transitional provisions

At the end of the Schedule to the **Jury Directions Act 2013** insert—

"4 **Crimes Amendment (Sexual Offences and Other Matters) Act 2014**

- (1) The amendments made to this Act by section 20 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014** apply only to a proceeding that relates to a charge for an offence that is alleged to have been committed on or after the commencement of that section.
 - (2) For the purposes of subclause (1), if an offence is alleged to have been committed between 2 dates, one before and one on or after the commencement of section 20 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014**, the offence is alleged to have been committed before that commencement."
-

**PART 6—AMENDMENT OF SUMMARY OFFENCES ACT
1966**

23 Division heading amended

In the heading to Division 4A of Part I of the
Summary Offences Act 1966, after "region"
insert "and distribution of intimate images".

See:
Act No. 7405.
Reprint No. 11
as at
27 April 2012
and
amending
Act Nos
27/2011,
5/2012,
26/2012,
27/2012,
32/2013,
70/2013,
77/2013,
15/2014,
26/2014 and
37/2014.
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24 Definitions

In section 40 of the **Summary Offences Act 1966**
insert the following definitions—

"community standards of acceptable conduct, in
relation to the distribution of an intimate
image, includes standards of conduct having
regard to the following—

- (a) the nature and content of the image;
- (b) the circumstances in which the image
was captured;
- (c) the circumstances in which the image
was distributed;
- (d) the age, intellectual capacity,
vulnerability or other relevant
circumstances of a person depicted in
the image;

- (e) the degree to which the distribution of the image affects the privacy of a person depicted in the image;

consent means free agreement;

intimate image means a moving or still image that depicts—

- (a) a person engaged in sexual activity; or
(b) a person in a manner or context that is sexual; or
(c) the genital or anal region of a person or, in the case of a female, the breasts;"

25 New sections 41DA and 41DB inserted

After section 41D of the **Summary Offences Act 1966** insert—

"41DA Distribution of intimate image

- (1) A person (A) commits an offence if—
- (a) A intentionally distributes an intimate image of another person (B) to a person other than B; and
- (b) the distribution of the image is contrary to community standards of acceptable conduct.

Example

A person (A) posts a photograph of another person (B) on a social media website without B's express or implied consent and the photograph depicts B engaged in sexual activity.

- (2) A person who commits an offence against subsection (1) is liable to level 7 imprisonment (2 years maximum).

-
- (3) Subsection (1) does not apply to A if—
- (a) B is not a minor; and
 - (b) B had expressly or impliedly consented, or could reasonably be considered to have expressly or impliedly consented, to—
 - (i) the distribution of the intimate image; and
 - (ii) the manner in which the intimate image was distributed.

41DB Threat to distribute intimate image

- (1) A person (A) commits an offence if—
- (a) A makes a threat to another person (B) to distribute an intimate image of B or of another person (C); and
 - (b) the distribution of the image would be contrary to community standards of acceptable conduct; and
 - (c) A intends that B will believe, or believes that B will probably believe, that A will carry out the threat.
- (2) A person who commits an offence against subsection (1) is liable to level 8 imprisonment (1 year maximum).
- (3) For the purposes of this section, a threat may be made by any conduct and may be explicit or implicit."

26 Search warrant

In section 41E(1) and (2) of the **Summary Offences Act 1966**, for "41B or 41C" substitute "41B, 41C, 41DA or 41DB".

27 Seizure of things not mentioned in warrant

In section 41F of the **Summary Offences Act 1966**, for "41B or 41C" (wherever occurring) **substitute** "41B, 41C, 41DA or 41DB".

PART 7—AMENDMENT OF OTHER ACTS

**Division 1—Classification (Publications, Films and
Computer Games) (Enforcement) Act 1995**

28 Publication or transmission of child pornography

After section 57A(2) of the **Classification
(Publications, Films and Computer Games)
(Enforcement) Act 1995** insert—

- "(3) Subsection (1) does not apply to a minor (A)
if—
- (a) the objectionable material is an image;
and
 - (b) the image depicts A alone or with an
adult; and
 - (c) the image is child pornography because
of its depiction of A.
- (4) Subsection (1) does not apply to a minor (A)
if—
- (a) the objectionable material is an image;
and
 - (b) the image depicts A with another
minor; and
 - (c) the image is child pornography because
of its depiction of A or another minor;
and
 - (d) where the image is child pornography
because of its depiction of a minor
other than A, at the time at which the
image is published or transmitted, or
made available for transmission—

See:
Act No.
90/1995.
Reprint No. 3
as at
17 January
2013 and
amending
Act No.
37/2014.
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- (i) A is not more than 2 years older than the youngest minor whose depiction in the image makes it child pornography; or
- (ii) A believes on reasonable grounds that they are not more than 2 years older than the youngest minor whose depiction in the image makes it child pornography; and
- (e) the image does not depict an act that is a criminal offence punishable by imprisonment.

