

# Crimes (Amendment) Act 2000

Act No. 67/2000

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Victoria

No. 67 of 2000

## Crimes (Amendment) Act 2000<sup>†</sup>

[Assented to 21 November 2000]

**The Parliament of Victoria enacts as follows:**

### **1. Purpose**

The purpose of this Act is to amend the **Crimes Act 1958** so as to—

- (a) extend the definition of "rape" to include situations where a male is coerced into sexually penetrating, or continuing to sexually penetrate, another person;
- (b) create a single new offence dealing with the sexual penetration of children under the age of 16;

- (c) increase the penalty for possession of child pornography.

**2. Commencement**

This Act comes into operation on the day after the day on which it receives the Royal Assent.

**3. Principal Act**

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

**4. Extended definition of rape**

In section 38 of the Principal Act, after subsection (2) **insert**—

"(3) A person (the offender) also commits rape if he or she compels a male person—

- (a) to sexually penetrate the offender or another person with his penis, irrespective of whether the person being sexually penetrated consents to the act; or
- (b) who has sexually penetrated the offender or another person with his penis, not to withdraw his penis from the offender or that other person, irrespective of whether the person who has been sexually penetrated consents to the act.

See:  
Act No.  
6231  
Reprint No. 15  
as at  
1 September  
1999 and  
amending  
Act No.  
26/1999.  
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(4) For the purposes of sub-section (3), a person compels a male person (the victim) to engage in a sexual act if the person compels the victim (by force or otherwise) to engage in that act—

(a) without the victim's consent; and

(b) while being aware that the victim is not consenting or might not be consenting."

**5. New section 45 substituted**

For sections 45 and 46 of the Principal Act substitute—

**"45. Sexual penetration of child under the age of 16**

(1) A person who takes part in an act of sexual penetration with a child under the age of 16 is guilty of an indictable offence.

(2) A person who is guilty of an offence against sub-section (1) is liable—

(a) if the court is satisfied beyond reasonable doubt that the child was, at the time of the offence, under the age of 10, to level 2 imprisonment (25 years maximum); or

(b) if the court is satisfied beyond reasonable doubt that the child was, at the time of the offence, aged between 10 and 16 and under the care, supervision or authority of the accused, to level 4 imprisonment (15 years maximum); or

(c) in any other case, to level 5 imprisonment (10 years maximum).

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- (3) Sub-section (1) does not apply to an act of sexual penetration if—
- (a) the child is aged between 10 and 16; and
  - (b) the persons taking part in the act are married to each other.
- (4) Consent is not a defence to a charge under sub-section (1) unless at the time of the alleged offence the child was aged 10 or older and—
- (a) the accused believed on reasonable grounds that the child was aged 16 or older; or
  - (b) the accused was not more than 2 years older than the child; or
  - (c) the accused believed on reasonable grounds that he or she was married to the child.
- (5) A circumstance of aggravation described in sub-section (2) is not an element of an offence against sub-section (1) but must be stated in the presentment.
- (6) An accused who takes issue with a circumstance of aggravation described in sub-section (2) and who wishes to have the matter determined on the trial may do so by pleading not guilty to the offence with which he or she is charged even if he or she does not take issue with any acts, facts, matters or circumstances relied upon by the prosecution to support a finding of guilt.
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- (7) A circumstance of aggravation described in sub-section (2)—
- (a) is to be determined by the jury if the accused pleads not guilty to the offence; and
  - (b) is to be determined by the trial judge if the accused pleads guilty to the offence.
- (8) An offender who pleads not guilty to an offence against sub-section (1) is to be taken to have pleaded guilty to the offence for the purposes of section 5(2)(e) of the **Sentencing Act 1991** if—
- (a) he or she—
    - (i) took issue with a circumstance of aggravation described in sub-section (2); and
    - (ii) did not take issue with any acts, facts, matters or circumstances relied upon by the prosecution to support a finding of guilt; and
  - (b) the circumstance of aggravation is not proved.
- (9) For the avoidance of doubt it is declared that it is the intention of the Parliament that an offence against sub-section (1) is not an offence to which section 53(1) of the **Magistrates' Court Act 1989** applies (indictable offences triable summarily) even though the offence is punishable by level 5 imprisonment where a circumstance of aggravation described in sub-section (2) is not present."
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**6. Possession of child pornography**

In section 70 of the Principal Act, for sub-section (1) **substitute**—

"(1) A person who knowingly possesses child pornography is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum)."

**7. Amendments to Principal Act consequential on section 5**

- (1) In section 60B(1)(a) of the Principal Act, **omit** "46,".
  - (2) In section 60B(1)(b) of the Principal Act, after "clause" **insert** "7A, 7B,".
  - (3) In section 359A(1)(a) of the Principal Act, **omit** "46,".
  - (4) In section 425(1)(c) of the Principal Act, for "10" **substitute** "16".
  - (5) In section 425(1) of the Principal Act, paragraph (d) is **repealed**.
  - (6) In section 425(3) of the Principal Act, for ", 45(1) or 46(1)" **substitute** "or 45(1)".
  - (7) In clause 7(e) of Schedule 8 to the Principal Act, for "10" **substitute** "16".
  - (8) Clause 7(f) of Schedule 8 to the Principal Act is **repealed**.
  - (9) In Schedule 8 to the Principal Act, after clause 7 **insert**—

"7A. An offence against section 45(1) (sexual penetration of child under the age of 10) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual**
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**Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**.

