

THE CRIMINAL CODE AND ANOTHER ACT AMENDMENT BILL

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1990

A BILL

**To amend The Criminal Code and the Criminal Law (Sexual
Offences) Act 1978-1989 in certain respects and for
related matters**

[Introduced on Leave, 21st November, 1990;—HON. DEAN WELLS]

WHEREAS democracy requires proper limits should be placed on the right of any State to interfere in the lives of its citizens

AND WHEREAS making criminal the private and voluntary sexual acts of adults, when those acts do not involve circumstances of aggravation and affect only the participants, goes beyond those limits 5

AND WHEREAS Parliament neither condones nor condemns the behaviour which is the subject of this legislation

AND WHEREAS Parliament reaffirms its determination to enforce its laws prohibiting sexual interference with children and intellectually impaired persons and non-consenting adults 10

AND WHEREAS rational public health policy is undermined by criminal laws which make those who are at high risk of infection unwilling to disclose that they are members of a high risk group

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:— 15

1. **Short title.** This Act may be cited as *The Criminal Code and Another Act Amendment Act 1990*.

2. **Commencement.** (1) Section 1 and this section commence on the day on which this Act is assented to for and on behalf of Her Majesty. 20

(2) Except as provided by subsection (1), this Act commences on a day appointed by Proclamation.

The date so appointed is in this Act referred to as the commencement of this Act.

3. **Amendment of index.** *The Criminal Code* is amended, in the index preceding Part 1, by— 25

(a) omitting the words "208. Unnatural offences" and substituting the words "208. Unlawful anal intercourse";

(b) omitting the words "209. Attempt to commit unnatural offences" and substituting the words "209. Attempt to have unlawful anal intercourse"; 30

(c) omitting the words "211. Indecent practices between males" and substituting the words "211. Carnal knowledge of animal";

(d) omitting the words "336. Assault with intent to commit unnatural offence" and substituting the words "336. Assault with intent to have unlawful anal intercourse". 35

4. **Amendment of s. 6.** Section 6 of *The Criminal Code* is amended by—

(a) omitting the words "or the term" and substituting the expression " , , , " 40

(b) inserting after the words “carnal connection” the words “or carnal knowledge by anal intercourse”.

5 **5. Repeal of and new s. 208 and heading.** *The Criminal Code* is amended by repealing section 208 and the heading “*Unnatural Offences*” immediately preceding and substituting the following heading and section:—

“Unlawful anal intercourse

208. Any person who—

10 (1) has carnal knowledge by anal intercourse of any person not an adult;

or

(2) permits a male person not an adult to have carnal knowledge of him or her by anal intercourse;

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

15 In a case where the offence is committed in respect of a child under the age of sixteen years, the offender is liable to imprisonment—

(a) for fourteen years unless it is a case to which paragraph (b) applies;

20 or

(b) for life—

(i) if the child is under the age of twelve years;

or

25 (ii) if the child, to the knowledge of the offender, is the lineal descendant of the offender;

or

(iii) if the offender is the guardian of the child;

or

30 (iv) if the child, for the time being, is under the care of the offender.

It is a defence to a charge under this section to prove that the accused person believed, on reasonable grounds, that the person in respect of whom the offence was committed was an adult.

35 A person may be convicted of an offence defined in this section upon the uncorroborated testimony of one witness, but the Court shall warn the jury of the danger of acting on such testimony unless they find that it is corroborated in some material particular by other evidence implicating that person.”.

6. Repeal of and new s. 209 and heading. *The Criminal Code* is amended by repealing section 209 and the heading immediately preceding and substituting the following heading and section:—

“Attempt to have unlawful anal intercourse

209. Any person who attempts to commit a crime defined in section 208 is guilty of a crime and is liable to imprisonment for three years. 5

In a case where the offence is committed in respect of a child under the age of sixteen years, the offender is liable to imprisonment— 10

(a) for seven years unless it is a case to which paragraph (b) applies;

or

(b) for fourteen years—

(i) if the child is under the age of twelve years; 15

or

(ii) if the child, to the knowledge of the offender, is the lineal descendant of the offender;

or

(iii) if the offender is the guardian of the child; 20

or

(iv) if the child, for the time being, is under the care of the offender.

