



New South Wales

# Crimes Amendment (Sexual Procurement or Grooming of Children) Bill 2007

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to make it an offence for an adult to procure or groom a child for unlawful sexual activity. The proposed preparatory offences will be subject to the following range of penalties depending on the age of the child (irrespective of the nature of the sexual activity for which the child has been procured or groomed):

- (a) Procuring a child under 14 years of age—Imprisonment for 15 years,
- (b) Procuring a child under 16 years of age—Imprisonment for 12 years,
- (c) Grooming a child under 14 years of age—Imprisonment for 12 years,
- (d) Grooming a child under 16 years of age—Imprisonment for 10 years.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the consequential amendments to the *Criminal Procedure Act 1986* set out in Schedule 2.

**Clause 5** is a formal provision that gives effect to a consequential amendment to the *Child Protection (Offenders Registration) Act 2000* set out in Schedule 3.

**Clause 6** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced.

## **Schedule 1      Amendment of Crimes Act 1900**

**Schedule 1 [1]** inserts proposed section 66EB into the *Crimes Act 1900* to make it an offence for an adult to procure or groom a child under 16 years of age for unlawful sexual activity, with the range of maximum penalties set out in the Overview.

Proposed section 66EB (1) defines expressions used in the proposed section. “Conduct” is defined to include communication by the internet, and “unlawful sexual activity” is defined to include acts of sexual intercourse or indecency with children and child prostitution and pornography offences.

Proposed section 66EB (2) provides that the procurement offence is committed if an adult person intentionally procures a child for unlawful sexual activity with that adult person or another person.

Proposed section 66EB (3) provides that the grooming offence is committed if an adult person engages in any conduct that exposes a child to indecent material (or provides a child with an intoxicating substance) with the intention of making it easier to procure the child for unlawful sexual activity with that adult person or another person.

Proposed section 66EB (4) provides that it is not necessary to specify or prove the particular unlawful sexual activity for which the child was or was to be procured.

Proposed section 66EB (5) extends the offence to a case in which a person who is being procured pretends to be a child (for example, by an investigating official in any communication over the internet).

Proposed section 66EB (6) requires the age of the child to be set out in the charge before the higher maximum penalties for children under 14 years can be imposed.

Proposed section 66EB (7) provides a defence if the accused reasonably believed that the person concerned was not a child.

Proposed section 66EB (8) makes provision for alternative verdicts.

**Schedule 1 [2]** ensures that the consent of the child is not a defence to a prosecution for an offence under proposed section 66EB.

**Schedule 1 [3]** extends the personal violence offences to which the AVO provisions of the Principal Act apply to the offences under proposed section 66EB.

## **Schedule 2      Consequential amendments to Criminal Procedure Act 1986**

**Schedule 2 [1]** extends the procedural protections for child victims of sexual offences (and other related provisions) of the Act to offences under proposed section 66EB of the *Crimes Act 1900*.

**Schedule 2 [2]** enables proceedings for the offences under proposed section 66EB of the *Crimes Act 1900* to be heard and determined summarily without a jury in certain cases.

## **Schedule 3      Consequential amendment to Child Protection (Offenders Registration) Act 2000**

**Schedule 3** extends the child sex offender registration scheme to persons convicted of offences under proposed section 66EB of the *Crimes Act 1900*.





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New South Wales

# Crimes Amendment (Sexual Procurement or Grooming of Children) Bill 2007

No. , 2007

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## A Bill for

An Act to amend the *Crimes Act 1900* with respect to the sexual procurement or grooming of children, and to make consequential amendments to other Acts.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Crimes Amendment (Sexual Procurement or Grooming of Children) Act 2007</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day to be appointed by proclamation.	6
<b>3 Amendment of Crimes Act 1900 No 40</b>	7
The <i>Crimes Act 1900</i> is amended as set out in Schedule 1.	8
<b>4 Consequential amendments to Criminal Procedure Act 1986 No 209</b>	9
The <i>Criminal Procedure Act 1986</i> is amended as set out in Schedule 2.	10
<b>5 Consequential amendment to Child Protection (Offenders Registration) Act 2000 No 42</b>	11 12
The <i>Child Protection (Offenders Registration) Act 2000</i> is amended as set out in Schedule 3.	13 14
<b>6 Repeal of Act</b>	15
(1) This Act is repealed on the day following the day on which this Act commences.	16 17
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	18 19



