



**PENAL CODE (AMENDMENT) (SEXUAL
OFFENCES) ACT 2016**

(NO. 3 OF 2016)



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***PASSED** by the National Parliament this third day of May 2016.*

(This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true copy of the Bill)

*Clezy Rore
Clerk to National Parliament*

***ASSENTED** to in Her Majesty's name and on Her Majesty's behalf this eighteenth day of May 2016.*

*Mr. Ajilon Jasper Nasiu
Acting Governor-General*

Date of Commencement: see section 2.

AN ACT TO AMEND THE PENAL CODE IN RELATION TO SEXUAL OFFENCES.

ENACTED BY THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS.

PENAL CODE (AMENDMENT) (SEXUAL OFFENCES) ACT 2016

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PENAL CODE (AMENDMENT) (SEXUAL OFFENCES) ACT 2016

1 Short title

This Act may be cited as the *Penal Code (Amendment) (Sexual Offences) Act 2016*.

2 Commencement

This Act commences on the day appointed by the Minister by *Gazette* notice.

3 Penal Code amended

This Act amends the *Penal Code* (Cap. 26) (the “**principal Act**”).

4 Amendment of section 4

Section 4 of the principal Act is amended by inserting the following definitions in alphabetical order:

“**child**” means a person under 18 years of age;

“**commercial sexual services**”, for Part XVI, has the meaning given in section 136;

“**consent**”, for Part XVI, has the meaning given in section 136A;

“**indecent act**”, for Part XVI, has the meaning given in section 136B;

“**person in a position of trust**”, in relation to a child, for Part XVI, has the meaning given in section 136C;

“**sexual intercourse**”, for Part XVI, has the meaning given in section 136D;”

5 Repeal and replacement of sections 136 to 150

Section 136 to 150 of the principal Act are repealed and replaced with the following:

“136 Meaning of “commercial sexual services”

In this Part, **“commercial sexual services”** means sexual services provided in return for financial or other reward, whether or not the reward is actually received by the person providing the sexual services or by another person.

136A Meaning of “consent”

- (1) In this Part, **“consent”** means free and voluntary agreement.
- (2) Circumstances in which a person does not consent to an act include circumstances where:
 - (a) the person submits because of force, fear of force, or fear of harm of any type, to himself or herself or another person; or
 - (b) the person submits because he or she is unlawfully detained; or
 - (c) the person is asleep, unconscious or so affected by alcohol or another drug as to be incapable of freely agreeing; or
 - (d) the person is incapable of understanding the nature of the act; or
 - (e) the person is mistaken about the nature of the act or the identity of the other person; or
 - (f) the person mistakenly believes that the act is for medical or hygienic purposes; or
 - (g) the person mistakenly believes that the act will be beneficial to his or her physical, psychological, social or spiritual wellbeing; or
 - (h) the person submits out of respect or fear due to another person’s position of authority, trust or responsibility; or
 - (i) the person submits because of threats to shame, degrade or humiliate the person or another person; or
 - (j) the person submits because of a false representation as to the nature or purpose of the act; or

- (k) the person withdraws consent during the act after initially consenting to it.
- (3) A person who does not offer actual physical resistance to an act is not, by reason only of that fact, to be regarded as consenting to the act.

136B Meaning of “indecent act”

- (1) In this Part, **“indecent act”** means an act of a sexual nature (including a person touching themselves in a sexual way or forcing another person to touch themselves in a sexual way), other than sexual intercourse, which a reasonable person would consider to be contrary to community standards of decency.
- (2) Without limiting subsection (1), an indecent act may be committed:
 - (a) by way of gestures or words; or
 - (b) by conveying words or images.

136C Meaning of “person in a position of trust”

- (1) In this Part, a person is a **“person in a position of trust”** in relation to a child if the person holds a position of trust or authority in relation to the child, or if the child is dependent in any way on the person.
- (2) Without limiting subsection (1), a person is in a position of trust in relation to a child if the person is any of the following:
 - (a) the child’s parent, grandparent, step-parent or adoptive parent;
 - (b) the child’s sibling, half-sibling or step-sibling;
 - (c) the child’s uncle or aunt;
 - (d) the child’s cousin;
 - (e) the child’s custodian, guardian or carer;
 - (f) the child’s custom doctor or healer, or medical practitioner;

- (g) the child's teacher;
- (h) the child's counsellor;
- (i) a leader of the child's religion or community;
- (j) the child's legal practitioner;
- (k) the child's employer;
- (l) a police officer;
- (m) if the child is in a correctional centre, a correctional services officer in the centre.

136D Meaning of "sexual intercourse"

- (1) In this section:

"genitalia" includes surgically constructed or altered genitalia;

"object" includes an animal.

