



Queensland

Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019

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Consultation draft—August 2019

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Consultation draft—August 2019

Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019

Contents

2019

A Bill

for

An Act to amend the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, the Criminal Code, the *Disability Services Act 2006*, the *Evidence Act 1977*, the *Penalties and Sentences Act 1992*, the *Transport Operations (Passenger Transport) Act 1994* and the *Working with Children (Risk Management and Screening) Act 2000* for particular purposes

Consultation draft—August 2019

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2019*.

2 Commencement

The following provisions commence on a day to be fixed by proclamation—

- (a) part 3, division 3;
- (b) part 4, division 3;
- (c) part 5, division 3;
- (d) part 8, division 3.

Part 2 Amendment of Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004

3 Act amended

This part amends the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

4 Amendment of sch 1 (Prescribed offences)

Schedule 1, item 4, entry for the Criminal Code—

insert—

- section 228I (Producing or supplying a child abuse object)
- section 228J (Possessing a child abuse object)

Part 3 Amendment of Criminal Code

Division 1 Preliminary

5 Code amended

This part amends the Criminal Code.

Division 2 Amendments commencing on assent

6 Amendment of s 207A (Definitions for this chapter)

Section 207A—

insert—

child abuse object means a doll, robot or other object if—

- (a) a reasonable adult would consider—
 - (i) the doll, robot or other object is a representation or portrayal of a person, or part of a person, who is a child under 16 years; or

[s 7]

- (ii) the predominant impression conveyed by the doll, robot or other object is that it is a representation or portrayal of a child under 16 years, irrespective of whether it has adult characteristics; and
- (b) it is likely the doll, robot or other object is intended for use in an indecent or sexual context, including, for example, engaging in a sexual activity.

7 Amendment of s 215 (Carnal knowledge with or of children under 16)

Section 215—

insert—

Note—

See section 745 in relation to the application of this section as in force from time to time before the commencement of the *Criminal Code, Evidence Act and Other Acts Amendment Act 1989*, section 14.

8 Replacement of s 218B (Grooming children under 16)

Section 218B—

omit, insert—

218B Grooming child under 16 years or parent or carer of child under 16 years

- (1) In this section—
 - (a) a reference to a *child*, in relation to an adult engaging in conduct in relation to a child or a child's parent or carer—
 - (i) is a reference to a person under 16 years or a person the adult believes is under 16 years; and

-
- (ii) if the conduct relates to a child—
includes a reference to a fictitious person who is represented to the adult as a real person under 16 years; and
 - (b) a reference to a *child's parent or carer*, in relation to an adult engaging in conduct in relation to a child's parent or carer, includes a reference to—
 - (i) a person the adult believes is a child's parent or carer; or
 - (ii) a fictitious person who is represented to the adult as a parent or carer of a child.
 - (2) An adult who engages in conduct in relation to a child, or a child's parent or carer, with intent to—
 - (a) facilitate the procurement of the child to engage in a sexual act, either in Queensland or elsewhere; or
 - (b) expose, without legitimate reason, the child to any indecent matter, either in Queensland or elsewhere;commits a crime.
- Note—*
See section 1 for the definition *indecent matter*.
Maximum penalty—5 years imprisonment.
- (3) The adult is liable to 10 years imprisonment if the child is—
 - (a) a person under 12 years; or
 - (b) a person the adult believes is under 12 years.
 - (4) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

[s 8]

- (5) An indictment charging an offence against this section with the circumstances of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.
- (6) For subsection (2)(a), a child engages in a sexual act if the child—
 - (a) allows a sexual act to be done to the child; or
 - (b) does a sexual act to the child’s own body or the body of another person; or
 - (c) otherwise engages in an act of an indecent nature.
- (7) Subsection (6) is not limited to sexual intercourse or acts involving physical contact.
- (8) For subsection (2)(a)—
 - (a) it is not necessary to prove that the adult intended to facilitate the procurement of the child to engage in any particular sexual act; and
 - (b) it does not matter that, by reason of circumstances not known to the adult, it is impossible in fact for the child to engage in the sexual act; and
 - (c) it does not matter when the adult intended the child would be procured to engage in a sexual act.
- (9) Evidence that the child was represented to the adult as being under 16 years, or 12 years, as the case may be, is, in the absence of evidence to the contrary, proof that the adult believed the child was under that age.
- (10) It is a defence to a charge under this section to prove the adult believed on reasonable grounds

that the child was at least 16 years.

