

Legislation of Interpol member states on sexual offences against children

## Australia - Australie - Australia

Canberra

### V. The Legislation of the Australian State of Western Australia

## Western Australia

Western Australia has legislation covering the following areas in relation to child sex offences:

### Child Sexual Abuse –

#### Criminal Code

SECTION	SHORT TITLE
204A.	Showing offensive material to children under 16
204B.	Using electronic communication to procure, or expose to indecent matter, children under 16
320.	Sexual offences against Child under 13
321.	Sexual offences against Child of or over 13 and under 16
321A.	Sexual relationship with Child under 16
322.	Sexual offences against by person in authority etc Child of or over 16
324.	Aggravated indecent assault
325.	Sexual penetration without consent
326.	Aggravated sexual penetration without consent
327.	Sexual coercion
328.	Aggravated sexual coercion
329.	Sexual offences by Relatives and the like

- 330. Sexual offences against Incapable person
- 331B. Sexual servitude
  
- 331C. Conducting business involving sexual servitude
  
- 331D. Deceptive recruiting for commercial sexual services

### **Child Pornography –**

Censorship Act

Section 60 Possess Child Pornography and like offences

### **Child Prostitution –**

Part 3, Sections 16 – 21 Prostitution Act 2000

### **DETAILS OF ABOVE SECTIONS –**

#### **204A. Showing offensive material to children under 16**

(1) In this section, unless the contrary intention appears —

“**material**” includes —

- (a) an object;
- (b) a still visual image of any kind, whether a drawing, painting, photograph, or other representation on a surface of any kind, and whether printed or not;
- (c) a moving visual image of any kind, whether produced from a cinematographic film, video tape, or other medium;
- (d) a hologram;

“**offensive material**” means material that —

- (a) describes, depicts, expresses, or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty or violence, or revolting or abhorrent phenomena, in a manner that is likely to cause offence to a reasonable adult;
- (b) depicts a person (whether engaged in sexual activity or otherwise) who is, or who is apparently, a child under the age of 16 years in a manner that is likely to cause offence to a reasonable adult;
- (c) describes, depicts, expresses, or otherwise deals with sexual activity of any kind between a human being and an animal; or
- (d) promotes, incites, or instructs in matters of crime or violence, and includes —
  - (e) a publication, within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth, that has been classified RC, Category 1 restricted or Category 2 restricted under that Act;
  - (f) a film, within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth, that has been classified RC or X under that Act; and

(g) a computer game, within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth, that has been classified RC under that Act.

(2) A person who, with intent to commit a crime, shows offensive material to a child under the age of 16 years is guilty of a crime and is liable to imprisonment for 5 years.

(3) Upon an indictment charging a person with an offence under subsection (2), a certificate issued under an Act referred to in the definition of “offensive material” in subsection (1) as to the status of any material under that Act is, in the absence of

evidence to the contrary, proof of the matters in the certificate.

(4) It is a defence to a charge under subsection (2) to prove the accused person —

(a) believed on reasonable grounds that the child was of or over the age of 16 years; **and**

(b) was not more than 3 years older than the child.

## **NEW INTERNET GROOMING LEGISLATION (ENACTED 30 MARCH 2006)**

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

(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 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;

“**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.

(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, 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, either in Western Australia or elsewhere, 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

(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 —

(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, either in Western Australia or elsewhere, is guilty of a crime and is liable to imprisonment for 10 years.

Alternative offence: subsection (2).

(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;

(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.

(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.

(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.

(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.

(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.

(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).

*[Section 204B inserted by No. 3 of 2006 s. 4.]*

## **SEXUAL OFFENCES AGAINST CHILDREN**

### **319. Interpretation**

(1) In this Chapter —

“**circumstances of aggravation**”, without limiting the definition of that expression in section 221, includes circumstances in which —

(a) at or immediately before or immediately after the commission of the offence —

(i) the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed;

(ii) the offender is in company with another person or persons;

(iii) the offender does bodily harm to any person;

(iv) the offender does an act which is likely seriously and substantially to degrade or

humiliate the victim; or

(v) the offender threatens to kill the victim; or

(b) the victim is of or over the age of 13 years and under the age of 16 years.

