

**Crimes (Amendment) Act 1997**  
**Act No. 81/1997**

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Victoria

No. 81 of 1997

## Crimes (Amendment) Act 1997<sup>†</sup>

[Assented to 2 December 1997]

The Parliament of Victoria enacts as follows:

### PART 1—PRELIMINARY

#### 1. *Purpose*

The purpose of this Act is to—

- (a) amend the **Crimes Act 1958** and the **Evidence Act 1958** so as to—
  - (i) create a presumption that multiple counts of sexual offences against the one accused are to be tried together;

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- (ii) broaden the scope of the sexual offence created by section 47A of the **Crimes Act 1958**;
  - (iii) provide for certain procedural changes on trials of sexual offences;
  - (b) amend the **Crimes Act 1958** with respect to the admissibility of propensity evidence;
  - (c) amend the **Crimes Act 1958** so as to—
    - (i) extend the range of offences for which a person can be compelled to undergo a forensic procedure;
    - (ii) permit registered nurses to conduct forensic procedures;
    - (iii) enable a member of the police force to apply to a court for a forensic sample from persons found guilty of certain offences;
    - (iv) extend the grounds on which a member of the police force may apply for a court order directing a person to undergo a compulsory procedure;
    - (v) make provision for persons to volunteer to give samples to provide information for inclusion in a computerised database.

## **2. Commencement**

- (1) Subject to this section, this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Parts 2 and 3 come into operation on 1 January 1998.
- (3) Subject to sub-section (4), Part 4 comes into operation on a day to be proclaimed.

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- (4) If Part 4 does not come into operation before 1 July 1998, it comes into operation on that day.

**3. *Principal Act***

In this Act, the **Crimes Act 1958** is called the Principal Act.

No. 6231.  
Reprint No. 13  
as at 5 June  
1997. Further  
amended by  
Nos 66/1996,  
26/1997,  
30/1997,  
44/1997 and  
48/1997.

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**PART 2—SEXUAL OFFENCES**

**Division 1—Amendment of Crimes Act 1958**

**4. *Jury directions on consent***

- (1) In section 37 of the Principal Act—
  - (a) for "In a relevant case" **substitute** "If relevant to the facts in issue in a proceeding";
  - (b) at the end of paragraph (c) **insert**—

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and relate any direction given to the facts in issue in the proceeding so as to aid the jury's comprehension of the direction."
- (2) At the end of section 37 of the Principal Act **insert**—

"(2) A judge must not give to a jury a direction of a kind referred to in sub-section (1) if the direction is not relevant to the facts in issue in the proceeding."

**5. *Sexual relationship with child under the age of 16***

- (1) In section 47A of the Principal Act—
    - (a) in sub-section (1) **omit** "and who is under his or her care, supervision or authority";
    - (b) in sub-section (2)(a) **omit** "and under his or her care, supervision or authority".
  - (2) In section 47A(2)(a) of the Principal Act, **omit** "particular" (where secondly occurring).
  - (3) In section 47A(2)(b) of the Principal Act, for "such an act also" **substitute** "an act which would constitute an offence under a provision of this Subdivision or Subdivision (8A) or (8B)".
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(4) In section 47A of the Principal Act, after sub-section (2) **insert**—

"(2A) It is not necessary that the alleged acts be of a similar nature or constitute an offence under the same provision."

(5) In section 47A of the Principal Act, for sub-section (3) **substitute**—

"(3) It is not necessary to prove an act referred to in sub-section (2)(a) or (b) 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 act instead of an offence against sub-section (1)."

#### **6. *Jury warnings in sexual cases***

(1) In section 61(1)(b) of the Principal Act, for subparagraphs (i) and (ii) **substitute** "inform the jury that there may be good reasons why a victim of a sexual assault may delay or hesitate in complaining about it".

(2) In section 61 of the Principal Act, after sub-section (2) **insert**—

"(3) Despite sub-section (2), a judge must not make any comment on the reliability of evidence given by the complainant in a proceeding to which sub-section (1) applies if there is no reason to do so in the particular proceeding in order to ensure a fair trial."

#### **7. *Orders for separate trial in sexual cases***

(1) In section 372 of the Principal Act, after sub-section (3) **insert**—

'(3AA) Despite sub-section (3) and any rule of law to the contrary, if, in accordance with this Act, 2 or more counts charging sexual

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offences are joined in the same presentment, it is presumed that those counts are triable together.

- (3AB) The presumption created by sub-section (3AA) is not rebutted merely because evidence on one count is inadmissible on another count.
- (3AC) In sub-section (3AA) "**sexual offence**" means—
- (a) an offence under Subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I or under any corresponding previous enactment or an attempt to commit any such offence or an assault with intent to commit any such offence; or
  - (b) an offence to which clause 1 of Schedule 1 to the **Sentencing Act 1991** applies.'

**8. *New section 587 inserted***

After proposed section 586 of the Principal Act  
**insert—**

**"587. *Transitional provisions (Crimes (Amendment) Act 1997—Part 2)***

- (1) The amendments of this Act made by sections 4, 6 and 7 of the **Crimes (Amendment) Act 1997** apply to any trial that commences on or after 1 January 1998, irrespective of when the offence to which the trial relates is alleged to have been committed.
- (2) For the purposes of sub-section (1), a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III.



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- (3) The amendments of section 47A of this Act made by section 5(1) of the **Crimes (Amendment) Act 1997** apply only to offences against section 47A(1) alleged to have been committed on or after 1 January 1998.
- (4) For the purposes of sub-section (3), if an offence is alleged to have been committed between two dates of which one is before and one is on or after 1 January 1998, the offence is alleged to have been committed before 1 January 1998.
- (5) The amendments of section 47A of this Act made by section 5(2), (3), (4) and (5) of the **Crimes (Amendment) Act 1997** apply to offences against section 47A(1) for which a charge is filed on or after 1 January 1998, irrespective of when the offence is alleged to have been committed."

