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

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CRIMES AMENDMENT (SEXUAL PROCUREMENT OR GROOMING OF CHILDREN) BILL 2007

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Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [10.38 a.m.], on behalf of Mr David Campbell: I move:

That this bill be now agreed to in principle.

The bill was introduced in the other place on Wednesday 7 November 2007, and the second reading speech appears at pages 5 to 7 in the *Hansard* galley for that day. The bill is in the same form as introduced in that House and I commend it to this House.

Mr GREG SMITH (Epping) [10.39 a.m.]: The Crimes Amendment (Sexual Procurement or Grooming of children) Bill 2007 amends the Crimes Act and makes consequential amendments to the Criminal Procedure Act 1986 and the Child Protection (Offenders Registration) Act 2000 to make it an offence for an adult to procure or groom a child for unlawful sexual activity. The Opposition does not oppose the bill. The following penalties will be introduced in relation to the offences: procuring a child under the age of 14, imprisonment for a maximum of 15 years; procuring a child under the age of 16 years, imprisonment for a maximum of 12 years; grooming a child under 14 years of age, imprisonment for a maximum of 12 years; and grooming a child under 16 years of age, imprisonment for a maximum of 10 years.

Earlier this year the Opposition obtained considerable media publicity over a proposal by the member for Manly, Mike Baird, and me that the Commonwealth legislation creating offences for predators who use the Internet with intent to have sexual intercourse with someone did not really cover all the possibilities of use of the Internet. We raised the issue that there was no prohibition at that stage against people on the predators list, or whatever it is called—it has various descriptions—who had been convicted of a child sexual assault offence from accessing chat rooms and other Internet links for the purpose of grooming or trying to arrange a meeting. The Commonwealth offences go further.

We stated that this particular group should have an offence attached to them for trying to access or for commencement actions that would not be sufficient to satisfy the Commonwealth offences Act. We said that in accordance with our proposal the Coalition would establish an advisory panel to investigate ways to ban convicted sex offenders from Internet chat rooms and social networking websites such as MySpace. I said:

> Chat rooms and social networking websites like MySpace are a hugely popular forum for children and teenagers. Unfortunately they can also attract those who are seeking to do harm to our young people About 3 million Australians, the majority between the ages of 14 and 25 use MySpace, and we urgently need to send a strong message that we are prepared to do whatever we can to insulate our children using these services from convicted sex offenders If legislation is required to ensure children and young people logging-on to chat with friends will not be at risk, then all stakeholders need to create a system that will work.

I said that in a press release dated 27 May 2007. There was a subsequent press conference and media publicity was given to this issue. I went on to state:

> Popular social networking website MySpace recently highlighted the potential scope of the risk to young people when it struck 7,000 sex offenders from its service in the United States.

We stated in our press release that several bills were before the United States Congress seeking to place a check on Internet activity of known sex offenders. Before the press release on 27 May, a 13-year-old girl in New South Wales had been allegedly raped by a man she first met over the Internet. My distinguished colleague Mike Baird said:

> an issue with such serious ramifications for child safety should not simply be cast into the too-hard basket.
>
> When an issue is as important as keeping our kids safe, it is above politics It would be naive to think convicted sex offenders in Australia aren't using chat rooms and similar internet sites for devious purposes What this advisory group will do is investigate ways to protect our kids from any convicted sex offenders using the internet as a mean to re-offend.
>
> As a parent of three young children I have expressed concerns over who my kids are communicating with over the internet.
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> People are not always who they say they are and our proposal would be an important step towards greater internet safety for NSW families.
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> The advisory panel will be seeking representatives from the Information Technology industry, NSW Police Force and child protection groups.
>
> Every parent would expect the State Government to be doing everything in its power to prevent convicted sex offenders from using internet websites to lure our children into dangerous situations

When the committee met subsequently, there were representatives from MySpace and other Internet groups as well as the child protection group, Bravehearts, and a representative from the office of the Minister for Police, Mr Campbell. It is slightly different from what the Government is doing at the moment. Nevertheless, what the Government is doing is good, and the Opposition agrees with that. Any increase in protection for children from predators is paramount. We support that; assuming that the legislation is properly drafted and has in it proper protections for people who are falsely accused, and matters of that sort.

