

5 September 2025

The Hon Dr Katrina Stratton MLC
Chair
Standing Committee on Legislation
Legislative Council Committee Office
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

By email: lclc@parliament.wa.gov.au

Dear Dr Stratton

CRIMINAL CODE AMENDMENT (POST AND BOAST) BILL 2025

Thank you for your letter dated 22 August 2025 inviting the Law Society to provide a submission to the Standing Committee on Legislation in relation to the *Criminal Code Amendment (Post and Boast) Bill 2025*.

The Law Society's submission is enclosed.

If you have any queries or would like to further discuss the Society's submission, please contact Susie Moir, Director Advocacy and Professional Development on 9324 8646 or smoir@lawsocietywa.asn.au

Yours sincerely



Gary Mack
President

Encl

Criminal Code Amendment (Post and Boast) Bill 2025

To

STANDING COMMITTEE ON LEGISLATION
LEGISLATIVE COUNCIL

Law Society Contact

MICHAELA SPEERING
LAWYER ADVOCACY AND PROFESSIONAL DEVELOPMENT

Date

5 SEPTEMBER 2025

The Law Society of Western Australia

Level 4, 160 St Georges Terrace, Perth WA 6000 | **Postal:** PO Box Z5345, Perth WA 6831 or DX 173 Perth
Phone: (08) 9324 8600 | **Fax:** (08) 9324 8699 | **Email:** info@lawsocietywa.asn.au | **Website:** lawsocietywa.asn.au

PD ACTIVE

Table of Contents

<i>Criminal Code Amendment (Post and Boast) Bill 2025</i>	2
Introduction	2
Summary of the Bill	3
‘Relevant offences’ and penalties	4
Legislation in other Australian jurisdictions	5
Recommendations for amendments to the Bill	7
Conclusion	8

Criminal Code Amendment (Post and Boast) Bill 2025

The Chair of the Standing Committee on Legislation invited the Law Society of Western Australia to provide a submission on the *Criminal Code Amendment (Post and Boast) Bill 2025* which is under consideration by the Standing Committee.

Introduction

The Law Society of Western Australia (the Law Society) is the peak professional association for lawyers in Western Australia. Established in 1927, the Law Society is a not-for-profit association dedicated to the representation for its members and the enhancement of the legal profession through leadership and advocacy on law reform, access to justice and the rule of law.

The State Government introduced the *Criminal Code Amendment (Post and Boast) Bill 2025* (the Bill) as part of a focus on community safety, citing an intention to target the publication and promotion of illegal and dangerous conduct on social media platforms.

The Society broadly supports the intention of the legislation which aligns with equivalent laws in other Australian states and territories. This law seeks to address the trend of ‘crimfluencers’ drawing attention to harmful behaviour which, in some cases, adds to the trauma of victims of crime. Law Society President Gary Mack provided the Society’s initial response to the introduction of the Bill in a Channel 9 news segment broadcast on 24 June 2025. The President expressed support of the purpose of the Bill, saying, “This legislation will make the internet a safer place, not just for our children, but for the community as a whole”. The President also responded to the suggestion that Western Australia was behind other jurisdictions in introducing these types of offences “It’s better that we have it [the law] now, than never at all.”

The Bill has been considered by the Society’s Criminal Law and Courts Committees. In August 2025, the Society invited members to provide feedback on the Bill. The Society acknowledges the contributions of the Committees, the Society’s members and interested members of the public informing this submission.

The Society notes the Parliamentary debate of the Bill included arguments for its withdrawal due to potential infringement of constitutionally protected rights and suggestions that the scope of the Bill be broadened to include all offences against the Criminal Code. The Society received a variance of responses from members, ranging from views expressing opposition to the entirety of the Bill, to support for the implementation of these reforms as a deterrent against glorifying criminal offences online.

The Society has concerns about aspects of the Bill in its current form, including the broad definition of ‘disseminate’ in relation to communicating material about particular offending conduct, the inclusion of offences relating to unlawful assembly and breaches of the peace and the punitive penalty provisions, which are the most severe in the country to date. The Society acknowledges this legislation may have a disproportionate impact on young offenders, in particular, Aboriginal and Torres Strait Islander people, and will place additional pressure on already stretched Police and Court resources.

The Society continues to advocate for Government to focus on youth crime prevention (rather than punishment in isolation) through an enhanced policy focus on early intervention and education. The Society has provided a list of recommendations at the conclusion of this submission for the Standing Committee’s consideration.