**Division 2—Amendment of Evidence Act 1958**

**9. Evidence as to sexual activities on sexual offence charges**

- (1) In section 37A(1) of the **Evidence Act 1958**, in Rule (5) before paragraph (a) **insert—**
- "(aa) must, in the case of an application to cross-examine the complainant as to his or her sexual activities—
- (i) be in writing and given to the Director of Public Prosecutions—
- (A) in the case of a committal proceeding, on or before the committal mention date; or
- (B) in the case of a trial, at least 14 days before the date fixed by the
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Criminal Trial Listing Directorate  
as the date on which the trial is to  
be listed for hearing;

- (ii) set out—
- (A) the initial questions sought to be asked of the complainant; and
  - (B) the scope of the questioning sought to flow from the initial questioning; and
  - (C) how the evidence sought to be elicited from the questioning has substantial relevance to facts in issue or why it is proper matter for cross-examination as to credit;".
- (2) In section 37A(1) of the **Evidence Act 1958**, in paragraph (a) of Rule (5) for "made" substitute "heard".
- (3) In section 37A(1) of the **Evidence Act 1958**, after Rule (5) insert—
- "(5A) The Director of Public Prosecutions must forward an application referred to in Rule (5)(aa) given to the Director of Public Prosecutions under that Rule—
- (a) in the case of a committal proceeding, to the registrar at the venue of the Magistrates' Court at which the committal proceeding is to be held on or before the committal mention date;
  - (b) in the case of a trial, to the Criminal Trial Listing Directorate together with the copy of the presentment required to be forwarded to that Directorate.
- (5B) Nothing in Rule (5) or (5A) prevents a court, because of the existence of exceptional
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circumstances, hearing and determining an application to cross-examine the complainant as to his or her sexual activities that is made after the expiry of the period referred to in Rule (5)(aa)(i).

- (5C) Despite anything to the contrary in Rule (5), the court may, because of the existence of exceptional circumstances, waive the requirement that an application to cross-examine the complainant as to his or her sexual activities be made in writing."

**10. *Alternative arrangements for giving evidence in certain proceedings***

In section 37C(2) of the **Evidence Act 1958**, for paragraphs (a) and (b) **substitute—**

- "(a) the proceeding relates (wholly or partly) to a charge for—
- (i) a sexual offence; or
  - (ii) an offence where the conduct constituting the offence consists wholly or partly of taking part, or attempting to take part, in an act of sexual penetration as defined in section 35 of the **Crimes Act 1958**; or
- (b) the proceeding relates (wholly or partly) to a charge for an indictable offence which involves an assault on, or injury or a threat of injury to, a person and the court is satisfied that the witness is a person with impaired mental functioning or under the age of 18."

**11. *New section 153 inserted***

After section 152 of the **Evidence Act 1958** **insert—**

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**"153. Transitional provisions (*Crimes (Amendment) Act 1997*)**

- (1) The amendments of this Act made by the **Crimes (Amendment) Act 1997** apply to—
- (a) any trial that commences on or after 14 January 1998; and
  - (b) any committal proceeding or hearing of a charge for an offence that commences on or after 1 January 1998—
- irrespective of when the offence to which the trial, committal proceeding or hearing relates is alleged to have been committed.
- (2) For the purposes of sub-section (1)—
- (a) a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III of the **Crimes Act 1958**; and
  - (b) a committal proceeding commences on the committal mention date; and
  - (c) a hearing of a charge for an offence commences on the taking of a formal plea from the accused."

**Division 3—Amendment of Magistrates' Court Act 1989**

**12. Procedure at close of prosecution case in committal proceeding**

In clause 11(1)(b) of Schedule 5 to the **Magistrates' Court Act 1989**, after "that Act"

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**insert** "and of Rules (5) to (5C) in section 37A(1) of the **Evidence Act 1958**".

**13. Transitional provision**

In Schedule 8 to the **Magistrates' Court Act 1989**, after clause 17 **insert**—

"18. The amendment of clause 11(1)(b) of Schedule 5 made by section 12 of the **Crimes (Amendment) Act 1997** applies to any committal proceeding that commences on or after 1 January 1998, irrespective of when the offence to which the committal proceeding relates is alleged to have been committed, and for this purpose a committal proceeding commences on the committal mention date."

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**PART 3—PROPENSITY EVIDENCE**

**14. *New section 398A inserted***

After section 398 of the Principal Act **insert—**

**"398A. *Admissibility of propensity evidence***

- (1) This section applies to proceedings for an indictable or summary offence.
- (2) Propensity evidence relevant to facts in issue in a proceeding for an offence is admissible if the court considers that in all the circumstances it is just to admit it despite any prejudicial effect it may have on the person charged with the offence.
- (3) The possibility of a reasonable explanation consistent with the innocence of the person charged with an offence is not relevant to the admissibility of evidence referred to in subsection (2).
- (4) Nothing in this section prevents a court taking into account the possibility of a reasonable explanation consistent with the innocence of the person charged with an offence when considering the weight of the evidence or the credibility of a witness.
- (5) This section has effect despite any rule of law to the contrary."

**15. *New section 588 inserted***

After proposed section 587 of the Principal Act **insert—**

**"588. *Transitional provisions (Crimes (Amendment) Act 1997—Part 3)***

- (1) Section 398A applies to any trial, committal proceeding or hearing of a charge for an

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offence that commences on or after 1 January 1998, irrespective of when the offence to which the trial, committal proceeding or hearing relates is alleged to have been committed.

- (2) For the purposes of sub-section (1)—
- (a) a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III; and
  - (b) a committal proceeding commences on the committal mention date; and
  - (c) a hearing of a charge for an offence commences on the taking of a formal plea from the accused."
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**PART 4—FORENSIC PROCEDURES**

**16. Definitions**

In section 464(2) of the Principal Act—

- (a) before the definition of "authorised person"  
**insert—**

' **"approved mental health service"** has the same meaning as in the **Mental Health Act 1986**;

- (b) for the definition of "medical practitioner"  
**substitute—**

' **"medical practitioner"** means a registered medical practitioner within the meaning of the **Medical Practice Act 1994**;

- (c) after the definition of "non-intimate sample"  
**insert—**

' **"nurse"** means a registered nurse within the meaning of the **Nurses Act 1993**;

- (d) the definition of "registered medical practitioner" is **repealed**;

- (e) before the definition of "relevant suspect"  
**insert—**

' **"related material and information"**—

- (a) in relation to any sample taken in a forensic procedure conducted in accordance with sections 464R to 464ZA or section 464ZF, means notes and video-recording made of the forensic procedure and any information which may identify the person contained in any record of or report relating to the forensic



procedure and in any copy of a record or report;

(b) in relation to any sample voluntarily given by a person in accordance with sections 464ZGB to 464ZGD, means notes and video-recording (if any) made of the procedure to take the sample and any information which may identify the person contained in any record of or report relating to the taking of the sample and in any copy of a record or report;'

(f) in paragraphs (a) and (b) of the definition of "relevant suspect", for "75, 75A or 318" **substitute** "75, 75A, 76, 77, 197 (in circumstances where the offence is charged as arson), 197A, 248 or 318 or under section 71, 72(1)(ab) or 72(1)(b) of the **Drugs, Poisons and Controlled Substances Act 1981**";

(g) after the definition of "relevant suspect" **insert—**

' "security patient" has the same meaning as in the **Mental Health Act 1986**;'.

### **17. Court ordered compulsory procedure**

(1) In section 464T(3)(c) of the Principal Act, for "either" **substitute** "any of the following applies".

(2) In section 464T(3)(c)(ii)(B) of the Principal Act, for "and" **substitute** "or".

