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PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

CRIMES LEGISLATION
AMENDMENT (SEXUAL OFFENCES
AGAINST CHILDREN) BILL 2010

Second Reading

SPEECH

Wednesday, 24 February 2010

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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Questioner
Speaker Keenan, Michael, MP

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Mr KEENAN (Stirling) (6.05 pm)—I rise to speak on the Crimes Legislation Amendment (Sexual Offences Against Children) Bill 2010. This bill aims to strengthen the existing child sex tourism offence regime and makes amendments to child sex offences committed outside of Australia. The bill also introduces new offences for steps leading up to actual sexual activity with a child. The bill aims, amongst other things, to ensure that behaviour involving sexual offences against children committed by Australians within Australia is also criminalised when committed by Australians overseas.

In 1994 the Commonwealth enacted a suite of new criminal offences targeting Australians who engaged in the sexual abuse of children overseas, sometimes referred to as ‘child sex tourism’. The introduction of these offences fulfilled Australia’s international and moral obligations to protect children internationally from sexual exploitation. In 2005 the former coalition government enacted a range of offences directed at the use of a carriage service, such as the internet or mobile phone, for the sexual exploitation of children. This action was taken in response to the increasing use by offenders of new technical tools such as the internet to engage in this heinous activity.

This bill will implement a range of reforms to the 1994 and 2005 offence regimes to ensure that they remain effective and continue to meet the needs of law enforcement agencies in combating contemporary offending. The reality we face today is that rapidly changing technologies and the anonymity provided by the internet has resulted in an unprecedented opportunity for child sex offenders. The coalition broadly supports these reforms and new offences which strengthen the current system so that sexual exploitation is comprehensively covered, whether committed online or through other devices such as mobile phones or through the mail.

Specifically, this bill aims to strengthen the existing child sex tourism offence regime. It introduces new offences for dealing in child pornography and child abuse material overseas. It introduces new offences for using a postal service for child sex related activity. It enhances the coverage of offences for using a carriage service for sexual activity with a child or for child pornography or child abuse material. It also makes minor consequential amendments to ensure existing law enforcement powers are available to combat Commonwealth child sex related offences, and it introduces a new scheme to provide for the forfeiture of child pornography and child abuse materials and items containing such material.

The bill’s explanatory memorandum notes that part 1 of schedule 1 will repeal the existing child sex tourism offence regime in the Crimes Act and move the provisions to the Criminal Code. It also aims to strengthen the child sex tourism offence regime by introducing new offences for steps preceding actual sexual activity with a child, improving the operation of existing offences for sexual intercourse or other sexual activity with a child or by introducing new sexual activity offences directed at aggravated conduct, persistent sexual abuse and sexual activity with a young person where the defendant is in a position of trust or authority in relation to that young person. Part 1 of schedule 1 will also introduce new offences for Australians dealing in child pornography and child abuse material overseas.

Commonwealth, state and territory offences criminalise dealings in child pornography and child abuse material within Australia and through the internet. However, there are currently no offences applying extraterritorially to dealings in such material by Australians overseas. Accordingly, part 1 will introduce new offences for possessing, controlling, producing, distributing or obtaining child pornography or child abuse material outside of Australia. The purpose of the amendments in part 1 is to ensure that all behaviour relating to sexual offences against children by Australians within Australia which are covered by state and territory offences is also criminalised when committed by Australians overseas.

Part 2 of schedule 1 will introduce new offences for using the postal or a similar service for child sex related activity. While there is a general offence of using a postal service to menace, harass or cause offence, carrying a maximum penalty of two years imprisonment, there are currently no specific offences for using a postal service for child sex related activity. This has led to inconsistencies in how child sex related activity using a

carriage service and comparable activity using a postal service is treated. Accordingly, part 2 will introduce a comprehensive suite of offences that criminalises the use of a postal service mirroring existing and proposed carriage service offences and penalties.

Part 2 of schedule 1 will enhance the coverage of offences for using a carriage service—for example, the internet—for child pornography or child abuse material or for sexual activity with children. In 2005, new offences for using a carriage service for child pornography or child abuse material or for grooming or procuring a child for sexual activity were inserted into the Criminal Code. Part 2 will extend and improve the operation of these existing offences. It will also introduce new offences for using a carriage service for indecent communications with a child or for sexual activity with a child.

Part 3 of schedule 1 will make minor consequential amendments to ensure existing law enforcement powers are available to combat all Commonwealth child sex related offences. Part 3 will make minor consequential amendments to the Australian Crime Commission Act 2002, the Crimes Act, the Surveillance Devices Act 2004 and the Telecommunications (Interception and Access) Act 1979. These amendments will ensure that law enforcement agencies are able to use existing powers applicable to existing offences for the investigation of the proposed new offences.

The purpose of schedule 1 is to introduce a comprehensive scheme for the forfeiture of child pornography or child abuse material or articles containing material derived from, or used in connection with, the commission of a Commonwealth child sex offence. Currently there is no specific Commonwealth scheme for dealing with child pornography or child abuse material that is seized or otherwise obtained by law enforcement in the course of their investigating activities. Material or offences will be able to be forfeited through a notice scheme administered by the Australian Federal Police or, where appropriate, a state or territory police force. Disputed forfeiture matters will be dealt with by a court. A court would also be able to determine forfeiture applications brought by the Commonwealth Director of Public Prosecutions either following a conviction or an acquittal or in purely civil proceedings.

