

**CHILD EXPLOITATION MATERIAL AND CLASSIFICATION LEGISLATION AMENDMENT BILL
2009**

Second Reading

Resumed from 17 June 2009.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [8.50 pm]: It has been some time since we last dealt with this bill; in fact, I can see from the notice paper that the last time I tried to get the call was 17 June last year. I suppose that the speech I was going to give at that time was based around the initial report of the Standing Committee on Uniform Legislation and Statutes Review, which was a fairly brief report at the time. The committee has since made some substantial changes with its second report, and I want to go through it.

This type of legislation is very important. I congratulate the government on introducing this legislation, because I think with changing times and our much broader access to things such as the internet, it is important that we keep up with these types of technological changes and put into place protections for children in our community. I speak not only as a member but also as a parent of three children. A lot of parents have to deal with these issues on a day-to-day basis because of access to information, the types of information and the types of images that are out there. The types of images that are out there are always of concern to a parent. When I initially sat down and thought about this, I thought that this was not an issue that is just confined to our state or to our country. The issue of child exploitation, which is referred to in this legislation, is now becoming a major, worldwide problem. We are constantly hearing of substantial cases across the United States, Europe and Australia in which police are working globally, tracking down large groups of people who are producing and distributing child pornography.

There is quite a bit of discussion in the committee's report about the use of the terminology of "pornography" or "child exploitation". I note that Hon Nick Goiran has made some comment in the committee report about his views on the terminology that is being applied. I say at the outset that I share his concerns with the changes, because although I do not have any issue with the legislation itself, I have some concerns about people's understanding. When people talk about pornography, it is a very old and somewhat dirty word, as it were, and people grasp what it is about, but when we are talking about child pornography, I understand very clearly that it is about the abuse of children. There is nothing pretty or attractive; it is about abuse. When we talk about child exploitation, it has a broader meaning and it is sometimes harder to break down what it actually means. I was talking to one of my colleagues today and I said that I understood what child pornography was and that it was very clear to me, but when I talk about exploitation of children, from where I have come, it is talking about exploiting children in the workplace—the labour relations type of exploitation. When we are talking about child exploitation, it takes on a different connotation for me, whereas child pornography is very clear. That is a concern about changing the words. I was not too sure whether that had simply come out from the meanings across the states and people deciding that in changing times we need to have that capacity to broaden it out. If the minister is able to explain why it has been expanded in that way, why those words have been changed in a way and the need to change those words, I would appreciate it.

This bill is good because it deals with those issues and increases the penalties for people who produce and distribute, and also people who possess, what I will continue to call during this debate "child pornography". When the committee first dealt with this legislation, it was a very brief report. I think there was a bit of frustration about certain aspects of the legislation or aspects of information that had been provided to the committee. It was very beneficial to members that the uniform legislation and statutes review committee had a second opportunity, which is not always one that is afforded to it, to deal with this legislation not only over a far greater period of time, but also in much more detail and to have the opportunity to seek input from a range of stakeholders. Given the nature of the subject matter that is being dealt with in this legislation, that was very helpful. I know that a raft of recommendations have come out of the second inquiry that will be considered later tonight.

Probably for many of us as children, our entertainment was initially found in books and comics, and then television came on the scene. However, now things are different for a lot of people. The idea of producing and distributing child pornography perhaps 30 years ago would have been an onerous task, whereas now it can be done instantaneously through many avenues, including mobile phones. A person can take a photo on their mobile phone and email it to whomever they wish. People can put images on Facebook and other types of internet tools that people are using now. I do not know whether they can put it on Twitter, because I am not advanced with that technology. I had a young fellow come into my electorate office the other day and he rattled off the different types of technologies that he uses as part of his daily life. Some of them I had not heard about. I will have to talk to my kids about a couple of them so that they can educate me on how to use them. These are vehicles that can be used to transmit this type of heinous imagery around the world.

It is good to have legislation in place to deal with the changes not only to technology, but also in people's attitudes and understanding of the seriousness of this issue and the depth of the problem that is occurring. I do not know how serious this problem was many years ago. I do not know whether people dealt with it. However, now it is something we are hearing about all the time. Rarely a week goes by when there is not a report in the media about some sort of pornography organisation being busted not only in Australia, but also elsewhere or a connection throughout the world. I recall a major incident a couple of years involving credit cards and Russian Mafia across the states of Australia. An enormous number of people were charged and convicted as a result of the police activity in this area. Another reason for having this legislation in place is that it will assist the police to do their job in dealing with this type of issue in a better way.

