

Appendix 7: List of questions asked in the Discussion Paper

Chapter 3: Definitional issues

Sexual penetration

1. Should the definition of sexual penetration in the *Code* be amended in any way? For example, should it be extended to include anilingus (oral stimulation of the anus)?

Sexual behaviour, carnal knowledge and carnal connection

2. Should the terms carnal knowledge and carnal connection in sections 186, 191, 192 and 319(4) of the *Code* be replaced? If so, what terms should be used instead?
3. Should the definition of sexual behaviour be amended in any other way?

Vagina

4. Should the definition of vagina in section 319(1) of the *Code* be clarified or reformed in any way?

Surgically constructed or altered body parts

5. Should the *Code* specify that references to relevant body parts (such as vagina, penis or urethra) include references to surgically constructed or altered body parts?

Other reforms

6. Are there any other sexual offence-related definitions in the *Code* that should be amended in any way?

Chapter 4: Sexual penetration without consent

Remove the distinction between penetrative and non-penetrative sexual assaults

7. Should the *Code* continue to distinguish between penetrative and non-penetrative forms of sexual assault?

Create a distinction between forms of penetration

8. Should the *Code* distinguish between different forms of penetration? For example, should there be different offences for penile and non-penile penetration without consent?

Change the name of the offence

9. Should the name of the penetrative sexual offence – sexual penetration without consent – be changed? If so, what should it be called?

Other reforms

10. Should any other changes be made to the offence of sexual penetration without consent?

Chapter 5: Sexual coercion

Make it clear that the sexual behaviour must be non-consensual

11. Should the offence of sexual coercion be amended to make it clear that the sexual behaviour must have been non-consensual?

Change the name of the offence

12. Should the name of the sexual coercion offence be changed? If so, what should it be called?

Prevent a potential overlap with the offence of sexual penetration without consent

13. Is there a need to address the potential overlap between the offences of sexual coercion and sexual penetration without consent? If so, how should this overlap be addressed?

Other reforms

14. Should any other changes be made to the offence of sexual coercion?

Chapter 6: Indecent assault

Define indecency

15. Should the *Code* include a definition of indecency for the purposes of the offence of indecent assault? If so, how should it be defined?

Make it clear that the section 319 definition of consent applies to indecent assaults

16. Should the *Code* be amended to clarify that the section 319 definition of consent applies to the offence of indecent assault?

Address the withdrawal of consent

17. Should the *Code* provide that the offence of indecent assault is committed where the accused continues to indecently touch or threaten the complainant after consent has been withdrawn?

Change the name of the offence

18. Should the name of the indecent assault offence be changed? If so, what should it be called?

Other reforms

19. Should any other changes be made to the offence of indecent assault?

Chapter 7: Sexual offences against children

Define procures, incites or encourages

20. Should the phrase procures, incites or encourages be defined or amended in any way?

Define indecent

21. Should the *Code* include a definition of indecency for the purposes of the child sexual offences that use this term? If so, how should it be defined?

Define care, supervision or authority

22. Should the phrase 'care, supervision or authority', as used in the context of sexual offences against children, be replaced by another descriptor? If so, what term(s) should be used?

23. Should the *Code* define the phrase 'care, supervision or authority' (or its replacement)? If so, how should it be defined?

Change the age of consent

24. Is 16 years the appropriate age below which all sexual activity with children should be prohibited regardless of a child's subjective attitude towards the activity? If not, what is the appropriate age?

Change the age categories

25. Should the age below which a higher maximum penalty for child sexual offences is available (13 years) be raised, lowered, maintained or abolished? If raised or lowered, what should the new age be?

Reform the mistake of age defence

26. Should the mistake of age defence be amended in any way? For example:

- Should the requirement that the accused be not more than three years older than the complainant be removed?
- Should the defence be limited to cases in which the complainant consented to the sexual activity?
- Should the accused be required to prove, on the balance of probabilities, that they took reasonable steps to ascertain the age of the complainant?