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<b>Schedule 1</b>	<b>Amendment of Crimes Act 1900 No 40</b>	1
	(Section 3)	2
<b>[1] Section 66EB</b>		3
	Insert after section 66EA:	4
<b>66EB</b>	<b>Procuring or grooming child under 16 for unlawful sexual activity</b>	5
(1)	<b>Definitions</b>	6
	In this section:	7
	<i>adult person</i> means a person who is of or over the age of 18 years.	8
	<i>child</i> means a person who is under the age of 16 years.	9
	<i>conduct</i> includes:	10
	(a) communicating in person or by telephone, the internet or other means, or	11
	(b) providing any computer image, video or publication.	12
	<i>unlawful sexual activity</i> means an act that constitutes an offence under this Division or Division 10A or 15 (or, in the case of an act occurring outside this State, that would constitute such an offence if it occurred in this State).	13
(2)	<b>Procuring children</b>	14
	An adult person who intentionally procures a child for unlawful sexual activity with that or any other person is guilty of an offence.	15
	Maximum penalty:	16
	(a) in the case of a child who is under the age of 14 years—imprisonment for 15 years, or	17
	(b) in any other case—imprisonment for 12 years.	18
(3)	<b>Grooming children</b>	19
	An adult person:	20
	(a) who engages in any conduct that exposes a child to indecent material or provides a child with an intoxicating substance, and	21
	(b) who does so with the intention of making it easier to procure the child for unlawful sexual activity with that or any other person,	22
	is guilty of an offence.	23

Maximum penalty:	1
(a) in the case of a child who is under the age of 14 years— imprisonment for 12 years, or	2 3
(b) in any other case—imprisonment for 10 years.	4
<b>(4) Unlawful sexual activity need not be particularised</b>	5
In any proceedings for an offence against this section, it is necessary to prove that the child was or was to be procured for unlawful sexual activity, but it is not necessary to specify or to prove any particular unlawful sexual activity.	6 7 8 9
<b>(5) Fictitious children</b>	10
A reference in this section to a child includes a reference to a person who pretends to be a child if the accused believed that the person was a child. In that case, a reference in this section:	11 12 13
(a) to unlawful sexual activity includes a reference to anything that would be unlawful sexual activity if the person were a child, and	14 15 16
(b) to the age of the child is a reference to the age that the accused believed the person to be.	17 18
<b>(6) Charge for aggravated offence</b>	19
The higher maximum penalty under subsection (2) or (3) in the case of a child under the age of 14 years does not apply unless the age of the child is set out in the charge for the offence.	20 21 22
<b>(7) Defence</b>	23
It is a defence in proceedings for an offence against this section if the accused reasonably believed that the other person was not a child.	24 25 26
<b>(8) Alternative verdict</b>	27
If on the trial of a person charged with an offence against subsection (2) the jury is not satisfied that the offence is proven but is satisfied that the person has committed an offence against subsection (3), the jury may acquit the person of the offence charged and find the person guilty of an offence against subsection (3). The person is liable to punishment accordingly.	28 29 30 31 32 33
<b>[2] Section 77 Consent no defence in certain cases</b>	34
Insert “, 66EB” after “66EA”.	35

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Amendment of Crimes Act 1900 No 40

Schedule 1

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**[3] Section 562A Definition of “personal violence offence”**

Insert “, 66EB” after “66EA”.

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2

<b>Schedule 2</b>	<b>Consequential amendments to Criminal Procedure Act 1986 No 209</b>	1
		2
	(Section 4)	3
<b>[1] Section 3 (1) Definition of “prescribed sexual offence”</b>		4
Insert “, 66EB” after “66EA”.		5
<b>[2] Schedule 1 Indictable offences triable summarily</b>		6
Omit “or 61O (1) or (1A)” from clause 1 of Table 2.		7
Insert instead “, 61O (1) or (1A) or 66EB”.		8

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Consequential amendment to Child Protection (Offenders Registration) Act Schedule 3  
2000 No 42

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<b>Schedule 3</b>	<b>Consequential amendment to Child Protection (Offenders Registration) Act 2000 No 42</b>	1
		2
		3
	(Section 5)	4
<b>Section 3 (1) Definition of “Class 2 offence”</b>		5
Insert after paragraph (a):		6
(a1) an offence under section 66EB of the <i>Crimes Act 1900</i> , or		7