



Speech by


Hon. Jarrod Bleijie

MEMBER FOR KAWANA

Hansard Thursday, 29 November 2012

CRIMINAL LAW (CHILD EXPLOITATION AND DANGEROUS DRUGS) AMENDMENT BILL

Introduction

 **Hon. JP BLEIJIE** (Kawana—LNP) (Attorney-General and Minister for Justice) (11.30 am): I present a bill for an act to amend the Commission for Children and Young People and Child Guardian Act 2000, the Criminal Code, the Disability Services Act 2006, the Drugs Misuse Act 1986, the Drugs Misuse Regulation 1987 and the Evidence Act 1977, and to make minor and consequential amendments of other acts as stated in the schedule, for particular purposes. I table the bill and the explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

Tabled paper: Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Bill 2012 [[1788](#)].

Tabled paper: Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Bill 2012, explanatory notes [[1789](#)].

The Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Bill 2012 fulfils the government's commitment as part of its six-month action plan to amend laws to address synthetic drugs, penalties for child pornography and some child sex offences including a new child-grooming offence.

The bill significantly strengthens the penalties for the child exploitation material offences in the Criminal Code. These types of offences are abhorrent and should not be considered as victimless crimes. Demand for the possession of these types of images creates a market for those who are actively involved in the making and the supply of such material. The making of child exploitation images results in children suffering at the hands of the depraved individuals who engage in the sexual activities which are often depicted in these images. It is therefore vital that this market is targeted by introducing tough new penalties.

The maximum penalty for the offence of possessing child exploitation material is increased from five years to 14 years imprisonment and the maximum penalties for the offences of involving a child in the making of child exploitation material, making child exploitation material and distributing child exploitation material are increased from 10 years to 14 years imprisonment.

By increasing all the maximum penalties to 14 years imprisonment, the current distinction in penalties between possessing the material and making and supplying the material is excluded. While the criminal law often treats the possession of contraband less seriously than its production or distribution, such an approach should not be taken for child exploitation material offences, where the market demand directly results in the physical and sexual abuse of children.

The bill amends the definition of 'child exploitation material' to ensure the phrase is interpreted to apply to animated or fictitious images of children and to allow for the joinder of multiple child exploitation material offences in one charge on an indictment.

The bill affords further protection to children by inserting a new circumstance of aggravation into the offences of sodomy, unlawful carnal knowledge and indecent treatment of children. Higher maximum penalties will apply when the child victim is a child with an impairment of the mind, in recognition of their increased susceptibility to the predations of paedophiles.

A new offence of 'grooming' a child to engage in sexual activity will be introduced and will carry a maximum penalty of five years imprisonment, or 10 years if the child is under 12 years. The new grooming offence is designed to capture adults who engage in conduct with a child with the intention to facilitate the later procurement of the child for sexual activity. The offence will potentially allow police to intervene before a sexual act or sex related activity takes place.

In order to strengthen the offence of using the internet to procure children under 16 to engage in a sexual act and to accommodate the new offence of grooming, the bill increases the penalties for procuring from five to 10 years imprisonment. The maximum penalty for the aggravated offence is raised to 14 years from 10 years. Further, the bill creates a new circumstance of aggravation where the procuring conduct involves the adult meeting the child or travelling to meet the child.

The bill also removes a loophole in the offence of incest in cases where an adult engages in consensual sex with their de facto partner's child who is over the age of consent—aged 16 or 17 years—but not yet an adult of 18 years. The offence of incest in the Criminal Code includes a complete defence where the parties were lawfully married at the time sexual intercourse took place or if the parties were entitled to be lawfully married. In a recent case, the Queensland Court of Appeal set aside the convictions for six counts of incest on the basis that the offender was lawfully entitled to be married to his long-term de facto wife's 17-year-old daughter when he commenced a sexual relationship with her. The bill amends the offence of incest to ensure the defence is only available if the parties are actually married or, if not married, both parties are adults and entitled to be lawfully married—therefore, over 18.

The bill makes a number of amendments to the Drugs Misuse Act 1986 and the Drugs Misuse Regulation 1987, but I particularly wish to mention two. The first is the creation of a new offence of trafficking in precursors. Precursors are those substances that are used to manufacture dangerous drugs. Often very large quantities of precursor chemicals are supplied, and the current offences of unlawful supply, possession or production do not truly reflect the criminality involved. The new offence of trafficking in precursors will carry a maximum penalty of 20 years imprisonment.

The second amendment is to the definition of 'dangerous drug'. The definition of 'dangerous drug' in the Drugs Misuse Act encompasses analogues of the dangerous drugs listed in the schedules in the regulation. However, in order to prove a substance is an analogue of a listed dangerous drug the prosecution must prove the substance has a substantially similar chemical structure to the scheduled dangerous drug and that it has a substantially similar pharmacological effect. Proving this second limb can be problematic, because often there is no research undertaken on the new drugs to evidence that the substance has a substantially similar pharmacological effect. The bill addresses this issue by removing the requirement to prove both limbs. This will mean that the prosecution will only need to prove that the substance either has a substantially similar chemical structure as a dangerous drug or has a substantially similar pharmacological effect as a dangerous drug and it has the intention to have a substantially similar pharmacological effect as a dangerous drug. The amendment will ensure that we can stay ahead of underground chemists who are producing illegal drugs that are currently not prescribed. To be clear, of the two limbs we currently have the second limb will be changed to encompass the intention to cause the same pharmacological effect. Rather than the prosecution having to prove both limbs, it will have to prove only one or the other of the limbs.

The bill also amends the Drugs Misuse Act to clarify that the District Court has the power to make forfeiture orders in relation to drugs, precursor chemicals, drug paraphernalia and proceeds derived from drug offences.

Other amendments include an amendment to section 54 of the Evidence Act 1977 to modernise the section and provide a rebuttable presumption as to a previous conviction where an expert opines to the identity of the offender.

Consequential amendments are made to the offence schedules relevant to the blue card system in the Commission for Children and Young People and Child Guardian Act 2000 to reflect changes made to relevant Commonwealth child sex related offences and to reflect the amendments in the bill. Corresponding amendments are also made to the offence schedules for the yellow card system in the Disability Services Act 2006. The consequential amendments will help ensure the effective operation of the blue and yellow card systems to protect children, young people and people with a disability.

This government wants Queensland to be the safest place in Australia to raise a child. The bill introduces tough new laws that address child exploitation offences and amends our drug laws to keep up with emerging criminal conduct. I commend the bill to the House.

First Reading



Hon. JP BLEIJIE (Kawana—LNP) (Attorney-General and Minister for Justice) (11.39 am): I move—
That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to the Legal Affairs and Community Safety Committee

Mr DEPUTY SPEAKER (Dr Robinson): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.