



Crimes (Child Sex Tourism) Amendment Act 1994

No. 105 of 1994

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Crimes (Child Sex Tourism) Amendment Act 1994

No. 105 of 1994

An Act to amend the *Crimes Act 1914*, and for related purposes

[Assented to 5 July 1994]

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Crimes (Child Sex Tourism) Amendment Act 1994*.

(2) In this Act, “**Principal Act**” means the *Crimes Act 1914*¹.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Insertion of new Part IIIA

3. After Part III of the Principal Act the following Part is inserted:

“PART IIIA—CHILD SEX TOURISM

“Division 1—Preliminary

General

“50AA.(1) In this Part:

‘act of indecency’ has the meaning given by section 50AB;

‘Australia’ includes the external Territories;

‘induce’ means induce by threats, promises or otherwise;

‘offence’, in the case of a reference to an offence against this Part or against a particular provision of it, has a meaning affected by subsections (2) and (3) of this section;

‘sexual intercourse’ has the meaning given by section 50AC;

‘vagina’ includes:

- (a) any part of a female person’s genitalia; and
- (b) a surgically constructed vagina.

“(2) A reference in this Part (except section 50DB) to an offence against this Part or against a particular provision of it includes:

- (a) a reference to:
 - (i) an offence against section 6, 7 or 50DB; or
 - (ii) an offence against subsection 86(1) because of paragraph 86(1)(a);

that relates to an offence against this Part or against that provision of it; and

- (b) a reference to an offence against this Part, or against that provision of it, because of section 5.

“(3) A reference in section 50DB to an offence against this Part or against a particular provision of it does not include a reference to such an offence because of section 5.

“(4) Section 7A does not apply to an offence against this Part.

“(5) Paragraph 86(1)(a) does not apply to an offence against section 50DB.

Meaning of “act of indecency”

“50AB.(1) In this Part:

‘act of indecency’ means an act that:

- (a) is of a sexual nature; and
- (b) involves the human body, or bodily actions or functions; and
- (c) is so unbecoming or offensive that it amounts to a gross breach of ordinary contemporary standards of decency and propriety in the Australian community.

“(2) To avoid doubt, ‘act of indecency’ includes an indecent assault.

Meaning of “sexual intercourse”

“50AC.(1) In this Part:

‘sexual intercourse’ means:

- (a) the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person; or
- (b) the penetration, to any extent, of the vagina or anus of a person, carried out by another person by an object; or
- (c) fellatio; or
- (d) cunnilingus; or
- (e) the continuation of any activity mentioned in paragraph (a), (b), (c) or (d).

“(2) Paragraph (1)(a) or (b) does not apply to an act of penetration if:

- (a) it is carried out for a proper medical or hygienic purpose; or
- (b) it is carried out for a proper law enforcement purpose.

Who can be prosecuted for an offence committed overseas

“50AD. A person must not be charged with an offence against this Part that the person allegedly committed outside Australia unless, at the time of the offence, the person was:

- (a) an Australian citizen; or
- (b) a resident of Australia; or
- (c) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or
- (d) any other body corporate that carries on its activities principally in Australia.

“Division 2—Sexual offences against children overseas

Sexual intercourse with child under 16

“50BA. A person must not, while outside Australia, engage in sexual intercourse with a person who is under 16.

Penalty: Imprisonment for 17 years.

Inducing child under 16 to engage in sexual intercourse

“50BB. A person must not induce a person who is under 16 to engage in sexual intercourse with a third person outside Australia and in the presence of the first-mentioned person.

Penalty: Imprisonment for 17 years.

Sexual conduct involving child under 16

“50BC. A person (**‘the first person’**) contravenes this section if, while the first person is outside Australia:

- (a) the first person commits an act of indecency on a person who is under 16; or
- (b) the first person submits to an act of indecency committed by a person who is under 16; or
- (c) the first person commits an act of indecency in the presence of a person who is under 16 (**‘the child’**), and the first person intends to derive gratification from the child’s presence during the act; or
- (d) the first person submits to an act of indecency committed in the presence of a person who is under 16 (**‘the child’**), and the first person intends to derive gratification from the child’s presence during the act; or
- (e) the first person engages in sexual intercourse with another person in the presence of a person who is under 16 (**‘the child’**), and the first person intends to derive gratification from the child’s presence during the sexual intercourse.