In September this year the New South Wales Parliamentary Library published a research report entitled "Protecting Children From Online Sexual Predators", written by Messrs Griffith and Roth. The report examined the recent climate of concern with respect to such issues and assessed recent proposals in addition to the state of the law in Australia presently. Briefly, the report states:

> In recent weeks attention has focused on the deletion in the United States of the profiles of 29,000 convicted sex offenders from the social networking site MySpace. In Australia MySpace has proposed that the email addresses of convicted child sex offenders be compulsorily registered for the purpose of removing known sex offenders from the site. To date, the Commonwealth Government has not endorsed this proposal. On 10 August 2007 it was reported that the NSW Police Minister plans to refer to Cabinet a proposal to require sex offenders to register their email addresses. If Cabinet agrees, the requirement will be incorporated into the *Child Protection (Offenders Registration) Act 2000 (NSW)* ... On the same day, the Federal Government announced a $189 million package of reforms to 'protect Australian families from online dangers in the increasingly complex internet environment'.

I sincerely hope that the Rudd Government adheres to that commitment. The report goes on to state:

> Since the dangers of online usage were identified in the 1990s many jurisdictions, including Australia, have engaged in research projects to identify the scope and nature of the problems at issue. The research suggests that the world of online grooming is a complex place. A US study in 2007 found that 8% of children reported they'd actually met someone they knew online, while a 2006 study found that one in seven children aged 10-17 received unwanted online sexual solicitations. On the other hand, not all these come from strangers. It also seems that many 'groomers' do not lie at all about themselves and what their intentions are. This research suggests that most at risk from online grooming are teenage girls who become 'romantically' involved with those they meet on social networking systems. However, more research needs to be undertaken in this field, across jurisdictions, to gain a broader and truer picture of the risks involved to all minors When the online practices and perceptions of parents and children are compared there is a sense in which they are reporting on parallel realities. It has been suggested that 'Directing more safety awareness at children themselves may be the best way forward, since parents often don't know what their children are doing online'.

A great problem in society is that parents have not grown up with the Internet, and some are not required to use the Internet during the course of their employment. For whatever reason, parents are less able to naturally acquire Internet expertise than are children whose minds are nimbler, and children are more accustomed to using the Internet at school and to chatting in that way rather than on the telephone.

The report by Griffith and Roth, which I will briefly refer to further, said that laws specifically designed to counter the online sexual solicitation of minors have been passed in several Australian and other comparable jurisdictions but not in New South Wales. In 2001 the Australian Capital Territory created a new offence of using the Internet, et cetera, to deprave young people. Two years later Queensland created a new offence of using the Internet with the intent of procuring a child under the age of 16 to engage in a sexual act or providing indecent matter to a child under 16. The law allows police to catch cyber predators by providing that it is irrelevant to the offence that the child is a fictitious person represented by an adult. Therefore, express provision is made for police stings against

online predators. Similar reforms followed in Tasmania, Western Australia and at the Commonwealth level. South Australia and Victoria have also made relevant amendments to their criminal laws.

In summary, the main Australian laws expressly targeting online sexual predators are directed towards some or all of the following acts: first, using the Internet or other form of communication with the intention of procuring a child to engage in sexual activity is an offence under Commonwealth, Queensland, South Australian, Tasmanian and Western Australian legislation; second, grooming a child by sending indecent material to a child or otherwise engaging in prurient communication with a child with the intention of making it easier to procure a child to engage in sexual activity is an offence under Commonwealth and South Australian legislation; and, third, exposing a child to indecent or pornographic material is an offence under Queensland, Tasmanian, Western Australian, Australian Capital Territory and Northern Territory legislation.

The report of Griffith and Roth went on to say that to some extent the introduction of the Commonwealth Internet procuring and grooming offences has overtaken the need for parallel reforms in the States. In the absence of a specific New South Wales online grooming offence, New South Wales police can and do refer cases to the Commonwealth Director of Public Prosecutions. Again I wonder why this Government, which has been in office for 12 years, has taken so long to act. It will say the Opposition has not introduced any bills. It may or may not have, but the Government has been charged with this responsibility and the other States and Territories certainly do not have the population or probably the proliferation of problems that New South Wales has—I think New South Wales has more criminal matters than virtually the whole of Australia combined. I do not know why the Government has not moved previously, but it is good that it is moving now even though it is very late in the piece.