Reform the lawful marriage defence

27. Should marriage continue to be a defence to charges involving sexual activity with persons of or over the age of 16 years? If so, should the defence be extended to other types of relationships or be amended in any other way?

Create a new similar age defence

28. Should the law allow a child of a certain age to consent to sexual activity with persons who are close to the child's age? If so, what should the age of the child be and what should be the permitted age gap between the participants?

Reform the offence of persistent sexual conduct with a child under 16 years

29. Should the offence of persistent sexual conduct with a child under the age of 16 be amended in any way? If so, how should it be amended?

Permit the prosecution to charge a course of conduct as a single count

30. Should the Code permit the prosecution to charge a course of conduct as a single count on the indictment? If so, how should this power be framed?

Change the name of the offences

31. Should there be any changes to the terminology used to describe child sexual offences, such as replacing sexual penetration and/or indecent with other terms?

Other reforms

32. Should any other changes be made to the sexual offences against children?

Chapter 8: Sexual offences against incapable persons

Change the language used in the provision

33. Should the Code use a different term to incapable persons? If so, what term should be used?

Reform the definition of incapable person

34. Should the definition of incapable person be amended in any way? If so, how should it be defined?

35. Should the definitions of mental illness and/or mental impairment that apply in relation to sexual offences against incapable persons be amended in any way? If so, how should they be defined?

Reform the prohibited sexual acts

36. Do Western Australia's laws protecting incapable persons provide appropriate protection?

37. Should the types of sexual activity against incapable persons that are criminalised be changed? If so, how?

38. Should Western Australia distinguish between offences against incapable persons committed by carers and those committed by non-carers?

39. If a special offence is to be created for carers how should 'carer' (or another suitable term) be defined?
40. Should Western Australian law require the prosecution to prove that the accused knew the complainant was an incapable person? Should the answer to this question depend on whether the law distinguishes between offences by carers and offences by non-carers?

Reform the lawful marriage defence

41. Should marriage continue to be a defence to charges involving sexual activity with incapable persons? If so, should the defence be extended to other types of relationships or be amended in any other way?

Permit sexual activity between incapable persons

42. Should Western Australian law permit sexual activity between two people who both meet the definition of incapable persons? If so, how should the *Code* be amended to enable this to occur?

Repeal specific offences against incapable persons

43. Should Western Australian law continue to include separate sexual offences against incapable persons?

Other reforms

44. Should any other changes be made to the sexual offences against incapable persons?

Chapter 9: Sexual offences against lineal relatives and de facto children

Reform the definitions of lineal relative or de facto child

45. Should the definitions of lineal relative and de facto child in section 329 of the *Code* be amended in any way? If so, how?

Repeal specific sexual offences against children by lineal relatives or de facto parents

46. Should sexual acts against children by a relative continue to be dealt with as a separate offence under section 329 of the *Code*, or should they be dealt with under the general child sexual offence provisions contained in sections 320-322 of the *Code*?

Decriminalise all consensual sexual acts between adult lineal relatives

47. Should sexual activity between consenting adults who are related be prohibited? If so, which types of sexual activity should be prohibited?

Other reforms

48. Should any other changes be made to the sexual offences against lineal relatives or de facto children?

Chapter 10: Sexual servitude and deceptive recruiting offences

Repeal the offence of deceptive recruiting for a commercial sexual service

49. Should the offence of deceptive recruiting for a commercial sexual service be repealed? If not, should it be amended in any way?

Other reforms

50. Should the offences of sexual servitude or conducting a business involving sexual servitude be amended in any way?

Chapter 11: Procuring and prostitution

Repeal or reform section 186

51. Should the offence in section 186 of the *Code* (which prohibits a person from inducing or knowingly permitting a child under 16 to be on premises they own, occupy, manage or control for the purpose of being unlawfully carnally known by a person) remain an offence? If so, should it be amended in any way?