- 7B. An offence against section 46(1) (sexual penetration of child aged between 10 and 16) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**."

**8. New section 593 inserted**

After section 592 of the Principal Act **insert**—

**'593. Transitional provisions—Crimes (Amendment) Act 2000**

- (1) In this section "**commencement day**" means the day on which the **Crimes (Amendment) Act 2000** comes into operation.
- (2) The amendment of section 38 of this Act made by section 4 of the **Crimes (Amendment) Act 2000** applies only to offences alleged to have been committed after the commencement day.
- (3) The amendment of section 70 of this Act made by section 6 of the **Crimes (Amendment) Act 2000** applies only to offences alleged to have been committed after the commencement day.
- (4) For the purposes of sub-sections (2) and (3), if an offence is alleged to have been committed between two dates, one before and one on or after the commencement day, the offence is alleged to have been committed before the commencement day.
- (5) From any time on or after the commencement day a charge or presentment may be filed against a person for an offence against section 45 of this Act, as substituted



- by section 5 of the **Crimes (Amendment) Act 2000**, irrespective of whether the offence is alleged to have been committed before, on or after the commencement day provided it is not alleged to have been committed before 5 August 1991.
- (6) For the purposes of sub-section (5), if an offence is alleged to have been committed between two dates, one before and one on or after 5 August 1991, the offence is alleged to have been committed before 5 August 1991.
- (7) Section 359A(1) of this Act, as in force before the commencement day, continues to apply to an alleged offence against section 45 or 46 (as in force before the commencement day) or an attempt to commit any such offence or an assault with intent to commit any such offence for which a person is directed to be tried, or with which a person is charged on indictment or presentment, before the commencement day.
- (8) The amendments of section 425(1) of this Act made by section 7 of the **Crimes (Amendment) Act 2000** apply to any trial that commences on or after the commencement day and an accused may be found guilty in such a trial of an offence against section 45 of this Act, as substituted by section 5 of the **Crimes (Amendment) Act 2000**, irrespective of whether the conduct constituting the offence is alleged to have occurred before, on or after the commencement day provided it is not alleged to have occurred before 5 August 1991.
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- (9) For the purposes of sub-section (8)—
- (a) a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III of this Act; and
  - (b) if conduct constituting an offence is alleged to have occurred between two dates, one before and one on or after 5 August 1991, the conduct is alleged to have occurred before 5 August 1991.
- (10) Section 425(3) of this Act, as in force before the commencement day, continues to apply to any trial of an offence against section 45(1) or 46(1) (as in force before the commencement day) that occurs on or after the commencement day, irrespective of whether that trial commenced before, on or after the commencement day.'

**9. Consequential amendments to Education Act 1958**

In section 35(2) of the **Education Act 1958**—

- (a) in paragraph (a), **omit** "46,";
- (b) after paragraph (a) **insert**—
  - "(ab) an offence against section 45(1) (sexual penetration of child under the age of 10) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**; or
  - (ac) an offence against section 46(1) (sexual penetration of child aged between 10 and 16) (as amended) of the **Crimes**

See:  
Act No.  
6240  
Reprint No. 8  
as at  
24 February  
2000 and  
amending  
Act No.  
8/2000.  
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**Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**; or";

- (c) in paragraph (c), after "(a)" **insert** ", (ab), (ac)";
- (d) in paragraph (d), after "(a)," **insert** "(ab), (ac),".

**10. Consequential amendments to Sentencing Act 1991**

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

- (a) in paragraph (c)—

- (i) in sub-paragraph (vi), for "10" **substitute** "16";

- (ii) sub-paragraph (vii) is **repealed**;

- (b) after paragraph (c) **insert**—

- "(ca) an offence against section 45(1) (sexual penetration of child under the age of 10) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**; or

- (cb) an offence against section 46(1) (sexual penetration of child aged between 10 and 16) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**; or".

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See:  
Act No.  
49/1991  
Reprint No. 5  
as at  
1 January  
2000 and  
amending  
Act Nos  
1/2000,  
41/2000 and  
54/2000.  
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(2) In clause 1 of Schedule 1 to the **Sentencing Act 1991**—

(a) in paragraph (a)—

(i) in sub-paragraph (v), for "10" **substitute** "16";

(ii) sub-paragraph (vi) is **repealed**;

(b) after paragraph (a) **insert**—

"(ab) an offence against section 45(1) (sexual penetration of child under the age of 10) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**;

(ac) an offence against section 46(1) (sexual penetration of child aged between 10 and 16) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**;"

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**ENDNOTES**

† *Minister's second reading speech—*

*Legislative Assembly: 5 October 2000*

*Legislative Council: 1 November 2000*

The long title for the Bill for this Act was "to amend the **Crimes Act 1958**, to make consequential amendments to the **Education Act 1958** and the **Sentencing Act 1991** and for other purposes."