



4 October 2019

The Senate Legal & Constitutional Affairs Legislation Committee
Parliament House
Canberra ACT 2600
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Dear Committee

**Submission to the Senate Legal & Constitutional Affairs Legislation Committee Inquiry into the
*Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures)
Bill 2019***

Jesuit Social Services welcomes the opportunity to comment on the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019*.

We understand this Bill comprises one among a range of Federal Government initiatives aimed at meeting community expectations regarding consequences for offenders in response to recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse (2017).

We also understand that key stakeholders, including the Law Council of Australia¹ and the Federal Opposition², raised concerns with various aspects of an earlier version of the Bill, particularly those concerning mandatory sentencing. Indeed, research in Australia and other jurisdictions has consistently found that mandatory sentences do not work to deter offending³, and do nothing to address the complex issues faced by many people who may offend. Mandatory sentences also erode the fundamental principles of an independent judiciary and discretion in sentencing.

Jesuit Social Services emphasises that legislation on its own can never provide a complete or holistic solution to such complex social problems as child sexual abuse and child sexual exploitation. Even where perpetrators are able to be identified, charged, found guilty and sentenced, there is increasing evidence

¹ Law Council of Australia (2017). *Crimes Legislation Amendment (Sexual Crimes against Children and Community Protection Measures) Bill 2017*. Canberra: Law Council of Australia.

² Source: Parliament of Australia Parliamentary Business website (accessed 25 September 2019): [link](#).

³ See Tonry, Michael (2009). The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings. *Crime and Justice*, 38(1): 65 -114, ([link](#)); and Law Institute of Victoria (2011). *Mandatory Minimum Sentencing: Submission to the Attorney-General, Robert Clark*. Melbourne, Victoria: Law Institute of Victoria, pp. 7–8, ([link](#)).

that imprisonment serves to increase the likelihood of repeat offending rather than reduce it⁴, unless combined with specifically targeted programs for offenders while in custody and while transitioning back into the community after having served their sentences.

Jesuit Social Services considers the concerns raised previously in relation to the Bill regarding the negative impacts of mandatory sentencing still to be relevant. Further, we believe it is also relevant to use this critical opportunity to consider the broader context of the Bill, in relation both to underlying factors that contribute to child sexual abuse and to implementation of other initiatives that research has shown protect children from sexual abuse. For example, we recommend implementation of a *Stop it Now!* style program in Australia to provide an anonymous, safe and confidential service for people worried about their sexual thoughts and behaviours in relation to children and young people, the Worried About Sex and Porn Project (to intervene earlier for children displaying harmful sexual thoughts and behaviours) and Circles of Support and Accountability (COSA), a restorative justice program that has been shown to reduce the risk of sex offenders reoffending by helping people re-integrate into society after release from prison.

Jesuit Social Services

Our work on gender justice

Jesuit Social Services has been working with boys and men for over 40 years.⁵ This work has included work with boys and men involved in the criminal justice system, including those leaving prison; establishing Victoria's first dedicated counselling service to work with young people struggling with concurrent mental health and substance abuse problems; and the Support After Suicide program, which provides free individual and family counselling to people bereaved by suicide and runs a specialist men's group.

Many of the boys and men we work with use violence, and we see many of them hold harmful attitudes towards girls and women. Our work with men who have committed serious violent and sex offences seeks to ensure they have, upon release from prison, a successful transition back into the community to lower the risk of recidivism and improve community safety.

Drawing from this experience, The Men's Project was established in 2017 to provide leadership and to develop new approaches to reduce violence and other harmful behaviours prevalent among boys and men, to build new approaches to improve their wellbeing, and to keep families and communities safe.

The Men's Project incorporates a range of initiatives across four key approaches, namely to:

- 1) Promote cultural and attitudinal change around issues of masculinity and gender to support primary prevention efforts;
- 2) Develop, deliver and evaluate interventions that address violence and other harmful behaviour;
- 3) Share knowledge across sectors about what works to engage boys and men, including developing a better understanding of their attitudes;
- 4) Build capacity across services to recognise and respond to violence and other harmful behaviours in boys and men.