- (11) For an offence defined in subsection (2) alleged to have been committed with the circumstance of aggravation mentioned in subsection (3)(a), it is a defence to the circumstance of aggravation to prove that the adult believed on reasonable grounds that the person was at least 12 years.

- (12) In this section—

procure means knowingly entice or recruit for the purposes of sexual exploitation.

9 Insertion of new ss 228I–228K

After section 228H—

insert—

228I Producing or supplying a child abuse object

- (1) A person who produces or supplies a child abuse object commits a crime.

Maximum penalty—

- (a) if the production or supply is for a commercial purpose—20 years imprisonment; or
- (b) otherwise—14 years imprisonment.
- (2) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.
- (3) An indictment charging an offence against this section with the circumstances of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.
- (4) In this section—
- produce* includes—

- (a) prepare, manufacture or package; and
- (b) offer to produce; and
- (c) do or offer to do any act in preparation for or furtherance of, or for the purpose of, an act of producing.

supply includes—

- (a) give, distribute, sell or transport; and
- (b) offer to supply; and
- (c) do or offer to do any act in preparation for or furtherance of, or for the purpose of, an act of supply.

228J Possessing a child abuse object

- (1) A person who knowingly possesses a child abuse object commits a crime.

Maximum penalty—14 years imprisonment.

- (2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.
- (3) An indictment charging an offence against this section with the circumstances of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

228K Defence for ss 228I and 228J

- (1) It is a defence for a person charged with an offence against section 228I or 228J to prove that—
 - (a) the person engaged in the conduct that is alleged to constitute the offence for a

genuine artistic, educational, legal, medical, scientific or public benefit purpose; and

- (b) the person's conduct was, in the circumstances, reasonable for that purpose.
- (2) Whether conduct was engaged in for a purpose mentioned in subsection (1)(a) is a question of fact.

10 Amendment of s 229B (Maintaining a sexual relationship with a child)

Section 229B—

insert—

Note—

See sections 746 and 747 in relation to—

- (a) the application of this section in relation to acts done before 3 July 1989; and
- (b) the application of this section during the period 3 July 1989 to 30 April 2003.

11 Amendment of s 632 (Corroboration)

Section 632(3), from 'but the judge'—

omit, insert—

but the judge must not—

- (a) warn or suggest in any way to the jury that the law regards any class of persons as unreliable witnesses; or
- (b) use the following, or similar, expressions in any comment made, or direction given, to the jury in relation to convicting the accused on the uncorroborated testimony of 1 witness—
 - (i) dangerous or unsafe to convict;

- (ii) scrutinise with great care.

12 Insertion of new pt 9, ch 101, ch div 1

Part 9—

insert—

**Chapter 101 Transitional and
declaratory provisions
for Criminal Code
(Child Sexual Offences
Reform) and Other
Legislation
Amendment Act 2019**

**Chapter division 1 Provisions
commencing on assent**

743 Definitions for chapter division

In this chapter division—

1989 amending Act means the *Criminal Code, Evidence Act and Other Acts Amendment Act 1989*.

2003 amending Act means the *Sexual Offences (Protection of Children) Amendment Act 2003*.

744 Application of repealed s 212

- (1) Repealed section 212 is taken always to have applied as if the limitation provision of the section was not, and had never been, in force.

- (2) To remove any doubt, it is declared that any immunity from prosecution acquired because of the limitation provision of repealed section 212 is abolished.
- (3) In this section—

limitation provision, of repealed section 212, means the provision of repealed section 212 that limited the period within which a prosecution for either of the offences defined in the section must be begun.

repealed section 212 means section 212 as in force from time to time before the commencement of the 1989 amending Act, section 13.

