Introduction

Collective Shout: for a world free of sexploitation welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Committee on the *Combatting Child Sexual Exploitation Legislation Amendment Bill 2019*.

Collective Shout is a grassroots campaign movement targeting corporations, advertisers, marketers and media which objectify and sexualise women and girls to sell products and services.

We also provide education services to students and parents on the effects of a hyper-sexualised popular culture, along with briefings and advice to social policy and law makers. We are especially concerned by the increasing pornification of culture and the way its messages have become entrenched in mainstream society, presenting distorted and dishonest ideas about women and girls, sexuality and relationships. Collective Shout draws attention to the interconnectedness of sexual harassment, sexual assault and the endemic culture of sexual objectification of girls and women.

Through a pornified culture, women and girls are fed a message that their only value lies in their sex appeal and ability to attract the male gaze. The proliferation of sexualised images of women and girls is linked to mental health problems such as low self-esteem, poor body image, eating disorders, depression and self-harm.[1] Pornified culture also harms men and boys, by inscribing limited ideas of how men should behave and encouraging them to view women and girls as unequal and as sexualised objects existing merely or primarily for men's sexual gratification rather than as human persons in their own right. It is from this perspective that we address the provisions of the Bill.

Schedule 1 – Failing to protect children from, or report child sexual offences

We support the provisions in this Schedule which create new offences for Commonwealth officers for (i) failing to protect children, for whom the officer has the care, supervision or authority over, from a known substantial risk of child sexual abuse or (ii) failing to report to police information about a potential offender who a reasonable person would believe has engaged, or will engage, in conduct that constitutes a child sexual abuse offence.

These provisions appropriately address the appalling, systemic failure by governments and institutions to properly protect children from sexual predators by putting other considerations, such as the reputation of the institution or the supposed otherwise "good character" of the offender, ahead of the fundamental duty to protect children.

[1] See, e.g. Australian Psychological Society, "Sexualisation of Girls," (2016), www.psychology.org.au/community/public-interest/sexualisation ; American Psychological Association, "Sexualisation of Girls is Linked to Common Mental Health Problems in Girls and Women," (2007), www.apa.org/news/press/releases/2007/02/sexualization.aspx

However, we query the necessity for the proposed provision against double jeopardy for conduct that would be an offence under the provisions of this Schedule.

The Explanatory Memorandum (para 136) notes that:

Many countries do not have effective laws against child pornography material, including for example child-like sex dolls, or are unwilling or unable to enforce them.

This is also true in regard to child sexual abuse offences and particularly the offences of failing to protect a child from a risk of sexual abuse or to report suspected child sexual abuse. As the offences in Schedule 1 apply only to officers of the Commonwealth of Australia then the standards of Australian law should prevail. An officer of the

Commonwealth who is acquitted of conduct, or convicted and given a trivial or otherwise insufficiently serious penalty, under the legal system of a country which may have a lower bar for expecting those responsible for the care of children to protect them from child sexual abuse should still be subject to possible prosecution before an Australian court in relation to that conduct.

Proposed new section 273B.6 requires the consent of the Attorney General before any prosecution for the offences in Schedule 1 can be commenced. Rather than an explicit provision against double jeopardy, any conviction or acquittal for the relevant conduct in another country should be a matter to be considered by the Attorney General before giving the required consent.

Recommendation 1: Schedule 1 be supported as it stands subject to an amendment removing the proposed provision against double jeopardy but requiring the Attorney General to consider matters of double jeopardy before giving consent for proceedings to begin.

Schedule 2 – Possession of child-like sex dolls

We strongly support the provisions in Schedule 2.

In June 2018 Collective Shout began a campaign to force the online budget shopping app Wish from listing child-like sex dolls for sale. In our media release we described the horrific nature of these dolls and then commented:

These items exist to aid users in their fantasies of raping children. The very sale of these dolls is an endorsement of paedophilia. Why is Wish promoting crimes of violence against children?[2]

[2] https://www.collectiveshout.org/wish_app_must_stop_selling_child_sex_dolls
After inadequate responses from the company itself we achieved success by contacting a key investor who agreed that the sale of the dolls was “disgusting.”[3]

"I'm an early seed investor but not on their board. I will certainly tell them it's not good for humanity OR their brand."[4]

The Explanatory Memorandum (para 11) states in relation to child-like sex dolls:

This new form of child sexual abuse material must be clearly criminalised to prevent children from being abused, as the dolls normalise abusive behaviour towards children, encourage the sexualisation of children and increase the likelihood that a person will engage in sexual activity with or towards children.

We agree with this rationale for criminalising the possession of child-like sex dolls and so support Schedule 2 as it stands.

The same rationale applies to other forms of child sexual abuse material such as anime and other cartoon depictions – whether in still images or in video – of children or childlike figures engaging in sexual behaviours.

In August 2008 the Classification Review Board classified an anime film, *T &A Teacher*, which explicitly depicted the violent sexual abuse of students by a teacher as R18+. Although noting that *"There are several violent scenes, two that result in injury to students following sexual behaviour or activity thus sexualising the violence"* the Board members posited that as this sexualised violence was in animated form it was "greatly diminished" in impact.

