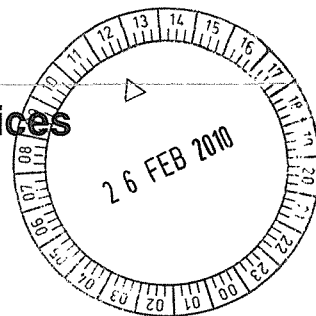




## Attorney General; Minister for Corrective Services

Our ref: 35-07756/3



Hon Adele Farina MLC  
Chair  
Standing Committee on Uniform Legislation and Statutes Review  
Legislative Council of Western Australia  
Parliament House  
PERTH WA 6000

Dear Ms Farina

### ***Criminal Code (Identity Crime) Bill 2009***

I refer to the Standing Committee on Uniform Legislation and Statutes Review's hearing on the Government's proposed Criminal Code Amendment (Identity Crime) Bill 2009 where officers from the Department of the Attorney General (DotAG) provided the Committee with specific details regarding various aspects of the proposed Bill. During the course of the hearing, it was agreed to provide the Committee with additional information regarding several different issues discussed during proceedings.

Subsequent to providing this information to you in my letter dated 15 February 2010, the relevant DotAG officers received a verbal request from Committee staff for further information on another aspect discussed at the hearing, namely the proposed Bill's operational capacity when elements of an alleged identity crime offence have occurred outside of Western Australia and *vice versa*. I provide the following comments in response to this request.

The issue discussed at the Committee hearing was formulated in questions 11.1 and 11.2. This issue is best discussed in the context of how any provision of the WA *Criminal Code* operates when part of the relevant offence occurs in another jurisdiction. As a general principle, the courts have adopted a rule of interpretation by which the WA Parliament is presumed to have addressed only what occurs or exists within the boundaries of the State. Therefore, all references in WA law to persons, acts or things will *prima facie* be restricted to persons, acts and things within the jurisdictional limits of Western Australia. With regards to criminal law, during *R v Franke* the Supreme Court of Victoria held that:

"It is well-settled that, at least in penal statute, general words will not be given an extra-territorial operation unless an intention to give such an operation to the statute appears expressly or by necessary implication. All references, therefore, in such a statute to persons, acts or things will *prima facie* be restricted to persons, acts and things within the territorial limits of the jurisdiction of the legislature."

Importantly, however, section 12 of the WA *Criminal Code* provides:

- "(1) An offence under this Code or any other law of Western Australia is committed if –
- (a) all elements necessary to constitute the offence exist;
  - and
  - (b) at least one of the acts, omissions, events, circumstances or states of affairs that make up those elements occurs in Western Australia.

(2) Without limiting the general operation of subsection (1), that subsection applies even if the only thing that occurs in Western Australia is an event, circumstance or state of affairs caused by an act of omission that occurs outside Western Australia.

(3) This section does not apply to an offence if –

(a) the law under which the offence is created explicitly or by necessary implication makes the place of commission an element of the offence; or

(b) the law under which the offence is created is a law of extraterritorial operation and explicitly or by necessary implication excludes the need for a territorial nexus between Western Australia and an element of the offence.”

Additionally, in *Criminal Law Western Australia* (LexisNexus Butterworths Australia, 1990), the author states:

“Section 12 of the Criminal Code vests jurisdiction in Western Australian courts where all elements of an offence exists and “at least one of the acts, omissions, events, circumstances or states of affairs that make up those elements occurs in Western Australia”: see section 12(1)(b). Since the only element of the offence of conspiracy is the agreement, it follows that to give jurisdiction to the Western Australian courts, the agreement must be made in Western Australia.”

Relevant case law relating to such inter-jurisdictional elements of offences can be found in *Western Australia v Marchesi*, where the respondents were charged with conspiring to possess a prohibited drug with the intent to sell or supply it to another. One of the respondents lived in Western Australia, while the other lived in Victoria. The Western Australian respondent went to the residence of the Victorian respondent. They then put the drugs into the WA respondent’s vehicle, who then consigned the drugs to Perth. Both respondents were charged in Western Australia and brought to trial before the WA District Court. Steytler J stated:

“In this case it is common cause that the agreement comprising the conspiracy was made entirely in Victoria. Indeed, all communications, and the only association, proved to have taken place between the two respondents took place in Victoria. There was no evidence of any form of communication between them outside that State. Consequently, the District Court of Western Australia had no jurisdiction in respect of the conspiracy charged.”

It follows from the above that, providing that there is a territorial nexus between Western Australia and the facts constituting the essential elements of the offence, Western Australian courts will have jurisdiction over the offence. This will require consideration of the facts on a case by case basis.

I note here that the substance of this issue was addressed by me in the course of the Parliamentary debate on this Bill.

Thank you for your continued interest in the Government’s proposed Criminal Code Amendment (Identity Crime) Bill 2009. I trust that the above information is of further assistance to the Committee’s Inquiry.

Yours sincerely



C. Christian Porter MLA  
ATTORNEY GENERAL; MINISTER FOR CORRECTIVE SERVICES

25 FEB 2010

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