745 Application of former s 215

- (1) Former section 215 is taken always to have applied as if the limitation provision of the section was not, and had never been, in force.
- (2) To remove any doubt, it is declared that any immunity from prosecution acquired because of the limitation provision of former section 215 is abolished.
- (3) However, subsections (1) and (2) do not apply in relation to the limitation provision of former section 215 to the extent it applied, from time to time before the commencement of the *Criminal Code Amendment Act 1976*, section 19, to a prosecution for an offence in relation to a girl of 16 years.
- (4) In this section—

former section 215 means section 215 as in force from time to time before the commencement of the 1989 amending Act, section 14.

limitation provision, of former section 215,

means the provision of former section 215 that limited the period within which a prosecution for either of the offences firstly defined in the section must be begun.

746 Application of s 229B to acts done before 3 July 1989

- (1) Section 229B as in force on the commencement of this section applies, and is taken to have always applied, in relation to acts done before the commencement of the 1989 amending Act, section 23.
- (2) For subsection (1), section 229B as in force on the commencement of this section applies, and is taken to have always applied, as if—
 - (a) the maximum penalty for an offence against section 229B(1) were—
 - (i) if in the course of the unlawful sexual relationship the adult committed a relevant sexual offence for which the adult is liable to imprisonment for 14 years or more—life imprisonment; or
 - (ii) if in the course of the unlawful sexual relationship the adult committed a relevant sexual offence for which the adult is liable to imprisonment for at least 5 years but less than 14 years—14 years imprisonment; or
 - (iii) otherwise—7 years; and
 - (b) section 229B(10) defined *relevant sexual offence* to mean an offence—
 - (i) defined in a provision of this Code as in force from time to time before the commencement of the 1989 amending Act, section 23; and

- (ii) constituted by an act that would, if committed on the commencement of this section, constitute an offence of a sexual nature; and
 - (c) the reference in section 229B(10), definition *unlawful sexual act* to an offence of a sexual nature were a reference to a relevant sexual offence.
- (3) Subsection (1) does not apply in relation to an act done before the commencement of the 1989 amending Act, section 23 if, before the commencement of this section, the act was the subject of a charge of an offence.

747 Application of s 229B during period 3 July 1989 to 30 April 2003

- (1) Section 229B as in force on the commencement of this section applies, and is taken to have always applied, during the period—
 - (a) starting on the commencement of the 1989 amending Act, section 23; and
 - (b) ending immediately before the commencement of the 2003 amending Act, section 18.
- (2) For subsection (1), section 229B as in force on the commencement of this section applies, and is taken to have always applied, as if—
 - (a) the reference in section 229B(10), definition *unlawful sexual act* to an offence of a sexual nature were a reference to a relevant sexual offence; and
 - (b) section 229B(10) defined *relevant sexual offence* to mean an offence—

- (i) defined in a provision of this Code as in force from time to time before the commencement of the 2003 amending Act, section 18; and
 - (ii) constituted by an act that would, if committed on the commencement of this section, constitute an offence of a sexual nature.
- (3) If an adult has been charged, before the commencement of this section, with committing an offence against section 229B over a period that includes any part of the period mentioned in subsection (1), subsection (1) does not apply in relation to the period the subject of the charge for—
 - (a) the proceeding for the offence; or
 - (b) any appeal against a conviction or sentence for the offence.

748 Proceedings for offences against s 229B

- (1) This section applies in relation to an offence committed by a person against section 229B as applied under section 746 or 747.
- (2) A proceeding for the offence may be started, and the person may be convicted of and punished for the offence, as if section 229B had always applied in the way provided for under section 746 or 747.
- (3) This section applies despite section 11 and the *Acts Interpretation Act 1954*, section 20C.

749 Application of s 632

- (1) New section 632 applies in relation to a proceeding only if an originating step for the proceeding is taken on or after the

commencement.

