

National Laws

Legislation of Interpol member states on sexual offences against children

Australia - Australie - Australia

Canberra

IV. The Legislation of the Australian State of Victoria

1. Overview. Five Acts have made substantial amendments to sexual offences since the proclamation of the *Crimes Act* 1958 on 1 April 1959. They are:

- a. The *Rape Offences (Proceedings) Act* 1976 No. 8940/1976;
2. The *Crimes (Sexual Offences) Act* 1980 No. 9509/1980;
3. The *Crimes (Sexual Offences) Act* 1991 No. 8/1991;
4. The *Crimes (Rape) Act* 1994 No.81/1991 and
5. The *Sentencing (Amendment) Act* 1993 No 41/1993.

2. In addition, legislation in relation to stalking, prostitution and unclassified films has been introduced and/or amended in recent times.

I. Ages for legal purposes

Age of simple majority

The age of simple majority is 18 years.

Age of sexual consent

The legislated age for sexual activity is 16 years.

Age of consent for marriage

The age of consent for marriage is 18 years of age, or 16 years with parental approval.

II.Rape

'Rape', Section 38 of the ' Crimes Act' as amended by section 4 of the Crimes (Amendment) Act :

A person commits rape if-

- a) he or she intentionally sexually penetrates another person without that person's consent while being aware that the person is not consenting or might not be consenting; or
- b) after sexual penetration he or she does not withdraw from a person who is not

consenting on becoming aware that the person is not consenting or might not be consenting.

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.

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 be not consenting .

III. Other forms of child sex abuse

I° CRIMES ACT

1) Indecent act with child under the age of 16

A person must not wilfully commit, or wilfully be in any way a party to the commission of, an indecent act with or in the presence of a child under the age of 16 to whom he or she is not married.

2) Sexual relationship with child under the age of 16

A person who maintains a sexual relationship with a child under the age of 16 to whom he or she is not married is guilty of an indictable offence

3) Sexual penetration of 16 year old child

A person must not take parting an act of sexual penetration with a 16 or 17 year old child to whom he or she is not married and who is under of his care, supervision or authority.

4) Indecent act with 16 year old child

A person must not wilfully commit, or wilfully be in any way a party to the commission of, an indecent act with or in the presence of a 16 year old child to whom he or she is not married and who is under his or her care, supervision or authority.

5) Facilitating sexual offences against children

A person who in Victoria makes travel arrangements for another person or does or omits to do any other act that aids, facilitates or contributes to in anyway whatever the commission by another person of an offence against this Subdivision (other than this section) or against Division 2 of Part IIIA of the Crimes Act 1914

of the Commonwealth or against a law in force only in a place outside Victoria the necessary elements of which consist of or include elements which, if present or occurring in Victoria, would constitute an offence against this subdivision (other than this section) is guilty of an indictable offence.

6) Procuring sexual penetration of child under the age of 16

A person must not procure a child under the age of 16 to take part in an act of sexual penetration outside marriage with another person and a person must not procure another person to take part in an act of sexual penetration outside marriage with a child under the age of 16.

7) Loitering near schools

A person who-

- a. has been found guilty certain offences including, a sexual offence, prostitution offence, murder (where there are reasonable grounds to believe that a sexual offence was also committed on the victim), child pornography offences and other crimes is found loitering without reasonable excuse in or near -
 - i. a school, kindergarden or child care centre; or
 - ii. a public place regularly frequented by children and in which children are present at the time of the loitering is guilty of an offence.

8) Child stealing

Whoever unlawfully either by force or fraud leads or takes away or decoys or entices away or detains any child under the age of 16 years, with intent to deprive any parent or guardian or any other person having the lawful care of charge of such child of the possession of such child intent or with intent to steal any article upon or about a person of such child; and whoever with any such intent receives or harbours any such child knowing the same to have been by force or fraud led, taken, decoyed, enticed away or detained, shall be guilty of an indictable offence.

II° CRIMINAL LAW CONSOLIDATION ACT

• Section 4 of the 'Common Law Consolidation Act 1935', Definition of sexual intercourse :

"Sexual Intercourse' includes any activity (whether of a heterosexual or homosexual nature) consisting or involving :

- a. penetration of the labia majora or anus of a person by any part of the body of another person
- b. fellatio; or
- c. cunnilingus.