- (2) In this Part, **"sexual intercourse"** means any of the following:

- (a) the penetration, to any extent, of the genitalia or anus of a person by any part of the body of another person, except if that penetration is carried out for a lawful medical purpose or is otherwise authorised by law;
- (b) the penetration, to any extent, of the genitalia or anus of a person by an object manipulated by another person, except if that penetration is carried out for a lawful medical purpose or is otherwise authorised by law;
- (c) the introduction of any part of the penis of a person into the mouth of another person;
- (d) fellatio;
- (e) cunnilingus;
- (f) the continuation of sexual intercourse as defined in paragraph (a), (b), (c), (d) or (e).

136E Recklessness in relation to consent

For this Part, a person is reckless as to another person's lack of consent if:

- (a) the person is aware of a risk that the other person does not consent and it is unreasonable to take the risk; or
- (b) the person does not give any thought as to whether the person is consenting.

136F Rape

- (1) A person commits an offence if the person has sexual intercourse with another person:

- (a) without the other person's consent; and
- (b) knowing about or being reckless as to the lack of consent.

Maximum penalty: Life imprisonment.

- (2) To avoid doubt, subsection (1) applies even if the persons are married or in a marriage-like relationship.

- (3) A person commits an offence if the person attempts to commit an offence under subsection (1).

Maximum penalty:

- (a) if the offender is over 18 years of age and the victim is under 15 years of age – 20 years imprisonment; or
- (b) otherwise – 15 years imprisonment.

- (4) A person commits an offence if the person:

- (a) attempts to commit an offence under subsection (1); and
- (b) in the course of the attempt, causes harm to the other person.

Maximum penalty: 25 years imprisonment.

- (5) A person commits an offence if the person:
- (a) attempts to commit an offence under subsection (1); and
 - (b) in the course of the attempt, causes grievous harm to the other person.

Maximum penalty: 30 years imprisonment.

136G Compelled sexual intercourse

A person commits an offence if the person compels a person to engage in sexual intercourse with another person:

- (a) without the person's consent; and
- (b) knowing about or being reckless as to the lack of consent.

Maximum penalty: Life imprisonment.

137 Abduction or detention with intent

A person commits an offence if the person takes, entices away or detains another person with the intention:

- (a) of having sexual intercourse with the person; or
- (b) of committing an indecent act on or in the presence of the person; or
- (c) that a third person will have sexual intercourse with the person.

Maximum penalty: 10 years imprisonment.

138 Indecent act without consent

- (1) A person commits an offence if the person commits an indecent act on or in the presence of another person:

- (a) without the other person's consent; and

- (b) knowing about or being reckless as to the lack of consent.

Maximum penalty:

- (a) if the victim is a child and the offender is a person in a position of trust in relation to the child – 10 years imprisonment; or
 - (b) if the victim is under 13 years of age – 10 years imprisonment; or
 - (c) if the victim is between 13 and 15 years of age – 7 years imprisonment; or
 - (d) in any other case – 5 years imprisonment.
- (2) To avoid doubt, subsection (1) applies even if the persons are married or in a marriage-like relationship.

138A Rape or indecent act – person with significant disability

- (1) In this section:

“significant disability” means an intellectual, mental or physical condition or impairment (or a combination of more than one of these types of condition or impairment) that affects a person to such an extent that it significantly impairs a person’s capacity to:

- (a) understand the nature of sexual conduct; or
- (b) understand the nature of a decision about sexual conduct; or
- (c) communicate decisions about sexual conduct.

- (2) A person (the **“offender”**) commits an offence if:

- (a) the offender has sexual intercourse with a person with a significant disability; and
- (b) the offender knows the person has a significant disability; and
- (c) the offender knows that the person is submitting to the sexual intercourse as a result of the disability.

Maximum penalty: Life imprisonment.

- (3) A person (the “**offender**”) commits an offence if:
- (a) the offender commits an indecent act on or in the presence of a person with a significant disability; and
 - (b) the offender knows the person has a significant disability; and
 - (c) the offender knows that the person is submitting to act as a result of the disability.

Maximum penalty:

- (a) if the victim is a child and the offender is a person in a position of trust in relation to the child – 10 years imprisonment; or
 - (b) if the victim is under 13 years of age – 10 years imprisonment; or
 - (c) if the victim is between 13 and 15 years of age – 7 years imprisonment; or
 - (d) in any other case – 5 years imprisonment.
- (4) To avoid doubt, subsections (2) and (3) apply even if the offender and the other person are married or in a marriage-like relationship.

139 Sexual intercourse or indecent act – child under 15

- (1) A person commits an offence if the person has sexual intercourse with a child who is under 15 years of age.

