

CLAUSE NOTES

Criminal Code and Related Legislation Amendment (Child Abuse) Bill 2018

Part 1 – Preliminary

Clause 1: Short title

Specifies the name of the proposed Act.

Clause 2: Commencement

Provides for the commencement of the proposed Act on the date of Royal Assent.

Part 2 – *Children, Young Persons and Their Families Act 1997* Amended

Clause 3: Principal Act

Provides that the Principal Act being amended in this Part is the *Children, Young Persons and Their Families Act 1997*.

Clause 4: Section 14 amended

Amends section 14 of the Principal Act by:

- inserting in the definition of 'prescribed person':
 - a member of the clergy of a church or religious denomination; and
 - a Member of the State Parliament;
- inserting a definition of 'religious confession' the same as section 127 of the *Evidence Act 2001*; and
- inserting in section 14 of the Principal Act subsection (7) to provide that a member of clergy of a church or religious denomination may not rely on confessional privilege for the purposes of the reporting obligation under this section.

Clause 5: Section 16 amended

Amends section 16 of the Principal Act by:

- inserting a definition of 'law enforcement agency' as:
 - any state, territory or international police service; or
 - any authority or person responsible for the investigation or prosecution of offences against the laws of a jurisdiction; and

- inserting in subsection 16(2) of the Principal Act paragraph (d) to include law enforcement agency.

Part 3 – *Criminal Code Act 1924* Amended

Clause 6: Principal Act

Provides that the Principal Act being amended in this Part is the *Criminal Code Act 1924*.

Clause 7: Schedule 1 (*Criminal Code*) amended

1. Inserting in Schedule 1 of the Principal Act section 105A which:

- creates the new crime of 'Failing to report the abuse of a child';
- defines certain words and terms such as 'abuse offence', 'child', 'proper authority' and 'religious confession' for the purposes of the new crime;
- provides that a person is guilty of the crime of 'Failing to report the abuse of a child' if the person:
 - has information that leads that person to form a reasonable belief that an abuse offence has been committed against a child; and
 - the person fails to report that information to police as soon as practicable without reasonable excuse;
- provides that a person is not guilty of the crime if:
 - the information was obtained by the person when he or she was a child; or
 - the alleged victim of the abuse offence had attained 18 years when the information was obtained and in circumstances where the person believes on reasonable grounds that the alleged victim does not want the information reported to police;
- provides that matters that may constitute a 'reasonable excuse' for the purposes of the crime include, but are not limited to, circumstances where:
 - the person fears on reasonable grounds that disclosing the information would endanger the safety of any person (other than the alleged perpetrator);
 - subject to subsection (5), the information is subject to a lawful claim or right of privilege;
 - the person believes on reasonable grounds that the information has already been reported to a proper authority or a proper authority already has the information; or

- the information is generally available to members of the public;
 - provides that a member of clergy of a church or religious denomination may not rely on confessional privilege to refuse to report a child abuse crime; and
 - provides that a prosecution of the crime under this section is not to be commenced without the written approval of the Director of Public Prosecutions.
2. Amending section 125D by:
- inserting 'and to any person' in subsections (1) and (3) to provide that the communication with intent to procure may also be made to any person not only a child subject of the crime; and
 - omitting subsection (5) and substituting to provide that it is a defence to crime under the section where:
 - the alleged victim was above the age of 15 years and the accused person was not more than 5 years older; and
 - the alleged victim was above the age of 12 years and the accused person was not more than 3 years older.
3. Amending section 461 by:
- inserting subsection (3) to apply to the repeal of section 18(3) retrospectively.
4. Inserting in Schedule 1 of the Principal Act section 462 which:
- provides that a crime under section 105A applies to information received on or after the commencement of this Act and includes information relating to crimes that occurred before the commencement of the Act.

Part 4 – Evidence (*Children and Special Witnesses*) Act 2001 Amended

Clause 8: Principal Act

Provides that the Principal Act being amended in this Part is the *Evidence (Children and Special Witnesses) Act 2001*.

