

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Senator Carr asked the following question at the hearing on 29 October 2019:

Senator KIM CARR: Well, let's have a look then. You cite in this bill 15 Commonwealth offences. Is that right? If there's not, tell me how many there are.

Ms Wells: In regards to Commonwealth child sex offences?

Senator KIM CARR: Yes.

The answer to the honourable senator's question is as follows:

Schedule 6, Part 1, Item 2 of the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019 (the Bill) lists the 15 Commonwealth child sex offences which would attract a minimum sentence of imprisonment under the proposed amendments to the *Crimes Act 1914* (Cth).

Schedule 6, Part 1, Item 2 of the Bill lists the 35 Commonwealth child sex offences which would attract a minimum sentence of imprisonment where the offence is a second or subsequent offence.

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Senator Carr asked the following questions at the hearing on 29 October 2019:

Senator KIM CARR: Unlike the Federal Police, the states, of course, are not shy about asking for additional resourcing. How much have they asked for?

Ms Wells: They haven't asked for any additional resources.

Senator KIM CARR: None? They haven't? The states have not asked for additional money from the Commonwealth despite the fact you've asked them to undertake extra work? That really does surprise me.

Ms Wells: Not to my knowledge.

Senator KIM CARR: Can you take that on notice?

Ms Wells: I can.

Senator KIM CARR: Thank you very much. So there have been no resourcing questions raised with the Commonwealth in regard to this legislation?

Ms Wells: Not to my knowledge.

Senator KIM CARR: You'll take that bit on notice as well?

Ms Wells: I can take that on notice as well.

The answer to the honourable senator's question is as follows:

Proposed measures in the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 (which are also in the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019) were discussed at the meetings of the National Working Group on measures concerning child sex offenders in July and October 2017. The Working Group comprised senior police and justice officials from each of the States and Territories and the Commonwealth. The text of the 2017 Bill and Explanatory Memorandum were circulated to members of the Working Group after the October 2017 meeting. Further, the Law, Crime and Community Safety Council, the Council of Australian Governments and the Ministerial Council for Police and Emergency Management discussed measures relating to child sex offenders at meetings held variously in 2016, 2017 and 2019.

Throughout this consultation, the State and Territory Governments have not requested funding or resources in relation to the proposed legislation.

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Senator Carr asked the following question at the hearing on 29 October 2019:

Mr de Crespigny: In 2018-19, 188 people were convicted.

Senator KIM CARR: How many of them received a sentence of imprisonment?

Mr de Crespigny: Sixty-one per cent.

Senator KIM CARR: How many of those were less than the mandatory minimum sentence that would have been imposed by this bill?

Mr de Crespigny: I can't provide that answer.

Senator KIM CARR: Would you like to take that on notice?

Mr de Crespigny: If you wish, Senator.

The answer to the honourable senator's question is as follows:

We refer to the answer to Senate Question on Notice number 692 asked by Senator Murray Watt on 13 September 2019. That answer sets out information about prosecutions undertaken by the Commonwealth Director of Public Prosecutions (CDPP) in 2018-19 for the list of 'Commonwealth child sex offences' as reported in that answer.

Table 1 has been prepared showing data for those offenders prosecuted by the CDPP in 2018-19 for those offences included in proposed section 16AAA of the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019 ('the Bill').

The CDPP notes that in the time available to respond to this Question on Notice, information could not be collected for offenders prosecuted by the CDPP in 2018-19 for the offences included in proposed section 16AAB who had 'second or subsequent offences' as defined. This is because it was not possible in the available time to determine whether those offenders had been previously convicted of a 'child sexual abuse offence'. A 'child sexual abuse offence' includes, inter alia, a State or Territory registrable child sex offence. Therefore Table 1 only shows offences of offenders to which proposed section 16AAA would apply.

Table 1 Mandatory sentence for offence listed in proposed s16AAA

Defendant ⁽ⁱ⁾	Age at 30 Jun 2019 ⁽ⁱⁱ⁾	Section ⁽ⁱⁱⁱ⁾	Head sentence delivered for offence ^(iv)	Mandatory minimum head sentence for offence listed in s16AAA, excluding any reduction for plea of guilty, or cooperation with authorities, or both ^(v) .
4	27	474.25A	9 months	5 years
		474.25A	9 months	5 years
7	37	474.25A	2 years 1 month 7 days	5 years
8	31	272.9	20 months	5 years
		272.11	12 years	7 years
		2 charges contrary to 272.8	3 years ^(vi)	6 years 6 years
		272.8	2 years	6 years
		272.11	12 years	7 years
		272.8	2 years	6 years
		272.11	12 years	7 years
		272.19	2 years	6 years
		272.8	2 years 6 months	6 years
272.9	12 months	5 years		
21	26	272.19	7 years	6 years
52	25	272.8	4 years	6 years
		272.19	3 years 6 months	6 years
105	61	272.11	8 years	7 years
		272.9	5 years	5 years
113	27	474.25A	2 years 9 months	5 years

