

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

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

The Crimes Legislation Amendment (Sexual Crimes against Children and Community Protection Measures) Bill 2019

My name is Liana Allan. I am the Founder of Migration Alliance Inc, the Peak Professional Association for Registered Migration Agents in Australia, and the Director of Legal Training Australia Pty Ltd, an approved provider of continuing professional development for Registered Migration Agents. I have spent the majority of my career working in the international immigration arena both in Australia and the United Kingdom. I am a mother of two children, and am an Australian Citizen.

I support The Crimes Legislation Amendment (Sexual Crimes against Children and Community Protection Measures) Bill 2019.

I agree with the Second Reading Speech, that is important that the Australian government not only protects children in Australia but also from overseas from the dangers of sexual exploitation, and abuse and to improve justice outcomes for survivors of childhood sexual abuse at the hands of sex offenders.

I agree that sexual crimes against children diminish the lives of children, and can even destroy their lives. Depraved people who prey on vulnerable children for their own sexual gratification or financial gain are often handed short jail terms and are released into the community without any supervision, or worse still, without serving a single day in prison. I agree that victims are left to face the resulting trauma for the rest of their lives.

I agree that the current sentencing practices for Commonwealth child sex offences are out of step with community expectations. They do not reflect the severity of the harm inflicted by these predators, and they fail to protect our children and communities from further offending. I support this government in ensuring that the human predators who commit these heinous crimes receive the sorts of sentences that the community would expect.

I agree that bill achieves this through reforms that target inadequacies in the existing legal framework at key points in the criminal justice process from bail and less so, to post-release supervision. I believe if administered the right way and in concert with the CLOUD Act, it can properly provide the tools to combat emerging forms of child sexual abuse which is becoming increasingly prevalent due to technological developments.

I agree that the bill complements a broad package of reforms already introduced by the coalition during the 45th parliament, which strengthened the laws relating to child sexual abuse and created new protections for the community. This included tough new measures to stop child sex offenders from travelling overseas to abuse children and the introduction of Carly's law, which targets online predators who use the internet to prepare or plan to sexually abuse children. This bill also complements the Combatting Child Sexual Exploitation Legislation Amendment Bill 2019 which the government introduced in July 2019. It can also be complemented by the current CLOUD Act negotiations between Australia and the United States of America.

Sentencing reforms

Like many Australians, this government is fed up with lenient sentencing practices that fail to protect the community from child sex offenders. This bill will vastly improve justice outcomes and community safety through a range of measures:

- mandatory minimum sentences for the most serious child sex offences and for recidivist offenders*
- increased maximum penalties across the spectrum of child sex offences, including up to life imprisonment for the most serious offences*
- presumptions in favour of cumulative sentences and actual imprisonment*
- ensuring that all sex offenders, upon release from custody, are adequately supervised and subject to appropriate rehabilitative conditions*
- an overhaul of the sentencing factors for all federal offenders*
- preventing courts from discounting sentences on the basis of good character where this is used to facilitate the crime, and*
- emphasising the importance of access to rehabilitation and treatment when sentencing child sex offenders.*

I support these reforms, in particular the adequate supervision of rehabilitation, where possible, of sex offenders.

In my view it is a disgrace that in the last financial year, 28 per cent of Commonwealth child sex offenders walked away with a non-custodial sentence following their convictions for child sex crimes.

It is a disgrace that in the majority of cases in the last five years where offenders did receive sentences of actual imprisonment, the most common total sentence was just 18 months with six months being served in custody.

I agree that child sex offenders spend insufficient time in custody to undergo proper treatment programs, or receive any significant rehabilitation before being eligible for release back into the community.

It is a disgrace that upon their release, many are not subject to parole or any other form of supervision, posing a continuing threat to community safety.

It is my view that all Child Sex Offenders (CSOs) should immediately be placed on a watch list that the United States enacted called the Clarifying Lawful Overseas Use of Data (CLOUD) Act in March 2018.

It is my understanding that United States and Australia are currently negotiating a CLOUD Act Agreement, negotiated by U.S. Attorney General William Barr, and Australian Minister for Home Affairs Peter Dutton.

