Extract from *Hansard*
[COUNCIL - Thursday, 23 March 2006]
p735b-738a
Hon Giz Watson; Hon Sue Ellery

CRIMINAL CODE AMENDMENT (CYBER PREDATORS) BILL 2005

Second Reading

Resumed from 22 March.

HON GIZ WATSON (North Metropolitan) [2.00 pm]: Yesterday when I started my contribution to this debate, I discussed the fact that the behaviour of a small minority of adults who choose to prey on children and young people to encourage them to participate in sexual activity is not new. Indeed, it is common among all ages and societies. What we are dealing with is the capacity for that to be done with a great deal of secrecy and speed via e-mails and Internet sites. The Legislative Council is debating a bill that will explicitly make this an offence under the Criminal Code. If this bill is passed, the part of the Criminal Code that deals with providing indecent material to underage children will be amended. By and large, the Greens (WA) are willing to accept this amendment to the Criminal Code. However, I want to raise other issues about material that can be accessed on the Internet. This issue poses a vexed question because when dealing with the enormous amount of inappropriate material available to young people by electronic means, we must also consider freedom of speech issues and people's right to access information. As I read the wording of the bill, an essential component of the offence is the intent of a person to procure a child to engage in sexual activity or to expose a child to indecent material. I ask the parliamentary secretary: would it be an offence if the person concerned was the child's parent or relative? Does the bill have any bearing on adults who knowingly or unknowingly make material available that would not otherwise be legal? I know that some of us think that such material ought to be illegal. Is that circumstance captured by this amendment to the Criminal Code? If a young person accesses the e-mails of his parents, relatives or older friends and obtains inappropriate material, could those people be charged with an offence? Does the same apply to someone whose web site is generally available, or is the offence specifically about the intention to procure a certain activity from a child? I want to make that distinction.

The community is greatly concerned that children have access to a variety of information, whether it be offensive material to do with sex or offensive material to do with violence, which is probably of equal if not greater concern. There is any amount of violent material readily available for young people to access. I have looked at some research in this area carried out by the Australia Institute, entitled "Parents' Attitudes to Regulation of Internet Pornography". That research produced some interesting results after studying 377 randomly selected households with at least one child in the specified age group. The article stated -

> Seventy eight per cent of these households report having access to the Internet at home, a much higher proportion than the average, which is closer to one third. . . . Internet connection in households with teenagers has risen rapidly in the last two years. . . .
>
> Parents were asked:
>
> > Do you think that any of your 12 to 17 year old children have looked at pornographic sites on the Internet, either at home or somewhere else?
>
> Only 35 per cent answered 'yes'; 57 per cent said 'no' and eight per cent were unsure. Parents from households with an Internet connection were a little more likely to say that they think their children have accessed pornography (36 per cent) than those without a connection (32 per cent). These answers can be compared with the reported Internet viewing habits of 16-17 year olds discussed in Flood and Hamilton (2003). Seventy-two per cent say that they have accidentally seen sex sites on the Internet (84 per cent boys and 60 per cent girls), while lower proportions say that they have deliberately sought them out - 38 per cent of boys but only two per cent of girls.
>
> Although the subject of little public comment, parents express strong concerns about the accessibility of Internet pornography. . . .
>
> . . . parents believe the Federal Government is not doing enough to protect children.

The article went on to suggest that two specific strategies were proposed: the mandatory blocking of pornography by Internet service providers and educating children on the risks of pornography.

How do we determine whether people providing those web sites will be caught by this legislation if they publish material that may expose a child to indecent material? Does this bill also attempt to prosecute the owners or operators of those Internet sites that provide indecent material? That is not such a direct issue as the other aspect of this bill, which is communication to procure a child to engage in sexual activity; it is more an exposure issue. It is important that we also put in place legislation such as this, which the Greens (WA) are happy to support, albeit with some reservations because it involves entrapment. Entrapment is a method that, in principle, we are reluctant to see included in legislation because of all the legal arguments about enticing someone to do something that they would not otherwise do. There is a wealth of legal articles and thought about the use of

entrapment in a range of legislative circumstances. In this case it seems that there are very few options for identifying the perpetrators if we do not engage in entrapment. Therefore, taking that into consideration, we are willing to accept that this is a necessary process to prevent the much more serious offence of entrapping children and young people to engage in sexual activity.

The bill proposes to amend the Criminal Code by inserting after section 204A a new section 204B. Section 204A of the Criminal Code provides a definition of "offensive material". That definition is quite specific. Proposed new section 204B creates a new offence of using electronic communication with the intent to procure a child to engage in sexual activity or to expose a child to indecent matter. It also introduces a definition of "indecent matter". The explanatory memorandum states -

> The term "indecent" is intended to be interpreted as in the Common Law.

It seems to me that the government has deliberately decided to define the words "indecent matter" in such a way that they will be interpreted very broadly. I am concerned about that, because it begs the question of who will make the decision about whether a particular matter is indecent. I am not familiar with this area of law. I have no idea how much case law is available about what the term "indecent" means. The police will be engaged in the entrapment of the person and the seizure of property. If the police will also be the ones who will decide whether a particular matter is indecent, I would prefer that the definition was more specific than just saying -

> The term "indecent" is intended to be interpreted as in the Common Law.