(3) After section 464T(3)(c)(ii) of the Principal Act, **insert—**

"(iii) the victim of the offence has not been found, and there are reasonable grounds to believe

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that material reasonably believed to be from the body of the victim is present on a person suspected of having committed the offence; or

- (iv) the offence in respect of which the application is made is an offence against a provision of Subdivision (8A), (8B) or (8C) of Division 1 of Part I and there are reasonable grounds to believe that the conduct of the procedure on the person may be relevant in determining the paternity of a child that has been conceived allegedly as a result of the offence; and".

**18. Forensic procedure on child**

In section 464U(3) of the Principal Act, in paragraphs (a) and (b) for "75, 75A or 318" **substitute** "75, 75A, 76, 77, 197 (in circumstances where the offence is charged as arson), 197A, 248 or 318 or under section 71, 72(1)(ab) or 72(1)(b) of the **Drugs, Poisons and Controlled Substances Act 1981**".

**19. Registered nurses may conduct forensic procedure**

- (1) In section 464S(1)(c) of the Principal Act, after "medical practitioner" **insert** "or nurse".
  - (2) In section 464Z(3)(a) and (3)(c) of the Principal Act, after "medical practitioner" **insert** "or nurse".
  - (3) In section 464Z(4) of the Principal Act, after "medical practitioner" **insert** "or nurse".
  - (4) In section 464Z(5) of the Principal Act, after "medical practitioner" (wherever occurring) **insert** ", nurse".
  - (5) In section 464Z(8) of the Principal Act, after "medical practitioner" **insert** ", nurse".
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- (6) In section 464ZA(4)(b) of the Principal Act—
- (a) after "independent medical practitioner" **insert** "or independent nurse";
  - (b) after "the medical practitioner" **insert** ", nurse".

**20. Caution before forensic procedure**

In section 464Y(1) of the Principal Act—

- (a) for "this Subdivision" **substitute** "sections 464R to 464ZA or section 464ZF (as the case may be)";
- (b) for "registered medical practitioner" **substitute** "medical practitioner, nurse".

**21. Procedure for taking samples**

In section 464Z(6) of the Principal Act—

- (a) in paragraph (a), after "medical practitioner" **insert** ", nurse";
- (b) after paragraph (a) **insert**—
  - "(ab) in the presence of a member of the police force who is present to witness the taking of the sample or the conduct of the physical examination and is of the same sex, if practicable, as the person from whom the sample is to be taken or who is to be examined; and";
- (c) in paragraph (c)(i), for "of the same sex, if practicable, as the person from whom the sample is to be taken or who is to be examined" **substitute** "required by paragraph (ab) to be present".

**22. Execution of order**

- (1) In section 464ZA(1) of the Principal Act—
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- (a) after "compulsory procedure," **insert** "or an order under section 464ZF for the conduct of a forensic procedure,";
- (b) after "medical practitioner," **insert** "nurse," .
- (2) In section 464ZA(5) of the Principal Act, after "compulsory" **insert** "or forensic".
- (3) In section 464ZA of the Principal Act, for subsection (6) **substitute**—
- "(6) After an order under section 464T(3), 464U(7), 464V(5) or 464ZF is executed—
- (a) if the procedure was video-recorded, the person who video-recorded the conduct of the procedure, or the member of the police force who witnessed the conduct of the procedure, must endorse on the order his or her own name and sign the endorsement; or
- (b) if an independent medical practitioner, nurse, dentist or other person witnessed the conduct of the procedure, the witness must endorse on the order his or her own name and sign the endorsement.
- (6A) A member of the police force must give a copy of the order so endorsed to the person on whom the procedure was conducted." .
- (4) In section 464ZA(7) of the Principal Act, after "compulsory" **insert** "or forensic".

**23. Analysis of samples**

At the end of section 464ZC of the Principal Act **insert**—

- "(2) If material, reasonably believed to be from the body of a victim of an indictable offence which has not been found, has been found on
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a person reasonably believed to have been associated with the commission of the offence, and there is sufficient material to be analysed both in the investigation of the offence and on behalf of a person from whom a sample has been taken in relation to that offence, a part of the material sufficient for analysis must, on request, be delivered to that person.

(3) If—

- (a) a sample has been taken from a child in connection with an investigation into an offence against a provision of Subdivision (8A), (8B) or (8C) of Division 1 of Part I; and
- (b) that child was conceived allegedly as a result of that offence—

a person suspected of having committed that offence and from whom a sample has been taken in relation to that offence may request a part of the child's sample.

(4) A part of that child's sample requested by a person under sub-section (3) must be delivered to that person provided that there is sufficient material to be analysed both in the investigation of the offence and on behalf of the person suspected of having committed the offence."

**24. Admission of evidence relating to forensic procedures**

(1) In section 464ZE(1) of the Principal Act—

- (a) after "person" (where first occurring) **insert** ", or from a sample voluntarily given by a person in accordance with sections 464ZGB to 464ZGD,";

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- (b) in paragraph (a), for "or section 464ZF" **substitute** ", sections 464ZF to 464ZFB, sections 464ZGB to 464ZGD or section 464ZGF";
- (c) in paragraph (d), for "section 464ZG" **substitute** "section 464ZFC, 464ZG, 464ZGA or 464ZGE".
- (2) In section 464ZE(2) of the Principal Act—
- (a) after "forensic procedure" **insert** ", or from a sample voluntarily given by a person in accordance with sections 464ZGB to 464ZGD,";
- (b) in paragraph (a), **omit** "are exceptional and".
- (3) In section 464ZE of the Principal Act, for sub-section (3) **substitute**—
- "(2A) In determining whether the circumstances justify the reception of evidence otherwise inadmissible by reason of sub-section (1)(a), the court may have regard to the following—
- (a) the probative value of the evidence, including whether equivalent evidence or evidence of equivalent probative value could have been obtained by other means;
- (b) the reasons given for the failure to comply with a provision referred to in sub-section (1)(a);
- (c) the gravity of that failure and whether it deprived the person of a significant protection under this Subdivision;
- (d) whether that failure was intentional or reckless;
- (e) the nature of the requirement that was not complied with;
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- (f) the nature of the offence alleged against the person and the subject-matter of the proceedings;
  - (g) whether the reception of the evidence would seriously undermine the protection given to persons under this Subdivision;
  - (h) any other matters the court considers relevant.
- (3) The probative value of the evidence does not by itself justify the reception of the evidence."