Cunnilingus is generally held to include the licking or sucking of the vagina or vulva, including the labia majora, with tongue or mouth.'

• 'Unlawful Sexual Intercourse', Section 49 of the ' Common Law Consolidation Act 1935 ' :

' (1) A person who has sexual intercourse with any person under the age of twelve (12) years shall be guilty of an offence and liable to be imprisoned for life.

(2) (...)

(3) A person who has sexual intercourse with a person of or above the age of twelve (12) years and under the age of seventeen (17) years shall be guilty of an offence and liable to be imprisoned for a term not exceeding seven years.

(4) It shall be a defence to a charge under subsection (3) to prove that:

a) the person with whom the accused is alleged to have had sexual intercourse was, on the date on which the offence is alleged to have been committed, of above the age of sixteen (16) years ; and

b) the accused -

(i) was, on the date on which the offence is alleged to have been committed, under the age of seventeen (17) years; or

(ii) believed on reasonable grounds that the person with whom he is alleged to have had sexual intercourse was of or above the age of seventeen (17) years.

(5) A person who, being the guardian, schoolmaster, schoolmistress or teacher of a person under the age of eighteen (18) years, has sexual intercourse with that person shall be guilty of an offence and liable to be imprisoned for a term not exceeding seven years.

(6) A person who, knowing that another is by reason of intellectual disability unable to understand the nature or consequences of sexual intercourse, has sexual intercourse with that other person is guilty of an indictable offence.

Penalty : Imprisonment for seven years.

(7) Consent to sexual intercourse is not a defence to a charge of an offence in this section.

(8) This section does not apply to sexual intercourse between persons who are married to each other.'

● **'Indecent Assault', Section 56 of the 'Common Law Consolidation Act 1935' :**

'A person who indecently assaults another shall be guilty of an offence and liable to be imprisoned for a term not exceeding eight years or, where the victim was at the time of the commission of the offence under the age of twelve (12) years, for a term not exceeding ten years.'

● **'Consent no defence in certain cases', Section 57 of the 'Common Law Consolidation Act 1935 ' :**

' (1) No person under the age of eighteen (18) years shall be deemed capable of consenting to any indecent assault committed by any person who is his or her guardian, teacher, schoolmaster or schoolmistress.

(2) Subject to subsection (3), no person under the age of seventeen (17) years shall be deemed capable of consenting to any indecent assault.

(3) Where the person is between the age of sixteen (16) and seventeen (17) years, his or her consent shall be a defence to a charge of indecent assault if the accused proves that at the time of the indecent assault

a) he or her was under the age of seventeen (17) years; or

b) he or she believed on reasonable grounds that the person was of or above the age of seventeen (17) years.'

- **'Acts of Gross Indecency', Section 58 of the 'Common Law Consolidation Act 1935':**

'(1) Any person who, in public or in private-

a) commits any act of gross indecency with, or in the presence of, any person under the age of sixteen (16) years;

b) incites or procures the commission by any such person of any act of gross indecency with the accused, or in the presence of the accused, or with any other person in the presence of the accused.

c) is otherwise a party to the commission of any act of gross indecency by or with, or in the presence of, any such person, or by or with any other person in the presence of any such person, or by any such person with any other person in the presence of the accused,

-shall be guilty of an offence and liable for a first offence to be imprisoned for a term not exceeding three years and for any subsequent offence to be imprisoned for a term not exceeding five years.

(2) It is no defence to a charge under this section that the act of indecency was committed with the consent of the person concerned.'

- **'Offence if person for prurient purposes incites or procures commission by child of indecent act, etc.', Section 58A of the 'Common Law Consolidation Act 1935':**

'(1) A person who with a view to gratifying prurient interest (whether of that person or some other person)-

a) incites or procure the commission by a child of an indecent act; or

b) causes or induces a child to expose any part of his or her body,

-shall be guilty of an indictable offence and liable for a first offence to be imprisoned for a term not exceeding two years and for any subsequent offence to be imprisoned for a term not exceeding three years.

(2) Subsection (1) applies whether events referred to in the subsection occur in public or in private or with or without the consent of the child.