Subsection (1) of section 204A spells out in detail, in paragraphs (a) to (g), what is considered to be offensive material. I do not think any of us would disagree with anything in that definition. Paragraph (a) provides that "offensive material" means material that -

> describes, depicts, expresses, or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty or violence, or revolting or abhorrent phenomena, in a manner that is likely to cause offence to a reasonable adult;

That is a good test of whether particular material is offensive, because what I or another member of this house might find offensive would probably be somewhat different from what a young person might find offensive and would probably be vastly different from what someone who was a couple of generations older might find offensive. This whole debate is about what will fall into the category of offensive material and what will not. I have some concern that it is being left as open-ended as this bill proposes. Interestingly, the definition in section 204A of the Criminal Code that deals with showing offensive material to children under 16 in a general way also includes cruelty and violence within such offensive material. Will proposed new section 204B also capture cruelty and violence, or does it refer only to sexually indecent material? If the latter is the case, it is limited as it should also include material that is offensive by way of being violent or cruel.

My final question on this bill refers to similar legislation in other states. I understand this bill is based on Queensland legislation. What other states have gone down this track, and is their legislation similar to this, or are there variations?

I am keen to hear the response from the parliamentary secretary to the issues I have raised. I am not ruling out the possibility of seeking an amendment to change the definition of indecent matter to being the same as that used in the existing Criminal Code provisions. I will need some persuasion that the shift to a broad definition is warranted, and I will be interested to hear what it hopes to achieve. It needs some explanation.

HON SUE ELLERY (South Metropolitan - Parliamentary Secretary) [2.18 pm]: I thank members for their contribution to the debate. In particular, Hon Giz Watson raised a number of issues that I will address in my response. The first issue she raised last night was what, apart from introducing this legislation, the government might be doing to protect children in Western Australia from pornography on the Internet. A range of things are being done in schools by the Department of Education and Training to prevent children from accessing inappropriate sites. Principals are required to ensure that procedures are developed to manage students' use of online services, such as e-mail and web-based services. The department also maintains a content filtering service based on a blacklist of pornographic sites from squidGuard. Individual schools requiring a high level of filtering can purchase software of their choice to filter at a local level. The Curriculum Materials Information Service's "Resourcing the Curriculum" web site is available to teachers over the departmental intranet and provides information and strategies to teachers on how to manage information and communication technology issues, including effective management of online chat forums, student privacy and safe surfing strategies. The department and Western Australia Police are finalising a joint departmental education program targeting students, designed to increase student awareness of safety issues and develop online protective behaviour.

The member also referred to the work that is being done by the commonwealth government. The Internet is controlled and regulated by commonwealth law, particularly under its broadcasting powers. Commonwealth law

endeavours to prevent child sex abuse. The state government is working in cooperation with the commonwealth to prevent child sex abuse.

Hon Giz Watson asked whether it is the intent of the bill that an offence occurs when the adult seeking to procure is a person related to the child. The answer is yes. The member also asked whether it is the intent of the bill to prosecute a person who is responsible for children accessing material that she described as being generally available. The answer is no. A person would be prosecuted only if that action was carried out with the intent to procure the child for sexual activity.

Hon Giz Watson also referred to violent material, which is not covered by this bill. Although I may have a point of view that does not disagree with the dangers and offensiveness of violent material being available on the Internet, this bill is specifically designed to assist the police to prosecute those people who seek to procure children for sexual activity.

The honourable member asked whether the bill goes so far as to prosecute owners or operators of sites and Internet service providers. It is not the intention of the bill to catch Internet providers unless it can be proved that in that activity they met the elements of the offence; that is, the use of electronic equipment with the intent to procure a child to engage in sexual activity. If that can be demonstrated by the courts, the bill may affect those people. To put it another way, the intent of the bill is to catch those individuals who engage in what might be described as predatory behaviour and who are using the Internet for the purpose of preying on children. The honourable member asked a question about section 204 of the Criminal Code. The essence of her question was that under the provisions we seek to include in this bill who will decide what constitutes "indecent matter". Section 204A of the Criminal Code refers to the showing of offensive material to children. In our deliberations it was considered inappropriate for a similar provision to be included in this bill because it includes a reference to more than sexual matters, particularly material that relates to crime or violence.

The reference to indecent matter in proposed new section 204B of the Criminal Code relates only to sexual matters. The question of indecent matter has been tested. As the member suggested, it may well be by case law. It refers to sexual matters only, given the context and purpose of that provision. The term "indecent matter" was not defined in the legislation, but was quite deliberately left for its common law meaning to be tested and determined by the courts because it is understood by the courts. To define it would mean that some relevant maters may be excluded. The common law definition is more appropriate because it can change with shifting values in the community.

The honourable member asked in what other jurisdictions this law applied. The member acknowledged this bill is based on the Queensland model. In addition, the Australian Capital Territory and the commonwealth have provisions in place that address the nature of the issues that this bill seeks to address. It is recognised not only in Australia, but also internationally that we need modern legislation to combat the abuse of children via the Internet and other electronic communication.

Enactment of this bill will make Western Australia one of the leading jurisdictions in protecting children from online sexual abuse. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Hon Sue Ellery (Parliamentary Secretary)** and passed.