Example

The image depicts the minor (A) taking part in an act of sexual penetration with another minor who is not more than 2 years younger. Both are consenting to the act. The offence in subsection (1) does not apply to A in respect of the image.

- (5) Subsection (1) does not apply to a minor (A) if—
- (a) the objectionable material is an image; and
 - (b) the image depicts A alone or with another person; and
 - (c) the image depicts an act that is a criminal offence; and
 - (d) A is a victim of that offence.

Example

The image depicts the minor (A) being raped by another person. The offence in subsection (1) does not apply to A in respect of the image.

-
- (6) Subsection (1) does not apply to a minor (A) if—
- (a) the objectionable material is an image; and
 - (b) the image does not depict A; and
 - (c) 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 believes on reasonable grounds that it does not; and
 - (d) at the time at which the image is published or transmitted, or made available for transmission—
 - (i) A is not more than 2 years older than the youngest minor whose depiction in the image makes it child pornography; or
 - (ii) A believes on reasonable grounds that they are not more than 2 years older than the youngest minor whose depiction in the image makes it child pornography.

Example

The image depicts a minor being sexually penetrated. A believes on reasonable grounds that they are not more than 2 years older than the minor is at the time at which the image is transmitted. The offence in subsection (1) does not apply to A in respect of the image.

- (7) In subsections (4) and (6), a reference to the age of the youngest minor whose depiction in the image makes it child pornography is a reference to the age of that minor at the time at which the image was made or produced.
- (8) The accused bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (4)(d)(ii) or (6)(c)(ii) or (d)(ii).
- (9) In this section—

child pornography has the meaning given by section 67A of the **Crimes Act 1958**.

Note

Section 72 of the **Criminal Procedure Act 2009** applies to subsections (3), (4) (other than paragraph (d)(ii)), (5) and (6) (other than paragraphs (c)(ii) and (d)(ii))."

29 New section 88 inserted

After section 87G of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** insert—

"88 Transitional provision—Crimes Amendment (Sexual Offences and Other Matters) Act 2014

- (1) The amendments made to this Act by section 28 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014** apply to a proceeding that commences before, on or after the commencement of that section, irrespective of when the offence to which the proceeding relates is alleged to have been committed.
- (2) Despite subsection (1), the amendments made to this Act by section 28 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014** do not apply to a

proceeding in which the hearing or trial
(as the case requires) has commenced before
the commencement of that section.

Note

See section 210 of the **Criminal Procedure Act 2009**
regarding when a trial commences."

Division 2—Education and Training Reform Act 2006

30 Definitions

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

(a) in paragraph (a), after "49A," insert "49B,";

(b) after paragraph (c) insert—

"(ca) an offence against section 38 or 39 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**; or

(cb) an offence against section 40 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**; or

(cc) an offence against 38A of the **Crimes
Act 1958** inserted in the **Crimes Act
1958** on 1 December 2006 by section 7
of the **Crimes (Sexual Offences) Act
2006** and repealed by section 4 of the
**Crimes Amendment (Sexual Offences
and Other Matters) Act 2014**; or";

See:
Act No.
24/2006.
Reprint No. 4
as at
17 January
2013 and
amending
Act Nos
71/2010,
76/2011,
39/2012,
14/2013,
47/2013,
67/2013,
76/2013,
6/2014,
17/2014,
19/2014,
37/2014 and
44/2014.
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(c) in paragraph (d), after "40," insert "41(1), 42(1), 43(1),".

Division 3—Liquor Control Reform Act 1998

31 Schedule 2

See:
Act No.
94/1998.
Reprint No. 7
as at 1 May
2013 and
amending
Act Nos
9/2013,
41/2013,
70/2013,
17/2014,
21/2014 and
37/2014.
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For item 2 of Schedule 2 to the **Liquor Control Reform Act 1998** substitute—

"2 Sexual offences

An offence against section 38(1), 39(1), 40(1), 41(1), 42(1) or 43(1) of the **Crimes Act 1958**.

An offence against section 38 or 39 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 against 38A of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 1 December 2006 by section 7 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 4 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014**.

An offence against section 40 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**."

Division 4—Serious Sex Offenders (Detention and Supervision) Act 2009

32 Schedule 1

- (1) In Schedule 1 to the **Serious Sex Offenders (Detention and Supervision) Act 2009**, for items 1 and 2 **substitute**—
- "1 An offence against a provision of Subdivision (8A) of Division 1 of Part I of the **Crimes Act 1958** that involves sexual penetration.
- 2 An offence against a provision of Subdivisions (8B) to (8EA) of Division 1 of Part I of the **Crimes Act 1958** that involves sexual penetration."
- (2) In Schedule 1 to the **Serious Sex Offenders (Detention and Supervision) Act 2009**—
- (a) in item 5, for "39 of the **Crimes Act 1958** (indecent assault)" **substitute** "40(1) (sexual assault), or 41(1) (sexual assault by compelling sexual touching), of the **Crimes Act 1958**";
- (b) in item 6, for "40(1) of the **Crimes Act 1958** (assault with intent to rape)" **substitute** "42(1) (assault with intent to commit a sexual offence), or 43(1) (threat to commit a sexual offence), of the **Crimes Act 1958**";
- (c) in items 27 and 28, for "a sexual or indecent assault" **substitute** "an offence referred to in item 1 or 2".