“**deals with**” includes doing any act which, if done without consent, would constitute an assault;

“**indecent act**” means an indecent act which is —

(a) committed in the presence of or viewed by any person; or

(b) photographed, videotaped, or recorded in any manner;

**“to indecently record”** means to take, or permit to be taken, or make, or permit to be made, an indecent photograph, film, video tape, or other recording (including a sound recording);

**“to sexually penetrate”** means —

(a) to penetrate the vagina (which term includes the *labia majora*), the anus, or the urethra of any person with —

(i) any part of the body of another person; or

(ii) an object manipulated by another person, except where the penetration is carried out for proper medical purposes;

(b) to manipulate any part of the body of another person so as to cause penetration of the vagina (which term includes the *labia majora*), the anus, or the urethra of the offender by part of the other person’s body;

(c) to introduce any part of the penis of a person into the mouth of another person;

(d) to engage in cunnilingus or fellatio; or

(e) to continue sexual penetration as defined in paragraph (a), (b), (c) or (d).

(2) For the purposes of this Chapter —

(a) **“consent”** means a consent freely and voluntarily given and, without in any way affecting the meaning attributable to those words, a consent is not freely and voluntarily given if it is obtained by force, threat, intimidation, deceit, or any fraudulent means;

(b) where an act would be an offence if done without the consent of a person, a failure by that person to offer physical resistance does not of itself constitute consent to the act;

(c) a child under the age of 13 years is incapable of consenting to an act which constitutes an offence against the child.

(3) For the purposes of this Chapter, a reference to a person indecently dealing with a child or an incapable person includes a reference to the person —

(a) procuring or permitting the child or incapable person to deal indecently with the person;

(b) procuring the child or incapable person to deal indecently with another person; or

(c) committing an indecent act in the presence of the child or incapable person.

(4) For the purposes of this Chapter, a person is said to engage in sexual behaviour if the person —

(a) sexually penetrates any person;

(b) has carnal knowledge of an animal; or

(c) penetrates the person’s own vagina (which term includes the *labia majora*), anus, or urethra with any object or any part of the person’s body for other than proper medical purposes.

### **320. Child under 13, sexual offences against**

(1) In this section **“child”** means a child under the age of 13 years.

(2) A person who sexually penetrates a child is guilty of a crime and is liable to imprisonment for 20 years.

Alternative offence: s. 320(4), 321(2) or (4) or 322(2) or (4).

(3) A person who procures, incites, or encourages a child to engage in sexual behaviour is guilty of a crime and is liable to imprisonment for 20 years.

Alternative offence: s. 320(4) or (5), 321(3), (4) or (5) or 322(3), (4) or (5).

(4) A person who indecently deals with a child is guilty of a crime and is liable to imprisonment for 10 years.

Alternative offence: s. 321(4) or 322(4).

(5) A person who procures, incites, or encourages a child to do an indecent act is guilty of a crime and is liable to imprisonment for 10 years.

Alternative offence: s. 321(5) or 322(5).

(6) A person who indecently records a child is guilty of a crime and is liable to imprisonment for 10 years.

Alternative offence: s. 321(6) or 322(6).

*[Section 320 inserted by No. 14 of 1992 s. 6(1); amended by No. 70 of 2004 s. 36(3).]*

### **321. Child of or over 13 and under 16, sexual offences against**

(1) In this section, “**child**” means a child of or over the age of 13 years and under the age of 16 years.

(2) A person who sexually penetrates a child is guilty of a crime and is liable to the punishment in subsection (7).

Alternative offence: s. 321(4) or 322(2) or (4).

(3) A person who procures, incites, or encourages a child to engage in sexual behaviour is guilty of a crime and is liable to the punishment in subsection (7).

Alternative offence: s. 321(4) or (5) or 322(3), (4) or (5).

(4) A person who indecently deals with a child is guilty of a crime and is liable to the punishment in subsection (8).

Alternative offence: s. 322(4).

(5) A person who procures, incites, or encourages a child to do an indecent act is guilty of a crime and is liable to the punishment in subsection (8).

Alternative offence: s. 322(5).

(6) A person who indecently records a child is guilty of a crime and is liable to the punishment in subsection (8).

Alternative offence: s. 322(6).

(7) A person who is guilty of a crime under subsection (2) or (3) is liable to imprisonment for —

(a) 14 years;

(b) where the child is under the care, supervision, or authority of the offender, 20 years; or

(c) where the offender is under the age of 18 years and the child is not under the care, supervision, or authority of the offender, 7 years.