(3) In this section, 'child' means a person under the age of sixteen (16).'

- **'Abduction of male or female person', Section 59 of the 'Common Law Consolidation Act 1935':**

'A person who takes away by force, or detains against his will, any other person-

a) with intent to marry, or to have sexual intercourse with that other person;

b) with intent to cause that other person to be married to, or to have sexual intercourse with a third person,

-shall be guilty of an offence and liable to be imprisoned for a term not exceeding fourteen years.'

- **'Incest', Section 72 of the 'Common Law Consolidation Act 1935':**

'Any persons who, being related, either as parent and child or as brother and sister, have sexual intercourse with each other shall be guilty of incest and liable to be imprisoned for a term not exceeding seven years.'

- **'Offences involving sexual intercourse', Section 73 of the 'Common Law Consolidation Act 1935':**

'(1) For the purposes of this Act, sexual intercourse is sufficiently proved by proof of penetration.

(2) No person shall, by reason of his age, be presumed incapable of sexual intercourse.

(3) No person shall, by reason only of the fact that he is married to some other person, be presumed to have consented to sexual intercourse with that other person.

(4) No person shall, by reason only of the fact that he is married to some other person, be presumed to have consented to an indecent assault by that other person.

(5) For the purposes of the provisions of this Act dealing with sexual offences, agreement to an act on the basis that it is necessary for the purpose of medical diagnosis, investigation or treatment, or for the purpose of hygiene, is not consent to that act for another purpose.'

- **'Persistent sexual abuse of a child', Section 74 of the 'Common Law Consolidation Act 1935':**

'(1) A person may be charged with and convicted of the offence of persistent sexual abuse of a child

(2) Persistent sexual abuse of a child consists of a course of conduct involving the commission of a sexual offence against a child on at least three separate occasions (whether the offence is of the same nature on each occasion or differs from occasion to occasion).

(3) A person does not however commit the offence of persistent sexual abuse of a child unless the occasions on which a sexual offence is committed against the child fall on at least three days.

(4) A charge of persistent sexual abuse of a child-

a) must specify with reasonable particularity when the course of conduct alleged against the defendant began and when it ended; and

b) must describe the general nature of the conduct alleged against the defendant and the nature of the sexual offences alleged to have been

committed in the course of that conduct,

-but the charge need not state the dates on which the sexual offences were committed, the order in which the offences were committed, or differentiate the circumstances of commission of each offence.

(5) Before a jury returns a verdict that a defendant is guilty of persistent sexual abuse of a child-

- a. the jury must be satisfied beyond reasonable doubt that the evidence establishes at least three separate incidents, falling on separate days, between the time when the course of conduct is alleged to have begun and when it is alleged to have ended in which the defendant committed a sexual offence against the child; and*
- b. the jury must be agreed on the material facts of three such incidents in which the defendant committed a sexual offence of a nature described in the charge (although they need not to be agreed about the dates of the incidents, or the order in which they occurred).*

(6) The judge must warn a jury, before it retires to consider its verdict on a charge of persistent sexual abuse of a child, of the requirements of subsection(5)

(7) A person convicted of persistent sexual abuse of a child is liable to a term of imprisonment proportionate to the seriousness of the offender's conduct which may, in the most serious of cases, be imprisonment for life.

(8) A charge of persistent sexual abuse of a child subsumes all sexual offences committed by the same person against the same child during the period of the alleged sexual abuse, and hence a person can not be simultaneously charged (either in the same or in different instruments of charge) with persistent sexual abuse of a child and a sexual offence alleged to have been committed against the same child during the period of the persistent sexual abuse.

(9) A person who has been tried and convicted or acquitted on a charge of persistent sexual abuse of a child. May not be charged with sexual offence against the same child alleged to have been committed during the period over which the defendant was alleged to have committed persistent sexual abuse of the child.

(10) A prosecution on behalf of the Crown for persistent sexual abuse of a child can not be commenced without the consent of the Director of Public Prosecutions.

(11) In this section -

** 'child' means a person under the age of sixteen (16) years;*

** 'sexual offence' means an, offence against section 48, 49, 56, 58, 58A or 72, or an attempt to commit, or an assault with intent to commit, any of those offences.'*

IV. Child prostitution

Child prostitution is legislated by the Prostitution Control Act which prohibits a person under the age of 18 years working as a prostitute.