I would be interested to hear from the parliamentary secretary that as this legislation is coming into play in Western Australia and, as I understand, already exists in a range of other states, whether the legislation that the federal government is looking at to filter the internet to deal with child pornography will have any impact on how this state's legislation will operate. Whilst we are dealing with this bill, the federal government is looking at filtering on the internet and that would involve a very important change to how people could access the internet to obtain information or imagery.

This bill is very useful. My initial worry when I first started thinking about this bill is how we deal with the constant change in technology. We are looking at issues with Facebook. I will give the parliamentary secretary a couple of examples. I went to a school function for one of my teenage daughters a year or two ago, and at the time the girls were using MySpace, which predated Facebook. A couple of hundred parents were sitting in a hall and it was announced that a range of photos would be flashed onto a screen. The result was that several images of teenage girls in various forms of dress or undress were flashed onto a large screen. It had been fixed so that we could not identify the faces, but the teachers had actually found these images of their students by going through MySpace. They were students at that school who were all aged 13, 14 and 15 years. They had taken photos of themselves and posted them. I give the parliamentary secretary that example because one of my worries is that in our changing world, sometimes our young people do not really understand what they are doing with these types of images. They think it is cute and funny—I am not too sure what else—to do this, and they post these photos on MySpace or Facebook. Sometimes their Facebook might be private. I always insist with my girls that theirs is private. However, if it is public, these images are out there for everyone to see.

In that situation a young person may have taken a photo of himself or herself, or maybe of a friend, and put it on his or her Facebook or MySpace page, or he or she may have Twittered it or sexted it. There is a whole range of things that this young person can do with that photo. Under this legislation, can he or she be charged as a person who produces and distributes child pornography, or is there some discretion for the police? Say this image is made in all innocence, or stupidity in some cases or naivety, it may be spread broadly. Once those images are out there, these young people have no control over them. I do not think they understand that. No matter how often their teachers tell them and no matter what policies are put in place, I do not think these kids really appreciate that once something is on the net, it is out there for everyone to see, and they cannot always take it back.

Hon Donna Faragher: They think it's just to share with their friends.

Hon KATE DOUST: That is right. Some of the stuff that young people put on their Facebook pages is quite scary. I have had to say to one of my daughters and one of her friends, "Be very careful. You don't really understand how the words you're using can be read by other people, and you don't know who is reading them."

Hon Alison Xamon: It's there forever.

Hon KATE DOUST: Absolutely; it is there forever. Although it may have been done in all innocence, as a bit of fun or as a bit of stupidity, who is to say that somewhere else somebody who is surfing the net will not pick up on the image and use it for another purpose? In that situation, is that child —

Hon Michael Mischin: It wouldn't make any difference now.

Hon KATE DOUST: It would not make any difference now?

Hon Michael Mischin: It is possession of child pornography under the current law.

Hon KATE DOUST: So would that person be treated in the same way under this bill? I am just curious. I would be interested in the response. Is there going to be discretion to deal with that situation?

Hon Michael Mischin: There is always discretion as to whether the police charge or not, but, yes, if a juvenile distributes or is in possession of child pornography within the definition, it is no different from what is done now.

Hon KATE DOUST: I think there is a massive education job to be done on this. Once this legislation goes through, how will people know that these changes are in place? I genuinely want to know. How will the community be educated about this legislation? How will it better understand that these laws are in place to

provide that protection? I think for most people in the community the issue of child pornography is something that absolutely grinds them down. It is something that churns one's gut when one reads about that sort of thing. Particularly as a parent, it is something that I always worry about.

In my son's school, a couple of situations have arisen. In one case a teacher was taking photos of the young boys in the change rooms—he was a sports teacher—and he was uploading those photos straightaway. Unfortunately, it was not a public school; it was another school. He was charged and I think he is serving time now. However, he was uploading those photos immediately. People always worry about those types of things. I am not saying that they happen all the time, but the fact that an image can be out there is speed-of-light stuff; it can be out there, it can be anywhere, and it is there forever. That is a real concern.

I had a couple of other questions about this legislation and I could not find answers in either the bill or the committee report. I suppose the questions go to how the police will manage this sort of outcome. One assumes that, if the legislation is there to assist the police to deal with this type of issue, the police might need more resources or new types of technology to assist them. I know that technology is being developed in other places to monitor and track child pornography through various systems. I am wondering what impact the proposed changes to the law—I might wait until the parliamentary secretary is listening—will have on the sex offender register. I would have thought that if people were caught producing, distributing or possessing such material, they would be put on the sex offender register. If they are, what impact will the proposed changes to the law have on that? The question following on from that is: given that one assumes that there will be an increase in the number of offenders on the sex offender register, has any modelling been done on the number of additional offenders on the register? My third question is: what additional resources, if any, have been allocated to the police officers who will have to enforce the register laws? A further question tacked onto those questions is: what provision has been made for resources in the form of equipment or new technologies, so that the police can better track these types of situations? These are a few questions that have not exactly been covered, but I want to know about these issues because at the end of the day, the police will have to do a lot more work in this area, and they will probably need to develop people who specialise in this area of policing, and they will have to have the appropriate technology to do so.