**25. New sections 464ZF and 464ZFA inserted**

For section 464ZF of the Principal Act  
**substitute—**

**'464ZF. Forensic procedure following the commission of forensic sample offence**

- (1) In this section—
- "child"** means a child aged 10 years or more but under 17 years;
- "forensic sample offence"** means any offence specified in Schedule 8.
- (2) If at any time on or after the commencement of section 25 of the **Crimes (Amendment) Act 1997** a court finds a person guilty of—
- (a) a forensic sample offence; or
  - (b) an offence of conspiracy to commit, incitement to commit or attempting to commit a forensic sample offence—
- a member of the police force, at any time following that finding but not later than 6 months after the expiration of any appeal period or the final determination of an appeal
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(whichever is the later), may apply to the court for an order directing the person to undergo a forensic procedure for the taking of a sample from any part of the body and the court may make an order accordingly.

(3) If—

- (a) at any time before the commencement of section 25 of the **Crimes (Amendment) Act 1997**, a person has been found guilty by a court of a forensic sample offence; and
- (b) at any time on or after that commencement, that person is serving a term of imprisonment or a period of detention in a prison, police gaol or youth training centre or as a security patient in an approved mental health service for any offence, whether or not a forensic sample offence—

a member of the police force may apply to the Magistrates' Court or the Children's Court (as the case may be) for an order directing the person to undergo a forensic procedure for the taking of a sample from any part of the body and the court may make an order accordingly.

- (4) In any application to a court under sub-section (2) or (3), the member of the police force must specify the type of sample (whether intimate or non-intimate) sought to be taken in the forensic procedure.
- (5) If an application made under sub-section (3) is in respect of a forensic procedure to be conducted on a person who is a child, notice of the application must be served on the child and a parent or guardian of the child.



- (6) An order made by a court under sub-section (2) or (3) before the appeal period in relation to the forensic sample offence has expired or an appeal (if any) has been finally determined (whichever is the later), must not be executed unless—
- (a) that appeal period expires; or
  - (b) an appeal (if any) is finally determined and the conviction for the forensic sample offence is upheld—
- whichever is the later.
- (7) If on appeal a conviction for the forensic sample offence is quashed, an order made by a court under sub-section (2) or (3) ceases to have effect.
- (8) A court hearing an application under sub-section (2) or (3)—
- (a) must take into account the seriousness of the circumstances of the forensic sample offence in determining whether to make the order under sub-section (2) or (3); and
  - (b) must be satisfied that, in all the circumstances, the making of the order is justified; and
  - (c) may make such inquiries on oath or otherwise as it considers desirable.
- (9) If a court makes an order under sub-section (2) or (3), it must—
- (a) give reasons for its decision and cause a copy of the order and reasons to be served—
    - (i) if the order directs a person (other than a child) to undergo the
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forensic procedure, on the person;  
or

(ii) if the order directs a child to  
undergo the forensic procedure,  
on the child and a parent or  
guardian of the child; and

(b) inform the person ordered to undergo  
the forensic procedure that a member of  
the police force may use reasonable  
force to enable the procedure to be  
conducted.

(10) A failure of a court to comply with sub-  
section (9) does not invalidate any order  
made by it but constitutes non-compliance  
for the purposes of section 464ZE(1)(a).

(11) If a forensic procedure has been conducted  
on a person in accordance with this section, a  
copy of every forensic report must be given  
or sent by registered post as soon as  
practicable but not more than 7 days after the  
procedure was conducted—

(a) if the person is not a child, to that  
person; or

(b) if the person is a child, to that child and  
a parent or guardian of that child.

**464ZFA. Warrants issued for forensic procedures  
under section 464ZF**

(1) If before a court makes an order under  
section 464ZF(3) directing a person to  
undergo a forensic procedure, that person  
has been released from the prison, police  
gaol, youth training centre or approved  
mental health service where he or she was  
serving a term of imprisonment or a period  
of detention at the time the application for

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the order was made, the court may issue a warrant authorising the person to whom it is directed, if necessary—

- (a) to break, enter and search by day or by night any place where the person named in the warrant is suspected to be; and
  - (b) to arrest the person; and
  - (c) to bring the person before the court for the hearing of the application; and
  - (d) if that application is granted, to detain the person for as long as reasonably permits the conduct of the forensic procedure.
- (2) A warrant issued under sub-section (1) may be directed to—
- (a) a named member of the police force; or
  - (b) generally all members of the police force.
- (3) A warrant issued under sub-section (1) directed to a named member of the police force may be executed by any member of the police force.
- (4) If a court issues a warrant under sub-section (1) it must—
- (a) give reasons for its decision; and
  - (b) cause a note of the reasons to be entered in the records of the court.
- (5) A failure of a court to comply with sub-section (4) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).
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- (6) If a person is arrested under a warrant issued under sub-section (1), the warrant ceases to have effect immediately after the procedure is completed or on the expiration of a reasonable time (whichever is the earlier).'

**26. New sections 464ZFB to 464ZFE inserted**

Before section 464ZG of the Principal Act  
**insert—**

**"464ZFB. Retention of information following finding of guilt**

- (1) If at any time on or after the commencement of section 26 of the **Crimes (Amendment) Act 1997—**
- (a) a forensic procedure is conducted on a person in accordance with section 464R, 464T(3), 464U(7) or 464V(5); and
  - (b) a court finds the person guilty of—
    - (i) the offence in respect of which the forensic procedure was conducted; or
    - (ii) any other offence arising out of the same circumstances; or
    - (iii) any other offence in respect of which evidence obtained as a result of the forensic procedure had probative value—

a member of the police force, within 6 months after the expiry of the appeal period in respect of the offence or the final determination of an appeal (whichever is the later), may apply to the Magistrates' Court or Children's Court (as the case may be) for an order permitting the retention of any sample

- taken and any related material and information and the court may make an order accordingly.
- (2) A court hearing an application under sub-section (1)—
- (a) must take into account the seriousness of the circumstances of the offence in determining whether to make the order under sub-section (1); and
  - (b) must be satisfied that, in all the circumstances, the making of the order is justified; and
  - (c) may make such inquiries on oath or otherwise as it considers desirable.
- (3) If a court makes an order under sub-section (1), it must give reasons for its decision and cause a copy of the order and reasons to be served on the person on whom the forensic procedure was conducted.
- (4) A failure of a court to comply with sub-section (3) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).

**464ZFC. *Destruction of information following finding of guilt***

- (1) Subject to section 464ZFD(2), if—
- (a) a member of the police force does not make an application under section 464ZFB within the period specified by sub-section (1) of that section; or
  - (b) a court refuses to make an order under section 464ZFB—

the Chief Commissioner of Police must without delay destroy, or cause to be

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- destroyed, any sample taken and any related material and information.
- (2) If a sample or related material and information is required to be destroyed in accordance with this section, the Chief Commissioner of Police must, if the person on whom the procedure was conducted so requests, within 14 days after receiving the request, notify in writing that person of whether the destruction has occurred.
- (3) A person who knowingly—
- (a) fails to destroy; or
  - (b) uses, or causes or permits to be used—
- a sample or related material and information required by this section to be destroyed is guilty of a summary offence punishable on conviction by level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).
- (4) A person who at any time uses, or causes or permits to be used, or otherwise disseminates information derived from, any sample or related material and information required by this section to be destroyed except in good faith for the purposes of section 464ZFD(2) is guilty of a summary offence punishable on conviction by level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

**464ZFD. *Computerised databases***

- (1) Information (including information which may identify the person on whom a forensic procedure was conducted) obtained from the analysis of samples taken or procedures conducted in accordance with sections 464R
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to 464ZA, section 464ZF or sections 464ZGB to 464ZGD (as the case may be), and which in accordance with this Subdivision may be retained, may be included in a computerised database.