Notes

- (i) The defendant, using the same number as in the answer to Senate Question on Notice No. 692;
- (ii) The defendant's age as at 30 June 2019;
- (iii) The *Criminal Code (Cth)* offence(s) for which the defendant was convicted to which proposed section 16AAA applies. This may be different to the previous table, which only listed the offence provision once if the same sentence was given, even if the offender had been convicted of multiple counts against that offence provision.

- (iv) The head sentence delivered by the sentencing judge for the particular *Criminal Code* offence. Sentences include the reduction in sentence for each charge given by the sentencing judge to account for pleas of guilty. This reflects sentencing practice in those jurisdictions. This does not apply to matter 8 where each head sentence excludes the discount for pleas of guilty and where the sentences were later combined by Her Honour the sentencing judge and given an overall discount to account for the pleas of guilty.
- (v) The mandatory minimum head sentence for the particular offence listed in s16AAA of the Bill, excluding any possible reduction for plea of guilty, or cooperation with authorities, or both.
- (vi) A single, global head sentence was imposed in relation to these 2 charges.

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Senator Carr asked the following question at the hearing on 29 October 2019:

Senator KIM CARR: How many of those sentencing decisions did you actually appeal?

Mr de Crespigny: Since 2015, we've appealed 13.

Senator KIM CARR: Only 13? But, of the 188—let's deal with that particular section—how many of those did you appeal?

Mr de Crespigny: I would have to take that on notice and check. I know the decisions which have been handed down in that period, but I can't say—

The answer to the honourable senator's question is as follows:

No prosecution appeals were initiated by the Commonwealth Director of Public Prosecutions (CDPP) against sentences imposed in 2018-19 in relation to Commonwealth child sex offences prosecuted by the CDPP.

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Senator Carr asked the following question at the hearing on 29 October 2019:

Senator KIM CARR: I will go through some of the evidence we've heard today and I'll give you an opportunity to comment on it. I'd be interested to deal, first of all, with the question of the royal commission. The advice we've got is that this bill does not deal with all the recommendations of the royal commission. Why not?

Ms Anggadi: If I may perhaps assist you in that, the measures in the bill are consistent with a number of the final report's recommendations. If I could draw your attention to a number of the measures in the bill which do that, the measures in schedule 2 of the bill facilitate the effective presentation of evidence by a vulnerable witness. These measures are consistent with recommendations—

Senator KIM CARR: I understand the ones that are consistent. I'm interested in the rest of them. Why haven't they been included in this bill?

Ms Anggadi: This bill is part of a broader package of measures which the government is considering in total.

Senator KIM CARR: I see. So there's more to come?

Ms Anggadi: It is not necessarily the final stop in the government's consideration of these—

Senator KIM CARR: Can you tell me how is the government tracking in implementing those recommendations? When will we see the rest of the package?

The answer to the honourable senator's question is as follows:

The Australian Government is making significant progress implementing recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. Of the Royal Commission's 409 recommendations, 84 about redress have been addressed through the implementation of the National Redress Scheme. Of the remaining 325 recommendations, 122 are directed wholly or partially at the Australian Government. In addition, the Australian Government is taking a national leadership role to implement up to 30 additional recommendations.

Some recommendations for which the Australian Government is wholly or partially responsible require the introduction of new legislation. Other recommendations are being implemented by policy or other means. Work on the 122 recommendations directed wholly or partially at the Australian Government is well advanced. 32% of these recommendations are implemented, 66% are underway and 2% are under consideration for how best to implement. These include recommendations from the Royal Commission's Criminal Justice Report.

The Australian Government is also working closely with state and territory governments on recommendations that require national consistency or collaboration. Some recommendations are also being implemented separately by state and territory governments. These include recommendations from the Criminal Justice Report.

Information about the Australian Government's implementation progress will be available in its second Annual Progress Report, due to be tabled in Parliament by 15 December 2019. This will be the second of five annual progress reports produced from 2018 until 2022. State and territory governments are also reporting annually on their progress. Australian Government, state, territory and non-government institution annual progress reports are available on the Australian Government Response website:
www.childabuseroyalcommissionresponse.gov.au/annual-progress-reporting.