I have given a couple of examples of the types of issues that I am concerned about. I will make a couple of comments about the second report because it went into quite a bit of detail and raised a number of issues. I have already canvassed the issue of the changing definition, and I assume that Hon Nick Goiran will speak on this bill and go through the reasons for the change in terminology. I look forward to hearing from him.

I have another question for the parliamentary secretary. The committee tabled its second report in October and there were a raft of recommendations. Has the government formally responded to those recommendations? Has a response been tabled?

Hon Michael Mischin: I have a copy of the response.

Hon Adele Farina: Is that in terms of the first or second report?

Hon Michael Mischin: It is the second report.

Hon KATE DOUST: If the parliamentary secretary has a copy, could he provide it?

Hon Michael Mischin: I can do that now.

Hon KATE DOUST: I thank the parliamentary secretary.

Hon Nick Goiran is quoted on page 10 of the report pointing out his views about the term “pornography”. I remember that there was an issue a few years ago when David Jones put out a particular children's clothing catalogue, and there was quite an uproar about the manner in which the children in that catalogue were depicted. I do not know whether that matter went to court. That advertisement was ultimately withdrawn because people considered that the children's clothing catalogue was pornographic. I could not see that myself, but sometimes people see things differently. Quite a lot of work is being done about the sexualisation of children in magazines and advertising, and that is where that came from.

I have raised with the parliamentary secretary the issues that I wanted to raise and I have canvassed with him the issue of young people putting images of themselves on the internet, which was also raised in some of the submissions that the committee received. On page 55 of the report there is some commentary to the committee on sexting. That is not something that I know much about but it is fairly popular among young people. I do not know how some of these things can be managed. A lot of people are quite blasé about what they put out there because they do not think that it will harm them and they do not understand how the images can be used. That is why it is important to run an education program so that young people can learn about the potential harm of doing these sorts of things. Parents must always keep a watchful eye on not only what their children access, but also their understanding of what these things are. I will never deny my children the right to read whatever they want

to, regardless of what it is, but I am very cautious about them accessing certain images because at certain ages they do not understand the purpose of an image or what it means. They might not understand the adult concepts in a film or in art, for example. We must be very careful about that. I was caught out the other day when my eldest daughter brought home a DVD that was suitable for her but I discovered that my 12-year-old son had watched it when we were not around. I did not think it was the type of film that I was happy for him to watch because it had some very adult concepts in it. We had to have a chat about that.

Hon Liz Behjat: How old is your daughter?

Hon KATE DOUST: She is 18. It is probably quite a tame film, but there is that age difference between them.

Hon Michael Mischin: You are getting old.

Hon KATE DOUST: No, I am just very cautious. I believe that children should be allowed to be children and not be exposed to the murkiness and evil that is behind some of this stuff. Child pornography is one of the most damaging things in our society and it causes irreparable damage to the children involved. Depending on what has happened to that child, I do not believe that the damage can ever be repaired even if the child is not old enough to understand it. Society must become more aware of child pornography and stomp on it as quickly as we can. It is good to have this sort of legislation in place. However, I worry that because we do not always update legislation as often as we should, we might get behind the eight ball concerning the changes in and access to technology and the speed at which people can either gather or send this type of information. I also worry about the naivety of young people who, for quite innocent reasons, may send out images. I am interested to know how this will be managed. It is good to have legislation in place but it is better that people know about it; and it is better particularly that young people know about it. I am a bit of a traditionalist, so I think it would send a much clearer message if we stuck to more traditional words so that people got that message clearly. As I explained earlier, child exploitation, for me, can take on a different connotation. Although I support the legislation, those are some of the questions I have about it. We should be doing everything we possibly can to try to stop these types of problems happening. It is like a seven-headed hydra—if we cut one problem off, another one grows. That seems to be the problem we have with this type of issue.