- (2) Information (other than information which may identify the person on whom a forensic procedure was conducted) obtained from the analysis of samples taken or procedures conducted in accordance with this Subdivision may be retained and included in a computerised database for statistical purposes.

**464ZFE. *Report to Attorney-General***

The Chief Commissioner of Police, on or as soon as practicable after 1 January, 1 April, 1 July and 1 October of each year, must submit to the Attorney-General a report that contains—

- (a) a list that identifies by a unique identifying number every sample taken in accordance with this Subdivision within the period to which the report relates; and
- (b) the date on which every sample listed in the report was taken; and
- (c) information on whether any of the samples listed in the report or in any previous report submitted under this section have been destroyed within the period to which the report relates; and
- (d) if a sample has been destroyed, the date of destruction and the name of the person who has destroyed it."

**27. *Destruction of identifying information***

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- (1) In section 464ZG of the Principal Act, sub-section (2) is **repealed**.
  - (2) In section 464ZG(3) of the Principal Act—
    - (a) for "sub-section (2)" **substitute** "section 464ZFD(2)";
    - (b) in paragraph (a), for "6" **substitute** "12";
    - (c) for "notes and video-recording made of the forensic procedure and any information which may identify the person contained in any record of or report relating to the forensic procedure and in any copy of a record or report" **substitute** "any related material and information".
  - (3) In section 464ZG(4) of the Principal Act—
    - (a) for ", notes, video-recording" **substitute** "and any related material";
    - (b) in paragraph (a), for "6" **substitute** "12".
  - (4) For section 464ZG(7) of the Principal Act **substitute**—

"(7) If a sample or related material and information is required to be destroyed in accordance with this section, the Chief Commissioner of Police must, if the person on whom the procedure was conducted so requests, within 14 days after receiving the request, notify in writing that person of whether the destruction has occurred."
  - (5) In section 464ZG(8) of the Principal Act—
    - (a) after "who" **insert** "knowingly";
    - (b) in paragraph (b) for "or makes, or causes or permits to be used or made" **substitute** ", or causes or permits to be used";
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- (c) for "notes made of a forensic procedure or any record of or report relating to a forensic procedure or any copy of a record or report" **substitute** "related material and information".
- (6) In section 464ZG(9) of the Principal Act—
  - (a) for "or makes, or causes or permits to be used or made" **substitute** ", or causes or permits to be used";
  - (b) for "notes made of a forensic procedure, any record of or report relating to a forensic procedure or any copy of a record or report" **substitute** "related material and information required by this section to be destroyed ";
  - (c) for "sub-section (2)" **substitute** "section 464ZFD(2)".

**28. New sections 464ZGA to 464ZGF inserted**

After section 464ZG of the Principal Act **insert**—

**"464ZGA. Forensic information from juveniles**

- (1) Subject to section 464ZFD(2), if—
    - (a) a person undergoes a forensic procedure as a child in accordance with this Subdivision, whether before or after the commencement of section 28 of the **Crimes (Amendment) Act 1997**; and
    - (b) any sample taken is not required to be destroyed under this Subdivision, other than under this sub-section; and
    - (c) the person is not found guilty of any further offence before attaining the age of 26 years—
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the Chief Commissioner of Police must without delay destroy, or cause to be destroyed, any sample taken and any related material and information.

- (2) Sub-section (1) does not apply if the offence in relation to which the forensic procedure was conducted was any of the following—
- (a) murder, attempted murder or manslaughter;
  - (b) an offence or attempt to commit an offence against section 16, 17, 18, 25, 26, 29 or 31;
  - (c) an offence or attempt to commit an offence under Subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I;
  - (d) an offence or attempt to commit an offence against section 75 or 75A;
  - (e) an offence or attempt to commit an offence against section 197 (in circumstances where the offence is charged as arson);
  - (f) an offence or attempt to commit an offence against section 197A—

and the person has been found guilty of that offence.

**464ZGB. *Samples given voluntarily***

- (1) A person of or above the age of 17 years may volunteer to give a sample (whether an intimate or non-intimate sample) to a member of the police force.
- (2) A sample may only be given under this section if the person volunteering to give it consents in accordance with this section and

that consent is not withdrawn prior to the giving of the sample.

- (3) A person consents in accordance with this section only if, in the presence of an independent person, he or she consents after a member of the police force has informed the person in language likely to be understood by the person—
- (a) that any sample that is given will be analysed;
  - (b) that information obtained from the analysis—
    - (i) will be included in a computerised database; and
    - (ii) could produce evidence to be used in a court;
  - (c) that the person is under no obligation to give a sample;
  - (d) that if the person consents to give a sample, he or she may at any time before the sample is taken, withdraw that consent;
  - (e) that the person may consult a legal practitioner before deciding whether or not to consent to give a sample;
  - (f) that the person may at any time (including after he or she has been charged with an offence) withdraw his or her consent to the retention of the sample;
  - (g) that where the person withdraws his or her consent to the retention of the sample, a member of the police force may nevertheless apply to a court for an
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- order to retain the sample and any related material and information;
- (h) that the person may request that the sample be taken by or in the presence of a medical practitioner, nurse or dentist of his or her choice.
- (4) A member of the police force who informs a person of the matters in sub-section (3) must—
- (a) record the giving of the information and the person's responses, if any—
- (i) in writing signed by both the person and the independent person witnessing the giving of the consent; and
- (ii) by video tape-recording if practicable, or otherwise by audio tape-recording; and
- (b) give or send by registered post to the person or his or her legal practitioner, without charge—
- (i) a copy of the video or audio tape-recording as soon as practicable, but not more than 7 days after the information is given; and
- (ii) a copy of the written record, signed by both the person and the independent person, forthwith.

**464ZGC. *Withdrawal of consent prior to giving sample***

- (1) A person, at any time prior to giving a sample, may withdraw the consent that was given by him or her in accordance with section 464ZGB either—

- (a) orally; or
  - (b) in writing—  
to a member of the police force or to the person authorised to take the sample.
- (2) If, prior to giving a sample, a person withdraws his or her consent orally, a member of the police force or the person authorised to take the sample must, as soon as practicable, record in writing the withdrawal of consent.

