

Serial
Criminal Code Amendment (Sexual Offences) Bill 2014
Mr Elferink

A Bill for an Act to amend the Criminal Code

CONSULTATION DRAFT ONLY –
PREPARED FOR THE DEPARTMENT OF THE ATTORNEY-GENERAL AND
JUSTICE

NORTHERN TERRITORY OF AUSTRALIA

CRIMINAL CODE AMENDMENT (SEXUAL OFFENCES) ACT 2014

Act No. [] of 2014

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2014

An Act to amend the Criminal Code

[Assented to [] 2014]
[Second reading [] 2014]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Criminal Code Amendment (Sexual Offences) Act 2014*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Act amended

This Act amends the Criminal Code.

4 Section 1 amended

(1) Section 1, definitions ***aggravated offence***, ***sexual intercourse*** and ***vagina***

omit

(2) Section 1

insert (in alphabetical order)

aggravated offence, see:

(a) for Part VI – section 149B; or

(b) for Part VIA – section 208GC(1).

close family member, for Part VIA, Division 6, see section 208M.

consent, for Part VIA, see section 208GB(1).

indecent, for Part VIA, see section 208GA(1).

married, for Part VIA, see section 208GC(1).

mental impairment, for Part VIA, Division 5, see section 208L.

position of authority, for Part VIA, see section 208KA.

sexually penetrate, for Part VIA, see section 208G.

touches, for Part VIA, see section 208GC(2).

young person, for Part VIA, Division 4, see section 208K.

5 Section 72 amended

(1) Section 72, definition **act of piracy**, paragraph (b)

omit, insert

(b) of boarding a ship against the wishes or without the knowledge of the master for the purpose of committing on the ship, or in fact committing on the ship, an act that, if committed in the Territory would constitute one of the following:

(i) the crime of murder mentioned in section 156;

(ii) a crime against section 181, 194, or 195;

(iii) an offence mentioned in Part VIA, Division 2 or 3;

(iv) a crime or an offence against section 241, 243 or 245; or

(2) Section 72, definition **act of piracy**

omit

all words from "his having" to "master himself"

insert

the person having taken control of the ship against the wishes of the master where the master

- (3) Section 72, definition **act of piracy**, paragraphs (a) and (c), at the end

insert

or

6 Part V, Division 2, Subdivision 2 replaced

Part V, Division 2, Subdivision 2

repeal, insert

Division 2A Offences relating to human remains

126 Failure to perform duty in relation to human remains

- (1) This section applies in relation to a person who is required to perform a duty in relation to the burial or other disposition of human remains, whether or not the duty is to be performed for reward.
- (2) A person is required to perform a duty mentioned in subsection (1) if:
- (a) the duty is imposed on the person by law; or
 - (b) the person has given another person an undertaking, whether orally or in writing, to perform the duty.
- (3) The person commits an offence if the person:
- (a) engages in conduct; and
 - (b) the conduct results in a failure to perform the duty.

Maximum penalty: Imprisonment for 2 years.

127 Interference with or indignity to human remains

- (1) A person is guilty of an offence if the person:
- (a) engages in conduct in relation to human remains, whether or not the remains are buried; and

-
- (b) the conduct results in an improper or indecent interference with, or an indignity to, the remains.

Maximum penalty: Imprisonment for 2 years.

- (2) For this section, **improper**, **indecent** or an **indignity** means improper, indecent or an indignity according to the standards of ordinary people.
- (3) In a prosecution for an offence against subsection (1), the question of what is improper or indecent, or is an indignity, is a matter for the trier of fact.

7 Section 188 amended

- (1) Section 188(2)(k)
omit
- (2) Section 188(2)(m)
omit
weapon,
insert
weapon;
- (3) Section 188(2)(a) to (j), at the end
insert
or
- (4) Section 188(3)
omit

8 Sections 192 to 192B repealed

Sections 192 to 192B

repeal

9 Part VIA inserted

After section 208F

insert

Part VIA Sexual offences

Division 1 Interpretation

208G Sexual penetration

(1) In this Part (other than Division 7):

sexually penetrate means:

- (a) penetrate (to any extent) the genitalia or anus of a person with any part of the body of a person or with anything manipulated by a person; or
- (b) penetrate (to any extent) the mouth of a person with the penis of a person; or
- (c) perform cunnilingus on a person; or
- (d) continue to sexually penetrate as defined in paragraphs (a) to (c).

