

CRIMINAL CODE AMENDMENT (CHILD MARRIAGE) BILL 2018

SECOND READING SPEECH

I move that the Bill be now read a second time.

Chapter XXXI of the Western Australian *Criminal Code Act Compilation Act 1913* (WA) contains a number of provisions that set out the acts that constitute sexual offences and factors that amount to a defence to those offences.

Several provisions in the Criminal Code provide a defence to certain sexual offences committed against a child under the age of 16, where the accused person is lawfully married to the child. The sexual offences include: sexual penetration of a child, procuring, inciting or encouraging a child to engage in sexual behaviour or to do an indecent act, indecently dealing with or recording a child and persistent sexual conduct with a child.

These defence provisions have no legal operation in Australia; they are a historical anomaly reflecting the fact that until August 1991, the *Marriage Act 1961* (Cth) allowed females to marry at 14 and 15 years of age with the authorisation of a Judge or Magistrate.

The *Marriage Act 1961* (Cth) provides a uniform system of marriage law throughout Australia, setting out what marriages are recognised as valid or void under Australian law. At present, the legal marriageable age under that Act is 18 years, or, with the authorisation of a Judge or Magistrate, at least 16 years of age. A marriage is void where either party is, or was not, of marriageable age at the time the marriage was solemnised. As such, it is not possible for a person to be lawfully married to a child under 16 years of age in Australia. This includes marriages that were solemnised overseas.

As the provisions in the Criminal Code are defunct and have the potential to mislead members of the public regarding the state of child marriage laws in Australia, they should be repealed. The Government proposes to repeal these provisions by way of legislative amendment to the Criminal Code.

The proposed legislative amendments are necessary to address anomalies between State and Commonwealth legislation as well as avert inconsistent behaviour by members of the public. The amendments align with general government policy regarding the protection of children from child sexual offences and to reflect Commonwealth marriage law.

Pursuant to Standing Order 126(1), I advise that this Bill is not a uniform legislation Bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the Government of the State is a party. Nor does this Bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the Commonwealth.

I commend the Bill to the House and table the Explanatory Memorandum.