I commend the work that the Standing Committee on Uniform Legislation and Statutes Review has done on both the first report and the second report that was tabled in October. Although it is not always easy to deal with uniform legislation, as we are quite confined by the commentary that we can make, from time to time, like some of the other bills that we have had before us, we should not always just accept what has come out of other states. We should say that we can do it better. If there are proposed amendments to this legislation that will make it better and tighter legislation, that will be a positive thing. The committee has come up with a raft of very solid amendments that would indeed do that job. I am interested in the feedback on some of those issues.

I certainly commend this bill to the house. I hope that there is an ongoing review of this situation so that we keep up to date with changes and try to not just reduce this type of crime but also reduce its impact upon our community.

HON ALISON XAMON (East Metropolitan) [9.17 pm]: This is the first substantial review of Western Australia's child pornography offences since 1996. The Child Exploitation Material and Classification Legislation Amendment Bill 2009 aims to reflect changes in information technology, media and communications.

The Greens (WA) support the intent of this bill. I note that my colleague Hon Giz Watson spoke about this bill on 17 June last year. The Greens commend the government on further referring this bill last year to the Standing Committee on Uniform Legislation and Statutes Review. The Greens believe that the issues outstanding as a result of the committee's first rather limited report certainly warranted further scrutiny of the bill. We are pleased that some further consultation with community groups and academics, taking into account current laws and enforcement practices in other states, was looked at.

As a result of the decision to refer this to the committee for further consideration, we were able to consider this bill armed with more detailed information, as provided by the committee in its report. I have to say from the outset, as a mum of young children, I obviously find it absolutely abhorrent that anyone would subject young children to the appalling acts depicted in child exploitation material. I am sure that that view is pretty much shared by everybody here. The proliferation of material as a result of the internet, which has actually opened up new ways for paedophiles to reach and abuse children, is very concerning and deeply disturbing. It is a sad indictment of where we are going and how things are panning out. I understand that the United Nations has evidence that the number of websites containing child pornography is increasing internationally. According to figures released by the UN in September last year, more than 750 000 people are using child porn sites around the world at any given time. The UN estimates that the child pornography industry is worth between \$3 billion and \$20 billion. We are therefore talking about an enormous industry. When we are dealing with something as

huge and as horrendous as this, the Greens (WA) welcome the cooperation of law enforcement agencies, both across Australia and internationally, in dealing with these crimes. The bill provides significant penalties for these offences. I welcome that the increased penalties signal the seriousness of crimes such as producing, disseminating and possessing child pornography. That is a highly symbolic act and indicates that as a community we will not tolerate child exploitation.

Importantly—I really want to stress this—the Greens would also welcome more investment in other equally important responses to the problems of child pornography, including filling the gaps around research in order to better understand why perpetrators do what they do. For example, the research literature on adults who have a sexual interest in children has not yet caught up with the latest technology. This creates a real problem for us in deciding how matters should be prioritised for investigation and prosecution and, importantly, how we can develop responses for the treatment of offenders. We will actually have to start doing that, and we will have to start doing it better. Until we start dealing with the core issues of why people offend sexually against children, we will really only deal with the end result. I think all of us would agree that we want to deal with offending at the core level to stop people from even wanting to offend against children in the first place.

I also want to comment on some of the provisions of the bill and about the terms that are used in the bill. A question has been raised a number of times, both in the committee report and by Hon Kate Doust, about why the term “child exploitation material” has been used in the bill in preference to the term “child pornography”. I understand that concerns have been raised that the new term might serve to desensitise the community from the horrible nature of these crimes. I am sure members would agree that it is the last thing we are trying to do with this bill and that it is obviously something we do not want to happen. However, the Greens accept the government’s explanation that the term “child exploitation material” is a broader definition and that the proposed offences are more expansive, which means that we can include “abuse”, “cruelty” and “torture” as areas subject to penalty even when the offence is not committed in a sexual context. I also note the amendment proposed by the government in the bill to include the term “child pornography”. The Greens do not have a problem with that amendment either.

I am aware that, as with the introduction of any new terminology, people may find it takes a bit of getting used to. The term “child exploitation material” will need some public education for it to become more widely accepted and understood. We must ensure that under no circumstances should people believe it is intended to be a softening of the current term “child pornography”. Having said that, I acknowledge the reasons behind the use of the new terminology and note that it is also being supported by the police and the Parliamentary Counsel’s Office, so the Greens accept that the proposal to use both terms probably has some merit. However, the Greens would like to express some concerns about a lack of prescription in the terms “likely to offend a reasonable person”, “offensive” and “demeaning”. I acknowledge the advice given to the committee that some of the terms are already known to the law, that the proposed level of prescription prevents narrow definitions that could result in unintended consequences and that the lack of prescription allows flexibility for future developments, which is a positive thing. Technology is such a movable feast; at the moment it seems to me that new stuff is coming out every day—things that I could not have fathomed even a year ago! Amazing developments happen so often that I think it is really important that this bill, as much as possible, is structured in such a way that it will be relevant into the near future so that we can ensure it captures our concerns. I note the committee’s finding 1 in the report —

... that terms in the definition of “child exploitation material” in the Child Exploitation Material and Classification Legislation Amendment Bill 2009 do not require further prescription. In particular, the phrase “likely to offend a reasonable person” and the terms “offensive” and “demeaning” do not require further prescription.