Whilst some adults may find the themes and sexual depictions offensive, the Review Board unanimously determined that the film could be accommodated by the R18+ classification because the impact of the sex scenes and sexualised violence was greatly diminished by the animated character of the film.[5]

In our view this approach to animated depictions of sexual abuse of students by a teacher failed to take into account the likelihood that viewing such acts, albeit in an animated form, could, to use the phrase from the Explanatory Memorandum (para 11),

"*normalise abusive behaviour*".

We urge the Committee to recommend that further amendments be made to the definitions of child abuse material and child pornography material in s473.1 of the Criminal Code to put it beyond doubt that "depictions" include animated depictions.

Recommendation 2: Schedule 2 be supported as it stands.

[3] https://www.collectiveshout.org/child_sex_dolls_removed_from_online_store_wish [4] M Liszewski, personal communication, September 30, 2018 [5] http://www.classification.gov.au/About/Documents/review-board-decisions/1060%20-%20Decision%20- %2030%20July%202008%20-%20film%20T%20and%20A%20Teacher.pdf

Recommendation 3: Amendments be made be made to the definitions of child abuse material and child pornography material in s473.1 of the Criminal Code to clarify that "depictions" include animated depictions.

Schedule 3 - Possession or control of child pornography material or child abuse material obtained or accessed using a carriage service

We support the provisions in Schedule 3 which are designed to make it easier to secure a conviction for the possession or control of child pornography or child abuse material. We note the Explanatory Memorandum (para 108) states:

The offences in Schedule 3 rely on the Commonwealth's telecommunications power under the Australian Constitution at section 51(v). Therefore, the requirement in the offence that the relevant criminal conduct be engaged in using a carriage service is a jurisdictional requirement. A jurisdictional element of the offence is an element that does not relate to the substance of the offence or the defendant's culpability, but marks a jurisdictional boundary between matters that fall within the legislative power of the Commonwealth and those that do not.

The approach being taken in these provisions of relying on a rebuttable presumption that the offending material was either obtained using a carrier service or intended to be shared using a carrier service is justifiable but somewhat clumsy.

We note that in relation to Schedule 2 and the offence of possessing a child-like sex doll the Explanatory Memorandum states (para 11) that:

These amendments are intended to further implement Australia's obligations under Articles 19 and 34 of the Convention on the Rights of the Child.

That is to say the provision relies straightforwardly on the external affairs power in section 51 (xxix) of the Constitution for its constitutional validity.

There is no persuasive reason why the offence of possessing child abuse material or child pornography material could not also rely on the external affairs power and Australia's obligations under Articles 19 and 34 of the Convention on the Rights of the Child[6].

This would make moot the need for linking possession to use of a carrier service and for resort to the rebuttable presumption, and further increase the prospects for successful convictions of possessors of child sexual abuse material.

[6] Article 19 provides for "*the right of the child to be protected from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse*" and Article 34 for "*the right of the child to be protected from all forms of sexual exploitation and sexual abuse*"

Recommendation 4: Schedule 3 be amended to introduce a simple offence of possession and the Explanatory Memorandum be amended to apply the same grounds for constitutional validity as for Schedule 2, that is the external affairs power and Australia's obligations under Articles 19 and 34 of the Convention on the Rights of the Child.

Schedule 4—Persistent sexual abuse of child outside Australia

We strongly support the provisions in Schedule 4 which are designed to make it easier to secure a conviction for the offence of persistent sexual abuse of a child outside Australia.

In particular the provisions rightly take into account the difficulties victims may have in identifying the particulars (dates, places etc.) of individual events of abuse when abuse has been persistent over a considerable length of time.

Recommendation 5: Schedule 4 should be supported as it stands.

Schedule 5 – Forced Marriage

No cultural practice, no matter how longstanding, should be given priority over the protection of children from sexual abuse.

We therefore support the provision which treats any purported marriage of a child under 16 years of age as a ***forced marriage*** without any requirement to prove that a particular victim when purportedly married under the age of 16 "*was incapable of understanding the nature and effect of the marriage ceremony*".

We endorse the rationale stated in the Explanatory Memorandum (para 29):

By explicitly criminalising underage marriages, the Bill reduces the need to call evidence from vulnerable child victims and simplifies the prosecutorial burden of demonstrating a lack of full and free consent resulting from coercion, threat, deception or incapacity to

understand the nature and effect of the marriage ceremony.

Recommendation 6 – Schedule 5 should be supported as it stands.

Schedule 6—Restricted defence of marriage for child sex offences

This provision appropriately narrows the existing defence of marriage which inappropriately allowed the defence even in the case of some child marriages where the victim was aged under 16 years either at the time of the offence or at least at the time of the marriage.

The retention of the defence in the case of a marriage where the young person (16 or 17 year old) was aged 16 years at the time of the marriage and the marriage was "*genuine*" is acceptable, provided that for a marriage to be considered "*genuine"* the young person entered into it freely and fully consenting.

However, there is no definition in the Bill or explanation in the Explanatory Memorandum of the content of the term *"genuine"*.

The provision should be amended to explicitly provide that for the purpose of s272.1 (b) for a marriage to be considered *"genuine"* it must have been entered into by the young person freely and fully consenting.

Recommendation 7: Schedule 6 should be supported subject to an amendment providing that for the purpose of s272.1 (b) for a marriage to be considered "genuine" it must have been entered into by the young person freely and fully consenting.