

1967

VICTORIA.



ANNO SEXTO DECIMO

ELIZABETHÆ SECUNDÆ REGINÆ

No. 7546.

An Act to amend the *Crimes Act* 1958.

[17th March, 1967.]

**BE** it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

Short title.

1. (1) This Act may be cited as the *Crimes Act* 1967.

Principal Act  
No. 6231 as  
amended by  
Nos. 6455, 6505,  
6561, 6572, 6651,  
6658, 6716, 6731,  
6758, 6761, 6762,  
6806, 6839, 6884,  
6886, 6958, 6994,  
7088, 7184, 7263,  
7269, 7327, 7332.

New sections  
inserted.

Suicide no  
longer a  
crime.

Survivor of  
suicide pact  
who kills  
deceased party  
is guilty of  
manslaughter.

(2) The *Crimes Act* 1958 is in this Act referred to as the Principal Act.

2. After section 6 of the Principal Act there shall be inserted the following sections :—

‘6A. The rule of law whereby it is a crime for a person to commit or to attempt to commit suicide is hereby abrogated.

6B. (1) Where upon the trial of a person for the murder of another person the jury are satisfied that the accused caused or was a party to causing the death of that other person by a wilful act or omission but are satisfied on the balance of probabilities that the act was done or the omission made in pursuance of a

suicide

suicide pact then the jury shall, notwithstanding that the circumstances were such that but for the provisions of this section they might have returned a verdict of murder, return a verdict of manslaughter in lieu thereof.

(2) Any person who—

(a) incites or counsels any other person to commit suicide and that other person commits or attempts to commit suicide in consequence thereof; or

(b) aids or abets any other person in the commission of suicide or in an attempt to commit suicide—

Inciting, counselling, aiding or abetting suicide or attempted suicide.

shall be guilty of a misdemeanour and liable to be imprisoned for a term of not more than fourteen years; but if the jury are satisfied on the balance of probabilities that the acts constituting the offence were done pursuant to a suicide pact the jury shall return a verdict of guilty of the misdemeanour of being a party to a suicide pact and the convicted person shall be liable to be imprisoned for a term of not more than five years.

(3) The fact that by virtue of this section any person who in pursuance of a suicide pact has killed another person has not been or is not liable to be convicted of murder shall not affect the question of whether the homicide amounted to murder in the case of a third person who is a party to the homicide and is not a party to the suicide pact.

Suicide pact no defence to murder if accused not party to pact.

(4) For the purposes of this section "suicide pact" means an agreement between two or more persons having for its object the death of all of them whether or not each is to take his own life; but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

Interpretation of "suicide pact".

3. After section 463A of the Principal Act there shall be inserted the following section:—

New section inserted.

"463B. Every person is justified in using such force as may reasonably be necessary to prevent the commission of suicide or of any act which he believes on reasonable grounds would, if committed, amount to suicide."

Prevention of suicide.

4. In section 40 of the Principal Act for the words "two years" there shall be substituted the words "five years".

Amendment of No. 6231 s. 40. Increase in penalty for certain assaults.

5. Sub-section (3) of section 186 of the Principal Act is repealed.

Repeal of limit of time for prosecution of taking secret commission.

6. (1) In

Amendment of No. 6231 s. 319.

Interpretation of "drug".

6. (1) In sub-section (4) of section 319 of the Principal Act for the expression "any drug of addiction or specified drug within the meaning of the *Poisons Act 1962*" there shall be substituted the words "any substance or preparation for the time being declared by Order made by the Governor in Council to be a drug for the purposes of this section".

Revocation &c. of Orders.

(2) After sub-section (4) of section 319 of the Principal Act there shall be inserted the following sub-section :—

"(5) Any Order made by the Governor in Council under sub-section (4) may by the like Order be revoked or varied."

Amendment of No. 6231 s. 352.

Experience of Crown prosecutors.

7. In section 352 of the Principal Act for the words "and shall have practised as an advocate or barrister and special pleader or as either in England Ireland Scotland and Victoria or any of them for such period as shall make an aggregate of five years" there shall be substituted the words "and shall have practised as an advocate barrister or special pleader in England Ireland Scotland or Australia for a period of five years or, if he has practised in more than one of those places, for an aggregate period of five years".

Amendment of No. 6231 s. 399.

Competency of witnesses.

8. The proviso to section 399 of the Principal Act is amended as follows :—

(a) paragraph (c) is repealed ; and

(b) in sub-paragraph (ii) of paragraph (e) after the words "witnesses for the prosecution" there shall be inserted the expression "(other than his wife or her husband as the case may be)".