- (2) For subsection (1), it does not matter whether the offence the subject of the proceeding was committed before or after the commencement.
- (3) If new section 632 does not apply in relation to a proceeding, old section 632 continues to apply in relation to the proceeding as if the amending Act, section 11 had not commenced.
- (4) In this section—

amending Act means the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2019*.

new section 632 means section 632 as amended by the amending Act.

old section 632 means section 632 as in force immediately before the commencement of the amending Act, section 11.

originating step, for a proceeding, means—

- (a) the arrest of the defendant in the proceeding; or
- (b) the making of a complaint under the *Justices Act 1886*, section 42 in relation to the defendant in the proceeding; or
- (c) the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 382.

Division 3 Amendments commencing by proclamation

13 Amendment of s 207A (Definitions for this chapter)

Section 207A—

insert—

accountable person, for sections 229BB and 229BC, see section 229BA(3)

associated—

(a) with an institution, for sections 229BB and 229BC—see section 229BA(4); or

(b) with a relevant carer, for sections 229BB and 229BC—see section 229BA(5).

child sex offence, for sections 229BB and 229BC, see section 229BA(7).

institution, for sections 229BB and 229BC, see section 229BA(2).

relevant carer, for sections 229BB and 229BC, see section 229BA(6).

14 Insertion of new ss 229BA–229BC

After section 229B—

insert—

229BA Meaning of particular words for ss 229BB and 229BC

(1) This section defines particular words used in sections 229BB and 229BC.

(2) An ***institution*** is an entity, other than an individual, that—

(a) provides services to children; or

-
- (b) operates a facility for, or engages in activities with, children under the entity's care, supervision or control.

Examples of institutions—

schools, government agencies, religious organisations, hospitals, child care centres, licensed residential facilities, sporting clubs, youth organisations

- (3) An **accountable person** is—
- (a) an adult associated with an institution; or
 - (b) a relevant carer.
- (4) An adult is **associated** with an institution if the adult—
- (a) owns, or is involved in the management or control of, the institution; or
 - (b) is employed or engaged by the institution; or
 - (c) works as a volunteer for the institution; or
 - (d) engages in an activity in relation to the institution for which a blue card under the *Working with Children (Risk Management and Screening) Act 2000* is required.
- (5) An adult is **associated** with a relevant carer if the adult is a member of the relevant carer's household.

Note—

Each adult member of a relevant carer's household is taken to be a volunteer who is engaged in regulated employment for which a positive notice blue card is required; see *Working with Children (Risk Management and Screening) Act 2000*, schedule 1, section 14.

- (6) A person is a **relevant carer** if the person is either of the following under the *Child Protection Act 1999*, schedule 3—
- (a) an approved foster carer;

- (b) an approved kinship carer.
- (7) A *child sex offence* is an offence of a sexual nature committed in relation to a child including, for example, an offence against this chapter or chapter 32.

229BB Failure to report belief of offence of sexual nature committed in relation to child

- (1) This section applies to an accountable person if—
 - (a) in the course of performing the accountable person’s functions or in the person’s capacity as an accountable person, the person gains information that causes, or ought reasonably to cause, the person to believe a child sex offence is being or has been committed against a child by another adult (the *alleged offender*); and
 - (b) the alleged offender is, or was at the relevant time—
 - (i) a relevant carer; or
 - (ii) associated with an institution or with a relevant carer; and
 - (c) the child is, or was at the relevant time, under the care, supervision or control of an institution or relevant carer; and
 - (d) either—
 - (i) the child is, or was at the relevant time, under 16 years; or
 - (ii) the alleged offender is, or was at the relevant time, in a position of authority in relation to the child.
- (2) If, without reasonable excuse, the accountable person fails to disclose the information to a police

officer as soon as reasonably practicable after the belief is, or ought reasonably to have been, formed, the person commits a misdemeanour.

Maximum penalty—3 years imprisonment.