(2) In this section:

genitalia, of a female, includes the internal and external genitalia and any surgically constructed genitalia.

part of the body includes a surgically constructed part of the body.

Note for section 208G

Section 208S provides a general defence for an offence against this Part for an act of sexual penetration in the course of a procedure carried out in good faith for medical or hygienic purposes.

208GA Indecency

(1) In this Part:

indecent means indecent according to the standards of ordinary people.

(2) In a prosecution for an offence, indecency or gross indecency is a matter for the trier of fact.

208GB Consent

(1) In this Part:

consent means free and voluntary agreement.

(2) Examples of circumstances in which a person does not consent to an act include the following:

- (a) the person submits to the act because of force or the fear of force to the person or to someone else;
- (b) the person submits to the act because the person is unlawfully detained;
- (c) the person is asleep or unconscious or is so affected by alcohol or another drug as to be incapable of consenting;
- (d) the person is incapable of understanding the essential nature of the act;
- (e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes).

Note for section 208GB

Section 208R also requires that the judge direct a jury, in a relevant case, as to the factors the jury may have regard to in determining whether or not there was consent.

208GC Other definitions

(1) In this Part:

aggravated offence means an offence against this Part that is an aggravated offence under section 208Q.

married means married according to the law of Australia.

(2) For this Part, a person **touches** another person if he or she touches the other person with any part of his or her body or with anything manipulated by him or her.

Division 2 Sexual acts committed without consent

208H Unlawful sexual penetration

(1) A person is guilty of an offence if:

- (a) the person sexually penetrates another person; and

(b) the other person does not consent to the sexual penetration;
and

(c) the person is reckless as to the other person's lack of consent.

Maximum penalty: Imprisonment for life.

(2) A person who is guilty of the offence of attempting to commit an offence against subsection (1) is liable to imprisonment for 7 years or, for an aggravated offence, 14 years.

(3) A person is guilty of an offence if:

(a) the person is sexually penetrated by another person and intends the sexual penetration to occur; and

(b) the other person does not consent to the sexual penetration;
and

(c) the person is reckless as to the other person's lack of consent.

Maximum penalty: Imprisonment for life.

(4) A person who is guilty of the offence of attempting to commit an offence against subsection (3) is liable to imprisonment for 7 years or, for an aggravated offence, 14 years.

(5) For this section, being reckless as to a lack of consent to sexual penetration includes not giving any thought to whether or not the other person is consenting to sexual penetration.

208HA Compelling sexual penetration

A person is guilty of an offence if:

(a) the person compels (by force or otherwise) another person to engage in conduct:

(i) to sexually penetrate the other person's own genitalia or anus; or

(ii) to sexually penetrate, or be sexually penetrated by, someone else; or

(iii) to sexually penetrate, or be sexually penetrated by, an animal; and

(b) the other person does not consent to engaging in the conduct;
and

(c) the person is reckless as to the other person's lack of consent.

Maximum penalty: Imprisonment for 15 years or, for an aggravated offence, 20 years.

208HB Gross indecency

A person is guilty of an offence if:

- (a) the person performs an act on another person; and
- (b) the act is grossly indecent; and
- (c) the other person does not consent to the act being performed; and
- (d) the person is reckless as to whether the act is grossly indecent; and
- (e) the person is reckless as to the other person's lack of consent.

Maximum penalty: Imprisonment for 14 years.

208HC Indecent touching

(1) A person is guilty of an offence if:

- (a) the person touches another person; and
- (b) the touching is indecent; and
- (c) the other persons does not consent to the touching; and
- (d) the person is reckless as to whether the touching is indecent; and
- (e) the person is reckless as to the other person's lack of consent.

Maximum penalty: Imprisonment for 7 years or, for an aggravated offence, 9 years.

(2) A person is guilty of an offence if:

- (a) the person is touched by another person; and
- (b) the touching is indecent; and
- (c) the person intends the touching to occur; and
- (d) the other person does not consent to the touching; and

(e) the person is reckless as to whether the touching is indecent;
and

(f) the person is reckless as to the other person's lack of consent.

Maximum penalty: Imprisonment for 7 years or, for an
aggravated offence, 9 years.

(3) For this section, being reckless as to a lack of consent to touching includes not giving any thought to whether or not the other person is consenting to the touching.