Summary of the Bill

The Bill amends *The Criminal Code 1913* by introducing a new offence of ‘disseminating material about particular offending conduct.’¹ The purpose of the Bill is stated as ‘targeting material on social media that may humiliate, intimidate or victimise a person, increase the reputation or notoriety of the offender, glorify the conduct, or encourage copycat behaviour.’²

There are two categories of new ‘Post and Boast’ offences summarised below:

1. Section 221I: Disseminating material about particular offending conduct

- (2) A person commits an offence if:
 - (a) the person disseminates material; and
 - (b) the material depicts an act or omission (conduct) that constitutes a relevant offence; and
 - (c) a reasonable person would consider that -
 - (i) the material, or dissemination of the material, is likely to humiliate, intimidate or victimise a victim of the relevant offence; or
 - (ii) the material, or dissemination of the material, is likely to be offensive or demeaning to a person or group of persons; or
 - (iii) it is likely that the material was disseminated for a purpose referred to in subsection (3).
- (3) The purposes are the following -
 - (a) the purpose of increasing the reputation or notoriety of a person who engaged in the conduct;
 - (b) the purpose of boasting of the conduct;
 - (c) the purpose of glorifying the conduct;
 - (d) the purpose of encouraging others to engage in the same or similar conduct.
- (4) A person may be prosecuted for, and convicted of, an offence against subsection (2) whether or not anyone has been prosecuted for or convicted of the relevant offence.

The penalty for an offence under section 221I(2) is 3 years imprisonment.

2. Section 221L: Rectification order

- (1) This section applies in relation to –
 - (a) a person charged with an offence against s221I(2); and
 - (b) any proceedings for or relating to the charge (including proceedings under the *Bail Act 1982*) held before a court.
- (2) The court may order the person to take reasonable actions to remove, retract, recover, delete, destroy or forfeit to the State any material to which the charge relates within a period specified in the order.
...
- (4) The court may make an order under subsection (2) whether or not the person is convicted of the offence against section 221I(2).
...

¹ Section 221I *Criminal Code Amendment (Post and Boast) Bill 2025*

² “Post and Boast Laws to Crack Down on ‘Crimfluencers’” (24 June 2025)

<https://www.wa.gov.au/government/media-statements/Cook%20Labor%20Government/Post-and-boast-laws-to-crack-down-on-%27crimfluencers%27-20250624>

Criminal Code Amendment (Post and Boast) Bill 2025

The Law Society of Western Australia

- (7) A person who, without reasonable excuse, fails to comply with an order made under subsection (2) commits an offence.

The penalty for an offence under section 221L is 12 months imprisonment and a fine of \$12,000. A daily penalty of \$200 applies to adults for each day or part of a day during which the offence continues.

The daily fine of \$200 does not apply to a person who was a child at the time the order under s221L(2) was made.

There is no right of appeal against an order under section 221L(2).

Defences and exceptions

Section 221J sets out a number of defences to a charge of disseminating material about particular offending conduct including proof that:

- (a) the material was disseminated for a genuine scientific, educational, academic, artistic, literary, satirical or entertainment purpose; or
- (b) the material was disseminated by a journalist or news publisher in the course of their respective activities;
- (c) the conduct depicted in the material is fictional or was artificially created;
- (d) the material was disseminated to warn of, complain about or denounce the conduct; or
- (e) the dissemination of the material was reasonably necessary for the purposes of legal proceedings, reporting to or assisting a law enforcement agency or making an insurance claim or otherwise reasonably necessary in the circumstances; or
- (f) the dissemination of the material was in the public interest.

Section 221K sets out exceptions to an offence under section 221(1) in relation to:

- (a) acts by members and officers of law enforcement agencies, where the act is done in good faith in the performance of that person's official duties and
- (b) an act by a person if the act is done in good faith in the course of official duties connected with the administration of justice, including the investigation of offences.

'Relevant offences' and penalties

In the Second Reading Speech, The Hon Dan Caddy MLC described the Bill as targeting:

"the dissemination of material depicting offences in chapters of the *Criminal Code* that deal with unlawful assemblies; breaches of the peace; racist harassment and incitement to racial hatred; Nazi symbols and salutes; being armed in public; assaults, stealing, robbery and extortion by threats; offences in or in respect of buildings; simple offences analogous to stealing; criminal damage and damage to property. It also deals with offences in the *Road Traffic Act 1974*: dangerous driving causing death or grievous bodily harm; dangerous driving causing bodily harm; careless driving causing death or grievous bodily harm or bodily harm; driving in a reckless manner; driving at a reckless speed; dangerous driving; careless driving; and causing excessive noise or smoke from a vehicle's tyres.