- (3) For subsection (1), it does not matter that the information was gained by the accountable person during, or in connection with, a religious confession.
- (4) Without limiting what may be a reasonable excuse for subsection (2), an accountable person has a reasonable excuse if—
 - (a) the person believes on reasonable grounds that the police service already has the information; or
 - (b) the person has already reported the information under any of the following provisions, or believes on reasonable grounds that another person has done so—
 - (i) the *Child Protection Act 1999*, chapter 2, part 1AA;
 - (ii) the *Education (General Provisions) Act 2006*, chapter 12, part 10;
 - (iii) the *Youth Justice Act 1992*, part 8 or 9; or
 - (c) the person gains the information after the child becomes an adult, and the person reasonably believes the adult does not want the information to be disclosed to a police officer.
- (5) An accountable person who discloses information mentioned in subsection (1)(a) to a police officer is not liable civilly, criminally or under an administrative process for making the disclosure.
- (6) In this section—

relevant time, in relation to a belief of an accountable person that a child sex offence is being or has been committed against a child by an alleged offender, means the time at which the offence is believed to have been committed.

religious confession means a confession made by a person to a member of the clergy in the member's professional capacity according to the ritual of the member's church or religious denomination.

229BC Failure to protect child from child sex offence

An accountable person commits a crime if—

- (a) the person knows there is a significant risk that another adult (the *alleged offender*) will commit a child sex offence in relation to a child; and
- (b) the alleged offender is—
 - (i) a relevant carer; or
 - (ii) associated with an institution or with a relevant carer; and
- (c) the child is under the care, supervision or control of an institution or relevant carer; and
- (d) either—
 - (i) the child is under 16 years; or
 - (ii) the alleged offender is in a position of authority in relation to the child; and
- (e) the person has the power or responsibility to reduce or remove the risk; and
- (f) the person wilfully or negligently fails to reduce or remove the risk.

Maximum penalty—5 years imprisonment.

15 Insertion of new pt 9, ch 101, ch div 2

Part 9, chapter 101, as inserted by this Act—
insert—

**Chapter division 2 Provision commencing
by proclamation**

750 Application of s 229BB

Section 229BB applies to an adult in relation to information gained on or after the commencement whether the information relates to an alleged offence believed to have been committed by an alleged offender before or after the commencement.

**Part 4 Amendment of Disability
Services Act 2006**

Division 1 Preliminary

16 Act amended

This part amends the *Disability Services Act 2006*.

**Division 2 Amendments commencing on
 assent**

17 Amendment of sch 2 (Current serious offences)

Schedule 2, item 4, entry for Criminal Code—

insert—

228I Producing or supplying a child
 abuse object

228J Possessing a child abuse object

18 Amendment of sch 4 (Current disqualifying offences)

Schedule 4, item 4, entry for Criminal Code—

insert—

228I Producing or supplying a child
 abuse object

228J Possessing a child abuse object

**Division 3 Amendment commencing by
 proclamation**

19 Amendment of sch 2 (Current serious offences)

Schedule 2, item 4, entry for Criminal Code—

insert—

229BC Failure to protect child
 from child sex offence

Part 5 **Amendment of Evidence Act
1977**

Division 1 **Preliminary**

20 **Act amended**

This part amends the *Evidence Act 1977*.

Division 2 **Amendments commencing on
assent**

21 **Replacement of s 132A (Admissibility of similar fact
evidence)**

Section 132A—

omit, insert—

**132A Admissibility of propensity evidence and
relationship evidence**

- (1) This section applies in relation to a criminal proceeding.
- (2) Propensity evidence, or relationship evidence, about the defendant is admissible in evidence in the proceeding if the court considers—
 - (a) the evidence will, by itself or having regard to other evidence adduced or to be adduced, have significant probative value; and
 - (b) having regard to the probative value of the evidence compared to the degree of risk of an unfair trial, a fair-minded person would consider that the public interest in admitting all relevant evidence of guilt outweighs the risk of an unfair trial.

[s 22]

- (3) In considering the probative value of evidence under subsection (2), the court may not have regard to the possibility that the evidence may be the result of collusion, concoction or suggestion.
- (4) The weight of evidence admitted under this section is a question for the jury, if any.
- (5) In this section—
propensity evidence, about a defendant, includes the evidence of 2 or more witnesses of events involving the defendant, if the similarities in the evidence of the witnesses make it improbable the witnesses are lying.

