



19 August 2019

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

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

Dear Honourable Members,

Re: International Justice Mission Australia's second submission on the Combatting Child Sexual Exploitation Legislation Amendment Bill 2019

Thank you for the opportunity to provide a further submission on the Combatting Child Sexual Exploitation Legislation Amendment Bill 2019 (the Bill). This submission responds to the Committee's Report (the Report)¹ and follows up on our earlier submission on the Bill, dated 4 March 2019.²

By way of background, International Justice Mission (IJM) works to strengthen public justice systems in developing countries to protect the poor from violence. We are the largest international anti-slavery organisation in the world.

In the Philippines, we work with the Australian Federal Police (AFP) in the Philippine Internet Crimes Against Children Center (PICACC). The PICACC serves as a hub for domestic Philippine and foreign law enforcement collaborative efforts to combat cybersex trafficking, also known as the online sexual exploitation of children (OSEC). The PICACC is a joint initiative between the National Bureau of Investigation and the Philippine National Police which is supported by the AFP, the United Kingdom National Crime Agency and IJM. Through this role, we can attest to the importance of good legislation in combatting OSEC on a global scale. We commend the Australian Government for approaching the drafting of this important legislation from both a domestic and international perspective.

We agree with the Committee that the proposed measures target child exploitation occurring in Australia and overseas, as well as enhance investigation and prosecution outcomes, particularly those regarding the criminalisation of possession or control of child abuse material. We have some concerns that the measures do not go far enough to criminalise the commissioning of child abuse via online media, also referred to as live-streamed child abuse. But we are happy to note the Committee's recognition that this legislation will need to be reviewed on an ongoing basis, to evolve in response to changes in the criminal activity typologies in the online sexual abuse of children.

Please find below our comments regarding the Bill.

Schedule 3: Recordings of live streamed material captured

In our first submission on this Bill, we welcomed the new offences of possessing or controlling child pornography material or child abuse material obtained or accessed using a carriage service (proposed sections 474.19A and 474.22A). We were concerned that the provisions would not adequately capture recorded live-streamed child abuse, but can understand the joint position of the Department of Home Affairs and the Attorney General's Department that "recordings of live-streamed material would clearly be electronic data that was obtained/accessed via a carriage service."³

We are hopeful that this provision will act as a unifying substitute for the various state and territory possession offences in most cases.

Schedule 4: Persistent sexual abuse outside of Australia, 2 occasions to be proved rather than 3

We are pleased to see that the Bill seeks to lower the minimum number of underlying occasions of child sexual abuse required to prove the offence from three occasions to two.

The offence of persistent sexual abuse of a child overseas has been used in the past to prosecute perpetrators of online sexual exploitation,⁴ and we believe this is important to ensure that online commissioning of abuse is treated as seriously as contact offending. We are hopeful that this will assist in the investigation and prosecution of OSEC perpetrators.

Schedule 7: Repealing the use of "child pornography material" and substituting "child abuse material"

IJM congratulates the Government on the proposed removal of the term 'child pornography' from all Australian legislation. As the Explanatory Memorandum recognises, this term suggests that the abuse of children in this way is somehow a legitimate subset of adult pornography, which it is not.⁵ Describing the content as 'child exploitation material' or 'child abuse material' more accurately describes the crime that is occurring, and several states have already implemented this change.⁶

Stronger and more uniform laws around child sex offences (including the online sexual exploitation of children)

As noted in our initial submission, IJM broadly supports this legislation and is encouraged that the Government is seeking to take a consistent approach in responding to child sex offending.

Based on our OSEC casework, we believe there are still gaps in federal criminal legislation, whereby the range of circumstances involved in the commissioning of child abuse via online media is not adequately covered. An example of this is in relation to the criminalising of the establishment of networks for the purpose of facilitating the distribution of child abuse

material. While several states have introduced legislation to criminalise this, there is no such federal offence, even though it is related to existing carriage service offences.

Other weaknesses include higher sentences and aggravating factors to capture severe conduct (violence and young victims) in association with sexual activity via carriage service offences. Such deficiencies were addressed by provisions in the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 (Cth) which has since lapsed.

Conclusion

We are heartened by the work that has led to the creation of this Bill, the earlier Report and the Explanatory Memorandum. We agree with the Report that the legislation will require further evolution in response to new technologies and the types of crimes against children involved,⁷ the abovementioned facilitator network being just one such example.

We would ask that the Committee not stop with this Bill, but that it also considers the provisions contained within the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 (Cth). Together with this Bill, such measures will bring greater strength and uniformity to the prosecution and sentencing of sexual offences against children.

Please do not hesitate to contact me if you require further information.

Yours faithfully,

Caroline Best
Director of Corporate and Legal
International Justice Mission Australia

References

¹ [Legal and Constitutional Affairs Legislation Committee's Report on the Combatting Child Sexual Exploitation Legislation Amendment Bill 2019 dated March 2019](#).

² Submission 4

³ Department of Home Affairs and Attorney-General's Department, Submission 8, p. 7, as noted in [the Report](#).

⁴ See [Director of Public Prosecutions \(Cth\) v Beattie](#) [2017] NSWCCA 301 (8 December 2017); [R v Goggins](#) [2014] VCC 1086 (7 July 2014).

⁵ Australian Federal Police, '[Northern Territory Man Arrested on Child Exploitation Charges](#)' (Media Release, 15 January 2016); Jeremy Prichard and Caroline Spiranovic, '[Child Exploitation Material in the Context of Institutional Child Sexual Abuse](#)' (Report, Royal Commission into Institutional Responses to Child Sexual Abuse, September 2014) 8.

⁶ See, for eg, [Crimes Amendment \(Child Pornography and Abuse Material\) Act 2010](#) (NSW).

⁷ Report, para 2.56