

WESTERN AUSTRALIA



LEGISLATIVE COUNCIL

AMENDMENTS AND SCHEDULES

Supplementary Notice Paper No. 76
Issue No. 2

WEDNESDAY, 7 NOVEMBER 2018

CRIMINAL LAW AMENDMENT (INTIMATE IMAGES) BILL 2018 [76-1]

When in committee on the *Criminal Law Amendment (Intimate Images) Bill 2018*:

Clause 4

Hon Michael Mischin: To move —

2/4 Page 6 line 12, to page 7 line 23 — To delete the lines and insert:

- (3) A person is not criminally responsible under subsection (2) if a reasonable person would consider the distribution of the image to be acceptable, having regard to each of the following (to the extent relevant) —
 - (a) the nature and content of the image;
 - (b) the circumstances in which the image was distributed;
 - (c) the age, mental capacity, vulnerability or other relevant circumstances of the depicted person;
 - (d) the degree to which the accused's actions affect the privacy of the depicted person;
 - (e) the relationship between the accused and the depicted person;
 - (f) any other relevant matters.
- (4) It is a defence to a charge under subsection (2) to prove that —
 - (a) the distribution of the image was for a genuine scientific, educational or medical purpose; or
 - (b) the distribution of the image was reasonably necessary for the purpose of legal proceedings; or
 - (c) the person who distributed the image —
 - (i) distributed the image for media activity purposes; and

- (ii) did not intend the distribution to cause harm to the depicted person; and
 - (iii) reasonably believed the distribution to be in the public interest.
- (5) Nothing in subsection (2) makes it an offence —
- (a) for a member or officer of a law enforcement agency or their agents to distribute an intimate image when acting in the course of their official duties; or
 - (b) for a person to distribute an intimate image in accordance with, or in the performance of the person's functions under, a written law or a law of the Commonwealth or another State or Territory; or
 - (c) for a person to distribute an intimate image for the purposes of the administration of justice.

Hon Alison Xamon: To move —

1/4 Page 8, after line 29 — To insert:

221BF. Review of amendments made by *Criminal Law Amendment (Intimate Images) Act 2018*

- (1) The Minister must review the operation and effectiveness of the amendments made to this Code, the *Restraining Orders Act 1997* and the *Working with Children (Criminal Record Checking) Act 2004* by the *Criminal Law Amendment (Intimate Images) Act 2018*, and prepare a report based on the review, as soon as practicable after the 5th anniversary of the day on which the *Criminal Law Amendment (Intimate Images) Act 2018* section 4 comes into operation.
- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary.