The bill is introduced in compliance with the 1989 Convention on the Rights of the Child, to which Australia is a signatory under article 34. The legislation is brought before Parliament because of the dramatic increase in predatory sexual behaviour towards children over the Internet. However, the offence is not limited to offences using electronic communication and, as such, is broader than the Commonwealth offence. In an article entitled "Ministry's web of deception needs a virtual reality check" in the *Sydney Morning Herald* of 14 September 2007, Michael Duffy reported that only one person has been charged and convicted of a child grooming offence by New South Wales police in the past two years. As I said, the Coalition announced on 27 May that we would move towards investigating ways to ban convicted sex offenders from Internet chat rooms and social networking websites. Our task force met on Thursday 9 August, and I think it was on 10 August that the Minister for Police announced he would do something about this.

On my reading of the legislation, it does not include a provision banning convicted predators from seeking access to young people's chat lines or other types of lines they use. Nevertheless, the legislation will bring New South Wales into line with the other States and Territories and the Commonwealth by enacting laws in relation to offences of this nature. Our maximum penalties are in excess of those imposed in other States. Some would say against this sort of legislation that there is a distinction between offences against those under 14 and those under 16, but that is similar to what happens with sexual assault offences in any event. The younger the child the heavier the punishment. The Opposition does not oppose this legislation and hopes that the Government soon brings in other legislation to discourage and punish predators who seek to access chat rooms and other media used by children.

Mrs DAWN FARDELL (Dubbo) [10.55 a.m.]: I support the Crimes Amendment (Sexual Procurement or Grooming of Children) Bill 2007. I am not legally trained like other members who have already spoken, but I have a few questions about whether a particular case I am aware of would be considered grooming. Does this legislation cover the example I am about to give? On Monday a mother came to my office in desperation. She had separated from the father of their then three-year-old daughter. It was an amicable separation and the mother was willing for the father to have access visits. In January this year the mother noticed inappropriate behaviour by her daughter, who was then four years old, towards her cousin of the same age. She found out that the girl knew more than she should and that her father's 13-year-old brother had interfered her with. This had been happening on access visits to the home where the father is now living with his mother and his 13-year-old brother.

The mother immediately stopped the visits and contacted the police. The police said it was not an issue for them and directed her to the Department of Community Services, which arranged for counselling of the four-year-old girl. She has had regular counselling at the clinic in Dubbo since February and is making significant improvement in dealing with what has occurred to her. The mother also sought legal advice, but things are at a stalemate. I was in contact with her solicitor yesterday. All parties have had a meeting. The father and his solicitor agreed that it was not appropriate for visits to occur while the 13-year-old was in the house, and that visits would occur only when he was at school. In the past two weeks the 13-yar-old has left school early and was unsupervised during access visits while the father was in another part of the house. Once again, the mother has become aware of an incident occurring. The child has not had any medical checks, because, according to the solicitor, it would be far too damaging to a child of her age.

My question to the Government is this: As the father knew this activity had occurred before, would this circumstance be considered grooming by the father? Would his behaviour fall within the provisions of this bill? Why is the 13-year-old not receiving counselling from the Department of Community Services or other agencies to

stop his behaviour? Why is he displaying this behaviour? The solicitor for the mother is not working fast enough. The mother has denied any further access as two incidents have occurred in the past two weeks. She fears her daughter is at further risk. I suppose I could be prosecuted too because I agreed with the mother that in the circumstances the child should not go to the house for access visits.

Could the father be prosecuted and also the grandmother, who has been in the house during the child's visits while the 13-year-old been unsupervised? The case I have referred to does not involve technology or the Internet, but these types of incidents are happening every day in New South Wales and other parts of Australia—young, vulnerable children are being abused by those a little bit older. Of course the 13-year-old risks not having a good life ahead of him if he does not receive counselling. Can we charge the parent with grooming? I support the bill.

