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for

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

Bill No. 135—2

Criminal Law Amendment (Uncertain Dates) Bill 2019

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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:

Part 1 — Preliminary

1. Short title

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

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

Part 2 — *The Criminal Code* amended

3. Act amended

This Part amends *The Criminal Code*.

4. Part I Chapter IIB inserted

After section 10I insert:

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

10J. Application of Chapter

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

10K. Terms used

In this Chapter —

amended includes enacted, replaced and repealed;

sexual offence means —

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

10L. Charge of indictable offence committed in period when written law amended

- (1) This section applies in relation to an alleged act or omission in the following circumstances —
 - (a) the alleged act or omission occurred in a period (the *relevant period*) during which the written law making the act or omission an indictable offence (the *relevant law*) was amended;
 - (b) it is uncertain when in the relevant period the alleged act or omission occurred;
 - (c) the alleged act or omission, if proved, constituted —
 - (i) an indictable offence before the relevant law was amended; and
 - (ii) a separate and different indictable offence after the relevant law was amended.
- (2) If the indictable offences referred to in subsection (1)(c) 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 when in the relevant period the alleged act or omission occurred.
- (3) If the indictable offences referred to in subsection (1)(c) 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 when in the relevant period the alleged act or omission occurred.

10M. Charge of sexual offence committed in period when victim has birthday

- (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 alleged act or omission occurred in a period (the *relevant period*) during which the victim had a birthday (the *relevant birthday*);
 - (b) it is uncertain when in the relevant period the alleged act or omission occurred;
 - (c) the alleged act or omission, if proved, constituted —
 - (i) a sexual offence in respect of the victim before the relevant birthday; and
 - (ii) a separate and different sexual offence in respect of the victim on or after the relevant birthday.
- (2) If the sexual offences referred to in subsection (1)(c) 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 when in the relevant period the alleged act or omission occurred.
- (3) If the sexual offences referred to in subsection (1)(c) 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 when in the relevant period the alleged act or omission occurred.

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.

**Part 3 — *Children’s Court of Western Australia*
Act 1988 amended**

5. Act amended

This Part amends the *Children’s Court of Western Australia Act 1988*.

6. Section 3 amended

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

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

7. Section 19 amended

(1) After section 19(2) insert:

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

(2AB) The Court retains the jurisdiction referred to in subsection (2AA) despite any evidence produced in proceedings in respect of the offence that the person had reached 18 years of age at the time the offence is alleged to have been committed.

- (2) In section 19(2a) delete “subsection (2),” and insert:
subsection (2) and (2AB),

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);

Part 5 — Magistrates Court Act 2004 amended

10. Act amended

This Part amends the *Magistrates Court Act 2004*.

11. Section 11 amended

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

Part 3;

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