It is a defence to a charge under this section to prove that the accused person believed, on reasonable grounds, that the person in respect of whom the offence was committed was an adult. 25

A person may be convicted of an offence defined in this section upon the uncorroborated testimony of one witness, but the Court shall warn the jury of the danger of acting on such testimony unless they find that it is corroborated in some material particular by other evidence implicating that person. 30

The offender cannot be arrested without a warrant unless the offence is committed in respect of a child under the age of sixteen.”. 35

7. Repeal of and new s. 211 and heading. *The Criminal Code* is amended by repealing section 211 and the heading immediately preceding and substituting the following heading and section:—

“Carnal knowledge of animal

211. Any person who has carnal knowledge of an animal is guilty of a crime and is liable to imprisonment for seven years.”. 40

8. Amendment of s. 213. Section 213 of *The Criminal Code* is amended by—

(a) omitting the expression “208 (1), 208 (3), 210, 211” and substituting the expression “208, 210”;

5 (b) omitting the expression “208 (1), 208 (3)” where it secondly occurs and substituting the expression “208”.

9. Amendment of s. 216. Section 216 of *The Criminal Code* is amended in subsection (6) by inserting before the definition “deals with” the following definition:—

10 ““carnal knowledge” includes carnal knowledge by anal intercourse;”.

10. Amendment of s. 219. Section 219 of *The Criminal Code* is amended by—

15 (a) omitting the expression “208 (1), 208 (3), 210, 211” and substituting the expression “208, 210”;

(b) omitting the expression “208 (1), 208 (3)” where it secondly occurs and substituting the expression “208”.

11. Amendment of heading before s. 336. *The Criminal Code* is amended, in the heading preceding section 336, by omitting the words “Commit Unnatural Offence” and substituting the words “Have Unlawful Anal Intercourse”.

12. Amendment of s. 336. Section 336 of *The Criminal Code* is amended by omitting the words “against the order of nature” and substituting the words “by anal intercourse”.

25 **13. Amendment of s. 337.** Section 337 of *The Criminal Code* is amended by omitting the words “against the order of nature” and substituting the words “by anal intercourse”.

14. Amendment of s. 416. Section 416 of *The Criminal Code* is amended by, in paragraph (c), omitting the words “against the order of nature” and substituting the words “by anal intercourse”.

15. Amendment of Criminal Law (Sexual Offences) Act. (1) The *Criminal Law (Sexual Offences) Act 1978-1989* is amended in section 3 by omitting from the definition “prescribed sexual offence” paragraph (e) and substituting the following paragraph:—

35 “(e) assault with intent to have unlawful carnal knowledge by anal intercourse;”.

(2) The *Criminal Law (Sexual Offences) Act 1978-1989* as amended by this section may be cited as the *Criminal Law (Sexual Offences) Act 1978-1990*.

16. Transitional. (1) Subject to subsection (2), a person who before the commencement of this Act commits—

- (a) an offence defined in sections 208 (1) or (3) of *The Criminal Code* as it exists immediately before the commencement;
- or
- (b) an offence defined in section 209 or 535 of *The Criminal Code* constituted by an attempt to commit an offence defined in paragraph (a);

cannot thereafter be convicted of the offence unless it is committed in respect of a person not an adult within the meaning of *The Criminal Code*.

(2) Notwithstanding the commencement of this Act, a person who before the commencement commits an offence defined in section 208, 209 or 535 of *The Criminal Code* by having or attempting to have carnal knowledge by anal intercourse of a person may be charged, convicted and punished as if this Act had not been passed in any case where the person in respect of whom the offence was committed was an intellectually impaired person within the meaning of section 216 of *The Criminal Code*.

Section 11 of *The Criminal Code* does not apply in such a case.

(3) A person who, before the commencement of this Act commits an offence defined in section 211 of *The Criminal Code* as it existed immediately before the commencement, cannot thereafter be convicted of the offence.

(4) A provision of this section stating that a person cannot be convicted after the commencement of this Act of an offence defined in a specified section of *The Criminal Code* committed before the commencement does not have the effect that such a person cannot be charged convicted and punished for an offence defined in some other section of *The Criminal Code* where the circumstances in question constitute an offence defined in that other section.

BY AUTHORITY

R. G. GILES, ACTING GOVERNMENT PRINTER, QUEENSLAND—1990