(8) A person who is guilty of a crime under subsection (4), (5) or (6) is liable to imprisonment for —

(a) 7 years;

(b) where the child is under the care, supervision, or authority of the offender, 10 years; or

(c) where the offender is under the age of 18 years and the child is not under the care, supervision, or authority of the offender, 4 years.

(9) Subject to subsection (9a) it is a defence to a charge under this section to prove the accused person —

(a) believed on reasonable grounds that the child was of or over the age of 16 years; and

(b) was not more than 3 years older than the child.

(9a) Where the child is under the care, supervision, or authority of the accused person it is immaterial that the accused person —

(a) believed on reasonable grounds that the child was of or over the age of 16 years; and

(b) was not more than 3 years older than the child.

(10) It is a defence to a charge under subsection (2), (3) or (4) to prove the accused person was lawfully married to the child.

(11) It is a defence to a charge under subsection (5) to prove —

(a) that the indecent act was a private conjugal act; or

(b) that the accused person intended the indecent act to be a private conjugal act.

(12) For the purposes of subsection (11) an indecent act is a private conjugal act if —

(a) it is not committed in the presence of, or viewed by, any person other than a person lawfully married to the child; and

(b) no photograph, film, videotape or other recording is made of it other than for the exclusive and private use of the child and a person lawfully married to the child.

(13) It is a defence to a charge under subsection (6) to prove —

(a) that the accused person was lawfully married to the child; and

(b) that the indecent recording was made for the exclusive and private use of the child and the accused person.

### **321A. Child under 16, sexual relationship with**

(1) For the purposes of this section a person has a sexual relationship with a child under the age of 16 years if that person, on 3 or more occasions each of which is on a different day, does an act in relation to the child which would constitute a prescribed offence.

(2) In subsection (1) the act referred to need not be the same act, or constitute the same offence on each of the 3 or more occasions.

(3) A person who has a sexual relationship with a child under the age of 16 years is guilty of a crime and is liable to imprisonment for 20 years.

(4) An indictment under subsection (3) shall specify the period during which it is alleged that the sexual relationship occurred and the accused shall not be charged in the same indictment with any other offence under this Chapter alleged to have been committed against the child during that period.

(5) In proceedings on an indictment charging an offence under subsection (3) it is not necessary to specify the dates, or in any other way to particularize the circumstances, of the alleged acts.

(6) An indictment for an offence under this section is to be signed by the Director of Public Prosecutions or the Deputy Director of Public Prosecutions.

(7) It is a defence to a charge under subsection (3) to prove the accused person —

(a) believed on reasonable grounds that the child was of or over the age of 16 years; and

(b) was not more than 3 years older than the child.

(8) It is a defence to a charge under subsection (3) to prove the accused person was lawfully married to the child.

(9) Upon an indictment charging a person with an offence under subsection (3), if the jury is not satisfied the accused person is guilty of that offence, the accused person may be convicted of one or more prescribed offences if the offence or offences are established by the evidence.

(10) If a person has been tried and convicted or acquitted on an indictment alleging the commission of an offence under subsection (3), that fact is a defence to any charge of an offence under this Chapter alleged to have been committed against the same child during the period when it was alleged the sexual relationship with the child occurred.

(11) In this section, “**prescribed offence**” means —

(a) an offence under section 320(2) or (4) or 321(2) or (4); or

(b) an offence under section 320(3) or 321(3) where the child in fact engages in sexual behaviour.

### **322. Child of or over 16, sexual offences against by person in authority etc.**

(1) In this section “**child**” means a child of or over the age of 16 years.

(2) A person who sexually penetrates a child who is under his or her care, supervision, or authority is guilty of a crime and is liable to imprisonment for 10 years.

Alternative offence: s. 322(4).

(3) A person who procures, incites, or encourages a child who is under his or her care, supervision, or authority to engage in sexual behaviour is guilty of a crime and is liable to imprisonment for 10 years.

Alternative offence: s. 322(4) or (5).

(4) A person who indecently deals with a child who is under his or her care, supervision, or authority is guilty of a crime and is liable to imprisonment for 5 years.

(5) A person who procures, incites, or encourages a child who is under his or her care, supervision, or authority to do an indecent act is guilty of a crime and is liable to imprisonment for 5 years.

(6) A person who indecently records a child who is under his or her care, supervision, or authority is guilty of a crime and is liable to imprisonment for 5 years.

(7) It is no defence to a charge under this section to prove the accused believed on reasonable grounds that the child was of or over the age of 18 years.

