

Our Ref: LH

Please reply to: Brisbane office

30 August 2019

Ms Sophie Dunstone
Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: legcon.sen@aph.gov.au

Dear Ms Dunstone

**Answer to a question on notice from the public hearing on the
Combatting Child Sexual Exploitation Legislation Amendment Bill 2019, 27 August 2019**

Please find below knowmore's response to the question taken on notice at the above hearing of the Legal and Constitutional Affairs Legislation Committee (the Committee).

Question from the Chair of the Committee (p. 13 of the draft transcript)

Are there cases that have been decided in which the notion of child abuse material being a subset has been borne out? Have there been cases where a charge has been brought on the basis that something is, say, child abuse material and it has been held to be not sufficiently abusive but would have been regarded as child exploitation material, or is that something that is a bit more academic at this point in time?

Response

Noting that the varying terminology used across jurisdictions means this is not straightforward to answer, we have not identified any cases where material was found to not constitute child abuse material but would likely have been regarded as child exploitation material. Regardless of which of the terms is used in legislation, the specific elements of a definition are naturally of more importance in practice.

Notwithstanding this, we remain of the view that child exploitation material, as commonly understood, is a broader and more encompassing term than child abuse material. As I noted at the hearing, many of our clients tend to associate the word 'abuse' with an element of assault or physical violence. Consistent with this, Bravehearts noted back in 2012 that:

*There is a shift in the language of sexual offences away from 'sexual abuse' as the term does not fully encompass the range of behaviours. The sector is moving towards a broader terminology that does not imply just physical contact.*¹

Ensuring that Commonwealth legislation refers to child exploitation material rather than child abuse material would be in line with this broader practice.

We also note a 2017 publication from the Australian Institute of Criminology (AIC) on online child sexual exploitation. Relevantly, it states that child exploitation material "is the preferred term for sexually abusive images of children and refers to child pornography".² This too supports use of the term child exploitation material, especially given that the focus of the relevant amendments is on re-labelling material currently described as child pornography.

Finally, as we noted in our submission to the Committee, child exploitation material is the term now used in the relevant legislation of the majority of states and territories. The above AIC publication also noted that the lack of consistency in legislative terminology across Australia complicates direct comparison and research efforts.

I trust this information will assist the Committee in its inquiry.

Yours sincerely

WARREN STRANGE
Executive Officer

1 Tasmania Law Reform Institute, *Sexual offences against young people*, TLRI, Hobart, 2012, p. 83, <https://www.utas.edu.au/_data/assets/pdf_file/0008/319814/YoungPeopleSexualOffencesFR.pdf>.

2 T Krone and RG Smith, *Trajectories in online child sexual exploitation offending in Australia*, Australian Institute of Criminology, Canberra, 2017, p. 1, <<https://aic.gov.au/file/6360/download?token=dBxKHeoQ>>.