208HD Compelling indecent touching

A person is guilty of an offence if:

(a) the person compels (by force or otherwise) another person to:

(i) touch any part of the other person's own body; or

(ii) touch, or be touched by, someone else; or

(iii) touch, or be touched by, an animal; and

(b) the touching is indecent; and

(c) the other person does not consent to the touching; and

(d) the person is reckless as to whether the touching is indecent;
and

(e) the person is reckless as to the other person's lack of consent.

Maximum penalty: Imprisonment for 7 years or, for an
aggravated offence, 9 years.

208HE Indecent act directed at person

(1) A person is guilty of an offence if:

(a) the person engages in an act directed at another person;
and

(b) the act is indecent; and

(c) the other person does not consent to the act being directed at
him or her; and

(d) the person is reckless as to whether the act is indecent; and

(e) the person is reckless as to the other person's lack of consent.

Maximum penalty: Imprisonment for 5 years or, for an aggravated offence, 6 years.

(2) For subsection (1), being reckless as to a lack of consent to the indecent act includes not giving any thought to whether or not the other person is consenting to the act.

(3) In this section:

indecent act does not include indecent touching.

208HF Fault elements for offence of attempting to commit sexual act without consent

(1) This section applies if a person is charged with an offence of attempting to commit a non-consensual sexual offence (an ***attempted offence***).

(2) Section 43BF(4) does not apply in relation to the attempted offence.

(3) The fault element in relation to a physical element of the attempted offence is the same as the fault element in relation to that physical element of the non-consensual sexual crime.

(4) In this section:

non-consensual sexual offence means an offence created by a provision of this Division.

Division 3 Sexual acts committed against or with children

208J Sexual penetration involving child

(1) A person is guilty of an offence if the person:

(a) sexually penetrates a child under 14 years of age; or

(b) is sexually penetrated by a child under 14 years of age and intends the sexual penetration to occur.

Maximum penalty: Imprisonment for life.

(2) A person is guilty of an offence if the person:

(a) sexually penetrates a child of or over 14 years of age but under 16 years of age; or

-
- (b) is sexually penetrated by a child of or over 14 years of age but under 16 years of age and intends the sexual penetration to occur.

Maximum penalty: Imprisonment for 16 years or, for an aggravated offence, 20 years.

208JA Gross indecency involving child

- (1) A person is guilty of an offence if:

- (a) the person performs an act of gross indecency on a child under 14 years of age; or
- (b) a child under 14 years of age performs an act of gross indecency on the person and the person intends the act to occur.

Maximum penalty: Imprisonment for 16 years or, for an aggravated offence, 20 years.

- (2) A person is guilty of an offence if:

- (a) the person performs an act of gross indecency on a child of or over 14 years of age but under 16 years of age; or
- (b) a child of or over 14 years of age but under 16 years of age performs an act of gross indecency on the person and the person intends the act to occur.

Maximum penalty: Imprisonment for 14 years or, for an aggravated offence, 16 years.

208JB Indecent touching involving child

- (1) A person is guilty of an offence if:

- (a) the person:
- (i) touches a child under 14 years of age; or
- (ii) is touched by a child under 14 years of age and intends the touching to occur; and
- (b) the touching is indecent; and
- (c) the person is reckless as to whether the touching is indecent.

Maximum penalty: Imprisonment for 14 years or, for an aggravated offence, 17 years.

(2) A person is guilty of an offence if:

(a) the person:

(i) touches a child of or over 14 years of age but under 16 years of age; or

(ii) is touched by a child of or over 14 years of age but under 16 years of age and intends the touching to occur; and

(b) the touching is indecent; and

(c) the person is reckless as to whether the touching is indecent.

Maximum penalty: Imprisonment for 10 years or, for an aggravated offence, 12 years.

208JC Indecent act directed at child

(1) A person is guilty of an offence if:

(a) the person engages in an act directed at a child under 14 years of age; and

(b) the act is indecent; and

(c) the person is reckless as to whether the act is indecent.

Maximum penalty: Imprisonment for 12 years or, for an aggravated offence, 14 years.

(2) A person is guilty of an offence if:

(a) the person engages in an act directed at a child of or over 14 years of age but under 16 years of age;

(b) the act is indecent; and

(c) the person is reckless as to whether the act is indecent.

Maximum penalty: Imprisonment for 8 years or, for an aggravated offence, 10 years.

(3) In this section:

indecent act does not include indecent touching.

208JD Persistent sexual conduct involving child

- (1) A person is guilty of an offence if the person:
- (a) is an adult; and
 - (b) engages in persistent sexual conduct in relation to a particular child under 16 years of age during any period.

