



# Legal Issues Bulletin

No. 45 revised January 2012

## Sexual procurement and grooming of children – changes to the criminal law

On 18 January 2008, the *Crimes Amendment (Sexual Procurement or Grooming of Children) Act 2007* commenced. The Act inserted new offences into the *Crimes Act 1990* dealing with the issue of *procurement* and *grooming* of children for unlawful sexual activity.

### What are the main features of the legislation?

It is an offence for an adult to intentionally procure a child for unlawful sexual activity. It is also an offence to engage in behaviour that grooms a child for the purpose of making it easier to procure that child for unlawful sexual activity.

### What is meant by the term “procure”?

“Procure” is not defined in the Act so the ordinary dictionary meaning will apply. The Macquarie Dictionary indicates the meaning of “procure” includes:

- to effect, cause, bring about, especially by unscrupulous or indirect means, or
- to obtain for the gratification of lust or purposes of prostitution.

For the purposes of the offence, examples of “procurement” for unlawful sexual activity would include:

- making promises to a child
- offering a child inducements, such as goods, clothes or other gifts
- encouraging a child to engage in the activity on the understanding that as a result of doing so, the child will receive some benefit or not incur some form of detriment.

The maximum penalty for the offence of procurement of a child is 15 years imprisonment if the child is under the age of 14 and 12 years imprisonment for all other cases.

### What is meant by the term “grooming”?

An adult is guilty of this offence if he or she engages in any conduct that:

- exposes a child to indecent material, or
- provides a child with an intoxicating substance

and does so with the intention of making it easier to procure the child for unlawful sexual activity. The unlawful sexual activity does not need to be with the adult actually engaged in the grooming.

For the purpose of the offence, “conduct” includes:

- communicating in person or by telephone, the internet or other means, or
- providing any computer image, video or publication.

The maximum penalty for the offence of grooming is 12 years imprisonment if the child is under the age of 14 and 10 years imprisonment in all other cases.

### **What is meant by the term “unlawful sexual activity”?**

There are a wide range of offences captured by this term but in general it includes:

- any offences in the nature of sexual assault or indecent assault, including attempts to commit such assaults
- sexual servitude type offences
- child prostitution offences
- child pornography offences, and
- any similar acts committed outside New South Wales that would be an offence if committed within New South Wales.

### **What is the meaning of “child” and “adult”?**

For the purposes of procurement and grooming offences, a child is any person under the age of 16. An adult is defined as anyone of or over the age of 18.

### **What other provisions are contained within the Act?**

The consent of the child concerned to the course of conduct giving rise to either of the offences is not a defence to any criminal action against an offender.

Further, if a person who is the subject of procurement or grooming pretends to be a child:

- the person will be considered a child if the offender believed the person to be a child
- “unlawful sexual activity” will include anything that would have been unlawful if the person was a child, and
- the age of the child will be the age the offender believed the person to be.

### **Does the new legislation have any impact on disciplinary action the Department may take against staff who are alleged to have engaged in "grooming behaviour"?**

The definitions in the Act are concerned only with potential breaches of the criminal law. The concept of "grooming" in terms of disciplinary action against staff will generally be much wider and may include conduct not found within the statutory provisions.

### **Linkage with previous bulletins**

This bulletin is one in a series that outlines various aspects of the criminal law relating to the safety and welfare of children. It would be prudent for staff to make themselves aware of those previous bulletins:

- [Legal Issues Bulletin No. 27 - Amendments to the Crimes Act 1900 – New Offences and other Related Changes Relevant to the Safety and Security of Schools, Staff and Students](#)
- [Legal Issues Bulletin No. 30 - Amendments to the Crimes Act 1900 in Relation to the Lawful Correction of Children](#)
- [Legal Issues Bulletin No. 32 - Changes to the Law in Relation to Sexual Offences and Related Issues](#)