

**Criminal Code Amendment (Cyber Predators)
Bill 2005**

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Western Australia

LEGISLATIVE ASSEMBLY

**Criminal Code Amendment (Cyber Predators)
Bill 2005**

A Bill for

**An Act to amend the *The Criminal Code* and, in consequence, to
amend the *Working With Children (Criminal Record Checking)
Act 2004*.**

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This is the *Criminal Code Amendment (Cyber Predators) Act 2005*.

2. Commencement

- 5 (1) Subject to subsection (2), this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Section 6 comes into operation on a day fixed by proclamation.

3. The Criminal Code amended

10 The amendments in this Act other than section 7 are to *The Criminal Code**.

[* *Reprint 12 as at 1 June 2005 (see the Schedule to the Criminal Code Act 1913 appearing as Appendix B to the Criminal Code Compilation Act 1913).*]

4. Section 204B inserted

15 After section 204A the following section is inserted —

“

204B. Using electronic communication to procure, or expose to indecent matter, children under 16

- 20 (1) In this section —
- “**computer generated image**” means electronically recorded data capable, by way of an electronic device, of being produced on a computer monitor, television screen, liquid crystal display or similar medium as an image, whether or not the image is
- 25 in the form of text;
- “**electronic communication**” has the meaning given to that term in section 5 of the *Electronic Transactions Act 2003*;

“**indecent matter**” includes an indecent film, videotape, audiotape, picture, photograph, or printed or written matter;

5 “**picture**” includes an image, whether or not it is a computer generated image;

“**victim**” means a person whom an adult, contrary to subsection (2) or (3), intends to —

- (a) procure to engage in sexual activity; or
- (b) expose to any indecent matter.

10 (2) An adult who uses electronic communication —

(a) with intent to —

- (i) procure a person under the age of 16 years to engage in sexual activity; or
- (ii) expose a person under the age of 16 years to any indecent matter,

15 either in Western Australia or elsewhere; or

(b) with intent to —

- (i) procure a person the offender believes is under the age of 16 years to engage in sexual activity; or
- (ii) expose a person the offender believes is under the age of 16 years to any indecent matter,

20 either in Western Australia or elsewhere,

25 is guilty of a crime and is liable to imprisonment for 5 years.

(3) An adult who uses electronic communication —

(a) with intent to —

- (i) procure a person under the age of 13 years to engage in sexual activity; or

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s. 4

- (ii) expose a person under the age of 13 years to any indecent matter, either in Western Australia or elsewhere; or
- (b) with intent to —
- 5 (i) procure a person the offender believes is under the age of 13 years to engage in sexual activity; or
- (ii) expose a person the offender believes is under the age of 13 years to any indecent matter,
- 10 either in Western Australia or elsewhere,
- is guilty of a crime and is liable to imprisonment for 10 years.
- Alternative offence: subsection (2).
- 15 (4) For the purpose of subsection (2)(a)(i) or (b)(i) or (3)(a)(i) or (b)(i), a person engages in sexual activity if the person —
- (a) allows a sexual act to be done to the person's body;
- 20 (b) does a sexual act to the person's own body or the body of another person; or
- (c) otherwise engages in an act of an indecent nature.
- (5) The acts referred to in subsection (4) are not limited to penetration or acts involving physical contact.
- 25 (6) For the purpose of subsection (2)(a)(i) or (b)(i) or (3)(a)(i) or (b)(i), it is not necessary to prove that the accused person intended to procure the victim to engage in any particular sexual activity.

- 5
- (7) If, despite subsection (6), an intention to procure the victim to engage in any particular sexual activity is alleged, it does not matter that, because of circumstances not known to the accused person, it is impossible in fact for the victim to engage in the sexual activity.
- (8) For the purposes of subsection (2) or (3), it does not matter that the victim is a fictitious person represented to the accused person as a real person.
- 10
- (9) Evidence that the victim was represented to the accused person as being under the age of 16 years, or 13 years, as the case may be, is, in the absence of evidence to the contrary, proof that the accused person believed the victim was under that age.
- 15
- (10) It is a defence to a charge under subsection (2)(a) to prove the accused person believed on reasonable grounds that the victim was of or over the age of 16 years.
- 20
- (11) It is a defence to a charge under subsection (3)(a) to prove the accused person believed on reasonable grounds that the victim was of or over the age of 13 years, but that does not prevent the person from being convicted of an offence under subsection (2).

”.

25 **5. Chapter LXXII heading amended**

The heading to Chapter LXXII is amended by inserting before “Custody” —

“ **Obtaining data from data storage devices:** ”.

6. Section 711AA inserted

After section 711 the following section is inserted —

“

711AA. Order to facilitate access to data in data storage devices

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(1) In this section—

“**data**” includes —

- (a) information in any form; and
- (b) any program or part of a program;

10

“**data storage device**” means a computer or other thing that —

- (a) contains or is designed to contain; or
- (b) provides access to or is designed to provide access to,

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data in digital, electronic or magnetic form;

“**prescribed offence**” means —

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- (a) an offence under section 204B, 320, 321, 321A, 322 or 329;
- (b) an offence under section 60 of the *Censorship Act 1996*; or
- (c) any offence under this Code or another written law that regulations prescribe as an offence to which this section applies.

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(2) A police officer may apply to a magistrate for an order requiring a specified person to provide any information or assistance that is reasonable and necessary to allow the police officer to do one or more of the following —

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- (a) obtain access to data contained in or accessible from a data storage device which is in the police officer’s possession, or to which the police officer has access, whether under a warrant or otherwise;

-
- (b) copy data referred to in paragraph (a) to another data storage device;
- (c) convert data referred to in paragraph (a) into any documentary form.
- 5 (3) The magistrate may make the order if the magistrate is satisfied that —
- (a) there are reasonable grounds for suspecting that anything relevant to a prescribed offence is contained in or accessible from the data storage device;
- 10 (b) the specified person —
- (i) is reasonably suspected of having committed the offence; or
- (ii) is, or is an employee of, the owner or lessee of the data storage device;
- 15 and
- (c) the specified person has relevant knowledge of —
- (i) the data storage device or a computer network of which the data storage device forms a part; or
- 20 (ii) measures applied to protect data contained in or accessible from the data storage device.
- 25 (4) Without limiting subsection (3), a magistrate may make an order under that subsection when issuing a warrant under section 711 in respect of a prescribed offence.
- 30 (5) In an order made under subsection (3) the magistrate must indicate which of subsection (3)(b)(i) or (ii) is applicable to the specified person.