<https://minister.homeaffairs.gov.au/peterdutton/Pages/australian-negotiation-cloud-act.aspx>

Electronic information held by U.S.-based global providers is critical to Australia as a foreign partner and our ability to investigate serious crime, in particular CSO crimes, violent crimes against children, sexual exploitation of children, sharing of child exploitation images, child trafficking and the like.

Demand for electronic evidence from the United States is increasing, straining resources and slowing response times. Foreign authorities such as Australia have expressed a need for increased speed in obtaining this evidence.

“Many of the assistance requests the United States receives, seek electronic information related to individuals or entities located in other countries, such as Australia and the only connection of the investigation to the United States is that the evidence happens to be held by a U.S.-based global provider.

The CLOUD Act is designed to permit our foreign partners that have robust protections for privacy and civil liberties to enter into bilateral agreements with the United States to obtain direct access to this electronic evidence, wherever it happens to be located, in order to fight serious crime.

The CLOUD Act thus represents a new paradigm: an efficient, privacy and civil liberties-protective approach to ensure effective access to electronic data that lies beyond a requesting country’s reach due to the revolution in electronic communications, recent innovations in the way global technology companies configure their systems, and the legacy of 20th century legal frameworks. The CLOUD Act authorizes bilateral agreements between the United States and trusted foreign partners that will make both nations’ citizens safer, while at the same time ensuring a high level of protection of those citizens’ rights.” United States Department of Justice

I respectfully submit that the Australian government consider the CLOUD Act as a means of protecting vulnerable children in Australia but also from overseas from the dangers of sexual exploitation and abuse. I submit that as part of the government’s plan to adequately supervise CSOs, that their details be placed onto a watch-list which auto-pings when the CSO’s online footprint is live, and their movements both on and offline are tracked 24/7 using the macro-data collected via this electronic evidence.

Electronic evidence should be available under the CLOUD Act for all child sex crimes and CSO criminal investigations.

CSO's and abusers use fast, modern technologies to organise their crimes against children, and also to cover up their evidence and make themselves virtually untraceable, especially in physical trafficking, and image and/or livestream sharing.

Australia should work hand in hand with our American partners to speed up the access of our State and Federal police to this online data. This will strengthen the protections that we can give to vulnerable children, and help us to keep them more secure, prevent crimes against them, whilst also protecting the data privacy and procedural safeguards of Australian citizens. The ongoing negotiations between Australia and the USA around e-evidence are therefore promising.

This type of agreement will enhance child safety by providing an improved and faster ability to identify and respond to CSO threats globally, and in a manner that assures respect for the rule of law in each country, the privacy of citizens, and the protection of civil liberties. I would like Australia to remain committed to working with the USA on this important issue. The CLOUD Act can assist with the intent to criminalise emerging forms of child sexual abuse:

Criminalising emerging forms of child sexual abuse

Disturbing new forms of child sex abuse are on the rise due to technological developments and increased global interconnectedness. This bill will fill gaps in the existing framework by introducing new offences to cover emerging forms of child sex abuse.

An ever-increasing number of online services profit from providing or facilitating the exchange and production of child abuse material. Currently, individuals behind such services can only be prosecuted where it can be proven they are also accessing child abuse material or encouraging others to do so. This bill will introduce a new offence allowing a sentence of up to 20 years imprisonment, to ensure the providers of such services can be held to account for facilitating access to, and encouraging the production of, child abuse material.

The bill also introduces a new offence criminalising the grooming of third parties to make it easier to procure children to engage in sexual activity in Australia and overseas. This is necessary to combat the growing prevalence of offenders grooming adults, such as parents or carers, domestically or in developing countries via the internet, with the aim of ultimately procuring a child for sexual abuse.

The bill also clarifies the scope of existing offences to create greater certainty regarding the types of acts covered. For example it clarifies that engaging in sexual activity with a child will include live online streaming of sexual abuse of children.

I agree. Access to the CLOUD Act Agreement will allow for quick e-evidence, and potentially e-alerts / pings to respective governments about a Person of Interest (POI) engaging in online activities deemed crimes against children, child sex crimes or CSO activity. If not, then I recommend building this into phase two of the CLOUD Act Agreement to ensure monitoring, especially electronic monitoring of CSO's, POIs and known 'service providers' of child abuse material. I make a special reference to the Agreement between the United States and the United Kingdom on Access to Electronic Data for the Purpose of Countering Serious Crime, Articles 1-17.