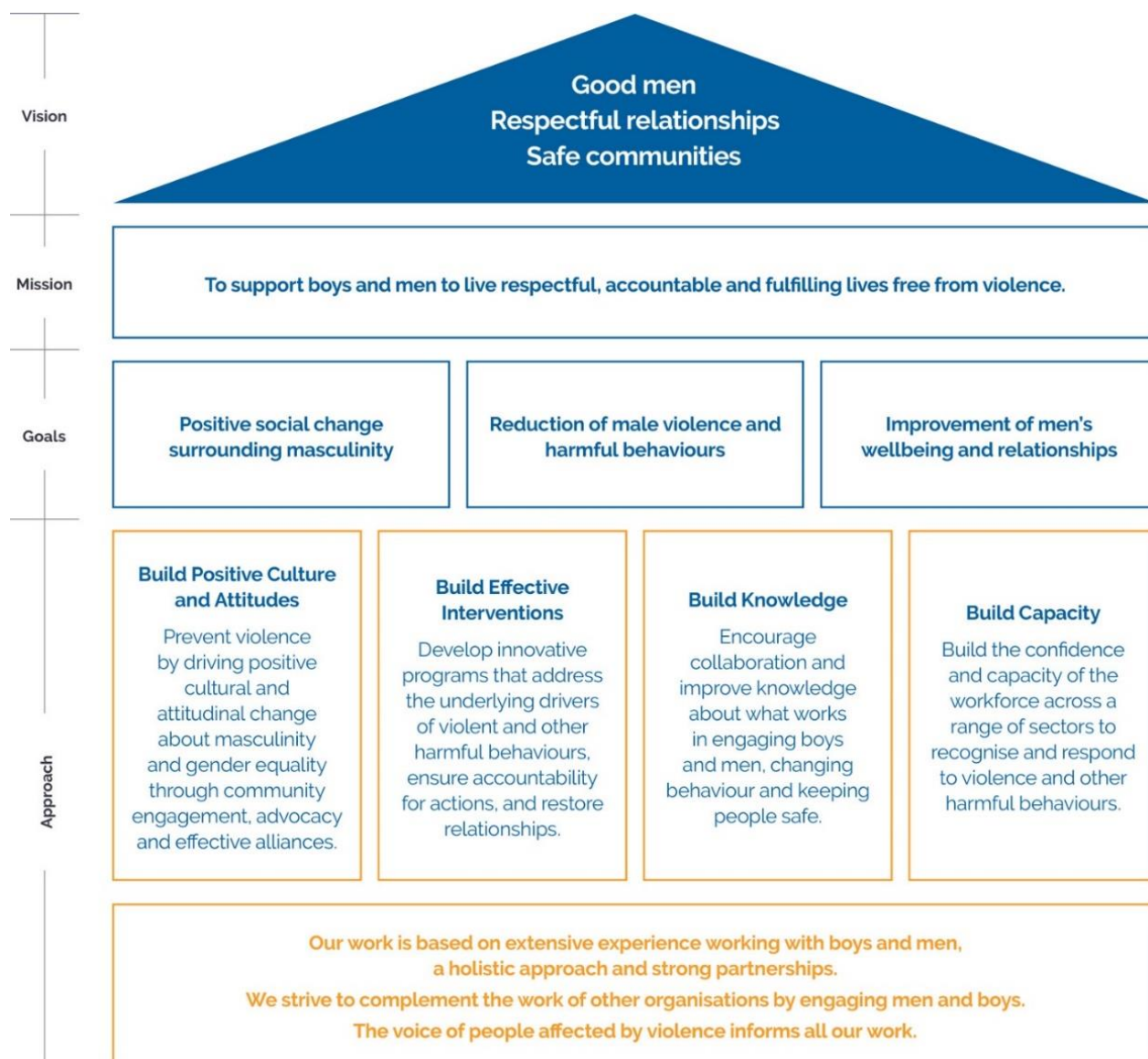
⁴ For example, see: Productivity Commission (2019). Report on Government Services 2019 – Justice. Canberra: Productivity Commission. ([link](#))

⁵ Information about the range of work in which Jesuit Social Services engages is provided in Appendix I.