Maximum penalty:

- (a) if the child is under 13 years of age or the offender is a person in a position of trust in relation to the child – life imprisonment; or
- (b) if the child is between 13 and 15 years of age – 15 years imprisonment.

- (2) A person commits an offence if the person commits an indecent act on or in the presence of a child who is under 15 years of age.

Maximum penalty:

- (a) if the child is under 13 years of age – 7 years imprisonment; or
- (b) if the child is between 13 and 15 years of age and the offender is a person in a position of trust in relation to the child – 7 years imprisonment; or
- (c) in any other case – 5 years imprisonment.
- (3) It is not a defence to a charge for an offence under this section to prove that the child consented to the relevant act.

140 Sexual intercourse or indecent act – child under 18

- (1) A person commits an offence if:
- (a) the person has sexual intercourse with a child who is at least 15 years of age but under 18 years of age; and
- (b) the person is in a position of trust in relation to the child.

Maximum penalty: 15 years imprisonment

- (2) A person commits an offence if:
- (a) the person commits an indecent act on or in the presence of a child who is at least 15 years of age but under 18 years of age; and
- (b) the person is in a position of trust in relation to the child.

Maximum penalty: 5 years imprisonment

- (3) It is not a defence to a charge for an offence under this section to prove that the child consented to the act.

141 Procurement

- (1) A person commits an offence if the person procures or attempts to procure a child to perform an indecent act or to have sexual intercourse with another person, either in Solomon Islands or

elsewhere.

Maximum penalty:

- (a) if the child is under 15 years of age – 20 years imprisonment;
or
 - (b) if the child is between 15 and 18 years of age – 15 years imprisonment.
- (2) A person commits an offence if the person procures or attempts to procure a person to provide commercial sexual services, either in Solomon Islands or elsewhere.

Maximum penalty:

- (a) if victim is under 15 years of age – 20 years imprisonment; or
 - (b) in any other case – 15 years imprisonment.
- (3) A person commits an offence if, in order to commit an offence under subsection (1) or (2), the person does any of the following:
- (a) threatens or intimidates the victim;
 - (b) makes false representations;
 - (c) administers or provides an intoxicating drug to the victim.

Maximum penalty:

- (a) if the victim is under 15 years of age – 7 years imprisonment;
or
- (b) in any other case – 5 years imprisonment.

142 Persistent sexual abuse of child

- (1) In this section:

“sexual offence” means an offence against section 136F, 138, 138A, 139, 140, 143(2) or 163.

- (2) A person commits an offence if the person engages in an act in relation to a particular child that constitutes a sexual offence on 3 or

more separate occasions occurring on separate days during any period.

Maximum penalty: Life imprisonment.

- (3) It is immaterial whether or not the act is of the same nature, or constitutes the same offence, on each occasion.
- (4) A charge of an offence against this section:
 - (a) must:
 - (i) specify with sufficient particularity the period during which the acts constituting sexual offences allegedly occurred; and
 - (ii) describe the nature of the separate offences alleged to have been committed by the accused during that period; but
 - (b) need not specify or prove the dates or exact circumstances of the alleged occasions on which the acts constituting the offence occurred.
- (5) A person who is found not guilty of an offence against this section may instead be found guilty of one or more sexual offences relied on as evidence of the commission of the offence without each sexual offence being charged and tried separately.

143 Child commercial sexual exploitation

- (1) In this section:

“premises” includes land, buildings, vehicles and vessels.
- (2) A person commits an offence if the person obtains commercial sexual services from a child.

Maximum penalty:

- (a) if the child is under 15 years of age – 20 years imprisonment; or
- (b) in any other case – 15 years imprisonment.

- (3) A person commits an offence if the person induces, invites, persuades, arranges or facilitates the provision of commercial sexual services by a child.

Maximum penalty:

- (a) if the child is under 15 years of age – 20 years imprisonment;
or
(b) in any other case – 15 years imprisonment.

- (4) The parent or guardian of a child commits an offence if the parent or guardian permits the child to be used for the provision of commercial sexual services.

Maximum penalty:

- (a) if the child is under 15 years of age – 20 years imprisonment;
or
(b) in any other case – 15 years imprisonment.

- (5) A person commits an offence if the person obtains a benefit from the provision of commercial sexual services by a child.

Maximum penalty:

- (a) if the child is under 15 years of age – 20 years imprisonment;
or
(b) in any other case – 15 years imprisonment.

- (6) Subsection (5) does not apply to the child who provides the commercial sexual services.

- (7) A person commits an offence if the person:

- (a) controls the use of premises; and
(b) the premises are used for the provision of commercial sexual services by a child; and

- (c) the person knows or is reckless as to whether the premises are being used for that purpose.

