

Combating Child Sexual Exploitation Legislation Amendment Bill 2019

A submission to the:
Legal Affairs and Constitutional Affairs
Legislation Committee

Prepared by:
yourtown, March 2019

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Dear Committee,

We note and broadly welcome the draft legislation, Combating Child Sexual Exploitation Legislation Amendment Bill 2019 (the Bill), which seeks to further strengthen the Australian Government's legal response to the sexual exploitation of children.¹

yourtown is a national organisation and registered charity that aims to tackle the issues affecting the lives of young people. Established in 1961, **yourtown's** mission is to enable young people, especially those who are marginalised and without voice, to improve their life outcomes. To this end, we deliver a range of services including Kids Helpline, the national 24/7 telephone and on-line, qualified counselling and support service for 5 -25 year olds, educational, employment and parenting programs, accommodation responses for families experiencing homelessness and domestic and family violence and, expressive therapy interventions for children who have experienced trauma.

We are committed to providing services that protect and keep children and young people free from harm at all times, and we support children and young people to have their say, seek justice and access counselling and other support services to overcome the impacts of abuse.² We seek to empower staff to provide support to children and young people who disclose harm, or the risk of harm, arising from internal operations or from their wider family and social environment, including concerns arising from historical and past abuse.

We therefore strongly support many of the Bill's elements that seek to provide greater protections for children and young people through:

- creating an offence of failure to protect a child at risk of a child sexual abuse offence for Federal government officers,
- creating an offence of failure to report a child sexual abuse offence for Federal government officers,
- strengthening existing laws for overseas persistent child sexual abuse by reducing the difficulties associated with distinguishing particular occasions of offending from repeated and regular child sexual abuse,
- preventing certain dealings with child-like sex dolls, and criminalising the possession of child-like sex dolls,

We also welcome the proposed expansion of the definition of forced marriage, and the restriction on the defence to overseas child sex offences based on a valid and genuine marriage. At KHL, we have heard from children and young people who have had to deal with being forced into marriage and their situations are worryingly precarious. We would, therefore, advocate for even more action in this area where a minor is involved, and specifically to make it a criminal offence to arrange, assist, or to be aware of the arrangements of a marriage between a minor and an adult and failing to report the matter to appropriate statutory authorities. That would include situations where it involves family members and friends.

We welcome proposed efforts to criminalise the possession of child pornography accessed via the internet. However, we note that a significant amount of child pornography on the internet emanates from overseas, whilst the internet knows no national barriers, leaving few effective remedial options for national legislators to explore. Hence, we would like to see the Federal Government play a leadership role in putting this issue at

¹ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6291

² <https://www.yourtown.com.au/sites/default/files/document/Commitment%20to%20Care%20and%20Protection%20of%20Children%20and%20Young%20People%20Position%20Statement%20-%20bd.PDF>

the top of the international agenda, and to initiate work with other key nations to develop an international agreement on how to better curb child pornography altogether.

We also note, in relation to the proposed criminalisation of the possession or control of child pornography material or child abuse material in the form of data, where that has been obtained or accessed using a carriage service, the new offence (at section 474.19A) will not be limited to those aged 18 years and over and, therefore, that minors may be subjected to prosecution. **yourtown** strongly maintains that all laws relating to children and young people must be careful to not unduly criminalise them given their developmental immaturity and lack of experience, and evolving moral and ethical codes. In addition to these caveats, where sexual activity is concerned, we must also emphasise that minors will be open to taking risks as they seek to explore relationships and their boundaries, and their own sexuality.

We know through contacts to KHL, for example, that sexting is a widespread practice of children and young people and they increasingly contact our counsellors for advice, including about the law, in relation to it. Indeed, the emerging new realities of childhood development framed by technology and the evolving dangers within it - including for example cyberbullying, blackmail, and widely accessible and increasingly aggressive and normalised pornography - are complex issues for adolescents to effectively navigate and contextualise, and are issues that adults and society at large are often ill-equipped to deal with. Yet this new legal provision would have the potential to do long-lasting harm to children and young people through criminally prosecuting them because of their own developmental and explorative behaviour.

Including minors under the proposed law on the possession or control of child pornography means it would be an offence for a child or young person under 18 years old to take, send or control a sexually explicit image of themselves and for a child or young person under 18 years to receive and control this image. Sexting, even when consensual, might constitute a sexual offence against children therefore, and as a result, it would in fact be possible that offences could involve instances where the victim and the perpetrator is the same person.

Whilst acknowledging that the Bill has included the provision of section 474.24C of the Criminal Code, requiring the Attorney-General to give their consent for proceedings to commence against a minor, with the aim of preventing the unnecessary prosecution of minors, we believe further safeguards against misplaced prosecutions of minors is required. We would recommend that guidelines in relation to the Attorney General's discretionary approach to the endorsement of criminal proceedings against a minor be developed in conjunction with child and youth development experts. This would ensure that non-malicious sexting between children and young people under 18 years old is filtered out of criminal investigations. These guidelines would also help the Attorney-General to base their decisions on more serious cases that they do investigate not simply on legal terms and concepts but on an understanding of how children and young people interact with others and why.

In addition to using its legislative powers to combat child sexual exploitation, we would ask that the Federal Government take a proactive approach to protecting children and young people. This will involve ensuring that there are appropriate and widely accessible education and support services in place to help children and young people navigate the digital world and keep safe online. **yourtown** is working with the E-Safety Commission to deliver a range of early education programs. However, we know given the potential scale and impact of the problem that more must be done. This includes providing education and support services to child and young person perpetrators of non-consensual sexting. Currently, very few services support children who find themselves subject to the present legislative framework and prosecutions. If young people are prosecuted, services are needed to help them reform and positively learn from their error. If they are not prosecuted - often the case if they are very young today (10 or 11 years old) - then appropriate referral support services need to be in place to minimise their risk of repeat offending.

Finally, we are enthused by the development of further national legislation in this area, and urge the Australian Government to work with all states and territories to harmonise all legislation seeking to better protect minors. This would support greater understanding of the law by everyone, everywhere, and address the inequities and gaps in legal protections that currently exist for children and young people across the nation.

Should you require any further information or have any questions about our submission, please do not hesitate to contact us.

Yours sincerely,

Tracy Adams
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