

## General Scheme

# **Criminal Justice (Exploitation of children in the commission of offences) Bill 2020**

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## **Section 1    Short title and commencement**

- 1(1) This Act may be cited as the Criminal Justice (Exploitation of children in the commission of offences) Act 2020.
- (2) This Act comes into operation on such day or days as the Minister may, by order or orders, appoint either generally or with reference to a particular purpose or provision and different days may be so appointed for different purposes or different provisions.

### Note

This is a standard provision.

## **Section 2 Interpretation**

Provide that:

2(1) In this Act—

“adult” means a person who has attained the age of 18 years;

“child” means a person who has not attained the age of 18 years;

“directs”, in relation to criminal activity, means—

- (i) controls or supervises the activity, or
- (ii) gives an order, instruction or guidance, or makes a request, with respect to the carrying on of the activity;

“criminal activity” means conduct that constitutes an offence;

“Minister” means the Minister for Justice.

### Note

This is a standard provision which defines words and terms used in the Bill.

“Criminal activity” is defined as conduct that constitutes an offence, in other words any offence. It would be possible to have a higher threshold by defining criminal activity as constituting an arrestable or indictable offence (as in the Australian State of Victoria, where the underlying criminal activities must be offences punishable by a prison sentence of at least five years). An argument for this approach is that it would safeguard against the new offences applying to minor involvement by children in offences in circumstances which are perhaps not the focus of concern. On the other hand, if there is an indictable

or arrestable offence threshold, this might not capture situations where children were being directed to engage in acts of intimidation as highlighted in the findings of studies on criminal gang participation and anti-social behaviour. Grooming children for crime is a process that may occur over time, and the seriousness of the proposed offence cannot always be gauged by reference to the seriousness of the underlying criminal activities alone. Limiting the new offences by a threshold of indictable or arrestable offences could therefore militate against the possibility of intervening at an earlier juncture before the child victim has been introduced to and or involved in more serious criminality.

There is also the consideration that, for less serious incidents, the prosecution would have the option to proceed summarily, or to exercise the discretion not to prosecute.

### **Section 3 Involving children in criminal activity**

Provide that:

- (1) An adult who –
  - (a) compels or coerces, or
  - (b) induces or invitesa child to engage in criminal activity, knowing or being reckless as to whether that person is a child, is guilty of an offence.
- (2) An adult who directs criminal activity by a child, knowing or being reckless as to whether that person is a child, is guilty of an offence.
- (3) A person may be convicted of an offence under this section regardless of whether or not the child:
  - (a) engages in criminal activity; or
  - (b) is prosecuted for, or is found guilty of, any offence.
- (4) A person guilty of an offence under this section shall be liable –
  - (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.

#### Note

Subheads (1) and (2) create new offences relating to the exploitation of children in the commission of offences. Currently, any adult who exploits children in this way would in most if not all cases be liable to be found guilty of the offence committed by the child, whether through section 7(1) of the

Criminal Law Act 1997, the common law offence of incitement to commit an offence, or the doctrine of innocent agency. However, this liability does not capture the harm done to the child by drawing him or her into criminality, with potentially long-term adverse consequences.

Subhead (1) makes it an offence for an adult to compel or coerce, or induce or invite, a child to engage in criminal activity. Liability is being limited to adults to avoid further criminalising children, some of whom could influence other children to commit crime.

Subhead (2) is intended to deal with a different form of exploitation of children, and penalises an adult who directs criminal activity by a child. Such an adult might not have engaged in the behaviour covered by subhead (1), i.e. getting a child involved in crime in the first place by threats or persuasion. "Directs" is given a broad meaning in Head 2, and covers controlling or supervising the activity, or giving an order, instruction or guidance, or making a request, with respect to the carrying on of the activity.

Subhead (3) is to make clear that, for liability for these offences to attach to an adult, it is not necessary for the child to have actually committed any offence or been prosecuted for and found guilty of an offence. It can be considered during drafting whether this provision is strictly necessary (or if its scope could be narrowed, as it may not be necessary in respect of the offence of inducing or inviting a child to engage in criminal activities).

## **Section 4                      Amendment of Bail Act 1997**

Provide that:

4.        The Schedule to the Bail Act 1997 is amended by the insertion of the following paragraph:

“8B. An offence under the Criminal Justice (Exploitation of children in the commission of offences) Act 2020.”.

### Note

This adds offences under this Act to the Schedule to the Bail Act 1997, enabling a court to refuse bail where a person is charged with such an offence if reasonably considered necessary to prevent the commission of a serious offence by that person.