Maximum penalty:

- (a) if the child is under 15 years of age – 20 years imprisonment;
or
- (b) in any other case – 15 years imprisonment.

144 Child exploitation material

- (1) In this section:

“child” means a person under the age of 15 years;

“child exploitation material” means material:

- (a) that depicts or describes, in a way that a reasonable person would regard as being, in all the circumstances, offensive:
 - (i) a child as a victim of torture, cruelty or physical abuse; or
 - (ii) a child engaged in or apparently engaged in a sexual pose or sexual activity (whether or not in the presence of other persons); or
 - (iii) a child in the presence of another person who is engaged or apparently engaged in a sexual pose or sexual activity; or
 - (iv) a child in a sexual context or a context intended to provide sexual or sadistic gratification; or
 - (v) the sexual parts of a child; or
- (b) that is intended, or apparently intended, to encourage or advocate people to engage in sexual activity with children.

- (2) For subsection (1):

- (a) the matters to be taken into account in deciding whether a reasonable person would regard particular material as being, in all the circumstances, offensive, include:

- (i) the literary, artistic or educational merit (if any) of the material; and
 - (ii) the journalistic merit (if any) of the material, being the merit of the material as a record or report of a matter of public interest; and
 - (iii) the general character of the material (including whether it is of a medical, legal or scientific character); and
- (b) material may be child exploitation material if it depicts a person as a child, even though the person is not in fact a child.
- (3) A person commits an offence if the person possesses, distributes, makes available for access, produces, sells or offers or advertises for distribution, sale, import or export child exploitation material.

Maximum penalty: 10 years imprisonment.

- (4) Subsection (3) does not apply:
- (a) to a police officer who has child exploitation material in his or her possession in the exercise or performance of a power or function conferred or imposed on the officer by an Act; or
 - (b) to a person who has child exploitation material in his or her possession in the exercise or performance of a power or function relating to the classification of such material conferred or imposed on the person by an Act.
- (5) A person commits an offence if the person uses, offers or procures a child for the production of child exploitation material.

Maximum penalty:

- (a) if the child is under 15 years of age – 20 years imprisonment;
or
- (b) in any other case – 15 years imprisonment.

145 Internal people trafficking

- (1) In this section:

“exploitation” includes all forms of sexual exploitation (including sexual servitude), forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs;

“internal people trafficking”: a person engages in internal people trafficking if the person recruits, transports, harbours or receives another person within Solomon Islands for the purpose of exploitation.

- (2) A person commits an offence if the person engages in internal people trafficking by one or more of the following means:
- (a) threats;
 - (b) use of force or other coercion;
 - (c) abduction;
 - (d) fraud;
 - (e) deception;
 - (f) abuse of power or of a position of trust;
 - (g) giving or receiving payments or benefits to obtain the consent of a person who has control over another person.

Maximum penalty:

- (a) if the person who is trafficked is a child – 25 years imprisonment; or
 - (b) in any other case – 20 years imprisonment.
- (3) A person commits an offence if the person engages in, or profits from, the exploitation of an internally trafficked person.

Maximum penalty: 15 years imprisonment.”

6 Section 156 repealed

Section 156 of the principal Act is repealed.

7 Sections 163 to 166 repealed and replaced

Sections 163 to 166 of the principal Act are repealed and replaced with the following:

“163 Incest

(1) In this section:

“**close family member**”, of a person, means any of the following persons:

- (a) a parent or grandparent;
- (b) a child or other lineal descendant;
- (c) a brother, sister, half-brother or half-sister.

(2) A person commits an offence if the person has sexual intercourse with another person who is a close family member of the person.

Maximum penalty:

- (a) if the close family member is under 13 years of age – life imprisonment; or
- (b) in any other case – 10 years imprisonment.

(3) It is a defence to an offence under subsection (2) to prove that the accused person was acting under the coercion of the close family member.

(4) It is a defence to an offence under subsection (2) to prove that the accused person did not know, and could not reasonably have been expected to know, that the other person was a close family member.

(5) A person commits an offence if the person attempts to commit an offence under subsection (2).

Maximum penalty:

- (a) if the close family member is under 13 years of age – 7 years imprisonment; or

(b) in any other case – 5 years imprisonment.”

8 Sections 167 and 168 repealed and replaced

Sections 167 and 168 of the principal Act are repealed and replaced with the following:

“167 Knowledge of age immaterial

Except as otherwise expressly stated, in a prosecution for an offence under this Part committed in relation to a child under a specified age, it is immaterial that the accused person did not know that the child was under that age, or believed that the child was not under that age.”