Maximum penalty: 20 years.

- (2) For this section, a person engages in ***persistent sexual conduct*** if the person engages in conduct constituting an offence against another provision of this Part (a ***relevant offence***) on 2 or more separate occasions occurring on separate days.
- (3) For a person to be found guilty of an offence against subsection (1), all the members of the jury must be satisfied the evidence establishes that the person has engaged in persistent sexual conduct.
- (4) A charge of an offence against subsection (1):
- (a) must specify with reasonable particularity the period during which the offence against subsection (1) occurred; and
 - (b) must specify the relevant offences alleged to have been committed by the accused during that period.
- (5) However, in relation to the relevant offences, it is immaterial:
- (a) whether or not the conduct constituting the offences is of the same nature, or constitutes the same offence, on each occasion; or
 - (b) whether any of that conduct occurred outside the Territory, so long as it occurred in the Territory on at least one occasion.
- (6) Also, in relation to the relevant offences:
- (a) the prosecution is not required to provide particulars of the dates or exact circumstances of any offence that would be necessary if the offence were charged as a separate offence; and
 - (b) the jury is not required to be satisfied about the particulars of an offence it would have to be satisfied about if the offence were charged as a separate offence; and

-
- (c) all the members of the jury are not required to be satisfied about the same relevant offences.
- (7) A person who has been convicted or acquitted of an offence against subsection (1) may not be convicted of another offence against this Part in relation to the same child that is alleged to have been committed in the period during which the accused was alleged to have committed an offence against subsection (1).
- (8) However, subsection (7) does not prevent an alternative verdict under section 208SB.
- (9) A person who has been convicted or acquitted of an offence against this Part in relation to a child under 16 years of age (a **sexual offence**) may not be convicted of an offence against subsection (1) in relation to the same child if any of the occasions relied on as evidence of the commission of the offence against subsection (1) includes the occasion of that sexual offence.
- (10) A proceeding for an offence against subsection (1) must not be started without the consent of the Director of Public Prosecutions.
- (11) However, a person may be arrested for, charged with, or remanded in custody or on bail in connection with, an offence against subsection (1) before the necessary consent has been given.

208JE No defence of consent

Consent of the child concerned is not a defence to an offence against this Division.

208JF No defence of belief in marriage or de facto relationship

It is not a defence to an offence against this Division if the person charged with the offence believed he or she:

- (a) was married to the child; or
- (b) was the de facto partner of the child.

208JG Application of absolute liability to circumstance of child's age

For an offence against this Division, absolute liability applies to the circumstance of a child against whom the offence is committed being under 14 years of age.

Note for section 208JG

Section 43AO(2) provides that if a law that creates an offence provides that absolute liability applies to a particular physical element of the offence:

- (a) *there are no fault elements for that physical element; and*

-
- (b) *the defence of mistake of fact under section 43AX is unavailable in relation to that physical element.*

208JH Application of strict liability to circumstance of child's age

For an offence against this Division, strict liability applies to the circumstance of a child against whom the offence is committed being of or over 14 years of age but under 16 years of age.

Notes for section 208JH

- 1 *Section 43AN(2) provides that if a law that creates an offence provides that strict liability applies to a particular physical element of the offence:*
- (a) *there are no fault elements for that physical element; and*
 - (b) *the defence of mistake of fact under section 43AX is available in relation to that physical element.*
- 2 *Under section 43BU, an accused relying on the defence of mistake of fact has an evidential burden in relation to the matter.*

208JI Proceeding against child under 14 years

- (1) A proceeding for an offence against this Division alleged to have been committed by a child under the age of 14 years of age must not be started without the consent of the Director of Public Prosecutions.
- (2) However, a child mentioned in subsection (1) may be arrested for, charged with, or remanded in custody or on bail in connection with, an offence against this Division before the necessary consent has been given.

Division 4 Sexual acts committed against young persons by persons in positions of authority

208K Definition – young person

In this Division:

young person means a person who is of or over 16 years of age but under 18 years of age.