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Senator CHANDLER asked the following question at the hearing on 29 October 2019:

Senator CHANDLER: I want to clear up a few issues raised, particularly, through the Law Council of Australia's submission. Do you have any data in relation to re-offending after conviction amongst child sex offenders?

Ms Wells: We can certainly take that on notice.

The answer to the honourable senator's question is as follows:

In response to the honourable senator's question, the Australian Institute of Criminology and the Department of Home Affairs provide the following information. This information draws on research conducted by the Australian Institute of Criminology and the Australian Institute of Family Studies, as well as non-Australian Government researchers.

Studies examining recidivism for child sex offenders rely on a variety of measures (ie re-arrest, re-conviction or re-incarceration for sexual offending), and none include sexual recidivism that did not come to the attention of the criminal justice system. As such, findings need to be interpreted with caution.

Reviews of international research report that the sexual recidivism rate for child sex offenders is about **13%**, over an average of three to five years (Hanson & Bussière 1998; Harris & Hanson 2004; Stathopoulos 2010). Over longer follow-up periods of 15 years, this rate increases to about **23%**.

The risk of sexual recidivism for child sex abusers is highest in the short-term (2-3 years after release from prison; Harris & Hanson 2004; Lievore 2004).

Australian studies have typically examined recidivism rates in combined samples of sex offenders against adults and children. It is important to distinguish between these populations when examining recidivism, as sex offenders against adults, when examined separately in international research, are more likely to recidivate than child sex offenders.

Broadhurst & Loh (1997) examined sexual recidivism in a sample of sex offenders in Western Australia. They found that, over an average follow-up period of 5.7 years, child sex offenders had a **20%** likelihood of sexually recidivating.

Examining the question retrospectively, Wortley and Smallbone (2000), in a survey conducted of incarcerated child sex offenders in Queensland, found that **22.2%** had a prior conviction for sexual offending. Since offenders were, on average, 41.5 years of age at the time they were sentenced for their most recent sex offences, the length of time over which these prior convictions could have occurred for most offenders would be much longer than the average follow-up periods in other studies.

International research has shown that child sex offenders who offend against male or both male and female victims, and victims outside of their families, are more likely to sexually recidivate (Hanson & Bussière 1998; Hanson & Morton-Bourgon 2005).

Child sex offenders with a demonstrated sexual preference for children, as indicated by prior criminal justice system contacts for sex offending or higher scores on clinical measures of sexual deviancy are more likely to sexually recidivate (Hanson & Bussière 1998; Hanson & Morton-Bourgon 2005; Helmus, Hanson, Babchishin & Mann 2013).

Child sex offenders who exhibit broader criminal, antisocial or psychopathic tendencies are more likely to sexually recidivate (Hanson & Bussière 1998; Hanson & Morton-Bourgon 2005).

References

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Harris AJR & Hanson RK 2004. *Sex offender recidivism: A simple question*. Report prepared for Public Safety and Emergency Preparedness Canada. Ottawa: Public Safety and Emergency Preparedness Canada

Helmus L, Hanson RK, Babchishin KM & Man RE 2013. Attitudes supportive of sexual offending predict recidivism: A meta-analysis. *Trauma, Violence and Abuse*, 14(1): 34-53

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Senator Carr asked the following question at the hearing on 29 October 2019:

Senator KIM CARR: When was the last time the Commonwealth undertook a comprehensive review into the sentencing practices for Commonwealth child sexual offences?

Ms Wells: I might have to take that one on notice also.

Senator KIM CARR: Has it ever occurred?

Ms Wells: There was certainly the ALRC report, which was across Commonwealth sentences more broadly. I'm not sure they've targeted—

Senator KIM CARR: Specifically on this matter?

Ms Wells: this matter.

CHAIR: It has been taken on notice, hasn't it, Senator Carr?

The answer to the honourable senator's question is as follows:

The last comprehensive review of Commonwealth sentencing practices, including sentencing for child sex offences, was conducted in 2006 by the Australian Law Reform Commission in Report 103 – *Same Crime, Same Time: Sentencing of Federal Offenders*.

During development of the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 and the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019, the Attorney-General's Department sought data and statistics from the Commonwealth Director of Public Prosecutions relating to the prosecution, imprisonment and release of Commonwealth child sex offenders.