

**CRIMINAL LAW AMENDMENT (UNCERTAIN DATES) BILL 2019**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

*Second Reading*

**HON SUE ELLERY (South Metropolitan — Leader of the House)** [10.06 pm]: I move —

That the bill be now read a second time.

The Criminal Law Amendment (Uncertain Dates) Bill 2019 will amend the Criminal Code and the Children's Court of Western Australia Act 1988 to close technical loopholes that may arise when uncertainties as to the date of an indictable offence, the age of the victim at the time of a sexual offence or whether an accused was a child at the time of an offence, prevent perpetrators being convicted of crimes that can otherwise be proven.

The measures in this bill have been developed with regard to improving access to justice for victims of serious crimes and is consistent with the principle that an accused is not exposed to a harsher penalty than existed at the time of the offence. Although this bill will have application across a range of matters in which there is uncertainty of particular dates, there is no doubt it will facilitate the successful prosecution of sexual offences against children. It is often a feature of child sexual abuse cases, given the historical nature of offending, the tender age of the child and the trauma inflicted, that it is difficult for a victim to recall specific dates of abuse. Unfortunately, perpetrators may evade conviction where, although all other facts are proved, it cannot be conclusively established when the offending took place. This represents a serious miscarriage of justice. This bill thus extends improvements in the administration of justice for victims of child sexual abuse.

I now provide more detail on the circumstances to be covered in proposed new chapter IIB of the code. Proposed section 10L of the code will address problems that arise where an indictable offence occurred sometime in a period during which the relevant written law was amended. Currently, if conduct constitutes an offence under both old and new offence provisions, a perpetrator cannot be convicted because it cannot be established which provision was in force at the time of the offence. Proposed section 10L will remedy this loophole by providing that an accused may be charged in respect of the relevant offence with the lesser maximum statutory penalty, whether that is under the old or the new law. If it can be proved to the court that the offence occurred sometime in the relevant period, the person may then be convicted and sentenced in respect of the lesser penalty offence.

Additional issues may arise when a sexual offence occurred sometime in a period during which the victim had a significant birthday. Proposed section 10M will address circumstances in which it is unclear which age-dependent child sexual offence would apply. It will also address uncertainty about whether a victim was still a child at the time of a sexual offence. To illustrate, it may be uncertain whether alleged conduct constitutes sexual offences against a child under 13 years of age or different sexual offences against a child 13 years and above. As may often be the case with historical child sexual abuse, the victim may not be able to recall the specific dates of abuse. It may only be possible to establish that the conduct spanned a period during which the victim turned 13.

Proposed section 10M will resolve these types of uncertainties by providing that an accused may be charged in respect of the relevant offence with the lesser maximum statutory penalty, whether this is before or after the victim's relevant birthday. If it can be proved that the sexual offence occurred sometime in the relevant period, the person may then be convicted and sentenced in respect of the lesser penalty offence.

Proposed section 10N will address problems where there is uncertainty regarding the birthdate of the victim of a sexual offence, which could be an issue in remote regional areas, or for children with refugee backgrounds. This may again be particularly relevant when dealing with age-dependent sexual offences. Consistent with proposed sections 10L and 10M, the accused may be charged in respect of the relevant offence with the lesser maximum statutory penalty, regardless of whether the offence is where the victim must be of a particular age or another offence where the victim was of a different age. If it can be proved that the offence occurred, the person may be convicted and sentenced in respect of the lesser penalty offence.

As new chapter IIB of the code is to remove technical impediments to convicting perpetrators with particular regard to historical child sexual abuse, it is intended to apply to acts or omissions committed prior to and upon commencement of the amendment provisions. However, the bill will not retrospectively alter or add new offences.

I now turn to part 3 of the bill, which proposes amendments to the Children's Court of Western Australia Act to deal with circumstances in which it is uncertain whether an accused was a child or adult at the time of the commission of the offence. In such circumstances, it may not be possible to establish which court has jurisdiction to hear the matter. This situation may tend to arise when an offence occurred sometime in a period spanning the accused's eighteenth birthday, when the exact date of the offence is uncertain. It may also occur when there is no formal registration of an accused's date of birth. By way of actual example, in one case, a person was alleged to

have committed sexual offences against a child in a period spanning a number of years. Particular dates on which the offending occurred were unable to be specified. Charges alleging very serious sexual offences could not be pursued because the state could not establish whether the accused was over or under 18 years of age at the time the particular offences were committed.

Proposed sections 19(2AA) and 19(2AB) will provide for the Children’s Court to have and retain jurisdiction if the charge alleges that the offence was committed by a person who may have been a child. Proposed section 19(2AB) in particular is intended to avoid prosecutions being discontinued when, during the trial, evidence suggests that the accused was, or may have been, an adult at the time of the offence. This will prevent additional stress and trauma for victims due to trials having to commence afresh in another court. To provide for the additional circumstances under proposed sections 19(2AA) and 19(2AB), the definition of “child” in section 3 of the children’s court act is to be expanded. Minor consequential amendments are also proposed to the Evidence Act 1906 and the Magistrates Court Act 2004 to maintain consistency with the children’s court act definition of “child”.

In conclusion, the amendments proposed throughout this bill will resolve technical impediments that currently prevent prosecution and conviction, in particular, regarding sexual offences against children. The sexual abuse of children is one the worst crimes imaginable. The provisions proposed in this bill improve the administration of justice for victims of child sexual abuse. They represent further improvements by the McGowan Labor government in the wake of the Royal Commission into Institutional Responses to Child Sexual Abuse and will be complemented by further appropriate reforms over time.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 3301.]

Debate adjourned, pursuant to standing orders.

*House adjourned at 10.13 pm*

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