208KA Position of authority

A person is in a **position of authority** in relation to a young person if, at the time of the conduct concerned:

- (a) the person is a school teacher at a school and the young person is a pupil at the school; or
- (b) the person is a parent, step-parent, foster parent, legal guardian or legal custodian of the young person; or

-
- (c) the person is a religious instructor to the young person; or
 - (d) the person is a counsellor to the young person in a professional capacity; or
 - (e) the person is a health professional and the young person is his or her patient; or
 - (f) the person is a police or correctional services officer and the young person is in his or her care, custody or control as such an officer; or
 - (g) the person has authority over the young person because of the circumstances of the person's relationship with the young person, regardless of whether the authority is exercised lawfully.

Example for paragraph (g)

The person supplies the young person with drugs.

208KB Sexual penetration involving young person

A person who is in a position of authority in relation to a young person is guilty of an offence if the person:

- (a) sexually penetrates the young person; or
- (b) is sexually penetrated by the young person and intends the sexual penetration to occur.

Maximum penalty: Imprisonment for 12 years or, for an aggravated offence, 15 years.

208KC Gross indecency involving young person

(1) A person who is in a position of authority in relation to a young person is guilty of an offence if:

- (a) the person performs an act of gross indecency on the young person; or
- (b) the young person performs an act of gross indecency on the person and the person intends the act to occur.

Maximum penalty: Imprisonment for 8 years or, for an aggravated offence, 10 years.

208KD Indecent touching involving young person

A person who is in a position of authority in relation to a young person is guilty of an offence if:

- (a) the person:
 - (i) touches the young person; or
 - (ii) is touched by the young person and intends the touching to occur; and
- (b) the touching is indecent; and
- (c) the person is reckless as to whether the touching is indecent.

Maximum penalty: Imprisonment for 7 years or, for an aggravated offence, 9 years.

208KE Indecent act directed at young person

- (1) A person who is in a position of authority in relation to a young person is guilty of an offence if the person:
 - (a) engages in an indecent act directed at the young person; and
 - (b) is reckless as to whether the act is indecent.

Maximum penalty: Imprisonment for 5 years or, for an aggravated offence, 6 years.

- (2) In this section:

indecent act does not include indecent touching.

208KF No defence of consent

Consent of the young person concerned is not a defence to an offence against this Division.

208KG Defence – marriage or de facto relationship

A person who is in a position of authority in relation to a young person is not criminally responsible for an offence against this Division in relation to an act if, at the time of the act:

- (a) the person was married to, or honestly and reasonably believed he or she was married to, the young person; or

-
- (b) the person was the de facto partner of, or honestly and reasonably believed he or she was the de facto partner of, the young person.

208KH Application of absolute liability to circumstance of person being young person

For an offence against this Division, absolute liability applies to the circumstance of a person against whom the offence is committed being a young person.

Division 5 Sexual acts committed against or with mentally impaired persons by carers

208L Definition

In this Division:

mental impairment includes senility, intellectual disability, mental illness, brain damage and severe personality disorder.

208LA Person responsible for care of person with mental impairment

For this Division, a person is responsible for the care of a person with a mental impairment if the person provides medical, nursing, therapeutic or educative services to the person in connection with his or her mental impairment.

208LB Sexual penetration involving person with mental impairment

A person who is responsible for the care of a person with a mental impairment is guilty of an offence if the person:

- (a) sexually penetrates the person with a mental impairment; or
- (b) is sexually penetrated by the person with a mental impairment and intends the sexual penetration to occur.

Maximum penalty: Imprisonment for 12 years or, for an aggravated offence, 15 years.

208LC Gross indecency involving person with mental impairment

A person who is responsible for the care of a person with a mental impairment is guilty of an offence if:

- (a) the person performs an act of gross indecency on the person with a mental impairment; or

-
- (b) the person with a mental impairment performs an act of gross indecency on the person and the person intends the act to occur.

Maximum penalty: Imprisonment for 8 years or, for an aggravated offence, 10 years.

208LD Indecent touching involving person with mental impairment

A person who is responsible for the care of a person with a mental impairment is guilty of an offence if:

- (a) the person:
- (i) touches the person with a mental impairment ; or
 - (ii) is touched by the person with a mental impairment and intends the touching to occur; and
- (b) the touching is indecent; and
- (c) the person is reckless as to whether the touching is indecent.

Maximum penalty: Imprisonment for 7 years or, for an aggravated offence, 9 years.

208LE Indecent act directed at person with mental impairment

- (1) A person who is responsible for the care of a person with a mental impairment is guilty of an offence if:
- (a) the person engages in an act directed at the person with a mental impairment ; and
 - (b) the act is indecent; and
 - (c) the person is reckless as to whether the act is indecent.