I want to talk just briefly about the role of the Australian Federal Police in combating online child exploitation. I think it is important at this point for us to acknowledge that the Australian Federal Police's child protection operations team performs an investigative and coordination role within Australia for multijurisdictional and international online child sex exploitation matters. These matters include those from Australian state and territory police, government and non-government organisations—including internet service providers and internet content hosts—the Virtual Global Taskforce, international law enforcement agencies, Interpol and members of the public.

The AFP investigate online child exploitation which occurs using a telecommunications service such as the internet or a mobile phone. The types of offences investigated include accessing, sending or uploading child exploitation and abuse material. Grooming and procuring of children over the internet is also investigated by the AFP. This is when an adult has made online contact with a child under the age of 16 with the intention of facilitating a sexual relationship. AFP investigations may also focus on internet sites carrying child abuse material and operating from an internet service provider in Australia. In cases where the site content is not hosted within Australia, the matter is referred to overseas law enforcement agencies. The coalition applauds the hard work that the Australian Federal Police do at a federal level and also at an international level to combat those who seek to harm the most innocent and vulnerable within our society.

I also want to say a brief word about sentencing guidelines across Australia. State and territory sentencing guidelines differ very significantly in relation to child pornography offences. In June last year this issue was raised by my predecessor in this portfolio, the member for Farrer, who spoke in this House about the inconsistencies in sentencing for child pornography offences in the differing state and territory jurisdictions. There have been a number of disturbing reports in the media about the perceived leniency of sentences for child pornography offences. One notable example is the case of the Queen v Nigel Keith Saddler, where Judge Berman commented on the inadequacy of the maximum penalty for child pornography offences under section 91H(3) of the Crimes Act 1900 in New South Wales. When sentencing Saddler, Judge Berman made a number of comments about the serious nature of child pornography offences and the need—which I think would be endorsed by most in the community—for harsh sentences for these offences, saying that this was:

... not only so that judges do what they can to reduce the demand for such appalling acts of cruelty, but also to mark in a very real way the community's horror at such treatment of entirely innocent and defenceless children.

Judge Berman also went on to say:

Of course the consequences of possession of child pornography go beyond the harm caused to those children involved in its production. The use by an offender of child pornography has the effect of weakening the otherwise very strong idea that children need to be protected from sexual exploitation. Further the use by a person of child pornography for sexual gratification can lead to a situation where the person himself moves beyond being merely a viewer of child pornography to become an abuser of children.

In New South Wales, the penalty for sexual conduct with a child under the age of consent is a maximum of seven years, in Queensland it is 20 years and in the Northern Territory it is 20 to 25 years imprisonment. Notably, maximum penalties also differ greatly for state and territory offences in relation to the production of child pornography or child abuse material. In New South Wales, Victoria and Queensland the maximum penalty for producing child pornography material is 10 years, in Tasmania the maximum is 21 years and in the ACT the maximum penalty is only five years imprisonment for such offences. These inconsistencies need to be addressed, and I think everyone in the community expects them to act as a deterrent for these heinous and hideous crimes.

In June 2008, my colleague in the Senate Senator Bernardi introduced a private senator's bill, the Crimes Legislation Amendment (Enhanced Child Protection from Predatory Tourism Offences) Bill 2008, which did not receive government support. The government—I think quite remarkably—would not allow Senator Bernardi's bill to be debated. I just want to remind this House of what the provisions of that bill were. The main provisions of the bill included the creation of new grooming, procuring and preparatory offences, which filled a gap in the current legislation. The purpose of those measures was 'to give law enforcement agencies and prosecutors the mandate to take action' before a child was actually harmed. So if there is a paedophile out there grooming a child then the authorities could step in and take appropriate action before that child is harmed. The bill also introduced a new offence making it illegal for Australian citizens and residents to possess, distribute, obtain or control child pornography or child abuse material while overseas, as this behaviour is currently outlawed only in Australia. The intention was to fill the gap where a foreign country was unable or unwilling to prosecute persons engaged in child sex tourism offences or where the country has no specific laws to deal with those offences. Senator Bernardi's bill also included the forfeiture of child pornography and child abuse material. It should be noted that these provisions have been included in the bill that we are debating here today and, as we see by the drafting of Senator Bernardi's bill of two years ago, these issues have been of concern to the opposition for some time.

This bill has been referred to the Senate Legal and Constitutional Affairs Legislation Committee, which is due to report on the bill by 15 March. The coalition, of course, supports this bill in principle. However, we reserve the right to make amendments pending the outcome of the Senate committee's inquiry. Importantly, I want to recognise and thank the hardworking members of our state and federal police forces around the country. I particularly single out the Australian Federal Police's High Tech Crime Centre. They work in conjunction with our international partners in the Virtual Global Taskforce, which painstakingly traces these criminals using web recognition tools, Google and specialised software in what is a truly international effort to crack down on the trade in these deplorable images.

At this point there is no effective technological solution that removes the need for these officers to sit and look through every image that is found on a seized hard drive. Sadly for some of these officers who have been involved in this particular task force, they have observed the same children over many years suffering continual abuse. Sometimes, through various software tools, they are able to identify locations, identify victims and arrest their abusers. I think everyone in the House will recognise that, while all police officers do a difficult job, these police officers are remarkable people who should be recognised for their continual efforts to crack down on this disgusting trade. The House should recognise that they are doing a particularly difficult job in what is, of course, a very difficult area of law enforcement.

Whilst Australia has a strong framework in place to criminalise online child sexual exploitation, the new offences and reforms contained within this bill will ensure that the offences capture contemporary offending. The opposition strongly believes that protecting children from this sort of disgraceful predatory sexual behaviour should be a priority for every government and endorses any measures this parliament will take to crack down on this truly horrendous crime.