Ms NOREEN HAY (Wollongong—Parliamentary Secretary) [10.59 a.m.]: I support the Crimes Amendment (Sexual Procurement or Grooming of Children) Bill. The sexual abuse of children is one of the worst evils affecting our society, and the Government has made it clear that it will take all necessary steps to eliminate it. As the mother of four and the grandmother of five I completely support the Iemma Government's position in that regard. In this bill we are creating new offences of child grooming and procuring. In recent years those investigating and prosecuting paedophilia around the world have begun to institute measures aimed at stopping child grooming. This is the practice whereby a paedophile befriends a victim and introduces him or her to explicit material or inappropriate sexual concepts. It is a common way for paedophiles to desensitise young people to sexual talk and behaviour and make them vulnerable to sexual abuse and is often a precursor to procuring a child for sex. By taking aim at this precursor activity we can begin to stop child sexual abuse before more serious crimes are committed.

The new offences carry a maximum penalty of 10 years for grooming and 12 years for procuring a child for a sexual purpose. The legislation also includes aggravated offences where the victim is under 14 years, which carry penalties of 12 years and 15 years respectively. They complement the Commonwealth's child procuring and grooming laws. However, these apply only to offences committed over the Internet or telephone lines. The New South Wales laws have been praised by representatives of victims groups such as Hetty Johnson from Bravehearts, who describes the reforms as "very, very welcome news". But the Opposition's position on child sexual abuse legislation is not nearly so clear. The Opposition has failed to offer any public comment in support of the Government's reforms yet has been unable to give the people of New South Wales any credible policies of its own. On 27 May this year the shadow Attorney General and the shadow Minister for Youth Affairs advanced a proposal involving banning sex offenders from using Internet chat rooms and dating sites. In doing so, however, they made it clear that they were not aware of the law in this area.

Mr Greg Smith: Rubbish! That's just a lie.

Ms NOREEN HAY: If I were the member for Epping I would be quiet on this issue.

Mr Greg Smith: Is that a threat?

Ms NOREEN HAY: No. It is embarrassing for you. The Government has already created a sex offender prohibition order scheme under which police can seek orders from a local court to prevent a person from engaging in activities that are a precursor to reoffending. This can include activity on the Internet, such as visiting the sites that the Opposition's proposals are aimed at. The Opposition needs to do its homework regarding the major reforms that the Government has implemented over the past two years. One important reform is the creation of several significant child protection tools, the first of which is the establishment of a register of all people convicted of child sexual assault offences in New South Wales. More than 2,200 offenders have to register where they live, where they work, and even what car they drive. The register makes sure that police can keep tabs on these people to help prevent them from reoffending against children. We have also expanded the details that offenders need to register, including membership of any clubs of which children may be members.

New South Wales has also led the development of a national approach to registering sexual offences against children and the establishment of the Australian National Child Offender Register, which is a national database that ensures notification and protection is extended across Australia. The Government's reforms include the creation of a continuing detention and extended supervision scheme for serious sex offenders. These laws recently allowed the Government to ensure that the child sex offender Kenneth Tillman remained behind bars. An offence has been created to prohibit convicted child sex offenders from loitering near schools and other areas where children congregate. There is now a system for screening people who work with children to ensure that none have been convicted of child sex offences.

Sentences for child sex offences have been made more serious. First, two new standard non-parole period sentences have been introduced. These include a minimum of 15 years for sexual intercourse with a child under 10 years and five years for aggravated indecent assault. Secondly, the maximum penalty has been increased from 20 to 25 years for the offence of sexual intercourse with a child under the age of 10 years. Finally, the Government has more than doubled the penalty for possession of child pornography from a maximum of two to five years to ensure that the seriousness of these crimes is reflected in the penalties imposed for possession, as

well as allowing for serious cases to be dealt with on indictment. The Government will continue to review and develop child protection laws in order to detect and prosecute paedophilia wherever it exists. I commend Premier Morris Iemma and the New South Wales Labor Government, and I wholly support the bill.

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [11.05 a.m.], in reply: I thank members representing the electorates of Epping, Dubbo and Wollongong for their contributions to what is obviously a very important debate. The shadow Attorney General, the member for Epping, referred to a proposal advanced earlier in the year by the member for Manly. The Government has already addressed that issue and, while we appreciate the Opposition's concern for the protection of children, we make it clear that the proposal to exclude child sex offenders from the Internet, or from certain sites on the Internet, is already covered by the Government's child protection legislation, which allows police to make orders to restrict offenders from certain areas or stop them engaging in certain conduct, such as accessing the Internet. Those provisions can be found in the Child Protection (Offenders Prohibition Orders) Act 2004.