Repeal or reform section 191

52. Should the offences in section 191 of the *Code* (which relate to procuring a person to be a prostitute) remain offences? If so, should they be amended in any way?

Repeal or reform section 192

53. Should the offences in section 192 of the *Code* (which relate to procuring sex by threats, intimidation, fraud or the administration of drugs) remain offences? If so, should they be amended in any way?

Change the language used in the provisions

54. If the offences in sections 191 and 192 are to remain offences, should the terms common prostitute and known immoral character be replaced? If so, what terms should be used instead?

Define procures

55. If the offences in sections 191 and 192 are to remain offences, should the word procures be defined? If so, how should it be defined?

Chapter 12: Introducing a mental state requirement

Introducing a mental state requirement

56. Should a mental state requirement be added to any of the *Code's* sexual offence provisions? If so, which provisions should include such a requirement and what should the requirement be?

Negligent sexual offences

57. Should the *Code* include negligent sexual offences?

Chapter 13: Other possible offences

Persistent sexual conduct with a child of or over 16

58. Should the *Code* include an offence of persistent sexual conduct with a child of or over the age of 16 years who is under the care, supervision or authority of the accused?

Grooming

59. Should the *Code* include a broad grooming offence? If so, how should that offence be framed?

Failing to protect a child within an institution

60. Should the *Code* include an offence of failing to protect a child within an institution? If so, how should that offence be framed?

Breach of conditional consent

61. Should the *Code* include an offence of breaching conditional consent? If so, how should that offence be framed?

Committing non-assaultive offences with an intent to commit sexual acts

62. Should the *Code* include an offence of committing a non-assaultive offence with the intention of committing or facilitating the commission of a sexual offence? If so, should this be limited to specific offences or extended to the commission of all offences?

Other reforms

63. Are there any other sexual offences that should be included in Chapter XXXI of the *Code*?

Chapter 14: Aggravated offences

Reform the circumstances of aggravation

64. Should the circumstances of aggravation listed in section 319 of the *Code* be amended in any way?

Create new aggravated offences

65. Should the *Code* include any additional aggravated offences?

Chapter 15: Statutory alternatives

66. Should the statutory alternatives for sexual offences be amended in any way?

Chapter 16: Penalties

Change the maximum penalties

67. Should the maximum penalties for any of the sexual offences under review be changed? If so, what maximum penalties should be set?

Care, supervision or authority

68. Should there be any change to the circumstances in which a maximum penalty is increased due to the complainant being under the accused's care, supervision or authority?

Offences against children and incapable persons

69. Should there be any change to the circumstances in which a maximum penalty is increased due to the complainant being a child or an incapable person?

70. In the case of children, should the higher maximum penalty apply where proof of the complainant's age is not available, but the complainant was apparently within the relevant age range?

Child offenders

71. Should there be any change to the circumstances in which a maximum penalty is reduced due to the offender being a child?

Change the circumstances in which a penalty is mandated

72. In what circumstances, if any, should mandatory sentencing provisions be used in relation to the *Code's* sexual offences?

Introduce rebuttable sentencing presumptions

73. In what circumstances, if any, should rebuttable sentencing presumptions be used in relation to the *Code's* sexual offences?

74. If rebuttable sentencing presumptions are introduced, in what circumstances should the ordinary sentencing presumption be rebutted?

Other reforms

75. Are there any other ways in which the penalty provisions for sexual offences should be reformed?

Chapter 17: Structure of Chapter XXXI of the Code

Structure of Chapter XXXI

76. How should the sexual offences against children be grouped in the *Code*?

77. Should sexual offences against adults or children appear first in the *Code*?

Position of offences in the Code

78. Should the sexual offences be placed in a separate Part of the *Code*, or should they remain within Part V of the *Code*?

79. If the offences set out in sections 186, 191 and 192 are retained, should they be moved to a different part of the *Code* or a different Act? If so, where should they be located?

Other Reforms

80. Are there any issues or options for reform that have not been raised in the Discussion Paper that you think the Commission should consider?