<https://www.justice.gov/ag/page/file/1207496/download#Agreement%20between%20the%20Government%20of%20the%20United%20States%20of%20America%20and%20the%20Government%20of%20the%20United%20Kingdom%20of%20Great%20Britain%20and%20Northern%20Ireland%20on%20Access%20to%20Electronic%20Data%20for%20the%20Purpose%20of%20Countering%20Serious%20Crimes>

New aggravated forms of child sex offences and aggravating factors

With respect to new aggravated forms of child sex offences and other aggravating factors, the government is deeply disturbed by the emerging trend where offenders inflict severe violence on children alongside sexual abuse. To ensure that this conduct is thoroughly and appropriately punished, the bill will criminalise activities that aggravate particular types of sexual offending such as subjecting a child to cruel, inhuman or degrading treatment, or causing the death of the child.

This bill also introduces new aggravating factors that a court must take into account when sentencing an offender for a relevant offence. These would apply if the victim was under the age of 10 at the time of the offending and if multiple people were involved in the offending.

I agree.

Protecting vulnerable persons

With respect to protecting vulnerable persons, the government remains committed to strengthening the protections afforded to child and other vulnerable witnesses giving evidence in Commonwealth criminal proceedings. This bill improves justice outcomes by limiting the re-traumatisation of vulnerable witnesses by removing barriers to the admission of prerecorded video evidence and ensuring that they are not subject to cross-examination at committal and other preliminary hearings, thus allowing them to put their best evidence forward at trial. These measures are also in line with recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse.

I agree. Online e-evidence obtained via the CLOUD Act could replace victim testimony in cases where this is available.

Bail

With respect to bail, another important community protection measure introduced through this bill is the establishment of a presumption against bail for recidivist child sex offenders or those charged with the most serious child sex offences. This presumption against bail is rebuttable and courts may still grant bail if satisfied that it is appropriate in all the circumstances to do so.

In considering bail for repeat child sex offenders or those charged with the most serious child sex offences, there is an expectation that, for the safety of the community, bail should be refused, unless the accused person can satisfy the court there are circumstances which justify their conditional release.

I agree. I do not however believe that bail should be offered to an accused person under any condition and I do not believe that there are justifications for conditional release. No bail.

Post release options

With respect to post release options, at the other end of the justice process, this bill introduces a requirement for the courts to set treatment and supervision conditions for all child sex offenders upon sentencing to prevent such offenders from being released without supervision and appropriate treatment conditions.

To better protect the community, this bill also introduces community safety as a primary consideration when deciding whether a federal offender's parole should be revoked.

The bill will also ensure that where an offender's parole has been revoked they can expect to serve a period of time in custody.

I agree, I have set out my submissions in relation to supervision of CSOs. Release without supervision, especially 24/7 online and offline (electronic ankle bracelet) monitoring, is not supported.

Conclusion

By way of conclusion, the bill signifies this government's commitment to addressing child sex offences that occur both domestically and overseas and to ensuring that the Australian community is protected from these heinous crimes. This government is committed to protecting vulnerable children from these abhorrent crimes, and will be seeking to urgently pass these measures this year, to enable these present inadequacies in sentencings and other inadequacies in the criminal justice system to be addressed as soon as possible.

These new measures are utterly essential to end the all-too-common scenario of child sex offenders walking free with no supervision after conviction or following brief terms of imprisonment. Such outcomes offend community values and expectations for how crimes of this nature will be dealt with, they compound the pain and trauma of victims and they further endanger the safety of the community.

For too long, child sex offenders have been receiving inadequate sentences for their crimes that are completely out of step with community expectations. It is time for this to change. On that basis, I commend the bill to the House.

I agree. I add that The Crimes Legislation Amendment (Sexual Crimes against Children and Community Protection Measures) Bill 2019 should include the sharing of information under the CLOUD Act, once negotiated so that CSOs and services providers are adequately monitored.

Yours sincerely

Liana Allan
Ordinary Citizen of Australia