These offences have been chosen because they are the most likely offences to be posted online or otherwise distributed and used to gain notoriety or seek attention."³

³ Western Australia, Parliamentary Debates, Legislative Council, 26 June 2025, 1931-1932 (the Hon Dan Caddy)
Criminal Code Amendment (Post and Boast) Bill 2025
The Law Society of Western Australia

The Society's concerns about the provisions of the current form of the Bill include:

1. Section 221G: The definition of 'disseminate' is expansive and includes communicating or publishing material by electronic or other means, including social media, to another person. Communication to one other person is sufficient to commit an offence. Unlike other Australian jurisdictions, such communication need not be publicly accessible. Dissemination of material by a person risks a potential period of imprisonment for three years, whether or not they are the same person committing the offending conduct.
2. Section 221H(1): The number and type of relevant offences captured by the Bill is much broader than other Australian jurisdictions.
3. Section 221H(1)(c): The scope of relevant offences being expanded by regulation.
4. Section 221H(2): The inclusion of offending conduct that has occurred in any jurisdiction outside of Western Australia.
5. Section 221I(2)(c): The inclusion of a 'reasonable person' test to determine whether the material is likely to intimidate, or victimise a victim of the relevant offence, or likely to be offensive or demeaning to a group of persons. This provision is particularly problematic in relation to relevant offences such as unlawful assembly and breaches of the peace.
6. Section 221O: Restrictions on rights of appeal against decisions by Courts to impose rectification orders.
7. The Bill contains disproportionate penalties for relevant offences. The penalties for some offences under the *Road Traffic Act 1974* captured by the Bill are less severe than the penalties applicable to the dissemination of the offending conduct. For example, the penalty for an offence of dangerous driving causing bodily harm attracts a fine of \$9,000 and imprisonment for 9 months. Careless driving or causing excessive noise offences carry a fine of \$1,500. In relation to offences such as disorderly behaviour, the maximum penalty under the *Criminal Code* is a fine of \$6,000.
8. The maximum penalty for the offence of disseminating material about particular offending conduct in section 221I(2) exceeds the penalties applicable to the offences in similar laws in other Australian jurisdictions.

Legislation in other Australian jurisdictions

'Post and boast' laws have been enacted in New South Wales, Victoria, Queensland and the Northern Territory and are currently under consideration in South Australia and the Australian Capital Territory.

New South Wales

The equivalent laws in New South Wales are expressed as 'performance crime offences', set out in section 154K of the *Crimes Act 1900*. Under the New South Wales provisions:

- Performance crime offences are limited to motor theft and breaking and entering offences;
- For an offence to occur, the person must disseminate material to advertise the offender's involvement in the offence or the act or omission constituting the offence;
- The maximum penalty for a performance crime offence is equal to the total of the maximum penalty for the motor theft or breaking and entering offence / imprisonment for two years;

- Advertising the conduct means attracting the notice and attention of the public or a limited section of the public;
- If a person is convicted of a performance crime offence, that person cannot also be convicted of the motor theft offence or breaking and entering offence in relation to the act or omission constituting the performance crime offence.

The *Performance Crimes Offences Act 2024* was announced at the same time as the New South Wales Government's investment in state-wide regional crime prevention initiatives.⁴

Victoria

In Victoria, the *Crimes (Performance Offences) Act 2025* received Royal Assent on 19 August 2025. This Act amends the *Crimes Act 1958* (Vic) to create a new offence of 'prohibiting publication of material about the commission of a relevant offence'. In Victoria:

- The relevant offences include theft, robbery, armed robbery, burglary, aggravated burglary, home invasion, aggravated home invasion, carjacking, aggravated carjacking, affray, violent disorder, incitement or attempts to commit these offences;
- The new offence relates only to publication by the person involved in the original criminal behaviour, who must be convicted of the relevant offence before they are liable for an offence under the Performance Crime provisions;
- The definition of 'publish' means making the material available 'to the public or a section of the public' and expressly excludes making material available to one other person;
- The maximum penalty is two years' imprisonment.

Queensland

Section 26B of Queensland's *Summary Offences Act 2005* creates an offence of 'publishing material about particular behaviour'. An offence under this Act arises if:

- The person publishes material on a social media platform or online social network which glorifies the conduct or increases the person's reputation (or that of another person) because of their involvement with the conduct;
- The conduct depicted must constitute a prescribed offence which includes offences involving driving, operating a vehicle, violence or threats of violence, burglary, damage to property and offences involving weapons;
- A person cannot be convicted of both an offence against section 26B(1) and offences in the *Criminal Code* or weapons offences where the publication is considered a circumstance of aggravation;
- A person may be charged under this section whether or not anyone has been charged or convicted of the prescribed offence;
- There are exceptions for publications by journalists;
- The maximum penalty is two years' imprisonment.

