

## **Criminal Code (Child Pornography and Abuse) Amendment Bill 2005**

### **Explanatory notes for amendments to be moved during consideration in detail by The Honourable Rod Welford MP**

#### **Title of the Bill**

*Criminal Code (Child Pornography and Abuse) Amendment Bill 2005*

#### **Objectives of the Amendments**

The purpose of the amendment is to clarify that the excuse provided in section 228H (Possession etc of child exploitation material by law enforcement officer) does not excuse unlawful conduct that should be authorised under Chapter 5 of the *Police Powers and Responsibilities Act 2000*.

The Bill creates a number of new offences relating to child exploitation material. It also includes a number of excuse and defence provisions, including section 228H, which provides that a person is not criminally responsible for an offence against section 228B, 228C or 228D if –

- (a) the person is, at the time of the offence, a classification officer or law enforcement officer acting in the course of the person's duties; and
- (b) the person's conduct is reasonable in the circumstances for the performance of the duties.

Section 228H was not intended to permit any police officer to proactively commit offences while investigating offences relating to child exploitation material, rather it was intended to provide protection for law enforcement officers required to copy child exploitation material (eg for the purposes of preparing the police brief), to distribute child exploitation material (eg by giving to the classification officer or providing it to the Office of the

Director of Public Prosecutions), or to possess child exploitation material (eg retaining for legitimate intelligence purposes).

Chapter 5 of the *Police Powers and Responsibilities Act 2000* provides for controlled operations and controlled activities. Its purpose is to permit certain law enforcement officers to effectively investigate serious indictable offences (such as child pornography) including by permitting those officers to engage in unlawful activity during the investigation. For investigations into child exploitation material, this would include permitting the relevant police or Crime and Misconduct Commission officer to be in possession of child exploitation material, to distribute it to targets and to counsel or procure targets to distribute child exploitation material to a covert officer.

The controlled operations approval is also designed to ensure that these types of unlawful activities are only undertaken when appropriately authorised, and only by appropriately trained officers. The process also preserves the admissibility of evidence obtained in this way, and protects the operatives from criminal and civil liability in relation to the approved unlawful activities.

It is arguable that section 228H would not apply to a police officer who, without the appropriate authority, undertook unlawful activities, because such conduct would not be reasonable in the course of that officer's duties. However to be prudent, it is considered necessary to amend section 228H to clarify that law enforcement officers will still be required to obtain controlled operations approvals under Chapter 5 of the *Police Powers and Responsibilities Act 2000* before undertaking unlawful activities.

### **Estimated Cost for Government Implementation**

Nil

### **Consistency with Fundamental Legislative Principles**

The amendments are consistent with fundamental legislative principles.

## **Consultation**

The amendments have been developed in consultation with the Department of the Premier and Cabinet, the Queensland Police Service and the Department of Tourism, Fair Trading and Wine Industry Development.

## **Notes on provisions**

Amendment 1 amends Clause 6 of the Bill by adding an example to section 228H(1) and adding new subsections (2) and (3) to section 228H.

New section 228H provides that a person is not criminally responsible for an offence against section 228B, 228C or 228D if—

- (a) the person is, at the time of the offence, a classification officer or law enforcement officer acting in the course of the person's duties; and
- (b) the person's conduct is reasonable in the circumstances for the performance of the duties.

The following examples of what conduct may be reasonable for the performance of a law enforcement officer's duties will be added to subsection (1)—

- Copying child exploitation material for the purposes of preparing a brief for police prosecutors.
- Supplying child exploitation material to a classification officer for classification or to the Office of the Director of Public Prosecutions for use during the prosecution of a person for an offence.
- Keeping child exploitation material obtained during an investigation for legitimate intelligence purposes.

The addition of these examples will give greater guidance as to the type of conduct that may be excused by this provision.

New subsection (2) provides that the protection of subsection (1) does not apply to the extent that the person's conduct consists of—

- (a) engaging in an activity as part of an investigation of chapter 5 criminal activity; or

*Criminal Code (Child Pornography and Abuse)*  
*Amendment Bill 2005*

---

- (b) engaging in conduct that is directed to obtaining evidence of the commission of an offence against a particular person.

New subsection (3) provides that “chapter 5 criminal activity” has the meaning given by the *Police Powers and Responsibilities Act 2000*, that is, a suspected indictable offence, a suspected misconduct offence or suspected organised crime (see section 165, *Police Powers and Responsibilities Act 2000*).

The purpose of these new subsections is to ensure that law enforcement officers investigating offences created by the Bill undertake otherwise unlawful activities only as part of a controlled operation or as a controlled activity, authorised under Chapter 5 of the *Police Powers and Responsibilities Act 2000*.