(8) It is a defence to a charge under this section to prove the accused person was lawfully married to the child.

### **324. Aggravated indecent assault**

A person who unlawfully and indecently assaults another person in circumstances of aggravation is guilty of a crime and is liable to imprisonment for 7 years.

Alternative offence: s. 321(4), 322(4) or 323.

Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.

### **325. Sexual penetration without consent**

A person who sexually penetrates another person without the consent of that person is guilty of a crime and is liable to imprisonment for 14 years.

Alternative offence: s. 322(2) or (4), 323 or 324.

### **326. Aggravated sexual penetration without consent**

A person who sexually penetrates another person without the consent of that person in circumstances of aggravation is guilty of a crime and liable to imprisonment for 20 years.

Alternative offence: s. 321(2) or (4), 322(2) or (4), 323, 324 or 325.

### **327. Sexual coercion**

A person who compels another person to engage in sexual behaviour is guilty of a crime and is liable to imprisonment for 14 years.

Alternative offence: s. 322(3), (4) or (5).

### **328. Aggravated sexual coercion**

A person who compels another person to engage in sexual behaviour in circumstances of aggravation is guilty of a crime and is liable to imprisonment for 20 years.

Alternative offence: s. 321(3), (4) or (5), 322(3), (4) or (5) or 327.

### **329. Relatives and the like, sexual offences by**

(1) In this section —

“**de facto child**” means a step-child of the offender or a child or step-child of a de facto partner of the offender;

“**lineal relative**” means a person who is a lineal ancestor, lineal descendant, brother, or sister, whether the relationship is of the whole blood or half-blood,

whether or not the relationship is traced through, or to, a person whose parents were not married to each other at the time of the person's birth, or subsequently, and whether the relationship is a natural relationship or a relationship established by a written law.

(2) A person who sexually penetrates a child who the offender knows is his or her lineal relative or a de facto child is guilty of a crime and is liable to the punishment in subsection (9).

Alternative offence: s. 321(2) or (4), 322(2) or (4) or 329(4).

(3) A person who procures, incites, or encourages a child who the offender knows is his or her lineal relative or a de facto child to engage in sexual behaviour is guilty of a crime and is liable to the punishment in subsection (9).

Alternative offence: s. 321(3), (4) or (5), 322(3), (4) or (5) or 329(4) or (5).

(4) A person who indecently deals with a child who the offender knows is his or her lineal relative or a de facto child is guilty of a crime and is liable to the punishment in subsection (10).

Alternative offence: s. 321(4) or 322(4).

(5) A person who procures, incites, or encourages a child who the offender knows is his or her lineal relative or a de facto child to do an indecent act is guilty of a crime and is liable to the punishment in subsection (10).

Alternative offence: s. 321(5) or 322(5).

(6) A person who indecently records a child who the offender knows is his or her lineal relative or a de facto child is guilty of a crime and is liable to the punishment in subsection (10).

Alternative offence: s. 321(6) or 322(6).

(7) A person who sexually penetrates a person of or over the age of 18 years who the offender knows is his or her lineal relative is guilty of a crime and is liable to imprisonment for 3 years.

(8) A person of or over the age of 18 years who consents to being sexually penetrated by a person who he or she knows is his or her lineal relative is guilty of a crime and is liable to imprisonment for 3 years.

(9) A person who is guilty of a crime under subsection (2) or (3) is liable to imprisonment for —

(a) where the child is under the age of 16 years, 20 years; or

(b) where the child is of or over the age of 16 years, 10 years.

(10) A person who is guilty of a crime under subsection (4), (5) or (6) is liable to imprisonment for —

(a) where the child is under the age of 16 years, 10 years; or

(b) where the child is of or over the age of 16 years, 5 years.

(11) On a charge under this section it shall be presumed in the absence of evidence to the contrary —

(a) that the accused knew that he or she was related (whether lineally or as otherwise referred to in this section) to the other person; and

(b) that people who are reputed to be related to each other in a particular way (whether lineally or as otherwise referred to in this section) are in fact related in that way.

### **330. Incapable person, sexual offences against**

(1) In this section a reference to an incapable person is a reference to a person who is so mentally impaired as to be incapable —

(a) of understanding the nature of the act the subject of the charge against the accused person; or

(b) of guarding himself or herself against sexual exploitation.