Northern Territory

The equivalent law is set out in section 276H of the *Criminal Code Act 1983*. Under the Northern Territory legislation:

- A person commits an offence if they publish on social media, material that depicts conduct that constitutes an offence;
- The person publishing the material on social media does not have to be charged with the original offence, an offence under s276H may still be prosecuted even if no one is charged;

⁴ <https://dcj.nsw.gov.au/news-and-media/media-releases/2024/new-bail-and-performance-crime-laws-passed-to-prevent-youth-crim.html>

- The criteria for the purpose of publication is similar to the provisions of section 221I(3) of the Bill;
- Social media is defined in the Act and includes Facebook, Instagram, Snapchat, TikTok and WhatsApp;
- The maximum penalty for a conviction is two years' imprisonment.

South Australia

In South Australia, the *Summary Offences (Prohibition of Publication of Certain Material) Amendment Bill 2025* creates a new offence of publishing material depicting an offence. In this Bill:

- It is the person publishing the material who commits the offence whether or not that person or any other person has been charged with the prescribed offence;
- It is a defence to the charge to prove that the conduct published did not constitute a prescribed offence or that the material was published for a legitimate public purpose;
- Publishing is by electronic means and includes posting or sharing material via the internet or social media platforms or other electronic platforms;
- The maximum penalty is two years' imprisonment.

Federal legislation

Similar laws have been considered at a Federal level with a private members Bill introduced in 2024 which would give the eSafety Commissioner new take down powers.⁵

Recommendations for amendments to the Bill

Law Society members have raised concerns that the Bill in its current form may infringe the constitutionally protected implied freedom of political communication.⁶ No other Australian jurisdictions have included offences akin to unlawful assembly in their legislation.

The Society makes the following recommendations for amendments to the Bill:

1. Offences such as unlawful assembly and breach of the peace be removed from the Bill to address concerns about the infringement of the constitutionally protected implied rights of freedom of political communication and assembly.
2. The definition of 'disseminate' be amended to refer to more than one recipient and to require publication of the material on a platform which is accessible by the public.
3. The Bill should include an express provision in similar terms to the provisions of the *Crimes Act 1958* (Vic) which excludes circumstances where material is disseminated to only one other person.
4. Section 221H(1)(c) which enables further relevant offences to be expanded by regulation be removed.

⁵ <https://www.innovationaus.com/opposition-bill-would-outlaw-posting-and-boasting-online/>

⁶ Wesson, Murray. "A Constitutional Law Comment on the Criminal Law Code Amendment (Post and Boast Offence) Bill 2025". Tabled in the Legislative Council on August 12, 2025
[https://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/4210427c20bd0a93273b935248258ce5000b52d0/\\$file/tp-427.pdf](https://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/4210427c20bd0a93273b935248258ce5000b52d0/$file/tp-427.pdf)

5. The provisions of section 221H(2) which expand the definition of relevant offence to laws occurring outside the jurisdiction of Western Australia, be removed.
6. The penalty provisions be reduced to a maximum of two years' imprisonment bringing the Bill into line with other Australian jurisdictions.
7. There be rights of appeal from decisions by Courts to impose rectification orders. Courts must retain the ability to consider context, intent and proportionality in sentencing and rectification orders.
8. The Bill include a provision mandating a statutory review of the legislation no later than two years after the law comes into effect, to assess the operation and effectiveness of the Bill and to consider the scope of relevant offences.

For many years, the Law Society has advocated for enhanced funding for early intervention strategies to address underlying causes and social determinants of criminal offending behaviour amongst children and young people, including in the Society's 2025 State Election Campaign. As children and young adults are large users and consumers of social media and the internet, the Society recommends the Government provide an ongoing educational campaign about the issues this Bill is designed to address, as well as increasing funding for support programs that provide intervention, diversion and rehabilitation opportunities for young people at risk of coming into contact with or involved in the criminal justice system.

Conclusion

The Society supports the Government's objective to deter the glorification of offending behaviour through social media and online platforms and to protect victim-survivors of criminal acts from exposure to additional trauma. The Society submits the current form of the Bill goes beyond that purpose. Additional public consultation on the re-drafted Bill is essential to ensure the legislation provides a proportionate response to these new offences, without imposing excessive penalties, infringing on expression of political communication and overburdening the justice system. The Society encourages the Standing Committee on Legislation to consider the implications of the current Bill and to endorse the recommendations listed above.

The Society welcomes further opportunities to consult with Government on this legislation.