I acknowledge this finding; however, I still have some concerns about this lack of prescription. As previously noted by my colleague Hon Giz Watson, what she, I and other members of this house might find offensive would probably be quite different from what a young person might find offensive, and possibly even different from what someone a couple of generations older than me might find offensive. We might find there are some vastly different ideas; therefore, I would feel more comfortable if these terms were more clearly defined. Although it is clear that there are definite benefits to leaving the task of determining the meaning of these terms to the courts, it does pose a number of dangers and is contrary to the common law principle that the law needs to be clearly defined before an offence is committed. Again, my concern is that by not defining the offence properly, we may actually deny what we recognise as a basic human right. I note that the committee also raised lack of prescription as a possible issue in proposed section 217. The Greens (WA) support the committee’s recommendation in the report that —

... “concerned” be deleted and “involved” be inserted in proposed sections 217(1)(a) and 217(1)(b).

I will move onto the very fraught issue of sexting, which Hon Kate Doust also talked about. One of the big concerns that the Greens have about the Child Exploitation Material and Classification Legislation Amendment Bill 2009 is the potential for it to adversely impact on young people, which would be a tragic irony considering that the very purpose of this bill is to afford children the greatest level of protection that we possibly can. As noted by the committee, the Commissioner for Children and Young People has raised concerns about the increasingly common practice of sexting. A United States survey found that one in five teenagers had sent nude or semi-nude pictures or videos of themselves. Although I am not suggesting Australian kids' behaviour is at that level yet, I think it would be naive of us to assume that it will not perhaps go in that direction and that these behaviours are becoming far more common. I find it very alarming. Things are very different from when I was a teenager. I am aware, as we have discussed, that sexting can have a lifelong impact, particularly when photographs are involved, which can stay with us for life. I am not suggesting that sexting is not an alarming trend among teens. It can be very dangerous and it can have some terrible consequences for both the person who sends it and the receiver. However, there are some different ways to deal with the rise of sexting rather than immediately moving to straight-out criminalisation of it in all cases, particularly among teens themselves. I am not talking about sexting between a minor and an adult. I am not quite sure how we deal with it; I am not sure that any of us could claim to have the solution, but we need to look at this in more detail and look at developing standards and some sort of protocols around these sexual behaviours and how we can handle these new ways of communication. Most importantly, we will have to engage in educating our teenagers and their parents on the ramifications of sexting. The thing about being a teenager is that we make mistakes and often do not understand the consequences of our behaviour. But the sorts of issues we are talking about can, as I have said already, have lifelong devastating effects and I am very concerned about that. We must look at better education programs for our teenagers. I completely agree with Hon Kate Doust that we need to teach our kids how to use websites such as MySpace, Facebook and YouTube: they need to understand what can happen if they put explicit photographs on their or other people's web pages, and what it means to send explicit text messages. We will have to teach them that this behaviour will potentially have an impact on their lives in the long term. I think it is something we will need to look at very seriously in the near future.

My concern is that the legislation has the potential to result in children and young people becoming criminals as a result of engaging in these behaviours that we are acknowledging we are very concerned about. If charged or convicted under this legislation it will have a lifelong impact for a young person, apart from the devastating —

Hon Michael Mischin: Do you want to make an exception for juveniles —

Hon ALISON XAMON: I would like to continue. I raise the concerns so that I can hear the responses from the parliamentary secretary, and if he could place them on the record that would be great.

I am concerned that if kids are charged or convicted under this legislation, it will impact on their capacity to undertake child-related work. They could have their names placed on the Australian National Child Offender Register. Any conviction will potentially impact on their future work and travel opportunities. These are really significant consequences for an act that, while deeply concerning, is viewed by a generation of kids as a right of passage. Page 50 of the report describes it as a "controlled means of sexual experimentation". Any suggestion of the potential for police to take a hard line and automatically treat young people who send pictures to their boyfriend or girlfriend as criminals who traffic in child exploitation material is very concerning. There is enormous potential for this to impact on the rest of their lives, perhaps even more than the original act of sexting, which, as I have already said, in itself has quite a lot of potential to do damage.