The Crimes Amendment (Sexual Procurement or Grooming of Children) Bill 2007 brings New South Wales into line with the 1989 Convention on the Rights of the Child, to which Australia is a signatory. Article 34 of the convention creates an obligation to protect children from "all forms of sexual exploitation and sexual abuse." The member for Epping rightly pointed to the problems created by new technologies and accessing the Internet, which have unfortunately resulted in an increase in predatory sexual behaviour towards children. Adult offenders exploit the anonymity of the Internet to win the trust of the child as a first step towards sexual abuse. Paedophiles do this through a process called grooming, which is undertaken with a view to procuring the child to meet with an adult and engage in unlawful sexual activity.

But it is important to recognise that the process is not confined solely to the Internet. That is why, unlike existing Commonwealth legislation, the bill does not limit grooming and procuring offences to those undertaken using electronic communications. Other practices used by paedophiles include befriending a potential child victim and introducing the child to explicit or inappropriate sexual concepts as part of a manipulation process to entice children into so-called "positive" sexual encounters with adults. Such activities make the child desensitised to sexual talk and behaviour, and therefore vulnerable to abuse. The New South Wales offence will therefore have a wider application than that of the Commonwealth.

As to the bill's protection powers, it is significant that item [1] (4) of schedule 1 states that it is not necessary to specify or to prove the unlawful sexual activity for which the child was to be procured. This means that a person can still be charged with a procuring or grooming offence even if no specific sexual activity had been suggested or planned with the child. Item [1] (5) clarifies that a child does not actually have to exist for an offence to have been committed under this section. References in the bill to a child include references to any person who pretends to be a child so long as the accused person believes the person was a child. This provision assists police in their investigations when law enforcement officers assume false identities to catch potential offenders.

The member for Epping also raised the issue of appropriate charges, and item [1] (8) provides for an alternative verdict in such cases where a person is charged with a procuring offence and the jury is not satisfied that the offence is proven but is satisfied that a grooming offence is proven. In such cases the jury will have the option of acquitting the person of the procuring offence but finding them guilty of a grooming offence. These legislative amendments bring New South Wales into line with penalties in other States and the Commonwealth and form part of the Government's strong and detailed plan for child protection in New South Wales.

The member for Epping said that the maximum penalties in this State exceed those of other States. In fact, the proposed penalty structure for offences in New South Wales is consistent with those of other jurisdictions such as South Australia, which has created an offence with a 10-year maximum penalty. In all cases it is consistent with existing New South Wales child sexual assault offences and indecent assault offences. Most importantly, the new offences must be kept in proportion with existing New South Wales offences, which carry maximum penalties ranging from 7 to 25 years.

I note with concern the issues raised by the member for Dubbo. I can only advise that it is important that these matters be raised with the police, the local area commander, the Department of Community Services and education authorities. It is not appropriate for me to stand here and give legal advice; it is for the police to investigate and prosecute charges that they have available to them. Of course they do that on the advice of police prosecutors and the Director of Public Prosecutions.

The Opposition asked why the Government has taken so long to introduce this legislation. The bill follows a referral from the Standing Committee of Attorneys-General Model Criminal Code Officers Committee. In 2004 it produced a report on child pornography. As a result New South Wales started the process of giving detailed consideration to the best way to implement the most effective child protection laws. The Government has responded to the concerns of legislators and investigators around the world in recent times about the practice by paedophiles of grooming potential victims, and that is why it is now introducing these offences. They form part of a wider array of antipaedophile legislation and police investigative resources the Government has been implementing in recent years.

This bill includes amendments that form an important and integral part of the Government's strong and detailed plan for child protection. As I have said, the offences do have wider application to the existing Commonwealth offences criminalising all forms of grooming and procuring activities, not just those involving electronic communications. The Government has made it clear that it sees sexual abuse of children as one of the worst evils affecting our society and that it will take all necessary steps to ensure that adequate laws are in place to protect young people and punish offenders in line with community expectations. I commend the bill to the House.

Question—That this bill be now agreed to in principle—put and resolved in the affirmative.

Motion agreed to.

Bill agreed to in principle.

Passing of the Bill

Bill declared passed and returned to the Legislative Council without amendment.