

CRIMINAL CODE AMENDMENT (CHILD SEX OFFENCES) BILL 2013

EXPLANATORY MEMORANDUM

Overview of the Bill

The Criminal Code Amendment (Child Sex Offences) Bill 2013 will expand and strengthen Western Australia's criminal laws to continue to protect children from sexual predators both within and outside of Western Australia.

Clause 1 – Short Title

Clause 1 provides that the title of the proposed Act is the *Criminal Code Amendment (Child Sex Offences) Act 2013 (WA)*.

Clause 2 – Commencement

Clause 2 provides that sections 1 and 2 will come into operation on the day that the Act receives Royal Assent. The remainder of the Act will commence on the day after Royal Assent is received.

Clause 3 – Act amended

Clause 3 provides that the proposed Act amends *The Criminal Code (WA)*.

Clause 4 – Section 187 amended

Section 187(1) of the *Criminal Code (WA)* (the Code) defines *prohibited conduct* as:

- (a) 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 an offence under Chapter XXXI; or
- (b) the commission of an offence under Part IIIA Division 2 of the *Crimes Act 1914* of the Commonwealth.

Clause 4 amends section 187(1) of the Code by inserting a new definition of *prohibited conduct* which makes it the doing of an act in a place outside of Western Australia in respect of a child that, if done in Western Australia, would constitute an offence under Chapter XXXI.

This expands the application of the offence of enabling or aiding a person to engage in *prohibited conduct* with any child whereas currently it only applies to a child under 16.

It also deletes the unnecessary reference to repealed Commonwealth legislation.

Clause 5 – Section 204B amended

Section 204B of the Code makes it an offence to use electronic communication to procure or expose a child under 16 to indecent matter.

However, the section does not operate as intended because the current definition of *electronic communication* does not definitively encompass communication over a mobile phone and all forms of email communication.

Clause 5 amends section 204B of the Code by deleting the current definition of *electronic communication* and inserting a new definition of *electronic communication* which specifically includes email, the Internet, facsimile, telephone (including mobile telephone), radio and television. It should be noted that the new definition is not limited to communication over these technologies; rather it is intended to apply to communication over any electronic medium.

It also refers to a new term *electronic* which includes electrical, digital, magnetic, optical, electromagnetic, biometric and photonic technologies.

Clause 6 – Section 557K amended

Section 557K(1) of the Code contains various definitions, including the definition of a *child sex offender*. The current definition only refers to persons convicted of offences under Western Australian legislation, or other jurisdictions substantially similar to laws otherwise covered by certain laws of the State.

Clause 6 amends section 557K of the Code by broadening the definition of *child sex offender* to include persons who have been convicted of various offences under Divisions 272, 273, 474 Subdivision D or Subdivision F of the *Criminal Code Act 1995* (Clth) or the repealed Part IIIA Division 2 of the *Crimes Act 1914* (Clth).