



## Online child grooming laws

Information and communications technologies (ICT) have created a new space of opportunity where children can learn, play and develop, but may also risk becoming the victims of crime or engage in illegal behaviour themselves. The types of offences relevant to online child exploitation include producing, possessing and disseminating child pornography, grooming children for the purposes of sexual contact, and displaying live images of child sexual abuse.

Child grooming is a process that commences with sexual predators choosing a target area that is likely to attract children. In the physical world, this could be venues visited by children such as schools, shopping malls or playgrounds. A process of grooming then commences where offenders take a particular interest in the child and make them feel special with the intention of forming a bond. Intimate personal details including the predator's sex life are shared with the child 'confidante' with the intention of making it easier to procure the recipient to engage in or submit to sexual activity with the offender or another person.

The internet has greatly facilitated this process. Offenders now seek out their victims by visiting internet relay chat (IRC) rooms from their home or internet cafés at any time. Once a child victim is identified, the offender can invite them into a private area of the IRC to engage in private conversations. Other communication technologies such as instant messaging, email, voice over internet protocol and mobile phones – can also be used in the grooming process. Often, the grooming process will continue for months before the offender arranges a physical meeting.

From January through July 2007, HINKLEY engaged in Internet conversations with "Cassie," an individual HINKLEY believed to be an eleven-year-old girl, and "Sheryl," whom HINKLEY believed to be "Cassie's" mother. In fact, both "Cassie" and "Sheryl" were an undercover officer with the Cañon City Police Department in Cañon City, Colorado. During these conversations, HINKLEY explicitly and graphically described to both "Cassie" and "Sheryl" the sexual activities he planned to engage in with them when the three met in person (US DoJ 2007).

### Australia

In recent years, Australia has introduced legislative amendments to counter the online grooming or luring of children for sexual purposes. Most jurisdictions within Australian have legislation in place that criminalises online child grooming for the purposes of sexual contact (see Table 1), and prosecutions have already taken place under this legislation.

For example, in Queensland a 25-year-old man had groomed what he thought to be a 13-year-old girl ('becky\_boo 13') in an IRC room by sending emails inviting her to engage in sexual activity. In fact, the emails were to a police officer pretending to be the child in question. The defendant was convicted and sentenced to imprisonment for two-and-a-half years, with parole after nine months. This was reduced on appeal to an 18-month term, suspended from the time of the appeal, the defendant having already served 90 days in custody (R v Kennings [2004] QCA 162). In a more recent incident, a man was sentenced to two years imprisonment for using 'online chat rooms to proposition children to engage in sexual acts on the internet' (CMC 2006). This sentence was suspended after the offender served three months in jail, with a condition that he not reoffend for three years.

### INVOLVEMENT OF REAL CHILD NOT REQUIRED

From these two examples, it is apparent that a real child need not be involved in the commission of the offence, as child grooming can be viewed as an act preliminary to commission of a sexual offence. For example, the *Criminal Code Act 1899* (Qld) s 218A(7) states that 'it does not matter that the person is a fictitious person represented to the adult as a real person'. Similar provisions are found in the *Criminal Code Act 1995* (Cth) s 474.28(9) and the *Crimes Act 1900* (NSW) s 66EB(5). Successful prosecutions of cases involving covert sting operations where investigators pose online as children have been achieved in other countries (e.g. see US DoJ 2007).

### JURISDICTIONS WITH NO SPECIFIC PROVISION

In jurisdictions with no specific legislation, Commonwealth law can be used in certain circumstances. A man was charged with one

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count of using a carriage service to communicate with a person under 16 years with the intention of procuring them to engage in sexual activity, contrary to the *Criminal Code Act 1995* (Cth) s 474.26(1). In July 2006, he was sentenced to 24 months imprisonment, to be released after serving three months (CDPP 2006). A 2007 case involved a man charged with 'child grooming' offences after explicit photographs and messages were allegedly sent to a teenage boy in the United States via the internet' (NSW Police 2007). This case is yet to be finalised.

### Other countries

Online child grooming offences have been introduced in other countries including Singapore and the United Kingdom.

#### SINGAPORE

Amendments to the Penal Code introduced in parliament in September 2007 included a grooming provision that would make it an offence to meet or travel to meet a minor under 16 years of age after sexual grooming (MHA 2007).