Penalty: Imprisonment for 12 years.

Inducing child under 16 to be involved in sexual conduct

“50BD.(1) A person (**‘the first person’**) must not induce a person who is under 16 to commit, to submit to, or to be present while a third person commits, an act of indecency that:

- (a) is committed outside Australia and in the presence of the first person; and
- (b) is not committed by or on the first person.

“(2) A person (**‘the first person’**) must not induce a person who is under 16 to be present while a third person engages in sexual intercourse with a fourth person outside Australia and in the presence of the first person.

Penalty: Imprisonment for 12 years.

“Division 3—Defences

Defence based on belief about age

“50CA. It is a defence to a prosecution for an offence against Division 2 that the defendant believed at the time of the sexual intercourse or act of indecency that the person in relation to whom the offence was allegedly committed was 16 or over.

Defence based on valid and genuine marriage

“50CB. It is a defence to a prosecution for an offence against Division 2 that:

- (a) at the time of the sexual intercourse or act of indecency, there existed between the defendant and the person in relation to whom the offence was allegedly committed a marriage that was valid, or recognised as valid, under the law of:
 - (i) the place where the marriage was solemnised; or
 - (ii) the place where the offence was allegedly committed; or
 - (iii) the place of the defendant’s residence or domicile; and
- (b) when it was solemnised, the marriage was genuine.

Defence must be proved on balance of probabilities

“50CC. A defence under this Division must be proved on the balance of probabilities.

Jury may consider reasonableness of alleged belief

“50CD. In determining whether the defendant believed as mentioned in section 50CA, the jury may take into account whether the alleged belief was reasonable in the circumstances.

“Division 4—Offences of benefiting from, or encouraging, offences against this Part

Benefiting from offence against this Part

“50DA.(1) A person contravenes this section if:

- (a) the person does an act, or makes an omission, whether within or outside Australia, with the intention of benefiting, whether financially or not, from conduct of a kind that would constitute an offence against this Part; and
- (b) the act or omission is reasonably capable of resulting in the person benefiting from such conduct;

whether or not that conduct in fact occurs or has occurred.

Penalty: Imprisonment for 17 years.

“(2) An example of an act covered by paragraph (1)(b) is profiting from an arrangement that facilitates an offence against this Part.

Encouraging offence against this Part

“50DB.(1) A person contravenes this section if:

- (a) the person does an act, or makes an omission, whether within or outside Australia, with the intention of encouraging conduct of a kind that would constitute an offence against this Part (other than this section); and

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- (b) the act or omission is reasonably capable of encouraging such conduct;

whether or not that conduct in fact occurs.

Penalty: Imprisonment for 17 years.

“(2) In this section:

‘**encourage**’ means:

- (a) encourage, incite to, or urge, by any means whatever, for example, by written, electronic or other form of communication; or
- (b) aid, facilitate, or contribute to, in any way whatever.

“(3) These are examples of acts covered by paragraph (1)(b):

- (a) organising an arrangement that facilitates an offence against this Part (other than this section);
- (b) assisting a person to travel outside Australia in order to commit an act that would constitute an offence against Division 2;
- (c) advertising an offer so to assist a person or an arrangement for so assisting a person.

“Division 5—Video link evidence

When court may take evidence by video link

“50EA. In a proceeding for an offence against this Part, the court may direct that a witness give evidence by video link if:

- (a) the witness will give the evidence from outside Australia; and
- (b) the witness is not a defendant in the proceeding; and
- (c) the facilities required by section 50EC are available or can reasonably be made available; and
- (d) the court is satisfied that attendance of the witness at the court to give the evidence would:
 - (i) cause unreasonable expense or inconvenience; or
 - (ii) cause the witness psychological harm or unreasonable distress; or
 - (iii) cause the witness to become so intimidated or distressed that his or her reliability as a witness would be significantly reduced; and
- (e) the court is satisfied that it is consistent with the interests of justice that the evidence be taken by video link.

Motion of parties

“50EB. A direction can only be made on application by a party to the proceeding.

Technical requirements for video link

“50EC.(1) A witness can give evidence under a direction only if:

(a) the courtroom or other place in Australia where the court is sitting (**‘the Australian point’**); and

(b) the place where the evidence is given (**‘the overseas point’**);

are equipped with video facilities that:

(c) enable appropriate persons at the Australian point to see and hear the witness give the evidence; and

(d) enable appropriate persons at the overseas point to see and hear appropriate persons at the Australian point.