- **'Causing or inducing a child to take part in prostitution', Section 5(1) of the 'Prostitution Control Act 1994 (102/1994)':**

This offence applies where a child is caused or induced to take part in prostitution as the prostitute or client or in any other capacity, or to continue to take part in such acts.

Penalty: 7 years imprisonment.

- **'Obtaining payment for sexual services provided by a child', Section 6(1) of the 'Prostitution Control Act 1994 (102/1994)', Section 8(1) of the 'Prostitution Regulation Act 1986 (124/1986)':**

Any person who receives payments knowing that it has been derived either in full or in part, directly or indirectly, from sexual services provided by a child, commits this offence, unless it is in the ordinary course of a business unrelated to prostitution.

Penalty: 7 years imprisonment.

- **'Agreement for provision of sexual services by a child', Section 7(1) of the 'Prostitution Control Act 1994 (102/1994)', Section 9(1) of the 'Prostitution Regulation Act 1986 (124/1986)':**

This offence applies to a person who enters into, or offers to enter into, an agreement for a child to provide sexual services either:

- *to or for that person; or*
- *for another person*

in return for:

- *payment; or*
- *in exchange for drugs of dependence.*

It is possible for the offence to be committed by entering into or offering to enter into the agreement for both payment and in exchange for drugs. The services may also be intended for more than one person, (for example, the sexual services may be provided to both the defendant and another).

Penalty: 7 years imprisonment.

- **'Forcing a person into or to remain in prostitution', Section 8 (1) (a), (b), (c) or (d), respectively, of the 'Prostitution Control Act 1994 (102/1994)', Section 10 (a), (b), (c) or (d), respectively, of the 'Prostitution Regulation Act 1986 (124/86)':**

This offence only applies to complainants who are aged eighteen (18) years or more at the time of the offence and is committed in any one of the following four ways; namely a person must not with intent to induce another person to engage or continue to engage in prostitution:

- (a) *assault or threaten to assault that person or any other person; or*

(b) intimidate that other person or any other person; or

(c) supply or offer to supply a drug of dependence to that person or any other person; or

(d) make a false representation or use any false pretence or other fraudulent means.

Penalty: 7 years imprisonment.

- **'Forcing a person to provide financial support out of prostitution', Section 9 (1) (a), (b), or (c), respectively, of the 'Prostitution Control Act 1994 (102/1994)', Section 11 (a), (b), or (c), respectively, of the 'Prostitution Regulation Act 1986 (124/1986)':**

The offence is essentially the same as s.8 of the Prostitution Control Act 1994 (see Item 75 above). The difference is that the assaulting etc. occurs with the intent of inducing another to provide or continue to provide the defendant with payment/s, directly or indirectly from prostitution engaged in by the complainant. It is also not an offence under this section to use false pretences.

This offence relates to complainants aged eighteen (18) years or more at the time of the offence.

It is an offence for a person with intent to induce another person to provide, or continue to provide, him or her with a payment or payments derived, directly or indirectly, from prostitution engaged in by that other person to:

(a) assault or threaten to assault that person or any other person; or

(b) intimidate that other person or any other person; or

(c) supply or offer to supply a drug of dependence to that person or any other person.

Penalty: 7 years imprisonment.

- **'Living on earnings of prostitution', Section 10 (1) of the 'Prostitution Control Act 1994 (102/1994)', Section 12(1) of the 'Prostitution Regulation Act 1986 (124/1986)':**

It is an offence to live either wholly or partly on the earnings of prostitution. It matters not whether the prostitution is carried out by a child or an adult.

Defences/Exemptions:

(a) The defendant will not be guilty of an offence under this section if there is a current licence in force granted under Part 3 of the Prostitution Control Act 1994 and a permit as required by the Planning and Environment Act 1987 for the use or development of the land for the purposes of the business.

(b) Prostitution Control Act 1994 - It is a defence for the defendant to prove that s/he did not hold a relevant position (whether in his or her own right or on behalf of any other person) in the prostitution service providing business or did not exercise a significant influence over or

with respect to the management or operation of that business.