**464ZGD. Procedure to take sample**

- (1) The procedure to be conducted to take a sample from a person following the giving of consent in accordance with section 464ZGB must—
- (a) be in accordance with the procedure set out in section 464Z; and
  - (b) be video-recorded, if practicable, and if the person consents.
- (2) If the taking of a sample voluntarily given by a person is video-recorded, a member of the police force must—
- (a) without charge; and
  - (b) as soon as practicable but not more than 7 days after the sample was taken—  
give or send by registered post a copy of the video-recording to the person who voluntarily gave the sample.

**464ZGE. Safeguards after giving sample**

- (1) If a person has given his or her consent in accordance with section 464ZGB, and a sample has been taken, that person may at any time after the sample has been taken, by
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notice in writing to the Chief Commissioner of Police, withdraw his or her consent to the retention of that sample.

- (2) Subject to sub-section (5) and section 464ZFD(2), if a person has voluntarily given a sample in accordance with sections 464ZGB to 464ZGD and either—
- (a) that person in accordance with sub-section (1) has withdrawn his or her consent to the retention of that sample; or
  - (b) a court has made an order under section 464ZGF for the retention of that sample and any related material and information, and—
    - (i) the person has not been charged with an indictable offence at the end of the period of 12 months after the order of the court; or
    - (ii) the person has been so charged but the charge is not proceeded with, or the person is not found guilty of the indictable offence or any other indictable offence for which the sample and any related material and information had probative value, whether on appeal or otherwise, before the end of that period—

the Chief Commissioner of Police, at the time specified in sub-section (3), must destroy, or cause to be destroyed, any sample given and any related material and information.

- (3) A sample and any related material and information referred to in sub-section (2) must be destroyed—
- (a) within 28 days after the receipt of the person's notice of withdrawal of consent under sub-section (1); or
  - (b) in a case to which sub-section (2)(b)(i) applies, immediately after that period of 12 months; or
  - (c) in a case to which sub-section (2)(b)(ii) applies—
    - (i) within 1 month after the conclusion of the proceedings and the end of any appeal period; or
    - (ii) if the proceedings have been adjourned under section 75 of the **Sentencing Act 1991**, within 1 month after dismissal under that section.
- (4) The Chief Commissioner of Police is not required to comply with the requirements in sub-sections (2) and (3) to destroy or cause to be destroyed a sample and any related material and information by reason of the person's withdrawal of consent if the Magistrates' Court makes an order under section 464ZGF for the retention of that sample and any related material and information.
- (5) If the Magistrates' Court refuses to make an order under section 464ZGF for the retention of a sample and any related material and information, and a person in accordance with sub-section (1) has withdrawn his or her consent to the retention of that sample, the
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- Chief Commissioner of Police must immediately destroy, or cause to be immediately destroyed, the sample given and any related material and information.
- (6) A member of the police force may, before the end of a period referred to in sub-section (3)(b) or (3)(c), apply, without notice to any other person, to the Magistrates' Court for an order extending that period and, if the court makes such an order, the reference to the period in sub-section (3)(b) or (3)(c) is a reference to that period as so extended.
- (7) If the Magistrates' Court makes an order under sub-section (6), it must give reasons for its decision and cause a copy of the order to be served on the person who voluntarily gave the sample.
- (8) If a sample or related material and information is destroyed in accordance with this section, the Chief Commissioner of Police must, within 14 days, give notice of the destruction to the person who voluntarily gave the sample.
- (9) A person who knowingly—
- (a) fails to destroy; or
  - (b) uses, or causes or permits to be used—
- a sample or related material and information required by this section to be destroyed is guilty of a summary offence punishable on conviction by level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).
- (10) A person who at any time uses, or causes or permits to be used, or otherwise disseminates information derived from any sample or
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related material and information required by this section to be destroyed except in good faith for the purposes of section 464ZFD(2) is guilty of a summary offence punishable on conviction by level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

- (11) This section does not prevent a member of the police force, in respect of a person who has voluntarily given a sample under sections 464ZGB to 464ZGD—
- (a) requesting, under section 464R, the person to undergo a forensic procedure; or
  - (b) making an application under section 464T or 464V for a court order directing the person to undergo a compulsory procedure.
- (12) A report containing an analysis of the sample taken from a person in accordance with section 464ZGD must be given or sent by registered post to that person as soon as practicable but not more than 7 days after the sample was taken.

**464ZGF. *Application to court where consent to retention of sample withdrawn***

- (1) A member of the police force may apply to the Magistrates' Court for an order to retain a sample that has been voluntarily given by a person in accordance with sections 464ZGB to 464ZGD, and any related material and information, and the court may make an order accordingly, if during an investigation into the commission of an indictable offence—
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- (a) either—
- (i) material reasonably believed to be from the body of a person who committed the indictable offence has been found—
    - (A) at the scene of the offence;  
or
    - (B) on the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed;  
or
    - (C) on an object or person reasonably believed to have been associated with the commission of the offence;  
or
  - (ii) if the offence is an offence against a provision of Subdivision (8A), (8B) or (8C) of Division 1 of Part I, and a member of the police force reasonably believes that a child has been conceived as a result of the commission of the offence and a sample has been taken from that child; and
- (b) a member of the police force reasonably believes that information obtained from the analysis of the sample voluntarily given by the person, and from any related material and information, has probative value in relation to the indictable offence being investigated; and
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- (c) the person who voluntarily gave that sample has withdrawn his or her consent to the retention of that sample; and
  - (d) the information obtained from the analysis of the voluntary sample, and from any related material and information, has not been destroyed in accordance with section 464ZGE(2)(a) and (3)(a).
- (2) A court hearing an application under sub-section (1) must—
- (a) be satisfied on the balance of probabilities that there are reasonable grounds to believe that the person has committed the offence in respect of which the application is made; and
  - (b) be satisfied that, in all the circumstances, the making of the order is justified.
- (3) If the court makes an order under sub-section (1), it must give reasons for its decision and cause a copy of the order and reasons to be served on the person who voluntarily gave the sample.
- (4) A failure of a court to comply with sub-section (3) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a)."

### **29. Immunity of registered nurses**

- (1) In section 464ZH of the Principal Act—
- (a) **omit** "legally qualified";
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- (b) after "medical practitioner" (where first occurring) **insert** "or nurse";
- (c) after "medical practitioner," (wherever occurring) **insert** "nurse,";
- (d) for the expression beginning with "was requested to be conducted" and ending at the end of the section, **substitute**—

"—

- (a) was requested to be conducted on another person under this Subdivision in accordance with a request of a member of the police force given under section 464R or in accordance with an order made by a court under this Subdivision; or
  - (b) was consented to by a person in accordance with sections 464ZGB to 464ZGD."
- (2) At the end of section 585 of the Principal Act **insert**—
- "(2) It is the intention of section 464ZH, as amended by section 29(1) of the **Crimes (Amendment) Act 1997**, to alter or vary section 85 of the **Constitution Act 1975**."