I absolutely understand and agree with the view of the police that a blanket exemption for children is not appropriate. However, I am concerned that without adequate support, and in the absence of a set of police guidelines and protocols for dealing with these matters, this bill will have unintended long-term consequences for our youth, when we are actually trying to protect them.

The committee proposed that, particularly in sexting cases, a senior officer from the sex crime division of WA Police be required to approve any charge against a child before it proceeds. This would provide an appropriate check and ensure that charges against a child are proceeded with only in appropriate cases, and after careful consideration. I would welcome advice from the government specifically on that proposal.

The committee stated in recommendation 2 that the minister review the offence penalties in section 321 of the Criminal Code to ensure consistency and parity in penalties. The Greens support that recommendation. There is a lack of parity between the maximum penalty that applies to an offence under proposed section 217 and the existing penalties for similar offences under the Criminal Code. The DPP gave the following advice to the committee —

It seems a curious outcome that someone who has invited a 14 year old child to become involved in the production of child exploitation material, but has been unsuccessfully achieving that production, would be liable to 10 years imprisonment, while the person who has actually indecently dealt with or

indecently recorded such a child is liable under s.321(8) to 7 years imprisonment. There may be a need to review penalties under s.321.

The Greens also acknowledge the concern that was raised by the DPP that the use of the term “produces” in the bill would not include all those involved in the production of child exploitation material. That led to the proposed amendment that is outlined in recommendation 3. The Greens support this proposed amendment.

During the committee’s hearings, the DPP advised that the defence that “the accused person did not know, and could not reasonably be expected to have known, that the material to which the charge relates describes, depicts or represents a person or part of a person in a way likely to offend a reasonable person” leaves open the possibility that an accused could argue that while he or she was aware of the contents of the material, he or she did not know that the contents were likely to offend a reasonable person. As a result of that advice, the committee has proposed the amendment outlined in recommendation 5. The Greens also support this proposed amendment.

I turn now to the artistic merit defence. This issue has been the cause of great controversy in recent years, particularly in Australia. The committee report refers to the case of the Bill Henson photographs, and to the diversity of community views that that case evoked. It notes the need for Parliament to achieve a balance between artistic rights and children’s rights. I note that WA Police said there were not enough cases to be able to form a solid opinion on these matters. I certainly agree with the committee’s acknowledgement that this defence may apply to advertising campaigns, articles or documentaries promoting ending child abuse where there are good public policy reasons for such material to be distributed. That shows that we cannot necessarily have a one-size-fits-all approach when we talk about the use of these sorts of images.

Hon Nick Goiran: Will you take an interjection on that?

Hon ALISON XAMON: I am happy to take an interjection from Hon Nick Goiran.

Hon Nick Goiran: If there were a campaign to end child abuse, surely such a campaign could be done without actually having a pornographic image.

Hon ALISON XAMON: Of course I can respond. I would certainly hope so. I will be honest: I have never seen any child pornography, and I hope I go through the rest of my life never having seen it. I feel sick at the prospect of viewing it in any form, including that. I am aware, however, that we are talking about a broader range of child abuse. I will refer to the fact that I got sent a YouTube video today from a Redress WA applicant, who has made a video of her experiences of being a physically abused child. It showed a series of images of what had happened to her. That was not her trying to engage in exploitative material; that was her trying to demonstrate to the world what had happened to her and her anger around what is happening in Redress. That demonstrated to me the simple showing of these images in a particular context. We have to look at the context in which the material is portrayed. I am sure that all of us at some point have probably been exposed to various images, particularly of child assault, and been horrified by it in news outlets and all sorts of things. Obviously, anything that would suggest that has been done for some sort of pleasure is repulsive, but if it actually serves to highlight and educate around a massive injustice, I suppose that is where we ought to look at the nuances around this bill. I note that the explanatory memorandum states that this defence exists so that artists, scientists, doctors and other persons are able to carry on with their work for the benefit of the community. This defence also replicates the defences under sections 58 and 101(2) of the enforcement act. The Greens (WA) do support the inclusion of this particular defence although I will note the concerns that I do not think it is intended to be a free-for-all under the guise of art to be able to depict anything people want to.

The onus of proof is an ongoing issue for the Greens. That probably would not surprise people. In the first report the committee raised the issue of the accused bearing the onus of proving the defences in proposed sections 221A(1) and 221A(2) in the bill. The government advised that the defence provided is not reversing the onus of proof. The Director of Public Prosecutions agreed with the government response with the onus and noted that it is arguable that the defence provided in the proposed sections reverses the onus of proof. In the view of the DPP this defence is appropriate, given the nature of the offence.