(c) Prostitution Regulation Act 1986 - The defendant shall, unless the court is satisfied to the contrary, be guilty of such offence, if it is proved to the court that:

(i) the person was living with, or was habitually in the company of a prostitute; or

(ii) the person exercised control, direction or influence over the movements of a prostitute in such manner to show that the person was aiding, abetting, procuring, or compelling the prostitute to prostitute himself or herself.

Penalty: 4 years imprisonment.

- **'Allowing a child to take part in prostitution', Section 11 (1) of the 'Prostitution Control Act 1994 (102/1994)', Section 7(1) of the 'Prostitution Regulation Act 1986 (124/1986)':**

This section applies to persons who own or occupy any premises or who manage or assist in the management of any premises. This section also applies to a child who is acting as either a client, a prostitute or taking part in any act of prostitution in any capacity.

'Prostitution Control Act 1994' only:

The accused will be presumed to have allowed a child to enter or remain on those premises if it is proved that-

(a) the premises was used for the operation of a brothel and for which a permit was required under the 'Planning and Environment Act 1987' for its use or development for those purposes; and

(b) the child was on those premises for the purpose of taking part in an act of prostitution.

-unless the accused satisfies the court on the balance of probabilities that s/he did not know, and could not reasonably have known, that a child was on those premises for that purpose at the time of the commission of the alleged offence.

'Prostitution Regulation Act 1986' only:

If it is proven that a child was on a premises which was a brothel (within the meaning of Part 4 of the Act), any person who owns, occupies, manages or assists in the management of those premises, is guilty of an offence against this section, unless s/he satisfies the court on the balance of probabilities that the child was not on the premises for the purposes of taking part in an act of prostitution.

This is substantially less than the proof required under the Prostitution Control Act; however, interviewing members should approach the investigation as though the higher standard were relevant, by way of proving knowledge that the child was on the premises for the purpose of taking part in an act of prostitution.

Penalty: 4 years imprisonment.

V. Child pornography

Child pornography is controlled by the following legislation:

Crimes Act

- **'Production of child pornography', Section 68 of the 'Crimes Act 1958 (6231/58)'**:

A person who prints or otherwise makes or produces child pornography is guilty of a indictable offence which appears in the Crimes Act.

Penalty : Level 5 Imprisonment

- **'Procurement of a minor for child pornography', Invite Minor : Section 69(a) of the 'Crimes Act 1958 (6231/58)', Procure Minor : 'Section 69(b) Crimes Act 1958 (6231/58)'**;

This offence relates to inviting a minor (child under 18) to be in any way concerned in the making or producing of child pornography or the procuring of a child to make child pornography. Note the reference to minor (a child under 18) where child pornography requires a subject who is or appears to be under the age of 16 years.

Penalty: Level 10 Imprisonment

Information:

Invite minor

The (Defendant) at (place) in the State of Victoria on/between (date/s) did invite, (victim), a minor under the age of 18 years to be concerned in the (making/production) of child pornography.

Procure minor

The (Defendant) at (place) in the State of Victoria on/between (date/s) did procure, (victim), a minor under the age of eighteen (18) years, for the purposes of making/producing) child pornography.

- **'Possession of child pornography', Section 70(1) of the 'Crimes Act 1958 (6231/58)'**:

A person who knowingly possesses child pornography is guilty of an offence. This applies to items that describe or depict a person who is or appears to be under sixteen (16) years of age engaged in sexual activity or in an indecent context or manner.

Penalty: Level 7 Imprisonment

CLASSIFICATION (PUBLICATIONS, FILMS, AND COMPUTER GAMES) ENFORCEMENT ACT 1995

- **'Sale of unclassified, RC, or X films', Section 15 of the 'Classification**

(Publications, Films and Computer Games) (Enforcement) Act 1995', Act No. 90/1995:

It is an offence for any person to sell an unclassified film or a film classified RC or X in the state of Victoria. The definition of sell is contained in the Act and means to sell or exchange or let on hire and includes offer or display for sale or exchange or hire, agree to sell, exchange or hire and cause or permit to be sold or exchanged or hired, whether by retail or wholesale. In order to proceed with such a charge it is essential to obtain formal classification certificate for each article.