**30. New section 589 inserted**

After proposed section 588 of the Principal Act **insert**—

**"589. Transitional provisions (Crimes (Amendment) Act 1997—Part 4)**

- (1) The amendment of this Act made by section 16(f), 17 or 18 of the **Crimes (Amendment)**
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- Act 1997** applies to applications made under section 464T(1), 464U(3) or 464V (as the case requires) irrespective of when the offence in respect of which the application is made is alleged to have been committed.
- (2) The amendment of this Act made by section 22 of the **Crimes (Amendment) Act 1997** only applies with respect to orders made by a court on or after the commencement of that section.
- (3) The amendments of this Act made by section 24 of the **Crimes (Amendment) Act 1997** apply to any proceedings that commence on or after the commencement of that section of that Act, irrespective of when the offence to which the proceedings relate is alleged to have been committed.
- (4) For the purposes of sub-section (3)—
- (a) a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III; and
  - (b) a committal proceeding commences on the committal mention date; and
  - (c) a hearing of a charge for an offence commences on the taking of a formal plea from the accused.
- (5) The first report submitted to the Attorney-General in accordance with section 464ZFE must relate to the period beginning with the day on which section 26 of the **Crimes (Amendment) Act 1997** comes into operation.
- (6) The amendments of section 464ZG(3)(a) and (4)(a) made by section 27(2)(b) and (3)(b) of
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the **Crimes (Amendment) Act 1997** apply only to samples taken in forensic procedures conducted on or after the commencement of section 27 of that Act and any related material and information within the meaning of Subdivision (30A) of Division 1 of Part III in relation to such samples.

- (7) The amendments of section 464ZG(8) and (9) made by section 27(5) and (6) of the **Crimes (Amendment) Act 1997** apply only to offences alleged to have been committed after the commencement of section 27 of that Act.
- (8) For the purposes of sub-section (7), if an offence is alleged to have been committed between two dates and section 27 of the **Crimes (Amendment) Act 1997** commences on a date between those two dates, the offence is alleged to have been committed before the commencement of that section."

**31. New Schedule 8 inserted**

After Schedule 7 to the Principal Act insert—

**"SCHEDULE 8**

Section 464ZF

**FORENSIC SAMPLE OFFENCES**

A forensic sample offence is:

***Offences against the person—Non-Sexual Offences***

1. Murder.
2. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, section 4 (conspiracy to murder) (as amended) of the **Crimes Act 1958** repealed on 1 June 1984 by section 8(b) of the **Crimes (Conspiracy and Incitement) Act 1984**.

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3. Manslaughter.
4. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections of the **Crimes Act 1958**:
  - (a) section 16 (causing serious injury intentionally);
  - (b) section 17 (causing serious injury recklessly);
  - (c) section 19A (intentionally causing a very serious disease);
  - (d) section 63 (child stealing);
  - (e) section 63A (kidnapping).
5. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) of the **Crimes Act 1958** repealed on 24 March 1986 by section 8(2) of the **Crimes (Amendment) Act 1985**:
  - (a) section 17 (intentionally causing grievous bodily harm or shooting, etc. with intention to do grievous bodily harm or to resist or prevent arrest);
  - (b) section 19 (inflicting bodily injury);
  - (c) section 19A (inflicting grievous bodily harm);
  - (d) section 20 (attempting to choke, etc. in order to commit an indictable offence).
6. The common law offence of kidnapping.

*Offences against the person—Sexual Offences*

7. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections of the **Crimes Act 1958**:
    - (a) section 38 (rape);
    - (b) section 39 (indecent assault) if—
      - (i) immediately before or during or immediately after the commission of the offence and at, or in the vicinity of, the place where the offence was committed, the offender inflicted serious personal violence on the victim or did an act which was likely seriously and substantially to degrade or humiliate the victim, whether or not the serious personal violence or that act
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- constituted or formed part of the indecent assault; or
- (ii) the offender was aided or abetted by another person who was present; or
  - (iii) the victim was under 16 years of age at the time of the commission of the offence;
- (c) section 40 (assault with intent to rape);
  - (d) section 44(1), (2) or (4) (incest) but not section 44(4) if both people are aged 18 or older and each consented (as defined in section 36 of the **Crimes Act 1958**) to engage in the sexual act;
  - (e) section 45(1) (sexual penetration of child under the age of 10);
  - (f) section 46(1) (sexual penetration of child aged between 10 and 16);
  - (g) section 47(1) (indecent act with child under the age of 16);
  - (h) section 47A(1) (sexual relationship with child under the age of 16);
  - (i) section 49A(1) (facilitating sexual offences against children);
  - (j) section 51 (sexual offences against people with impaired mental functioning);
  - (k) section 52 (sexual offences against residents of residential facilities);
  - (l) section 53 (administration of drugs, etc.);
  - (m) section 55 (abduction or detention);
  - (n) section 56 (abduction of child under the age of 16);
  - (o) section 57 (procuring sexual penetration by threats or fraud);
  - (p) section 58 (procuring sexual penetration of child under the age of 16);
  - (q) section 76 (burglary) in circumstances where the offender entered the building or part of the building as a trespasser with intent to commit a sexual or indecent assault;
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- (r) section 77 (aggravated burglary) in circumstances where the offender entered the building or part of the building as a trespasser with intent to commit a sexual or indecent assault.
8. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed on 1 January 1992 by section 3 of the **Crimes (Rape) Act 1991**:
- (a) section 40 (rape);
  - (b) section 41 (rape with aggravating circumstances);
  - (c) section 43 (indecent assault with aggravating circumstances).
9. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) inserted in the **Crimes Act 1958** 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**:
- (a) section 44(1) (indecent assault);
  - (b) section 44(2) (indecent assault with aggravating circumstances);
  - (c) section 45(1) (rape);
  - (d) section 45(2) (attempted rape);
  - (e) section 45(2) (assault with intent to commit rape);
  - (f) section 45(3) (rape with aggravating circumstances);
  - (g) section 45(4) (attempted rape with aggravating circumstances);
  - (h) section 45(4) (assault with intent to commit rape with aggravating circumstances);
  - (i) section 47(1) (sexual penetration of child under the age of 10);
  - (j) section 47(2) (attempted sexual penetration of child under the age of 10);
  - (k) section 47(2) (assault with intent to take part in act of sexual penetration with child under the age of 10);
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- (l) section 48(1) (sexual penetration of child aged between 10 and 16);
  - (m) section 48(2) (attempted sexual penetration of child aged between 10 and 16);
  - (n) section 48(2) (assault with intent to take part in act of sexual penetration with child aged between 10 and 16);
  - (o) section 50(1) (gross indecency with child under the age of 16);
  - (p) section 51 (sexual penetration of mentally ill or intellectually defective person);
  - (q) section 51 (attempted sexual penetration of mentally ill or intellectually defective person);
  - (r) section 51 (assault with intent to take part in act of sexual penetration with mentally ill or intellectually defective person);
  - (s) section 52 (incest) but not section 52(4) or (5) if both people are aged 18 or older and each consented to taking part in the act of sexual penetration;
  - (t) section 54 (procuring persons by threats or fraud);
  - (u) section 55 (administration of drugs, etc.);
  - (v) section 56 (abduction and detention);
  - (w) section 61 (unlawful detention for purposes of sexual penetration).
10. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) of the **Crimes Act 1958** repealed on 1 March 1981 by section 5 of the **Crimes (Sexual Offences) Act 1980**:
- (a) section 44(1) (rape);
  - (b) section 44(2) (rape with mitigating circumstances);
  - (c) section 45 (attempted rape);
  - (d) section 45 (assault with intent to rape);
  - (e) section 46 (unlawfully and carnally knowing and abusing a girl under the age of 10);
  - (f) section 47 (attempting to unlawfully and carnally know and abuse girl under the age of 10);
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- (g) section 47 (assault with intent to unlawfully and carnally know and abuse girl under the age of 10);
  - (h) section 48(1) (unlawfully and carnally knowing and abusing girl aged between 10 and 16);
  - (i) section 48(2) (attempting to unlawfully and carnally know and abuse girl aged between 10 and 16);
  - (j) section 48(2) (assault with intent to unlawfully and carnally know and abuse girl aged between 10 and 16);
  - (k) section 52 (incest) but not section 52(3) or (4) if the woman or girl is the sister of the offender and both are aged 18 or older and the carnal knowledge or attempt or assault with intent to have unlawful carnal knowledge was or was made with the consent of the sister;
  - (l) section 54 (carnal knowledge of female mentally ill or intellectually defective person);
  - (m) section 54 (attempted carnal knowledge of female mentally ill or intellectually defective person);
  - (n) section 54 (assault with intent to carnally know female mentally ill or intellectually defective person);
  - (o) section 55(1) (indecent assault);
  - (p) section 55(3) (felonious indecent assault);
  - (q) section 57(1) or (2) (procuring defilement of woman by threats or fraud or administering drugs);
  - (r) section 59 (abduction of girl under eighteen with intent to have carnal knowledge);
  - (s) section 60 (unlawful detention with intent to have carnal knowledge);
  - (t) section 62 (forcible abduction of woman);
  - (u) section 68(1) (buggery);
  - (v) section 68(3A) or (3B) (indecent assault on male person);
  - (w) section 69(1) (act of gross indecency with girl under the age of 16).
11. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, section 61
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(abduction of woman from motives of lucre) of the **Crimes Act 1958** repealed on 1 March 1980 by section 5 of the **Crimes (Sexual Offences) Act 1980**.