Clause 9: Section 3 Amended

1. Amends section 3 of the Principal Act by:
- omitting from the definition of 'affected child' paragraph (ba);

- inserting in the definition of 'affected child' witnesses of certain serious crimes as specified; a witness required to give evidence in relation to a child sexual offence;
- inserting a definition of 'affected person' to include an 'affected child' and a person who has attained 18 years, in respect of whom a child sexual offence was committed; and
- inserting a definition of 'child sexual offence'.

Clause 10: Part 2 Heading Amended

Amends the heading of Part 2 of the Principal Act to include 'affected persons'.

Clause 11: Section 6 Amended

Omits 'affected child' and substitutes with 'affected person'.

Clause 12: Section 6A Amended

Omits 'affected child' and substitutes with 'affected person' in section 6A of the Principal Act.

Clause 13: Section 7A Amended

Omits 'affected child' and substitutes with 'affected person' in section 7A of the Principal Act.

Clause 14: Section 7B Amended

Omits subsection 7B(1) of the Principal Act and substitutes a new subsection to provide a judge is to admit an audio visual record of evidence made under the Part in later civil or criminal proceedings where:

- the audio visual recording is relevant to the later proceeding; and
- the admission of the audio visual recording is not contrary to the interests of justice.

Clause 15: Section 7C Amended

Amends section 7C of the Principal Act by inserting a police officer or other person authorised by the Commissioner of Police for the training or evaluation of the police officer involved in making the audio visual recording.

Clause 16: Section 7D Inserted

Inserts section 7D in the Principal Act which:

- defines 'law reform body' for the purposes of the section;
- provides that the Attorney-General may approve an application by a law reform body to view audio visual recordings made under this Part for the purposes of a review into the laws of evidence;

- provides that the Attorney-General may approve an application by a law reform body under this section on conditions as the Attorney-General considers appropriate;
- provides that a person with authority to possess and use an audio visual recording under the Part, has authority to play the recording to a member of the law reform body as approved by the Attorney-General;
- requires all legal proceedings in relation to the audio visual recording be concluded; and
- requires the witness giving evidence in the audio visual recording be de-identified or if the witness has attained 18 years of age provided consent for the use of the recording by the law reform body.

Clause 17: Section 8 Amended

Omits 'affected child' and substitutes with 'affected person' in section 8 of the Principal Act.

Clause 18: Section 9A Inserted

Inserts section 9A in the Principal Act which:

- provides that a judge may make the following orders in respect of a witness in a child sexual offence proceeding:
 - a special hearing be held to take and record evidence; and/or
 - that the witness is not required to be present at trial;
- in determining what is in the interest of justice, the judge is to take into account, but is not limited to, whether:
 - the unavailability of the witness to give evidence may cause undue delay in the prosecution;
 - the relationship between the witness and another witness in the proceeding may cause emotional trauma or distress to either witness;
- the order may be made on the application of the prosecutor; and
- the defendant is to be served a copy and is entitled to be heard on the application.

Part 5 – Sentencing Act 1997 Amended

Clause 19: Principal Act

Provides that the Principal Act being amended in this Part is the *Sentencing Act 1997*.

Clause 20: Section 4 Amended

Amends section 4 of the Principal Act to define 'child sexual offence'.

Clause 21: Section 11 Amended

Amends section 11 of the Principal Act to provide that a court imposing a single sentence for more than child sexual offence is to identify the sentence that would have been imposed if separate sentences for each child sexual offence were imposed.

Clause 22: Section 11A Amended

Amends section 11A of the Principal Act to provide that a court sentencing a person for a child sexual offence is to take into account the sentencing practices at the time of sentencing.

Part 6 – Repeal of Act

Clause 23: Repeal of Act

Provides that the Act is repealed automatically a year after it commences. The amendments that this Act has made to the Principal Acts remain in force after the repeal of this Act.