Penalty: If film is subsequently Class. G, PG or M:

- 5 Penalty Units

If film is subsequently Class. MA or R:

- 10 Penalty Units

If film is classified or subsequently Class. X:

- 60 Penalty Units or 6 Months imprisonment.

If film is classified or subsequently Class. RC:

- 240 Penalty Units or 2 Yrs imprisonment.

- **'Making objectionable film', Section 24 (1) of the 'Classification (Publications, Films & Computer Games) (Enforcement) Act 1995', Act No. 90/1995:**

For the making or producing of an objectionable film to be an offence such making must be done for the purpose of gain. Section 24(2) states that a prosecution for this offence may be brought at any time; hence removing any statute of limitations. See definition section re the definition of Objectionable Film.

Penalty: 240 penalty units or 2 years imprisonment

- **Offence to make or reproduce child abuse product or bestiality product, Section 72 of the 'Classification (Publications, Films & Computer Games) (Enforcement) Act 1995', Act No. 90/1995:**

A person must not-

- a. make or reproduce a child abuse product bestiality product; or
- b. cause or permit a child abuse product or bestiality product to be made or reproduced; or
- c. in any way concerned in the making and reproduction of a child abuse product or bestiality product

Penalty

Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

- **Offence to procure child to be concerned with making child abuse product, Section 73 of the 'Classification (Publications, Films & Computer Games) (Enforcement) Act 1995', Act No. 90/1995:**

A person must not procure or invite or attempt to procure a child to be in any way concerned in the making of a child abuse product.

Penalty

Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

- **Offence to possess child abuse product or bestiality product, Section 74 of the 'Classification (Publications, Films & Computer Games) (Enforcement) Act 1995', Act No. 90/1995:**

A person must not have possession of-

- child abuse product; or*
- bestiality product*

Penalty:

Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both.

CLASSIFICATION OF FILMS AND PUBLICATIONS ACT, 1990

The following sections deal with offences relating to objectionable films/publications and child pornography in the 'Classification of Films and Publications Act 1990, (46/1990)'.

- **'Make objectionable film for purpose of gain', Section 44 (1) of the 'Classification of Films & Publications Act 1990 (46/1990)':**

This offence only applies where the prosecution can prove the objectionable film was made for the 'purpose of gain'. If the film was made for personal use, this section cannot be used. If children are involved in the making of the film, consider the charge of 'procure child' to make an objectionable film, which is discussed below.

Copying such a film is also an offence under s.44(2) C.F.P.A.

Penalty: 240 penalty units, or 2 years imprisonment.

Defences: Section 46 makes it a defence if:

- the film was classified at the time of the offence or subsequently; or*
- the defendant had taken all reasonable steps to classify the film or*
- the defendant reasonably believed the film was classified.*

- **'Procure Child to Make Objectionable Film Section', Section 45 of the 'Classification of Films & Publications Act 1990 (46/1990)':**

This offence applies to situations when a person invites or procures, attempts to procure or aids or abets the procuring of a child to make an objectionable film. A child is a person under the age of eighteen (18) years.

Depending on the nature of activity on the video, the offence of 'take part in act of sexual penetration' etc. should be considered.

Penalty: 600 penalty units, or 5 years imprisonment, or both.

- **'Possession of Child Pornography', Section 60A of the 'Classification of Films & Publications Act 1990 (46/1990)':**

This offence applies to films or photographs depicting a person under or apparently under the age of sixteen (16) years engaging in sexual activity, or who is depicted in an indecent sexual manner.

Defences: It is a defence to a charge under this section to prove that the:

1) item was classified; or

2) item was for medical/legal/scientific/educational purposes; or

3) item had artistic merit - this defence is unavailable if the child was actually under sixteen (16) years; or

4) defendant believed on reasonable grounds that the child was sixteen (16) years or over, or was the defendant's spouse; or

5) defendant was not more than 2 years older than the child was or appeared to be at the time of offence; or

6) child depicted was the defendant.

Photocopies of photographs are included in this section, (s.60A(5)(b)).

Penalty: 120 penalty units, or 12 months imprisonment.

