HOUSE OF REPRESENTATIVES

BILLs

Criminal Code Amendment (Sharing of Abhorrent Violent Material) Bill 2019

Second Reading

SPEECH

Thursday, 4 April 2019
Mr PORTER (Pearce—Attorney-General) (10:28): I present the explanatory memorandum to this bill and move:

That this bill be now read a second time.

I might commence by starting this speech by paying tribute to all those who suffered and lost their lives and lost loved ones as a result of the Christchurch terrorist attack on Friday, 15 March 2019. The victims, their families and their loved ones; the Muslim community in New Zealand and Australia and around the world; and New Zealanders, who have been shocked and saddened by that vile act, know, of course, that Australia stands with them. The horror of that act was brought to the world in real time and the platforms that were used to connect with the world were turned against us to amplify the shooter's message of hate and intolerance.

The relevant footage was broadcast for 17 minutes without interruption and it was another 12 minutes after that point in time that the first user report on the original video was received by Facebook. The material was live-streamed on Facebook and available on that platform for almost an hour and 10 minutes until the first attempts were made to take it down. Simply put, we find that unacceptable.

The Australian government expects that internet platforms should take responsibility for preventing the spread of abhorrent violent material online. The internet is not an ungoverned space. Together, we must act to ensure that perpetrators and their accomplices cannot leverage online platforms for the purposes of spreading their violent and extreme fanatical propaganda. These platforms should not be weaponised for evil purposes.

The Criminal Code Amendment (Sharing of Abhorrent Violent Material) Bill represents an important step in this process. It will ensure that hosting and content services expeditiously remove abhorrent violent material and notify the Australian Federal Police when it appears on their platforms. Internet platforms must take the risks posed by the spread of abhorrent violent material online seriously. The new offences will therefore be accompanied by criminal penalties.

With respect to the removal of abhorrent violent material, it is clear that live-streaming and other video platforms can and will continue to be abused to spread messages of hate and terror, and this cannot be allowed to continue. The bill addresses this risk by requiring the providers of online content and hosting services, whose services can be used to access abhorrent violent material, to ensure the expeditious removal of that material. This will apply when the material is reasonably capable of being accessed within Australia, regardless of whether the content or hosting service is providing from within or outside of Australia. It is important to ensure that this offence is limited to the worst types of material that can be shared online.

Platforms will only be required to ensure the expeditious removal of audiovisual or audiovisual material that is recorded by the perpetrator or an accomplice and that depicts specified abhorrent acts and violent conduct. This is defined to mean acts of terrorism, murder, attempted murder, torture, rape or kidnapping.

The bill does include defences to the offence in certain circumstances, including for law enforcement purposes where the material relates to a news or current affairs report that is in the public interest, for court and tribunal proceedings where the accessibility of the material is for lawful advocacy purposes and where the accessibility of the material relates to research or artistic works created in good faith.

These offences will attract penalties of up to $2.1 million or three years imprisonment, or both, for individuals, and bodies corporate will face penalties of up to $10.5 million or 10 per cent of the annual turnover of the body corporate. There should be no mistake made. These very serious penalties are warranted.

Internet platforms provide immense value to the Australian community, but recent events have shown that they can also be used for great harm and as a platform to spread violent and dangerous ideologies. These penalties
will send a clear message that the Australian government expects the providers of online content and hosting services to take responsibility for the use of their platforms to share abhorrent violent material.

Notably, proceedings for an offence against these provisions would require the written consent of the Attorney-General, which acts as an important safeguard against inappropriate prosecutions and allows a wide range of circumstances to be taken into account before proceeding to any prosecution.

With respect to the eSafety Commissioner's new notice power, the new offence will be supported by a new power by the eSafety Commissioner to issue a notice advising that a content or hosting service is being used to host abhorrent violent material. This will put the service on notice that it is being used to disseminate the relevant material. Once a notice has been given, that service will have no excuse for failing to comply with its obligation to remove that material as expeditiously as possible. As such, the effect of the notice will be to create presumptions that the operator of the service was reckless as to whether the abhorrent violent material could be accessed on their service and that the material in question was abhorrent violent material. Both of these presumptions can be rebutted if the operator of the service is able to produce evidence to the contrary.

Finally, it is critical that Australian law enforcement agencies are able to promptly investigate conduct depicted in abhorrent violent material that may be occurring in Australia and is being shared online. The bill, therefore, introduces a new offence applying to the providers of internet hosting or content services who fail to refer details of abhorrent violent material that records or streams conduct that has occurred or is occurring in Australia to the AFP. This referral must take place within a reasonable time after the provider has become aware of the existence of the material.

The providers of internet hosting and content services are uniquely placed to bring this material to the attention of law enforcement authorities. Prompt referrals will assist the AFP not only to investigate past incidents but also to track events that are unfolding in real time and potentially minimise the harm generated from ongoing access to this material. In practice, it is likely that providers will become aware of a vast array of abhorrent violent material that is already in the public domain. It would serve no practical purpose to refer such material to the AFP and would create a significant administrative burden on all parties. It is, therefore, a defence to this obligation if the provider reasonably believes that the details of the material are already known to the AFP. The referral of material involving serious violent criminal conduct is very important. Failure to comply will be a serious matter and will attract penalties of up to $168,000 for an individual and $840,000 for a body corporate.

In conclusion, the events of Christchurch have shown us that internet platforms can be used to spread messages of hate and terror, and this bill forms an important part of the Australian government's response to these events. Internet platforms have the means to prevent the spread of abhorrent violent material and will face criminal sanction if they do not work expeditiously to remove such material. Separately, the government has announced a task force that includes industry stakeholders to examine immediate and longer term actions with a focus on prevention, transparency and response times.

Leave granted for second reading debate to continue immediately.