



Crimes Legislation Amendment Bill.

Second Reading

Mr NEVILLE NEWELL (Tweed—Parliamentary Secretary) [11.02 a.m.], on behalf of Mr Bob Debus: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Crimes Legislation Amendment Bill, which makes a number of miscellaneous amendments to the criminal law and procedures that are designed to improve the administration of the criminal justice system. The first amendment in schedule 1 is a consequential amendment to the Child (Protection Offenders Registration) Act 2000 to include the new filming offence as a "registrable offence" on the Child Protection Register. The creation of the new offence is dealt with by schedule 8 of the bill. Schedule 8 amends the Summary Offences Act 1989 to create two new offences of, first, filming for indecent purposes and, secondly, installing a device to facilitate filming for indecent purposes.

Members of this House will be aware of a number of recent troubling cases concerning persons using modern surveillance devices in an untoward manner. Because of the use of modern technology and the fact that filming often takes place in the perpetrator's own home there is no relevant offence on the statute book to deal with this serious invasion of privacy for indecent purposes. The new offence under section 21G, filming for indecent purposes, will cover the situation:

... where the perpetrator films another person to provide sexual arousal or sexual gratification, where the other person:

(a) is in a state of undress, or is engaged in a private act, in circumstances in which a reasonable person would reasonably expect to be afforded privacy, and

(b) where the person does not consent to being filmed.

The maximum penalty will be 100 penalty units or imprisonment for two years, or both. "Filming" is defined in such a way as to cover both viewing the image in real time or recording the image to be viewed later. In order to be serious enough to warrant a criminal conviction the "state of undress", together with the accompanying behaviour on the part of the accused, should constitute a serious invasion of privacy. The level of undress that meets the requisite degree of criminality is a matter appropriately left to the courts to determine in all the circumstances of a particular case. Ultimately the proof of this offence will rely heavily on the type of images or recordings made and the locations in which the cameras are set up. The offence is also drafted in such a way as to catch those who produce these films for themselves or for the purpose of passing the recording on to another person.

A new offence under section 21H of installing a device to facilitate filming for indecent purposes will also cover the situation where a person installs a surveillance device with the intention of committing an offence under section 21G. Schedule 2 amends section 11 of the Children (Criminal Proceedings) Act 1987 to clarify that the protections provided by the section apply to deceased child victims, and to extend the protection to the child siblings of child victims. Section 11 (1) of the Children (Criminal Proceedings) Act 1987 prohibits the publication or broadcasting of the name of any child who appears as a witness in criminal proceedings. This amendment closes a gap to cover situations where the victim of the offence is a deceased child and extends that protection to include the siblings of child victims, including deceased child victims, in order to minimise the trauma to the family of the deceased.

Schedule 3 amends the Costs in Criminal Cases Act 1967 to provide that an applicant can seek a certificate for costs in relation to a special hearing. Pursuant to section 2 of the Costs in Criminal Cases Act 1967 the court may grant a certificate to a defendant seeking costs. It is unclear whether this section applies to applications made in respect of a special hearing. Special hearings are trials held for defendants who have been found unfit to be tried in the normal way. Special hearings may be distinguished from other criminal cases because of the limited evidence that is available and because the defence advocate faces unique problems in relation to obtaining instructions. This on its own, however, should not be a bar to obtaining costs. In every other respect the matter proceeds in the same way as a normal criminal trial. Accordingly, this amendment allows applicants in special hearings to seek a certificate for costs when the applicant has been acquitted or where the court has not reached a verdict following a special hearing.

Items [1] and [2] of schedule 4 amend sections 52A and 52B of the Crimes Act 1900 to expand the definition of "impact" for dangerous driving offences. Section 52A of the Crimes Act 1900 provides for the offence of dangerous driving occasioning death or grievous bodily harm where a vehicle is involved in an impact that causes the death or grievous bodily harm of a person. Section 52B is set out in similar terms. However, that section concerns the offence of "dangerous navigation". Section 52A (5) sets out the definition of "impact". It covers many, but not all, scenarios. Dangerous driving can result in serious injury or death even though the vehicle itself does not collide with anything.

Examples of this are where a person is thrown or ejected from a vehicle or where a part of the body of the person protrudes from the vehicle and impacts with some object, including the ground. The Government is therefore amending sections 52A (5) and 52B (5) to accommodate these situations. It is still a defence when the death or serious injury is in no way attributable to the manner of driving.

Items [3] and [4] of schedule 4 amend section 80A of the Crimes Act 1900 so that it has the same circumstances of aggravation and penalties as other sexual offences in the Crimes Act 1900. Section 80A of the Crimes Act provides that it is an offence to compel another person, by means of a threat, to engage in self-manipulation. The offence carries a maximum penalty of 14 years imprisonment. Unlike other sexual offences, however, section 80A identifies only one aggravating feature: if the victim is under the age of 10 years.

Schedule 5 amends the Crimes (Sentencing Procedure) Act to clarify the powers of the Sentencing Council in respect of guideline judgments. We know that guideline judgments can be very effective in giving courts guidance on the appropriate factors to take into account in the exercise of their sentencing function. They foster more consistent sentencing by the courts. Section 100J (1) (b) will now allow the Sentencing Council to advise and consult with the Attorney, not only in relation to offences suitable for guideline judgments but also in relation to particular courts or classes of courts, particular offences or classes of offences, particular penalties or classes of penalties, or particular classes of offenders but not particular offenders.

Schedules 6 and 7 make consequential amendments arising out of amendments last year to section 39 of the Mental Health (Criminal Procedure) Act so that, after a finding of not guilty by reason of mental illness, the court is empowered to order a person's detention or release on such terms and conditions as the court considers appropriate. The amendment to section 7 (4) of the Criminal Appeal Act simply provides the Court of Criminal Appeal with the same powers as a court now has under section 39. The amendments in schedule 7 clarify that the Mental Health Review Tribunal and authorised officers have the same powers in relation to persons that are released conditionally under section 39 as they do for other forensic patients detained under section 39. The bill makes a number of amendments that are necessary for the continuing development of an efficient and equitable criminal justice system in New South Wales. I commend the bill to the House.

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