(2) A person who sexually penetrates a person who the offender knows or ought to know is an incapable person is guilty of a crime and is liable to the punishment in subsection (7).

Alternative offence: s. 322(2) or (4), 323, 324, 325, 326 or 330(4).

(3) A person who procures, incites, or encourages a person who the offender knows or ought to know is an incapable person to engage in sexual behaviour is guilty of a crime and is liable to the punishment in subsection (7).

Alternative offence: s. 322(3), 322(4), 322(5), 327, 328 or 330(4) or (5).

(4) A person who indecently deals with a person who the offender knows or ought to know is an incapable person is guilty of a crime and is liable to the punishment in subsection (8).

Alternative offence: s. 322(4), 323 or 324.

(5) A person who procures, incites, or encourages a person who the offender knows or ought to know is an incapable person to do an indecent act is guilty of a crime and is liable to the punishment in subsection (8).

Alternative offence: s. 322(5).

(6) A person who indecently records a person who the offender knows or ought to know is an incapable person is guilty of a crime and is liable to the punishment in subsection (8).

Alternative offence: s. 322(6).

(7) A person who is guilty of a crime under subsection (2) or (3) is liable to imprisonment for —

(a) 14 years; or

(b) where the incapable person is under the care, supervision, or authority of the offender, 20 years.

(8) A person who is guilty of a crime under subsection (4), (5) or (6) is liable to imprisonment for —

(a) 7 years; or

(b) where the incapable person is under the care, supervision, or authority of the offender, 10 years.

(9) It is a defence to a charge under this section to prove the accused person was lawfully married to the incapable person.

### **331. Ignorance of age no defence**

It is no defence to a charge of a crime under section 320 or 329 in respect of which the age of the victim is relevant that the accused person did not know the age of the victim or believed the victim was of or over that age.

### **331A. Interpretation for ss. 331B to 331D**

In sections 331B to 331D —

“**child**” means a person under the age of 18 years;

“**sexual service**” means the use or display of the body of the person providing the service for the sexual arousal or sexual gratification of others;

“**incapable person**” has the meaning given by section 330(1).

### **331B. Sexual servitude**

A person who compels another person to provide or to continue to provide a sexual service is guilty of a crime and is liable —

(a) if the other person is a child or an incapable person, to imprisonment for 20 years; or

(b) otherwise, to imprisonment for 14 years.

### **331C. Conducting business involving sexual servitude**

(1) In this section —

“**conducting a business**” includes —

(a) taking part in the management of the business;

(b) exercising control or direction over the business; and

(c) providing finance for the business.

(2) A person who conducts a business that involves any other person being compelled to provide or to continue to provide a sexual service is guilty of a crime and is liable —

(a) if the other person is a child or an incapable person, to imprisonment for 20 years; or

(b) otherwise, to imprisonment for 14 years.

### **331D. Deceptive recruiting for commercial sexual services**

(1) A person who —

(a) offers a person who is neither a child nor an incapable person (the “**victim**”) employment or some other form of engagement to provide personal services;

(b) at the time of making the offer knows —

(i) that the victim will in the course of or in connection with the employment or engagement be asked or expected to provide a commercial sexual service; and

(ii) that the continuation of the employment or engagement, or the victim’s advancement in the employment or engagement, will be dependent on the victim’s preparedness to provide a commercial sexual service; and

(c) does not disclose that knowledge to the victim at the time of making the offer, is guilty of a crime and is liable to imprisonment for 7 years.

(2) A person who —

(a) offers a child or an incapable person (the “**victim**”) employment or some other form of engagement to provide personal services; and

(b) at the time of making the offer knows —

(i) that the victim will in the course of or in connection with the employment or engagement be asked or expected to provide a sexual service; and

(ii) that the continuation of the employment or engagement, or the victim's advancement in the employment or engagement, will be dependent on the victim's preparedness to provide a sexual service, is guilty of a crime and is liable to imprisonment for 20 years.

## **CHILD PORNOGRAPHY Censorship Act 1996**

### **Definition -**

**"child pornography"** means an article that describes or depicts, in a manner that is likely to cause offence to a reasonable adult, a person who is, or who looks like, a child under 16 years of age (whether the person is engaged in sexual activity or not);

### **60. Child pornography**

(1) A person who —

(a) with intent to sell or supply the child pornography or the copy to another, possesses or copies child pornography; or

(b) sells or supplies, or offers to sell or supply, to another, child pornography, is guilty of a crime, and is liable to imprisonment for 7 years.