The committee also noted that the commonwealth and every other state include a number of defences with this legislation and the defences currently in the enforcement act reflect the committee’s finding. However, the Greens still remain very concerned with this proposal. The burden of proving someone has committed an offence should continue to lie with the prosecution. If someone is unwittingly in the possession of child exploitation material—for example, through spamming or through unsolicited emails—should that person still not be presumed innocent of a crime until proven guilty? I have not received child pornography but I have received unsolicited pornography when I was the women’s officer at the State School Teachers’ Union of WA many years ago. There was a charming little man who felt obliged to send me explicit photographs of women. I am assuming that they were over age—I certainly hope so—because he felt the need to send them to me on a weekly basis. I

would open them because he would change names, and I had no idea what they were until they were in my face, and then I would go straight for “delete”. I am sure I am not the only member here who has received these charming little messages. I was very pleased that when I finished in that role they did not follow me, but apparently they did follow the person who took over the role after me, so it would appear to be one of the hazards of the job. I come back to this point: to not work with the presumption of innocence until proven guilty is very clearly contrary to international covenants, particularly that on civil and political rights.

I note that child protection workers are not afforded the exclusion from being charged with an offence that members of law enforcement agencies are granted. On hearing from the Minister for Child Protection, Hon Robyn McSweeney, and Western Australia Police, the committee was satisfied that child protection officers do not require the same level of protection as is offered to law enforcement agencies. The Greens are happy with that decision.

I come now to the very tricky issue of the mistaken belief of the age of the child. I would welcome the government’s response to the committee’s recommendation that, for example, an accused could argue that they believed the child involved in child exploitation material was aged 16 years or older. The committee’s recommendation 6 states —

The Committee recommends that proposed section 221A be amended to clearly reflect the Government’s intention in relation to whether section 24 of *The Criminal Code* applies to the proposed offences.

If the Government intended that an honest and reasonable, but mistaken, belief as to the age of a child should be a defence, then this should be clearly stated in proposed section 221A(1).

If the Government intended that an honest and reasonable, but mistaken, belief as to the age of a child should be excluded as a defence, then this should be clearly stated in proposed section 221A.

I will now refer to the amendments that I received only today. I note the parliamentary secretary’s intention to move an amendment to insert a provision outlining that it is no defence to a charge of an offence under sections 217, 218, 219 or 220 to prove that the accused person did not know the age of the child to whom the charge relates, or the age of the child described, depicted or represented in the material to which the charge relates, or believed that the child was 16 years of age or over. The Greens (WA) feel that we have not been given sufficient time to give adequate consideration to this proposed amendment. We have had a break of almost three months and we could have received the proposed amendment earlier. The Greens would be greatly concerned if someone were to receive on their computer an image that appeared to be a woman in a sexual pose and they looked at it and even sent it on to their friends only to find out later that in actual fact it is a picture of 15-year-old. They would then face a significant period in jail for possessing or distributing child exploitable material. We need to consider further the implications of this proposed amendment.

Having said that, I clarify that whoever produced the image of the 15-year-old, particularly if that person distributed it knowing that it was a 15-year-old, is guilty of an extremely serious crime and should, of course, face the full weight of the law. We will have to start being realistic about the convoluted distribution channels for this type of material. I suppose they are some cautionary words. Having said that, I make it clear that the Greens absolutely believe that this is a very important bill, which includes important matters for this house to be discussing. We have a fundamental obligation to protect our children from the harm that is posed by child exploitation and child pornography with very strong and effective legislation. We acknowledge that this bill modernises and strengthens the legislation in relation to child exploitation and it also brings us in line with other states, and that is really important.

Again, the Greens (WA) would be concerned that in our haste and anxiety to protect our children we unwittingly expose them to potential harm of the long-term consequences of charges or convictions under this legislation stemming, particularly, from the increasingly common practice of sexting. I would be very concerned if the criminalisation of children became the outcome of the passage of this legislation when we are, rightly, trying to prosecute adults who are involved in the production and consumption of exploitative images of children and young people.

HON NICK GOIRAN (South Metropolitan) [9.50 pm]: I am pleased to rise this evening in the little time that is left to speak on the Child Exploitation Material and Classification Legislation Amendment Bill, which probably is the bill with the longest title since I have been in this place, and I note that the parliamentary secretary is looking to extend that title by a couple of words. However, as it happens, I agree with that amendment, and we will get to that in due course. I make my comments this evening mindful of my role as a member for the South Metropolitan Region, but also as a father and considering my role on the Joint Standing Committee on the Commissioner for Children and Young People. Being a member of that committee, I think it would be somewhat remiss of me to not make any comments on this bill this evening.