Collectively, these initiatives seek to promote positive social change surrounding masculinity, reduce male violence and harmful behaviours, and improve men’s wellbeing and relationships.

An overview of our vision, goals and approach taken through The Men’s Project is provided in Figure 1 below.

Figure 1: The Men's Project



Innovations in responses to men who use sexual violence

Through the Men's Project, Jesuit Social Services is working to respond to identified gaps in programs that respond to men who use sexual violence, including work to intervene earlier to prevent child sexual abuse and reducing recidivism among people who have committed a child sexual offence. Some examples of approaches that could be considered for application in Australia – specifically, *Stop It Now!* and *Circles of Support and Accountability (COSA)* – are provided below.

Intervening earlier to prevent child sexual abuse

Stop it Now! Scoping Study on Implementation in Australia (a partnership with the University of Melbourne)

There are currently no national early interventions in Australia for adults, children and young people who are worried about their sexual thoughts or behaviours in relation to children. The gap in preventative interventions for potential perpetrators was identified by the Royal Commission into Institutional Responses to Child Sexual Abuse, and *Stop It Now!* was highlighted as a potential model to adopt in the recommended National Child Sexual Abuse Prevention Strategy.

Stop It Now! is a secondary prevention program that operates in North America, the United Kingdom, Ireland, and the Netherlands, and has also previously operated on a small scale in Queensland. The program has been positively evaluated in both the UK and the Netherlands.^{6,7}

Stop It Now!'s key feature is a national confidential and anonymous phone helpline that provides information and support for people who are worried about their own sexual thoughts and behaviours, as well as parents, family-members, and professionals who are concerned about actual or potential child sexual abuse. The phone helpline and text contact facility would balance engagement with accountability, provide information, complete safety planning based on a comprehensive risk assessment, and facilitate referrals for additional assistance (in compliance with legal and mandatory reporting obligations).

The program would also include a website with advice, self-help materials and guidance to raise awareness around child abuse, as well as links to a network of partner agencies who would refer to and receive referrals from *Stop It Now!* Australia.

As part of The Men's Project, Jesuit Social Services, in collaboration with the University of Melbourne, has assessed the feasibility of a *Stop It Now!* phone helpline. Discussions with a wide range of stakeholders revealed strong support for a *Stop It Now!* program in Australia.

A copy of the full scoping study including the proposed preliminary models and recommendations for its operation in Australia is available.⁸

⁶ Brown, A., Jago, N., Kerr, J., McNaughton-Nicholls, C., Paskell, C., & Webster, S. (2014). Call to keep children safe from sexual abuse: A study of the use and effects of the Stop It Now! UK and Ireland Helpline. London: NatCen Social Research. ([link](#))

⁷ Van Horn, J., Eisenberg, M., McNaughton Nicholls, C., Mulder, J., Webster, S, Paskell, C., Brown, A., Stam, J., Kerr, J., & Jago, N. (2015). Stop It Now! A Pilot Study Into the Limits and Benefits of a Free Helpline Preventing Child Sexual Abuse, *Journal of Child Sexual Abuse*, 24:8, pp. 853-872. ([link](#))

⁸ Jesuit Social Services (2019). *Stop It Now! A Scoping Study on implementation in Australia*. Richmond, Victoria: Jesuit Social Services. ([link](#))

Intervening earlier for children displaying harmful sexual thoughts and behaviours – *Worried About Sex and Porn Project (WASAPP)*

About half of all child sexual abuse is carried out by children and young people, yet currently there is a lack of early intervention responses for children and young people displaying problematic sexualised behaviours and thoughts. Recognising this gap, as part of the development of the *Stop it Now!* program, Jesuit Social Services is working with stakeholders to explore the development of a tailored service response and practice framework for this cohort.