THE SUMMARY OFFENCES ACT 1935

- **'Indecent or offensive material', Section 33 of the 'Summary Offences Act 1935':**

In this section

'child' means a person under, or apparently under, the age of 16 years;

'child pornography' means indecent or offensive material in which a child (whether engaged in sexual activity or not) is depicted or described in a way that is likely to cause serious and general offence amongst reasonable adult members of the community;

'computer data' means electronic data from which an image, sound or text may be created by means of a computer;

'computer record or a system' means a computer disk or tape or other object or device on which computer data is stored;

'indecent material' means material that is, in whole or in part, of an indecent, immoral or obscene nature;

'indecent or offensive aspects' of indecent material or offensive material means those aspects or characteristics of the material by virtue of which it is indecent material or offensive material;

'material' includes

- a. *any written or printed material; or*
- b. *any picture, painting or drawing; or*
- c. *any carving sculpture, statue of figure; or*
- d. *any photograph, film, video tape or other object from which an image may be reproduced; or*
- e. *any computer data or the computer record or system containing the data; or*
- f. *any other material or object on which an image or representation is recorded or from which an image or representation may be reproduced.*

'offensive material' means material-

- a. *of which the subject matter is or includes-*
 - i. *violence or cruelty; or*
 - ii. *the manufacture, acquisition, supply or use of instruments of violence or cruelty; or*
 - iii. *the manufacture, acquisition, supply, administration or use of drugs; or*
 - iv. *instruction in crime; or*
 - v. *revolting or abhorrent phenomena; and*
- b. *which would cause serious and general offence amongst reasonable adult members of the community;*

'sell' includes-

- a. *barter, exchange or let on hire; or*
- b. *offer or have in possession for sale, barter, exchange or hire; or*
- c. *deliver for the purposes of, or in puissance of, sale, barter, exchange or hire.*

And 'sale' a has corresponding meaning.

'(2) A person who -

- a. *produces, or takes any step in the production of indecent or offensive material for the purpose of sale; or*
- b. *sells indecent or offensive material; or*
- c. *exhibits indecent or offensive material in a public place or so as to be visible from a public place; or*
- d. *deposits indecent or offensive material in a public place or, except with the permission of the occupier, in or on private premises; or*
- e. *exhibits indecent material to a person so as to offend or insult that person; or*
- f. *delivers or exhibits indecent or offensive material to a minor (other than a minor of whom the person is a parent or guardian); or*
- g. *being a parent or guardian of a minor, causes or permits the minor to deliver or exhibit indecent or offensive material to another person; or*
- h. *causes or permits a person to do an act referred to in a preceding paragraph of this subsection,*

- is guilty of an offence.

Penalty:

- a. *if the offence involves child pornography for a first offence, imprisonment for 2 years and for a second or subsequent offence, imprisonment for 4 years;*
- b. *in any other case \$20000 fine or imprisonment for 6 months.*

(3) A person who is in possession of child pornography is guilty of an offence.

Penalty:

\$5000 or imprisonment for 1 year.

(4) In proceedings for an offence against this section, the circumstances of the production, sale, exhibition, delivery or possession of material to which the charge relates and its use or intended use may be taken into account in determining whether the material was indecent or offensive material, but, if the material was inherently indecent or offensive material, the circumstances of its production, sale, exhibition, delivery or possession or its use or intended use cannot be taken to have deprived it of that character.

(5) Notwithstanding the foregoing provisions of this section -

- a. *no offence is committed by reason of the production, sale, exhibition, delivery or possession of material in good faith and for the advancement or dissemination of legal, medical or scientific knowledge; and*
- b. *no offence is committed by reason of the production, sale, exhibition, delivery or possession of material that constitutes, or forms part of, a work of artistic merit if, having regard to the artistic nature and purposes of the work as a whole, there is no undue emphasis on its indecent or offensive aspects.*

(6) A prosecution for an offence against this section can not be commenced without the written consent of the Minister.

(7) In deciding whether to consent to a prosecution under this section, the Minister must have regard to the relevant decision of the Classification of Publication Board.

(8) In proceedings for an offence against this section, an apparently genuine document purporting to be signed by the minister and to be a consent to a prosecution under this section will be accepted by the court, in the absence of proof to the contrary, as proof of that consent.

(10) This section does not derogate from the Classification of Publications Act 1974 or the Classification of Films for Public Exhibition Act 1971.'