#### UNITED KINGDOM

Section 15 of the Sexual Offences Act 2003 makes it an offence for anyone over the age of 18 to meet a child under 16 or travel to meet them, after communicating with the child at least twice (including by phone or internet) with the intention of: committing sexual activity with a child, causing or inciting a child to engage in sexual activity, engaging in sexual activity in the presence of a child, and causing a child to watch a sexual act.

In 2006, a man was convicted under these provisions and sentenced to 15 years imprisonment for taking an indecent photograph of a child, meeting a female child aged under 16 following sexual grooming (via an IRC room), sexual activity with a female under 16 and causing or inciting a female child

**Table 1: Offences using ICT to procure or groom children for sexual contact**

	Provision	Maximum penalty	Definition (years)
Cth	<i>Criminal Code Act 1995</i> s 474.26	15 years imprisonment	Under 16
	<i>Criminal Code Act 1995</i> s 474.27	12 years imprisonment (15 years imprisonment if s 474.27(3) applies)	Under 16
ACT	<i>Crimes Act 1900</i> s 66	s 66(1): 10 years imprisonment (five years imprisonment if this is the first offence)	Under 16
		s 66(3): 100 penalty units, five years imprisonment or both	Under 16
Qld	<i>Criminal Code Act 1899</i> s 218A	s 218A(1): Five years imprisonment	Under 16
		s 218A(2): 10 years imprisonment	Under 12
NT	<i>Criminal Code Act</i> s 131	s 131(1): Three years imprisonment	Under 16
		s 131(2): Five years imprisonment	Under 16
	<i>Criminal Code Act</i> s 132	s 132(2): 10 years imprisonment	Under 16
		s 132(4): 14 years imprisonment	Under 10
NSW	<i>Crimes Act 1900</i> (as amended by Crimes Amendment (Sexual Procurement or Grooming of Children) Bill 2007) s 66EB	s 66EB(2)(a): 15 years imprisonment	Under 14
		s 66EB(2)(b): 12 years imprisonment	Under 16
		s 66EB(2)(a): 12 years imprisonment	Under 14
		s 66EB(2)(b): 10 years imprisonment	Under 16
SA	<i>Criminal Law Consolidation Act 1935</i> s 63B	ss 63B(1)(a) and 63B(3)(a): 10 years imprisonment	Under 16
		ss 63B(1)(b) and 63B(3)(b): 12 years imprisonment	Under 12
Tas	<i>Criminal Code Act 1924</i> s 125D	No statutory maximum penalty: at the discretion of the court: maximum of 21 years imprisonment (House of Assembly Hansard 2005)	Under 17
WA	Criminal Code s 204B	s 204B(2): Five years imprisonment	Under 16
		s 204B(3): 10 years imprisonment	Under 13

Source: Urbas and Choo (2008)

under 16 to engage in sexual activity. The sentence was subsequently reduced to 10 years on appeal (*R v Costi* [2006] EWCA Crim 3152).

### Transnational laws

The use of online child grooming legislation often involves transnational criminal activity. Recent legislation deals with this by enabling prosecutions to take place where the accused or victim is in a different jurisdiction, as long as there is sufficient connection with the place in which the prosecution is

commenced. However, where an accused is located in another country, it may be necessary to seek extradition.

#### NEED FOR FURTHER RESEARCH

Due to the dearth of information on the nature and extent of online child exploitation, there is a need for research to review sources of data, legislation and academic research. Of particular importance is the need to assess risks of displacement arising from new legislation and to understand unintended consequences of criminalisation.

#### FURTHER READING

All URLs were correct at 7 April 2008

Commonwealth Director of Public Prosecutions (CDPP) 2006. *2005–2006 annual report*

House of Assembly Hansard 2005. Criminal Code Amendment (Child Exploitation) Bill 2005 (No. 37): Second reading. 14 June

NSW Police 2007. Man charged with child grooming offences. *Media release* 28 March

Queensland Crime and Misconduct Commission (CMC) 2006. Sunshine Coast paedophile sentenced. *Media release* 2 April

Singapore Ministry of Home Affairs (MHA) 2007. Summary of the key amendments to the Penal Code. *Media release* 17 September

United States Department of Justice (US DoJ) 2007. U.S. arrests Manhattan consultant for travelling between states to engage in sexual activities with a minor under the age of 12. *Media release* 17 July

Urbas G & Choo K-KR 2008. *Resource materials on technology-enabled crime*. Technical and background paper series 28. Canberra: Australian Institute of Criminology. <http://www.aic.gov.au/publications/tbp/tbp028/>