22 Insertion of new ss 132BA–132BC

After section 132B—

insert—

132BA Standard of proof for propensity evidence and relationship evidence in proceeding for sexual offence

- (1) This section applies in relation to a criminal proceeding in which there is a jury if—
 - (a) the defendant is charged with a sexual offence; and
 - (b) under section 132A, propensity evidence, or relationship evidence, about the defendant is admitted in evidence in the proceeding.
- (2) The judge may not direct the jury as to the standard of proof required in relation to the use of the propensity evidence or relationship evidence.
- (3) In this section—
propensity evidence, about a defendant, see section 132A(5).

sexual offence means an offence of a sexual nature, including, for example—

- (a) an offence against a provision of the Criminal Code, chapter 32; and
- (b) an offence against a provision of the Criminal Code, chapter 22.

132BB Delay in prosecuting offence

- (1) This section applies in relation to a criminal proceeding in which there is a jury.
- (2) If the judge, on application by a party to the proceeding, is satisfied the defendant has suffered a significant forensic disadvantage because of the effects of delay in prosecuting an offence the subject of the proceeding, the judge must inform the jury of—
 - (a) the nature of the disadvantage; and
 - (b) the need to take the disadvantage into account when considering the evidence.
- (3) However, the judge need not comply with subsection (2) if there are good reasons for not doing so.
- (4) For subsection (2), a significant forensic disadvantage is not established by the mere fact of delay in prosecuting the offence.
- (5) In complying with subsection (2), the judge must not use the following, or similar, expressions—
 - (a) dangerous or unsafe to convict;
 - (b) scrutinise with great care.
- (6) The judge may not, other than under this section, inform or warn the jury about the disadvantages suffered by the defendant because of the effects of delay in prosecuting the offence.

(7) In this section—

delay, in prosecuting an offence, includes delay in reporting the offence.

132BC Reliability and credibility

(1) This section applies in relation to a criminal proceeding in which there is a jury.

(2) In giving any warning or direction to the jury about the reliability of the evidence, or the credibility, of a witness in the proceeding, the judge must not use the following, or similar, expressions—

- (a) dangerous or unsafe to convict;
- (b) scrutinise with great care.

23 Insertion of new pt 9, div 10

Part 9—

insert—

Division 10 Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2019

154 Definition for division

In this division—

originating step, for a criminal proceeding, means—

- (a) the arrest of the defendant in the proceeding;
- or

-
- (b) the making of a complaint under the *Justices Act 1886*, section 42 in relation to the defendant in the proceeding; or
 - (c) the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 382.

155 Application of s 132A

- (1) New section 132A applies in relation to a criminal proceeding only if an originating step for the proceeding is taken on or after the commencement.
- (2) For subsection (1), it does not matter whether the offence the subject of the proceeding was committed before or after the commencement.
- (3) If new section 132A does not apply in relation to a criminal proceeding, old section 132A continues to apply in relation to the proceeding as if the amending Act, section 21 had not commenced.
- (4) In this section—

amending Act means the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2019*.

new section 132A means section 132A as inserted by the amending Act.

old section 132A means section 132A as in force immediately before the commencement of the amending Act, section 21.

156 Application of ss 132BA–132BC

- (1) Sections 132BA, 132BB and 132BC apply in

[s 24]

relation to a criminal proceeding only if an originating step for the proceeding is taken on or after the commencement.

- (2) For subsection (1), it does not matter whether the offence the subject of the proceeding was committed before or after the commencement.

Division 3 Amendment commencing by proclamation

24 Amendment of s 21M (Meaning of *protected witness*)

Section 21M(3), definition *prescribed offence*—

insert—

229BB, 229BC,

Part 6 Amendment of Penalties and Sentences Act 1992

25 Act amended

This part amends the *Penalties and Sentences Act 1992*.