Maximum penalty: Imprisonment for 5 years or, for an aggravated offence, 6 years.

- (2) In this section:

indecent act does not include indecent touching.

208LF Defence – consent

- (1) Consent of the person with the mental impairment is not a defence to an offence against this Division, except as provided by this section.

(2) A person who is responsible for the care of a person with a mental impairment is not criminally responsible for an offence against this Division in relation to an act if, at the time of the act:

- (a) the person with the mental impairment consented to the act; and
- (b) the giving of the consent was not unduly influenced by the fact that the person was responsible for the care of the person with the mental impairment.

208LG Defence – marriage or de facto relationship

A person who is responsible for the care of a person with a mental impairment is not criminally responsible for an offence against this Division in relation to an act if, at the time of the act:

- (a) the person was married to, or honestly and reasonably believed he or she was married to, the person with the mental impairment; or
- (b) the person was the de facto partner of, or honestly and reasonably believed he or she was the de facto partner of, the person with the mental impairment.

Division 6 Incest

208M Definition

In this Division:

close family member, in relation to a person, means someone who from birth and not from marriage or adoption, is a parent, son, daughter, sibling (including a half-brother or half-sister), grandparent or grandchild of the person.

208MA Incest

- (1) A person is guilty of an offence if the person:
 - (a) sexually penetrates another person who is a close family member; or
 - (b) is sexually penetrated by another person who is a close family member and intends the sexual penetration to occur; and
 - (c) knows the other person is a close family member.

Maximum penalty: Imprisonment for 7 years.

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- (2) For subsection (1)(c), the person is presumed to know that the other person is a close family member unless the contrary is proved.
 - (3) A proceeding for an offence against subsection (1) must not be started without the consent of the Director of Public Prosecutions.
 - (4) However, a person may be arrested for, charged with, or remanded in custody or on bail in connection with, an offence against subsection (1) before the necessary consent has been given.

208MB No defence of consent

Consent of the close family member is not a defence to an offence against this Division.

Division 7 Bestiality

208N Offence to commit bestiality

- (1) A person is guilty of an offence if the person:
 - (a) sexually penetrates an animal; or
 - (b) is sexually penetrated by an animal and intends the sexual penetration to occur.

Maximum penalty: Imprisonment for 3 years.

- (2) For subsection (1), sexual penetration occurs if:
 - (a) the person inserts (to any extent) the person's penis into the genitalia or anus of an animal; or
 - (b) the animal's penis is inserted (to any extent) into the person's genitalia, anus or mouth.

Division 8 Gross indecency in public

208P Offence to commit grossly indecent act in public

A person is guilty of an offence if:

- (a) the person performs an act; and
- (b) the act is grossly indecent; and

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- (c) the act is performed in a public place within the view of another person or when another person is present.

Maximum penalty: Imprisonment for 2 years.

Division 9 Increased penalties for aggravated offences

208Q Increased penalties for aggravated offences

- (1) The following are circumstances of aggravation for offences committed against this Part, and a maximum penalty specified in this Part for an aggravated offence applies if any such circumstance of aggravation applies to the offence:
- (a) the offence was committed during torture;
 - (b) the offence was committed by the use or threatened use of an offensive weapon;
 - (c) the offence was committed by a person in the company of another person;
 - (d) the offence was committed in circumstances that involved the victim being caused serious harm or being threatened with serious harm or death;
 - (e) the offence was committed against a child under 14 years of age (except in the case of an offence against section 208J(1), 208JA(1), 208JB(1) or 208JC(1));
 - (f) the offence was committed against a child of or over 14 years of age but under 16 years of age (except in the case of an offence against section 208J(2), 208JA(2) or 208JB(2) or 208JC(2));
 - (g) the offence was committed against a person in abuse of a position of trust (except in the case of an offence against Division 4 or 5);
 - (h) the offence was committed against a person in abuse of a position of authority (except in the case of an offence against Division 4).
- (2) For subsection (1)(a), the offence was committed during torture if the person who committed it deliberately and systematically, over a period, inflicted severe pain on the person against whom it was committed.

208QA Procedural and evidentiary provisions

- (1) If the prosecution intends to prove an aggravated offence, the relevant circumstance of aggravation must be contained in the charge.
- (2) In order to prove an aggravated offence, the prosecution must prove that the person who committed the offence was reckless as to the circumstance of aggravation.

