

Criminal Law Amendment (Uncertain Dates) Bill 2019

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amended**

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

**Criminal Law Amendment (Uncertain Dates)
Bill 2019**

A Bill for

An Act to amend *The Criminal Code* and the *Children's Court of Western Australia Act 1988* to make provision for the treatment of charges where the date of offence, or the age of the victim or accused person, is uncertain and to make consequential amendments to the *Evidence Act 1906* and the *Magistrates Court Act 2004*.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

2

1. Short title

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This is the *Criminal Law Amendment (Uncertain Dates)*
4 *Act 2019*.

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5

2. Commencement

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This Act comes into operation as follows —

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(a) Part 1 — on the day on which this Act receives the
8 Royal Assent;

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(b) the rest of the Act — on the day after that day.

1 **Part 2 — *The Criminal Code* amended**

2 **3. Act amended**

3 This Part amends *The Criminal Code*.

4 **4. Part I Chapter IIB inserted**

5 After section 10I insert:
6

7 **Chapter IIB — Charges where date of offence, or age of**
8 **victim, is uncertain**

9 **10J. Application of Chapter**

10 This Chapter applies to an alleged act or omission
11 regardless of whether it is alleged to have occurred
12 before, on or after the day on which the *Criminal Law*
13 *Amendment (Uncertain Dates) Act 2019* section 4
14 comes into operation.

15 **10K. Terms used**

16 In this Chapter —

17 ***amended*** includes enacted, replaced and repealed;

18 ***sexual offence*** means —

- 19 (a) an offence of a sexual nature under
20 Chapter XXII, XXV, XXX, XXXI, XXXIA or
21 XXXII as in force at any time; or
22 (b) an offence of attempting, inciting or conspiring
23 to commit an offence referred to in
24 paragraph (a); or
25 (c) an offence of becoming an accessory after the
26 fact to an offence referred to in paragraph (a).

- 1 **10L. Charge of indictable offence committed in period**
2 **when written law amended**
- 3 (1) This section applies in relation to an alleged act or
4 omission in the following circumstances —
- 5 (a) the alleged act or omission occurred in a period
6 (the *relevant period*) during which the written
7 law making the act or omission an indictable
8 offence (the *relevant law*) was amended;
- 9 (b) it is uncertain when in the relevant period the
10 alleged act or omission occurred;
- 11 (c) the alleged act or omission, if proved,
12 constituted —
- 13 (i) an indictable offence before the relevant
14 law was amended; and
- 15 (ii) a separate and different indictable
16 offence after the relevant law was
17 amended.
- 18 (2) If the indictable offences referred to in
19 subsection (1)(c) have the same statutory penalty, the
20 accused person may be charged with, and convicted
21 and sentenced in respect of, either of the offences
22 regardless of when in the relevant period the alleged
23 act or omission occurred.
- 24 (3) If the indictable offences referred to in
25 subsection (1)(c) have different statutory penalties, the
26 accused person may be charged with, and convicted
27 and sentenced in respect of, the offence that has the
28 lesser statutory penalty regardless of when in the
29 relevant period the alleged act or omission occurred.

- 1 **10M. Charge of sexual offence committed in period when**
2 **victim has birthday**
- 3 (1) This section applies in relation to an alleged act or
4 omission in respect of a person (the *victim*) in the
5 following circumstances —
- 6 (a) the alleged act or omission occurred in a period
7 (the *relevant period*) during which the victim
8 had a birthday (the *relevant birthday*);
- 9 (b) it is uncertain when in the relevant period the
10 alleged act or omission occurred;
- 11 (c) the alleged act or omission, if proved,
12 constituted —
- 13 (i) a sexual offence in respect of the victim
14 before the relevant birthday; and
- 15 (ii) a separate and different sexual offence
16 in respect of the victim on or after the
17 relevant birthday.
- 18 (2) If the sexual offences referred to in subsection (1)(c)
19 have the same statutory penalty, the accused person
20 may be charged with, and convicted and sentenced in
21 respect of, either of the offences regardless of when in
22 the relevant period the alleged act or omission
23 occurred.
- 24 (3) If the sexual offences referred to in subsection (1)(c)
25 have different statutory penalties, the accused person
26 may be charged with, and convicted and sentenced in
27 respect of, the offence that has the lesser statutory
28 penalty regardless of when in the relevant period the
29 alleged act or omission occurred.

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10N. Charge of sexual offence when victim’s age uncertain

- (1) This section applies in relation to an alleged act or omission in respect of a person (the *victim*) in the following circumstances —
 - (a) the age of the victim at the time of the alleged act or omission is uncertain;
 - (b) the alleged act or omission, if proved, constituted —
 - (i) a sexual offence, if the victim was of a particular age; and
 - (ii) a separate and different sexual offence, if the victim was of a different age to that referred to in subparagraph (i).
- (2) If the sexual offences referred to in subsection (1)(b) have the same statutory penalty, the accused person may be charged with, and convicted and sentenced in respect of, either of the offences regardless of the age of the victim at the time of the alleged act or omission.
- (3) If the sexual offences referred to in subsection (1)(b) have different statutory penalties, the accused person may be charged with, and convicted and sentenced in respect of, the offence that has the lesser statutory penalty regardless of the age of the victim at the time of the alleged act or omission.

1 **Part 3 — *Children's Court of Western Australia***
2 **Act 1988 amended**

3 **5. Act amended**

4 This Part amends the *Children's Court of Western Australia*
5 Act 1988.

6 **6. Section 3 amended**

7 In section 3(1) in the definition of *child* delete paragraph (c) and
8 insert:

- 9
10 (c) a person dealt with under section 19(2), (2AA)
11 or (2AB); and
12

13 **7. Section 19 amended**

14 (1) After section 19(2) insert:

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16 (2AA) Despite any uncertainty as to the age of the person
17 charged at the time the offence is alleged to have been
18 committed, the Court has jurisdiction for the purposes
19 of subsection (1) if the charge alleges that the offence
20 was committed by a person who might have been a
21 child.

22 (2AB) The Court retains the jurisdiction referred to in
23 subsection (2AA) despite any evidence produced in
24 proceedings in respect of the offence that the person
25 had reached 18 years of age at the time the offence is
26 alleged to have been committed.
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Part 3 Children's Court of Western Australia Act 1988 amended

s. 7

- 1 (2) In section 19(2a) delete “subsection (2),” and insert:
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3 subsection (2) and (2AB),
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Part 4 — Evidence Act 1906 amended

8. Act amended

This Part amends the *Evidence Act 1906*.

9. Section 106A amended

In section 106A in the definition of *child* delete paragraph (c) and insert:

- (c) in any proceeding in the Children’s Court, a person dealt with under the *Children’s Court of Western Australia Act 1988* section 19(2), (2AA) or (2AB);

1 **Part 5 — *Magistrates Court Act 2004* amended**

2 **10. Act amended**

3 This Part amends the *Magistrates Court Act 2004*.

4 **11. Section 11 amended**

5 In section 11(3)(c) delete “Part 3 where the accused, at the time
6 of the alleged offence, was under 18 years of age;” and insert:

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8 Part 3;

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