26 Amendment of s 9 (Sentencing guidelines)

- (1) Section 9(4)(a) and (b)—

omit, insert—

- (a) the court must have regard to the sentencing practices, principles and guidelines applicable when the sentence is imposed rather than when the offence was committed; and

-
- (b) the principles mentioned in subsection (2)(a) do not apply; and
 - (c) the offender must serve an actual term of imprisonment, unless there are exceptional circumstances.
 - (2) Section 9(5), ‘subsection (4)(b)’—
omit, insert—
subsection (4)(c)
 - (3) Section 9, after section 9(6)—
insert—
(6AA) However, for subsection (6)(g), the court must not have regard to the offender’s good character if it assisted the offender in committing the offence.
 - (4) Section 9(6A)(d), ‘or 228DC’—
omit, insert—
, 228DC, 228I or 228J
 - (5) Section 9(7)(a)—
omit, insert—
 - (a) for an offence other than an offence against section 228I or 228J—the nature of any material describing or depicting a child that the offence involved, including the apparent age of the child and any activity shown; and
 - (aa) for an offence against section 228I or 228J—the nature of the doll, robot or other object representing or portraying a child that the offence involved, including the apparent age of the child; and
 - (ab) the offender’s conduct or behaviour in relation to the material, doll, robot or other object that the offence involved; and

[s 27]

- (ac) any relationship between the offender and the child the subject of the description or material, or represented or portrayed by the doll, robot or other object, that the offence involved; and

27 Insertion of new s 195E

After section 195D—

insert—

195E Court may require copies of report to be given to corrective services department

- (1) A court that sentences an offender for an offence may order that a copy of a medical or other report tendered during the sentencing proceeding must be given to the corrective services department.
- (2) The order may include—
 - (a) the time within which the copies must be given to the corrective services department; and
 - (b) any other requirement to facilitate the giving of the copy to the corrective services department.
- (3) A report given to the corrective services department under this section is confidential information for the *Corrective Services Act 2006*, section 341.
- (4) In this section—

corrective services department means the department in which the *Corrective Services Act 2006* is administered.

28 Insertion of new pt 14, div 21

Part 14—

insert—

**Division 21 Transitional provisions for
Criminal Code (Child
Sexual Offences Reform)
and Other Legislation
Amendment Act 2019**

256 Sentencing guidelines

Section 9, as amended by the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2019*, applies to the sentencing of an offender after the commencement whether the offence or conviction happened before or after the commencement.

257 Application of s 195E

Section 195E applies to a court sentencing an offender after the commencement—

- (a) whether the offence or conviction happened before or after the commencement; and
- (b) even if the sentence is imposed on appeal or reopening of sentencing proceedings under section 188.

29 Amendment of sch 1C (Prescribed offences)

(1) Schedule 1C, entry for Criminal Code—

insert—

[s 30]

- section 228I (Producing or supplying a child abuse object)
 - section 228J (Possessing a child abuse object)
- (2) Schedule 1C, entry for Criminal Code, entry for section 218B, ‘(Grooming children under 16)’—
- omit, insert—*
- (Grooming child under 16 or parent or carer of a child under 16)

Part 7 Amendment of Transport Operations (Passenger Transport) Act 1994

30 Act amended

This part amends the *Transport Operations (Passenger Transport) Act 1994*.

31 Amendment of sch 1A (Driver disqualifying offences)

Schedule 1A, part 1, division 1—

insert—

10H section 228I (Producing or supplying a child abuse object)

10I section 228J (Possessing a child abuse object)

Part 8 **Amendment of Working with
Children (Risk Management
and Screening) Act 2000**

Division 1 **Preliminary**

32 **Act amended**

This part amends the *Working with Children (Risk Management and Screening) Act 2000*.

Division 2 **Amendments commencing on
assent**

33 **Amendment of sch 2 (Current serious offences)**

Schedule 2, item 4, entry for Criminal Code—
insert—

228I Producing or supplying a child
 abuse object

228J Possessing a child abuse object

34 **Amendment of sch 4 (Current disqualifying offences)**

Schedule 4, item 4, entry for Criminal Code—
insert—

228I Producing or supplying a child
 abuse object

228J Possessing a child abuse object

Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019

Part 8 Amendment of Working with Children (Risk Management and Screening) Act 2000

[s 35]

Division 3 **Amendment commencing by
proclamation**

35 **Amendment of sch 2 (Current serious offences)**

Schedule 2, item 4, entry for Criminal Code—

insert—

229BC Failure to protect child from
child sex offence