(2) A person who publishes —

(a) anything likely to be understood as conveying that the person publishes or supplies child pornography; or

(b) an advertisement for child pornography, is guilty of a crime, and is liable to imprisonment for 5 years.

(3) A person who displays, exhibits or demonstrates child pornography is guilty of a crime, and is liable to imprisonment for 5 years.

(4) A person who possesses or copies child pornography is guilty of a crime, and is liable to imprisonment for 5 years.

(5) In proceedings for an offence against subsection (1), evidence that a person had possession of, or made, 10 or more copies of an article that is child pornography is evidence that the person intended to sell the child pornography and, in the absence of evidence to the contrary, is proof of that fact.

(6) For the purposes of subsection (2)(b), if a person publishes an advertisement for child pornography at the request of another person, that other person alone must be taken to have published it.

(7) A person liable to imprisonment under this section may be sentenced to pay a fine of any amount in addition to or instead of being sentenced to imprisonment.

# **CHILD PROSTITUTION Prostitution Act 2000**

## **Definition**

“**child**” means a person whose age is less than 18 years;

## **16. Causing, permitting, or seeking to induce child to act as prostitute**

(1) A person is not to cause or permit a child to act, or continue to act, as a prostitute.

(2) A person is not to do anything with the intention of inducing a child to act, or continue to act, as a prostitute.

(3) An offence under subsection (1) or (2) is a crime.

Penalty: Imprisonment for 14 years.

## **17. Obtaining payment for prostitution by a child**

(1) A person is not to receive a payment, in money or any other form, knowing that it or any part of it has been derived, directly or indirectly, from a child taking part in an act of prostitution, whether as a prostitute or as a client.

Penalty: Imprisonment for 14 years.

(2) An offence under subsection (1) is a crime.

(3) A person has a defence to a charge of an offence under subsection (1) if it is proved that the payment was received in the ordinary course of a business unrelated to prostitution.

## **18. Agreement for prostitution by a child**

(1) A person is not to enter into, or offer to enter into, an agreement under which a child is to act as a prostitute, whether for that person or anyone else.

Penalty: Imprisonment for 14 years.

(2) An offence under subsection (1) is a crime.

## **19. Child not to seek services of prostitute**

(1) A child is not to seek another person to act as a prostitute.

(2) For the purposes of subsection (1), a child seeks another person to act as a prostitute if the child —

(a) invites or requests another person to act as a prostitute; or

(b) loiters in or frequents a place for the purpose of, or with the intention of —

(i) inviting or requesting another person to act as a prostitute; or

(ii) receiving an invitation for another person to act as a prostitute.

(3) It makes no difference —

(a) whether or not the child is the prospective client;

(b) whether or not a particular person is sought to act as a prostitute; or

(c) whether the child makes or intends to make the invitation or request directly or through someone else to, or intends to receive the invitation directly or through someone else from, the person whom the child seeks to act as a prostitute.

## **20. Prostitution at place where child present**

(1) A person who takes part, whether as a prostitute or as a client, in an act of prostitution at a place where the person knows that a child is present commits an offence under this section.

Penalty:

(a) for a first offence — \$25 000;

(b) for any subsequent offence — imprisonment for 2 years.

(2) For the purposes of subsection (1), the place extends as far as the limits up to which either a prostitute or a client taking part in the act of prostitution exercises, or is able to exercise, control over who is allowed to be there.

(3) It makes no difference whether control is, or is able to be, exercised solely or in common with others.

## **21. Allowing child to be at place involving prostitution**

A person who allows a child to enter or remain at a place at which the person knows or could be reasonably expected to know —

(a) an act of prostitution is taking place; or

(b) a business involving more than one prostitute in the provision of prostitution is being carried on, commits an offence under this section.

Penalty:

(a) for a first offence — \$25 000;

(b) for any subsequent offence — imprisonment for 2 years.

## **AGE OF CONSENT**

- The age of consent for sexual activity in Western Australia is 16 years of age for both males and females.
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- There is an additional age of consent of 18 years of age if one of the parties (that is the offender) is in a position of authority (ie Police or Teacher), supervision or care - Section 322 Criminal Code
- Age for Child Pornography images is under 16 years. See definition above.

For more information please consult the State Law Publishers website - <http://www.slp.wa.gov.au/statutes/swans.nsf>