We know that young people who have sexually abused say that porn is a trigger as well as their own experiences of victimisation. They say they knew it was wrong but couldn't stop and that there was nothing there to help them stop. The Worried About Sex and Porn Project for young people (WASAPP) is exploring whether there is a window of opportunity to intervene early with children and young people in the same way that there is with adults.

Recommendation 1:

That the Federal Government increase investment in national early intervention programs in Australia for adults, children and young people who are worried about their sexual thoughts or behaviours in relation to children. This includes programs such as *Stop it Now!* and the Worried About Sex and Porn Project (WASAPP).

Reducing recidivism among people who commit sex offences

Circles of Support and Accountability (COSA)

Circles of Support and Accountability (COSA) is a restorative justice program that has been shown to reduce the risk of sex offenders reoffending by helping them re-integrate into society after release from prison. It is a program that harnesses the assistance of volunteers and aims to create a safer community for all, at the same time holding offenders accountable for their actions and ensuring they recognise the need for behaviour change.

COSA Canada describes the aim of the program as being: "To substantially reduce the risk of future sexual victimisation of community members by assisting and supporting released individuals in their task of integrating with the community and leading responsible, productive, and accountable lives."⁹

Rather than being 'soft on offenders', as the program is sometimes portrayed, the primary goals are to reduce reoffending and to protect communities. The program reflects the reality that most sex offenders will be released back into society at some stage, and that effective reintegration is the best way of ensuring no future victims.

The COSA model involves volunteers from the community engaging with people who have been convicted of a sex offence and working toward building lasting and responsible friendships with them. This provides a surrogate social network for the offenders, as well as additional monitoring of their behaviour. Social connection both sets boundaries and provides a sense of belonging that reduces the risk of future

⁹ Correctional Service Canada (2003). "Circles of Support and Accountability: Guide to project development." Ottawa: COSA. ([link](#))

offending.¹⁰ COSA volunteers help with some of the practical aspects of the offenders' transition back into the community, and provide a sounding board on everything from housing possibilities and study or volunteering options to modifying risky behaviour. The model also includes the provision of training and support to the volunteers by appropriately qualified professionals within the community, to oversee management of the volunteers and be on call in situations of concern.

Understandably, many victims have little interest in seeing humanity in perpetrators of sex offences, especially sex offences perpetrated on children. Yet victims are among the supporters of COSA, and children's charity Barnados is a backer and partner of COSA in the United Kingdom. Explaining its involvement, Barnados states, "There is significant evidence ... that highlights enhanced child and public protection in geographical areas where Circles operate."¹¹ Acknowledging victims and discussing with past offenders the devastating impact of sexual abuse are core parts of the COSA approach, and the focus is on building a positive future notwithstanding past behaviour.

Jesuit Social Services would be happy to provide further information regarding the COSA model and its possible application in the Australian context.

Recommendation 2:

That the Federal Government support States and Territories in implementing programs that work with men who use, or are at risk of using, sexual violence, including Circles of Support and Accountability (COSA). COSAs work with men so that they take responsibility for their violence, change their violent attitudes and behaviours, and address any factors that may be amplifying their risk of violence. Such programs for men must place women's and children's safety at the centre.

Other relevant matters

National Redress Scheme

In its current form, the National Redress Scheme for people who experienced institutional child sexual abuse can deny a victim access to redress if they have been sentenced to imprisonment for five years or longer, or are in prison.

However, we know that a high proportion of individuals within the justice system have histories of childhood abuse. The Royal Commission into Institutional Responses to Child Sexual Abuse highlighted the stories of many survivors who found that the complex trauma and disadvantage resulting from their experience of abuse led to involvement with the justice system later in life. The status of victim and offender are often intertwined, and it is only fair that *all* people have the right to access compensation, have support to rehabilitate, and have an opportunity to heal.