Amendment of No. 6231 s. 400.

9. For section 400 of the Principal Act there shall be substituted the following section :—

Giving of evidence by husbands and wives.

"400. (1) Where a person is charged with an offence, whether indictable or punishable on summary conviction, the husband or wife of the person charged shall be a competent witness for the prosecution without the consent of the person charged but save as otherwise expressly provided in sub-section (3) or in any other Act may not be compelled to give evidence.

(2) Where the husband or wife of the person charged is a competent witness for the prosecution but may not lawfully be compelled to give evidence for the prosecution, the presiding judge magistrate or justice shall before the witness gives evidence and, where the proceedings are being conducted before a jury, in the absence of the jury, inform the witness that he or she is not compelled to give evidence if unwilling to do so.

(3) The husband or wife of a person charged with any of the following offences may be compelled to give evidence for the prosecution in the same manner as if he or she were not the husband or wife of the person charged, namely :—

- (a) an offence mentioned in sections 3, 5, 6, 11, 12, 13, 14, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 37, 44, 45, 52, 54, 55 or 68 or an offence against sub-section (4) of section 69 of being a male person who in public or in private committed or was a party to the commission of any act of gross indecency with another male person wherever it is alleged that any of those offences was committed against a person who was under the age of sixteen years at the time of the commission thereof ;
- (b) an offence against sections 46, 47 or 48 or sub-section (1) of section 69 ;
- (c) an offence against section 71 of the *Childrens Welfare Act 1958* ; or
- (d) an offence on the prosecution of which the wife or husband of the person charged might lawfully have been compelled to give evidence before the 14th day of December, 1915.

(4) Nothing in this section shall in any way affect the operation of section 27 of the *Evidence Act 1958*.”

10. (1) In sub-section (2) of section 408A of the Principal Act for the words “statement in writing” there shall be substituted the words “certificate in or to the effect of Schedule Seven A”.

Amendment of  
No. 6231  
s. 408A.

Copy certificate  
of breath test  
to be evidence  
in certain  
circumstances.

(2) After sub-section (2) of section 408A of the Principal Act there shall be inserted the following sub-section :—

“(2A) A copy of any certificate given in accordance with the provisions of sub-section (2) and purporting to be signed by a person authorized by the Chief Commissioner of Police to operate breath analysing instruments shall be *prima facie* evidence in any proceedings referred to in sub-section (1) of the facts and matters stated therein with respect to the breath analysis concerned and the delivery of a certificate thereof to the accused person unless the accused person gives notice in writing to the informant a reasonable time in the circumstances before the hearing that he requires the person giving the certificate to be called as a witness.”

11. In section 461 of the Principal Act for the words “three years” there shall be substituted the words “five years”.

Amendment of  
No. 6231 s. 461.

Increase in  
penalty for  
assaults in  
course of  
apprehension.

Amendment of No. 6231 s. 568. Determination of appeals against sentence.

12. For sub-section (4) of section 568 of the Principal Act there shall be substituted the following sub-section :—

“(4) On an appeal against sentence the Full Court shall, if it thinks that a different sentence should have been passed or a different order made, quash the sentence passed at the trial and pass such other sentence or make such other order warranted in law (whether more or less severe and including an order for probation) in substitution therefor as it thinks ought to have been passed or made, and in any other case shall dismiss the appeal.”

New Schedule inserted.

13. After the Seventh Schedule to the Principal Act there shall be inserted the following Schedule :—

“SCHEDULE SEVEN A.

Section 408A.

CERTIFICATE OF AUTHORIZED OPERATOR OF BREATH ANALYSING INSTRUMENT AS TO PERCENTAGE OF ALCOHOL INDICATED IN BLOOD OF PERSON WHOSE BREATH HAS BEEN TESTED BY MEANS OF A BREATH ANALYSING INSTRUMENT.

I, ..... of ..... being a person authorized by the Chief Commissioner of Police under section 408A of the Crimes Act 1958 to operate a breath analysing instrument hereby certify that I did on the .....

at ..... a.m. analyse a sample of the breath of ..... p.m.

of ..... at .....

by means of a breath analysing instrument within the meaning of the said section and that the said instrument indicated that the percentage of alcohol present in the blood of the person whose breath was analysed was ..... grams of alcohol per 100 millilitres of blood which expressed as a percentage is ..... per cent. and I further certify that the said instrument was in proper working order and properly operated by me in accordance with the regulations and that I delivered this certificate to the person whose breath was analysed at ..... a.m. on the said day. p.m.

Authorized Operator.

Date.....”