

CRIMINAL CODE AMENDMENT (CHILD SEX OFFENCES) BILL 2013

Receipt and First Reading

Bill received from the Council; and, on motion by **Dr K.D. Hames (Deputy Premier)**, read a first time.

Explanatory memorandum presented by the Deputy Premier.

Second Reading

DR K.D. HAMES (Dawesville — Deputy Premier) [12.30 pm] — by leave: I move —

That the bill be now read a second time.

This government is committed to strengthening Western Australia's criminal laws to protect children from sexual predators, both within and outside of the state's borders. This bill will do so by amending the Criminal Code in three respects: by inserting a new definition into section 187 as to what constitutes prohibited conduct for the purposes of that section; by broadening the definition of electronic communication for the purposes of section 204B; and by supplementing the definition of child sex offender for the purposes of section 557K. I shall outline what is proposed in that order, dealing first with the amendments to section 187.

Section 187 is contained within chapter XXII of the Criminal Code. Chapters XXII and XXXI contain a variety of offences of a sexual nature, including sexual offences against children—it is lucky I learnt Roman numerals along the way. Section 187 creates the crime of facilitating sexual offences against children outside Western Australia. In essence, the section provides that a person who enables, aids, counsels or procures another person to engage in prohibited conduct commits a crime punishable by 20 years' imprisonment. The term "prohibited conduct" is defined to be the doing of an act in a place outside Western Australia in respect of a child under the age of 16 years which, if done in Western Australia, would constitute a sexual offence under chapter XXXI of the code; or the commission of an offence under part IIIA, division 2 of the commonwealth Crimes Act 1914. That part of the Crimes Act made it an offence to engage in conduct commonly referred to as "child sex tourism", whereby Australians travel overseas to indulge in sexual conduct with children outside the direct protection of our laws and law enforcement agencies. Australia's child sex tourism laws recognise a moral obligation to attempt to protect children of other nations from Australian child abusers by providing that such conduct, even if committed outside Australia's borders, will be punishable by our laws.

The passage of the commonwealth Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010 repealed the child sex tourism offence regime in the Crimes Act 1914 and, by way of a new division 272, "Child sex offences outside Australia", transferred those provisions into the commonwealth Criminal Code Act 1995. It is therefore necessary to amend the references to the commonwealth legislation. The current commonwealth child sex offence regime closely resembles that of Western Australia, and the reference to repealed commonwealth legislation in section 187(1)(b) of the Western Australian Criminal Code is redundant and unnecessarily restrictive. In any case, merely amending section 187(1)(b) by updating the reference to the Commonwealth Crimes Act 1914 to the Commonwealth Crimes Act 1995 would create another anomaly due to the differing range of ages covered by the state and commonwealth offences. Accordingly, the bill amends section 187 to delete the reference to a "child under the age of 16 years" in the definition of "prohibited conduct". This means that any sexual misconduct committed overseas against children that would be an offence against our Criminal Code can be the subject of a prosecution under section 187, and the reference to the commonwealth Crimes Act is unnecessary and can be deleted.

The bill will also amend section 204B of the Criminal Code to ensure that "electronic communication" explicitly encompasses all forms of email communication and voice communication over a mobile phone or any other electronic medium. Section 204B was introduced into the Criminal Code by the Criminal Code Amendment (Cyber Predators) Bill 2006. Its purpose, broadly, was to protect children under the age of 16 years from sexual activity or indecent matter communicated through the misuse of electronic communications. It was intended to embrace a broad range of electronic communications including internet chat, email, SMS and communication over a mobile phone. To achieve that end, the section defined "electronic communication" as having the meaning ascribed to that term by the Electronic Transactions Act 2003. That definition was subsequently updated to a reference to the Electronic Transactions Act 2011, upon the passage of that Act and the repeal of its predecessor. However, it has emerged that the current definition of electronic communication may be narrower in its scope than had previously been thought to be the case and should be broadened. Two cases have not been able to be prosecuted due to difficulties with the definition of electronic communication; one involved verbal communication over a mobile telephone, and the other involved email communication with photographic attachments. Accordingly, the bill addresses this issue by, firstly, amending the definition of "electronic communication" and, secondly, inserting a new definition for the term "electronic". The new definition of "electronic communication" will mean a communication by electronic means and will specifically include

communication by email, the internet, facsimile, telephone—including mobile telephone—radio and television. The new term “electronic” will include electrical, digital, magnetic, optical, electromagnetic, biometric and photonic technologies.

Lastly, the bill will supplement existing definitions of “child sex offender” in section 557K of the Criminal Code. Section 557K deals with offences committed by child sex offenders. What is meant by a “child sex offender” is defined in subsection (1) of that section. However, the current definition refers only to persons convicted of offences under Western Australian legislation, or other jurisdictions substantially similar to laws otherwise covered by certain laws of the state. The bill will broaden the scope of that definition to include persons who have been convicted of certain child sex offences under the commonwealth Criminal Code Act 1995 or the repealed provisions of the commonwealth Crimes Act 1914. These, essentially, are child sex offences committed outside of Australia, or the use of a carriage service relating to child pornography or child abuse material, or sexual activity with a person under 16 years of age. The expanded definition will allow Western Australia Police to more readily identify and deal with persons in Western Australia who are convicted of these commonwealth offences.

In summary, the bill will expand the application of Western Australia’s criminal laws to continue to protect children from sexual predators both within and outside Western Australia.

I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.