¹⁰ Vogelvang, B., Höing, M., Duke, L., & Völlm, B. (2015). European Handbook: COSA Circles of Support and Accountability. Breda: Circles4EU.

¹¹ Barnados (2017). Website (accessed 4 August 2017): [link](#).

By allowing for the exclusion of this vulnerable cohort, the current National Redress Scheme falls short of fulfilling the specific recommendations, findings, and overall ethos and intentions of a redress scheme, as described in the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse.¹²

Jesuit Social Services' (2018) submission to the Senate Community Affairs Legislation Committee Inquiry on the *National Redress Scheme for Institutional Child Sexual Abuse Bill 2018* provides further details concerning this issue.

Recommendation 3:

That the Federal Government amend the relevant legislation so that:

- People with criminal convictions are not excluded from the National Redress Scheme, and
- People are permitted to apply for the National Redress Scheme while in prison.

Anti-Child Trafficking

Trafficking in children refers to a range of practices which involve the deliberate exploitation of children, and there is often considerable overlap in laws designed to prevent trafficking for the purposes of child sexual exploitation, child labour/slavery, or illegal adoption.¹³

For example, intercountry adoption is a complex and controversial matter and, irrespective of the regulatory rigor of domestic processes, there will always be some elements that are outside Australia's control.¹⁴ The *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption 1993*, which was ratified by the Australian Government in 1998, sets minimum international standards and a co-operative framework for countries with a view to preventing the abduction, sale and trafficking of children. Still, there are significant flaws in the Convention, regarding which much has been written, particularly by international legal scholars.¹⁵ The Convention has even been described, "rather than representing a comprehensive approach to intercountry adoption, [as] primarily an anti-trafficking treaty, and a very incomplete anti-trafficking treaty at that."¹⁶

The *Australian Citizenship Amendment (Intercountry Adoption) Act 2015*, which extends provisions for intercountry adoptions by Australian citizens made under the Hague Convention to intercountry adoptions made under Bilateral Agreements, has somewhat eroded the previous rigor of Australia's intercountry adoption processes. While considered "streamlining" by adoption proponents, experts in the field are extremely concerned by the deregulation.¹⁷ Indeed, it was surprising that this legislative

¹² Royal Commission into Institutional Responses to Childhood Sexual Abuse (2017). Final Report: Our Inquiry, Royal Commission into Institutional Responses to Childhood Sexual Abuse. Barton, ACT: Commonwealth of Australia.

¹³ See Larsen, J. J. (2011). The trafficking of children in the Asia-Pacific. *Trends & issues in crime and criminal justice*, (415): [link](#).

¹⁴ Dreyfus, K., Quartly, M. & Cuthbert, D. (2015). "Why can't I have my baby tomorrow?": A Legislative Periodisation of Intercountry Adoption in Victoria and Australia from the Early 1970s to the Present. *Victorian Historical Journal*, 82(2): 336-362.

¹⁵ *Ibid*, p. 353.

¹⁶ Smolin, D. M. (2009). Child Laundering and the Hague Convention on Intercountry Adoption: The Future and Past of Intercountry Adoption. *University of Louisville Law Review*, 48 (3), p. 452.

¹⁷ Hilferty, F. & Katz, I. (2019). Inter-country adoption in Australia: Examining the factors that drive the practice and implications for policy reform. *Australian Journal of Social Issues*, 54(1), 76-90.

change was introduced for several reasons. Firstly, Australia’s intercountry adoption program with India had been suspended indefinitely by the Federal Government in 2010 due to child trafficking concerns.¹⁸ Secondly, the high prevalence of orphanage tourism – the exploitation of children who are not orphans – particularly by Australians in South East Asia, was being increasingly reported in Australia at the time.¹⁹ Also, in 2013, it was reported that an Australian citizen was sentenced in an American court to 40 years in prison for heinous sexual offences committed with his long-time American boyfriend against a boy they adopted from a Russian surrogate mother.²⁰ The police involved in the case believed that the couple adopted the infant “for the sole purpose of exploitation.”