12. Any of the following common law offences:

- (a) rape;
- (b) attempted rape;
- (c) assault with intent to rape.

*Property Offences*

13. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections of the **Crimes Act 1958**:

- (a) section 75 (robbery);
- (b) section 75A (armed robbery);
- (c) section 76 (burglary);
- (d) section 77 (aggravated burglary).

14. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions of the **Crimes Act 1958** repealed on 1 October 1974 by section 2(1)(b) of the **Crimes (Theft) Act 1973**:

- (a) section 117 (robbery; larceny from the person);
  - (b) section 118 (assault with intent to rob);
  - (c) section 119 (robbery with wounding);
  - (d) section 120 (robbery under arms or company);
  - (e) section 128 (burglary by breaking out);
  - (f) section 130 (burglary with wounding);
  - (g) section 132 (entering house at night with intent to commit a felony);
  - (h) section 133 (breaking into etc., building within curtilage);
  - (i) section 134 (house-breaking);
  - (j) section 135 (house-breaking etc., with intent etc.);
  - (k) section 138 (larceny in the house);
  - (l) section 139 (larceny with menaces).
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15. The common law offence of robbery abolished on 1 October 1974 by section 3(1) of the **Crimes (Theft) Act 1973**.
  16. The common law offence of burglary abolished on 1 October 1974 by section 3(1) of the **Crimes (Theft) Act 1973**.
  17. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections of the **Crimes Act 1958**:
    - (a) section 197 (destroying or damaging property) in circumstances where the offence is charged as arson;
    - (b) section 197A (arson causing death).
  18. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions of the **Crimes Act 1958** repealed on 1 July 1979 by section 2(1)(c) of the **Crimes (Criminal Damage) Act 1978**:
    - (a) section 196 (setting fire to church etc.);
    - (b) section 197 (setting fire to house anyone being in it);
    - (c) section 199 (setting fire to railway buildings etc.);
    - (d) section 200 (setting fire to public buildings);
    - (e) section 201 (setting fire to other buildings);
    - (f) section 202 (setting fire to goods in buildings);
    - (g) section 203 (attempting to set fire to buildings).
  19. An offence against section 203A (placing inflammable substance with intent to destroy, damage, etc.) (as amended) of the **Crimes Act 1958** repealed on 1 July 1979 by section 2(1)(c) of the **Crimes (Criminal Damage) Act 1978**.
  20. The common law offence of arson.
  21. An offence against section 248 (contamination of goods) of the **Crimes Act 1958**.

*Drug Offences*

22. An offence against section 71 (trafficking in a drug of dependence) of the **Drugs, Poisons and Controlled Substances Act 1981**.
  23. An offence against section 72(1)(ab) (cultivation of a narcotic plant in circumstances where the offence is committed in relation to a quantity of a drug of dependence,
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being a narcotic plant, that is not less than the commercial quantity applicable to that narcotic plant) of the **Drugs, Poisons and Controlled Substances Act 1981**.

24. An offence against section 72(1)(b) (cultivation of a narcotic plant for a purpose related to trafficking in that narcotic plant) of the **Drugs, Poisons and Controlled Substances Act 1981**."
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**NOTES**

† *Minister's second reading speech—*

*Legislative Assembly: 9 October 1997*

*Legislative Council: 12 November 1997*

The long title for the Bill for this Act was "to amend the **Crimes Act 1958**, the **Evidence Act 1958** and the **Magistrates' Court Act 1989** and for other purposes."

**Constitution Act 1975:**

*Section 85(5) statement:*

*Legislative Assembly: 9 October 1997*

*Legislative Council: 12 November 1997*

*Absolute majorities:*

*Legislative Assembly: 30 October 1997*

*Legislative Council: 20 November 1997*