See:
Act No.
91/2009.
Reprint No. 1
as at
27 June 2012
and
amending
Act Nos
65/2012,
32/2013,
70/2013,
76/2013,
12/2014,
25/2014,
26/2014,
36/2014 and
37/2014.
LawToday:
www.
legislation.
vic.gov.au

Division 5—Sex Offenders Registration Act 2004

33 Schedules 1 to 4

See:
Act No.
56/2004.
Reprint No. 4
as at
16 July 2012
and
amending
Act Nos
82/2012,
32/2013,
76/2013,
7/2014,
17/2014,
26/2014 and
37/2014.
LawToday:
www.
legislation.
vic.gov.au

(1) In Schedule 1 to the **Sex Offenders Registration Act 2004**, for items 1 and 1A substitute—

"1. An offence against a provision of Subdivision (8A) 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.

1A. An offence against a provision of Subdivisions (8B) to (8EA) 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."

(2) In Schedule 2 to the **Sex Offenders Registration Act 2004**—

(a) in item 1, for "39 of the **Crimes Act 1958** (indecent assault)" substitute "40(1) (sexual assault), or 41(1) (sexual assault by compelling sexual touching), of the **Crimes Act 1958**";

(b) in item 2, for "40(1) of the **Crimes Act 1958** (assault with intent to rape)" substitute "42(1) (assault with intent to commit a sexual offence), or 43(1) (threat to commit a sexual offence), of the **Crimes Act 1958**";

(c) in items 19 and 20, for "a sexual or indecent assault" substitute "an offence referred to in item 1 or 1A of Schedule 1".

(3) In Schedule 3 to the **Sex Offenders Registration Act 2004**, for items 1 and 1A substitute—

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

- 1A. An offence against a provision of Subdivisions (8B) to (8EA) of Division 1 of Part I of the **Crimes Act 1958** that involves sexual penetration."
- (4) In Schedule 4 to the **Sex Offenders Registration Act 2004**—
- (a) in item 1, for "39 of the **Crimes Act 1958** (indecent assault)" **substitute** "40(1) (sexual assault), or 41(1) (sexual assault by compelling sexual touching), of the **Crimes Act 1958**";
- (b) in item 2, for "40(1) of the **Crimes Act 1958** (assault with intent to rape)" **substitute** "42(1) (assault with intent to commit a sexual offence), or 43(1) (threat to commit a sexual offence), of the **Crimes Act 1958**";
- (c) in items 8 and 9, "a sexual or indecent assault" **substitute** "an offence referred to in item 1 or 1A of Schedule 3".

Division 6—Sex Work Act 1994

34 Definitions

In section 3(1) of the **Sex Work Act 1994**, for the definition of *sexual penetration* **substitute**—

"*sexual penetration* has the meaning given by section 35 of the **Crimes Act 1958**;"

See:
Act No.
102/1994.
Reprint No. 8
as at 21
August 2013
and
amending
Act Nos
77/2013 and
37/2014.
LawToday:
www.
legislation.
vic.gov.au

Division 7—Victoria Police Act 2013

35 Schedule 4

See:
Act No.
81/2013 and
amending
Act Nos
17/2014 and
37/2014.
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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(3) or (4), 45(1), 47(1), 48(1), 49(1), 51, 52, 53, 54, 55, 56, 57, 58, 59(1), 60A(1), 68, 69 or 70(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**."

Division 8—Working with Children Act 2005

36 Category B and C applications and offences

- (1) In section 13(1)(a) of the **Working with Children Act 2005**, for "clause 2, 8 or 9" substitute "clause 2, 8, 9 or 14A".
- (2) In section 14(1)(b) of the **Working with Children Act 2005**, for "clause 2, 8 or 9" substitute "clause 2, 8, 9 or 14A".
- (3) After clause 14 of Schedule 2 to the **Working with Children Act 2005** insert—
"14A An offence against section 41DA or 41DB of the **Summary Offences Act 1966**."

See:
Act No.
57/2005.
Reprint No. 3
as at
1 August 2011
and
amending
Act Nos
17/2014,
19/2014 and
36/2014.
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PART 8—REPEAL OF AMENDING ACT

37 Repeal of amending Act

This Act is **repealed** on 30 June 2016.

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**).

ENDNOTES

[†] *Minister's second reading speech—*

Legislative Assembly: 21 August 2014

Legislative Council: 18 September 2014

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, to amend the **Criminal Procedure Act 2009** to remove time limits on commencing proceedings for certain former sexual offences and to provide for a course of conduct charge, to amend the **Summary Offences Act 1966**, the **Sentencing Act 1991**, the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995**, the **Working with Children Act 2005** and the **Jury Directions Act 2013**, to make minor amendments to certain Acts and for other purposes."