Children born into families experiencing poverty in developing countries are highly vulnerable to trafficking which is driven by demand, often from Western countries, including Australia: “Demand for cheap labour, young brides, sex with children and adoption drives the trafficking of children”²¹.

Jesuit Social Services thus emphasises the importance of considering the unintended consequences of legislative change in other areas that some may consider positive to ensure that child sex offenders, past and potential, are not facilitated to travel overseas to engage in unregulated practices – such as orphanage tourism, surrogacy or intercountry adoption – for the ultimate purpose of child sexual exploitation.

We appreciate the Committee taking these matters into consideration.

Yours sincerely

Julie Edwards – CEO, Jesuit Social Services

¹⁸ See Callinan, Rory (2014). Evidence of trafficking of Indian children for illegal adoption emerges. *Sydney Morning Herald* online: [link](#).

¹⁹ For example, Murdoch, Lindsay (2013). Orphanages on list of shame. *Traveller* online ([link](#)); and Vuk, Jen (2013). Orphanage tourism provides a feelgood moment but a lifetime of regret. *Sydney Morning Herald* online ([link](#)).

²⁰ Ralston, Nick (2013). Couple offered son to paedophiles. *The Sydney Morning Herald* online ([link](#)).

²¹ Larsen, J. J. (2011). The trafficking of children in the Asia-Pacific. *Trends & issues in crime and criminal justice*, (415), p. 3: [link](#).

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Appendix I

Jesuit Social Services

Who we are and what we do

Jesuit Social Services is a social change organisation working to build a just society where all people can live to their full potential. For over 40 years we have been working at the hard end of social justice with some of the most disadvantaged and marginalised members of our community, who are often experiencing multiple and complex challenges.

As an organisation, we do and we influence. We accompany people and communities to foster and regenerate the web of relationships that sustain us all – across people, place and planet; and we work to change policies, practices, ideas and values that perpetuate inequality, prejudice and exclusion.

We work where the need is greatest and where we have the capacity, experience and skills to make the most difference. We have a presence in Victoria, New South Wales, the Northern Territory and internationally, through involvement in the International Jesuit Prison Network ([link](#)).

Our practical support and advocacy covers five main areas:

- **Justice and crime prevention** for people involved with the criminal justice system.
- **Mental health and wellbeing** for people with multiple and complex needs and those affected by trauma, suicide, and complex bereavement.
- **Settlement and community building** for disadvantaged communities, and recently arrived migrants and refugees.
- **Education, training and employment** for people with barriers to sustainable employment.
- **Gender and culture** providing leadership on the reduction of violence and other harmful behaviours prevalent among boys and men, and building new approaches to improve their wellbeing and keep families and communities safe.

The pursuit of **ecological justice** underpins all that we do in our programs and advocacy. Recognising the inherent interrelationship between all things, as an organisation we have been on a journey to transform our programs and practices so that they are both environmentally and socially just.

The promotion of **education, lifelong learning and capacity building** is fundamental to all our activity. We believe this is the most effective means of helping people to reach their potential and exercise their full citizenship. This, in turn, strengthens the broader community.

Research, advocacy and policy are coordinated across all program and major interest areas of Jesuit Social Services. Our advocacy is grounded in the knowledge, expertise and experiences of program staff and participants, as well as academic research and evidence. We seek to influence policies, practices, legislation and budget investment to positively influence participants' lives and improve approaches to address long-term social challenges. We do this by working collaboratively with the community sector to build coalitions and alliances around key issues, and building strong relationships with key decision-makers and the community.

Our **Learning and Practice Development Unit** builds the capacity of our services through staff development, training and evaluation, as well as articulating and disseminating information on best practice approaches to working with participants and communities across our programs.

We acknowledge that we live and work on unceded Aboriginal lands. We value and respect the knowledge and living culture that Aboriginal and Torres Strait Islander people bring to our communities. We walk alongside them as we strive together for justice.