Division 10 Legal proceedings

Note for Division 10

The Sexual Offences (Evidence and Procedure) Act makes further provisions about evidence and procedure for offences against this Part.

208R Jury directions on consent

- (1) In a proceeding for an offence against this Part, the Judge must, in a relevant case, direct the jury that a person must not be regarded as having consented to a particular sexual act merely because:
 - (a) the person did not say or do anything to indicate that she or he did not consent; or
 - (b) the person did not protest or physically resist; or
 - (c) the person did not sustain physical injury; or
 - (d) during the period or on the occasion when the sexual act occurred, or on an earlier occasion, the person consented to engage in a sexual act (whether or not of the same type) with the person charged with the offence or with another person.
- (2) In a proceeding for an offence against this Part, the Judge must, in a relevant case, direct the jury that, in deciding whether the accused was under a mistaken belief that a person consented to a sexual act, the jury may consider whether the mistaken belief was reasonable in the circumstances.

Division 11 General provisions

208S Defence – medical or hygienic procedures

A person is not criminally responsible for an offence against this Part in relation to any sexual penetration, touching or other act done in good faith in the course of a procedure for medical or hygienic purposes.

208SA Alternative verdicts

- (1) This section applies if, in a proceeding against a person charged with an offence against this Part (the **prosecuted offence**), the trier of fact:
 - (a) is not satisfied beyond reasonable doubt that the person committed the prosecuted offence; but
 - (b) is satisfied beyond reasonable doubt that the person committed an offence, or attempted to commit an offence, against another provision of this Part (the **alternative offence**).
- (2) The trier of fact may find the person not guilty of the prosecuted offence but guilty of the alternative offence.
- (3) This section does not authorise the trier of fact to find a person guilty of an alternative offence for which the maximum penalty is greater than the maximum penalty for the prosecuted offence.

10 Sections 319 and 377 repealed

Sections 319 and 377

repeal

11 Part XII, Division 11 inserted

After section 453

insert

Division 11 Criminal Code Amendment (Sexual Offences) Act 2014

454 Definitions

In this Division:

commencement means the commencement of the *Criminal Code Amendment (Sexual Offences) Act 2014*.

offence provisions means the provisions of this Act that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

455 Application of offence provisions generally

- (1) Subject to section 456, the offence provisions, as amended by the *Criminal Code Amendment (Sexual Offences) Act 2014*, apply only in relation to offences committed after the commencement.
- (2) The offence provisions, as in force before the commencement, continue to apply in relation to offences committed on or before the commencement.
- (3) For this section, if any of the conduct constituting an offence occurred on or before the commencement, the offence is taken to have been committed on or before the commencement.

456 Offence of persistent sexual conduct involving child

- (1) A person may be charged with an offence against section 208JD(1) if it is alleged that the persistent sexual conduct involves the person:
 - (a) engaging, on at least one occasion, in conduct constituting a relevant offence; and
 - (b) before the commencement, maintaining a relationship of a sexual nature with a child under 16 years of age by doing an act constituting an offence of a sexual nature on one or more occasions.
- (2) For subsection (1), section 208JD applies as if an offence of a sexual nature were a relevant offence.
- (3) Despite subsections (1) and (2), a person may be charged with an offence against section 131A of the Act, as in force immediately before the commencement, in relation to offences of a sexual nature alleged to have been committed on 3 or more occasions.
- (4) In this section:

offence of a sexual nature, see section 131A of this Act as in force immediately before the commencement.

persistent sexual conduct, see section 208JD(2).

relevant offence, see section 208JD(2).

12 Schedule 1 amended

- (1) Schedule 1, after "Section 103A (Threats or reprisals relating to persons involved in criminal investigations or judicial proceedings or against public officers)"

insert

Part V (Acts injurious to the public in general), Division 2A (Offences relating to human remains)

- (2) Schedule 1

omit

Section 192 (Sexual intercourse and gross indecency without consent)

- (3) Schedule 1, after "Part VI (Offences against the person and related matters), Division 9 (Defences)"

insert

Part VIA (Sexual offences)

13 Act further amended

The Schedule has effect.

14 Expiry of Act

This Act expires on the day after it commences.

Schedule Act further amended

section 13

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 43BK(1) and (2)	natural persons	individuals
section 43BK(2)	a natural person	an individual
Part V, Division 2, heading	whole heading	Division 2 Child abuse material and indecent articles
Part V, Division 2, Subdivision 1, heading	whole heading	