In my short time in this chamber, I have made no secret of the fact that I am passionate about children's issues. One of those issues is the worldwide phenomenon known as the sexualisation of children—something that some of our members have talked about tonight and something that is of great concern to me. As a result of that, I say at the outset that this bill is by no means a silver bullet; it is only the beginning. I think that that echoes the comments of the other members who have talked about such things as education campaigns, which would be particularly important, one would think, not necessarily for adults, who one would think would surely have their brains sufficiently developed that they would be able to work out that this is something not to be involved in, but more so for young people. Therefore, I have some sympathy for the comments that have been expressed this evening, particularly with regard to, for example, high school students, who I think would be very much affected by this phenomenon of the sexualisation of children.

Regrettably—I hope members on the whole agree with this—we have found ourselves in a very commercialised culture that seeks to take advantage of children in a sexualised way, particularly in the way that products are marketed. We have a mentality of buy, buy, buy, and the target of such products is the teens, what are called the tweens, and the pre-teens. Therefore, it was with some relief that I found that this bill had been introduced into this place some weeks prior to my arrival here in May last year. It is somewhat unfortunate, in a sense, that we have not been able to deal with this legislation before now. However, as has been foreshadowed by some other members, there are some very legitimate reasons for that, not the least being the need for the Standing Committee on Uniform Legislation and Statutes Review to have adequate time to properly consider the bill. I want to take this opportunity to thank the committee members for their two very excellent reports, and, in a passing note, indicate that in hindsight it is a bit unfortunate that they were not afforded the opportunity to look at the policy of the bill, which in this instance might perhaps have been a useful thing to do. Of course, I am probably not one to say much because I did not speak up earlier on that issue. However, having said that, we live and learn from these things, and perhaps next time I will express that view.

I also take the opportunity to commend the Attorney General for the excellent amendments that have been proposed. We will deal with them when we get to the committee stage. It is particularly important for members to appreciate that although the amendments proposed by the parliamentary secretary representing the Attorney General appear, in a sense, not to add anything specific to the legislation, in my view it is critical that they be included before this bill is passed by the house. One might ask why it is so important to add two words to the title so that it will ultimately be “Child Pornography and Exploitation Material and Classification Legislation Amendment Bill”. Why would that be an important thing to do? I suggest that one of the key reasons is to ensure that the message is right for the community. Again, one might ask what is meant by that; people surely know what child exploitation material is. Over the past six months that I have been considering this bill, I have asked countless people—I would say hundreds of people—what they think “child exploitation material” means. Mr President, do you know what most people say when I ask them about that? They think it has to do with child labour or child slavery, or something to that effect. I acknowledge the comments made by Hon Kate Doust earlier tonight; she showed great discernment in making those remarks, because that is certainly what the general population thinks. When they hear the term “child exploitation material”, they actually ignore the word “material”; they just hear “child exploitation” and think we are taking advantage of children by not paying them enough wages when they work in fish and chip shops or wherever else they might work as young people. Of course, this legislation has absolutely nothing to do with that; this legislation is to do with child pornography.

It is interesting that when one looks at the synopsis of this bill on the parliamentary website, there are words to the effect that the bill will seek to get tougher on the evils of child pornography. The synopsis does not say that we are going to get tough on the evils of child exploitation material; it says “child pornography”. That is quite telling; I suspect the author of that synopsis put that in there because everyone understands what it means. When we talk about child pornography it probably creates in most people's minds an exclamation mark; when we talk about child exploitation material, it creates a question mark. That is quite unhelpful given that, as legislators, we play a very serious role in sending a message to the community.

The point is not lost on me that at the conclusion of this process the title will effectively be lost, because this bill is not stand-alone legislation; it is legislation that takes these provisions out of the classification legislation and other legislation and puts them into the Criminal Code, partly to indicate the seriousness of these matters. Nonetheless, it is important that when we communicate to our constituents that the house has passed this bill, we are able to do so by sending the right message. Having the extra words in the title is incredibly important to that.

Another matter which is worth noting, apart from the message to the general public, and which may not be well known to members, is that for many years the pornography industry has been trying to disassociate itself from the word “pornography” because of its negative connotations. The industry has recognised for a long time that that word—someone said this earlier—is a dirty word. The industry has recognised that that is not good for marketing and it has distanced itself from that word.

Debate adjourned, pursuant to standing orders.