“(2) In subsection (1):

‘appropriate persons’ means such persons as the court considers appropriate.

Application of laws about witnesses

“50ED.(1) A person who gives evidence under a direction is taken to give it at the courtroom or other place in Australia where the court is sitting.

“(2) Subsection (1) has effect, for example, for the purposes of laws relating to evidence, procedure, contempt of court and perjury.

Administration of oaths and affirmations

“50EE. An oath or affirmation to be sworn or made by a witness who is to give evidence under a direction may be administered either:

(a) by means of the video link, in as nearly as practicable the same way as if the witness were to give the evidence at the courtroom or other place in Australia where the court is sitting; or

(b) as follows:

(i) on behalf of the court and as directed by it;

(ii) by a person (whether an Australian official or not) authorised by the court;

(iii) at the place where the witness is to give the evidence.

Expenses

“50EF. A court may make such orders as are just for payment of expenses incurred in connection with giving evidence under a direction by the court under this Division.

Other laws about foreign evidence not affected

“50EG. This Division does not prevent any other law about taking evidence of a witness outside Australia from applying for the purposes of a proceeding for an offence against this Part.

“Division 6—Other rules about conduct of trials

Certain material taken to be evidence of age

“50FA.(1) In determining for the purposes of this Part whether a person is under 16, or was under 16 at a particular time, or how old a person is or was at a particular time, a jury or court may treat any of the following as admissible evidence:

- (a) the person’s appearance;
- (b) medical or other scientific opinion;
- (c) a document that is or appears to be an official or medical record from a country outside Australia;
- (d) a document that is or appears to be a copy of such a record.

“(2) This section does not make any other kind of evidence inadmissible, and does not affect a prosecutor’s duty to do all he or she can to adduce the best possible evidence for determining the question.

“(3) If, on a trial for an offence against this Part, evidence may be treated as admissible because of subsection (1), the court must warn the jury that it must be satisfied beyond reasonable doubt in determining the question.

Alternative verdicts

“50FB.(1) If, on a trial for an offence against section 50BA, the jury is not satisfied that the defendant is guilty of the offence, but is satisfied that he or she is guilty of an offence against section 50BC, it may find the defendant not guilty of the offence against section 50BA but guilty of the offence against section 50BC.

“(2) If, on a trial for an offence against section 50BB, the jury is not satisfied that the defendant is guilty of the offence, but is satisfied that he or she is guilty of an offence against subsection 50BD(1), it may find the defendant not guilty of the offence against section 50BB but guilty of the offence against subsection 50BD(1).

Double jeopardy

“50FC. If a person has been convicted or acquitted in a country outside Australia of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence against this Part in respect of that conduct.

Sentencing

“50FD.(1) In determining the sentence to be passed, or the order to be made, in respect of a person for an offence against Division 2, the court must take into account the age and maturity of the person in relation to whom the offence was committed, so far as these matters are relevant and known to the court.

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“(2) The matters mentioned in subsection (1) are in addition to any other matters the court must take into account, for example, the matters mentioned in subsection 16A(2).

“Division 7—Saving of other laws

Saving of other laws

“50GA. This Part is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.”.

NOTE

1. No. 12, 1914, as amended. For previous amendments, see No. 6, 1915; No. 54, 1920; No. 9, 1926; No. 13, 1928; No. 30, 1932; No. 5, 1937; No. 6, 1941; No. 77, 1946; No. 80, 1950; No. 10, 1955; No. 11, 1959; No. 84, 1960; No. 93, 1966; Nos. 33 and 216, 1973; No. 56, 1975; No. 37, 1976; Nos. 19 and 155, 1979; No. 70, 1980; No. 122, 1981; Nos. 67, 80 and 153, 1982; Nos. 91, 114 and 136, 1983; Nos. 10, 63 and 165, 1984; No. 193, 1985; Nos. 76, 102 and 168, 1986; Nos. 73, 120 and 141, 1987; Nos. 63 and 108, 1989; Nos. 4, 11 and 75, 1990; Nos. 28, 59, 99 (as amended by No. 145, 1991), 120, 123, 140 and 145, 1991; No. 164, 1992; and No. 98, 1993.

[*Minister's second reading speech made in—
House of Representatives on 3 May 1994
Senate on 30 June 1994*]