



Committee Secretary
Senate Legal and
Constitutional Affairs Committee
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Canberra ACT 2600

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26 September 2019

Dear Committee Secretary,

1. The Carly Ryan Foundation is a not-for-profit, registered harm prevention charity created to promote internet safety and prevent crime against children under the age of 18 years. The Foundation supports families and the community through education, awareness, engagement, harm prevention, promotion and political advocacy.
2. The Foundation's mission is to make the internet safer for children and families. We have pioneered efforts to raise public awareness about the dangers of harmful internet pornography, sexual predators, cyber bullying and other online threats. We create solutions that promote shared responsibility between the public, technology and the law. We stand for a community where all people are respected and valued, for a child's innocence is to be protected and for a society free from online sexual exploitation of youth.
3. We welcome the government's commitment to the protection of children through the introduction of a raft of new legislative measures (including Carly's Law) and the establishment of the Australian Centre to Counter Child Exploitation (ACCCE). In a world where offender communities have formed online and used global connection for depraved use, it is more important than ever that bodies such as the ACCCE are established to present a cohesive countermeasure to the increasingly organised network of online child sexual abuse material. We congratulate the ACCCE on its international partnerships but more importantly, its ability to work constructively and proactively with state and territory police. It cannot be overstated how valuable the communication is between federal, state and territory police forces in combating the organised nature of child abuse material distribution and production.

4. We continue to advocate and raise awareness with regards to the online mediums used by criminals, to groom and procure children online in order to harm them and the need to protect the community from those who seek to control and manipulate vulnerable children.
5. The Foundation therefore provides our full support (with some cautious hopes) to the amendments proposed under the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019. We have set out below our general reasons for support according to the schedules being amended.

Schedule 1—Revocation of parole order or licence to protect safety

6. CRF agrees that there is practical use in the amendments of this schedule. Allowing offenders to be notified of an intention to revoke a bail or parole order may allow them the opportunity to dispose of evidence if they were causing or engaging in online harm. Further, taking into account the highly organised networks that child sexual abuse offenders often operate in, the delay can also give them the opportunity to forewarn their online networks. Responses to online harm must be swift due to these above issues.

Schedule 2—Use of video recordings

Schedule 3—Cross-examination of vulnerable persons at committal proceedings

7. CRF welcomes these changes so that vulnerable witnesses such as children are better protected against unnecessary harm during court processes, and that the amendments also bring commonwealth legislation into line with similar changes under state and territory laws.
8. The royal commission into institutional child sexual abuse heard ample evidence of the re-traumatisation of children in court processes; CRF will therefore not labour this point. However, from the perspective of this organisation it is self-evident that the Australian legal system should recognise and support vulnerable victims of crime during court processes.

Schedule 4—Strengthening child sex offences

9. Technology and connectedness has changed the landscape of child sex offending in such a way that is no longer enough to have laws that govern actions and behaviour within physical, territorial borders. Therefore we must have in mind the interests and safety of *all* children, not just Australian children. CRF is encouraged by the expansion of offences to include matters such as live streaming and offending against children outside of Australia.
10. Research from the Canadian Centre for Child Exploitation found that more than half of child abuse material images that contain children under 12 involved explicit sexual activity/assaults and extreme sexual assaults.¹ This is a trend that Australian law enforcement agencies are also experiencing. There is a desperate need to acknowledge that child abuse offences that are coupled with severe violence are

¹ *Child Sexual Abuse Images on the Internet: A CyberTip.ca Analysis*, Canadian Centre for Child Protection accessed 25 September 2019 at: <https://www.protectchildren.ca/en/resources-research/child-sexual-abuse-images-report/>

especially heinous, and the Foundation welcomes moves from the government to punish this appropriately.

11. Further, that same research found that more than half of the images analysed placed the child in a home setting². For law enforcement and organisations working with child sexual abuse survivors, it is well known that the majority of offending is perpetrated by someone known to them. CRF is pleased to see that this acknowledged in these amendments, and the abuse of that trust is appropriately punished (as is currently for other aggravated offences).
12. CRF also notes the importance that covert police operations are protected from defence claims of legal impossibility in the proposed offences.
13. CRF would like some clarification around paragraph 68 of the Explanatory Memorandum for this Bill, which for ease of reading has been reproduced below:

Paragraphs 471.25A(1)(d), (2)(d), (3)(d) and subparagraph (3)(e)(ii), provide clarity that the offence only targets adult offenders (persons who are at least 18 years of age). This offence will not capture conduct engaged in by persons under 18 years of age with an intended victim under the age of 16 years. This respects the right of young people, over 16, to make their own decisions about sex, and reflects the age of consent in the majority of jurisdictions.³

14. In particular, the sentence '*This offence will not capture conduct engaged in by persons under 18 years of age with an intended victim under the age of 16 years.*' The sentence seems to be at odds with the sentence that follows it. CRF would like to know whether the sentence should read '*... with an intended victim **over** the age of 16 years*'; or, that this type of offence is dealt with elsewhere. If it is dealt within other legislation, CRF would appreciate the inclusion of a reference to the relevant legislation. For example, is it an offence if a 17 year old teenage boy grooms a 17 year old friend to make available the friend's 8 year old sister to him for sexual activity?
15. CRF has a similar question for Paragraph 132 of the Explanatory Memorandum.
16. The Foundation supports the introduction of offences for service providers under the proposed section 474.23A *Conduct for the purposes of electronic service used for child abuse material*. The Foundation would take this further and remove the intention element at 474.23A(1)(b) and make it a strict liability offence. There must be firm action taken by government and industry in addressing the architecture of the internet itself. It is borderless. Anonymous. Regulatory and legally opaque. It is an environment ripe for use by organised criminal networks: a fact that was known at the very beginnings of the world wide web. As technology advances so too will these networks; so too, will the creativity of consumers of

² *Child Sexual Abuse Images on the Internet: A Cybertip.ca Analysis*, Canadian Centre for Child Protection accessed 25 September 2019 at: <https://www.protectchildren.ca/en/resources-research/child-sexual-abuse-images-report/>

³ Explanatory Memorandum, Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019, paragraph 68

child abuse material in distributing it. The tech industry needs to be more accountable and have foisted upon them responsibility in their role of being the mechanisms of how perpetrators organise, distribute and access child abuse material. We should no longer tolerate ‘too hard basket’ or ‘the cat is already out of the bag’ thinking. We all have the ability to choose and shape a better world for our children.

Sentencing Reforms

17. *Schedule 5—Increased penalties*
Schedule 6—Minimum sentences
Schedule 7—Presumption against bail
Schedule 8—Matters court has regard to when 2 passing sentence etc.
Schedule 9—Additional sentencing factors for 2 certain offences
Schedule 10—Cumulative sentences
Schedule 11—Conditional release of offenders 2 after conviction
Schedule 12—Additional sentencing 2 alternatives
Schedule 13—Revocation of parole order or 2 licence

Current sentencing for these and other appalling crimes against children is currently completely inadequate in each state often resulting in suspended sentences or sentences delivered of only a few months. The Australian community expects our legal system to deliver justice for such inexcusable and horrendous crimes against children and those victims of crime deserve this justice given the life long suffering endured if the victim survives the offence committed against them.

18. CRF understands that this Bill puts forward a suite of sentencing reforms. When read together, they make for a powerful statement on how we as a community feel about perpetrators of harm against children. We appreciate and applaud this government for the movement towards realigning legislation to reflect community expectations on how offenders are dealt with.
19. However, the following sentence at paragraph 195 of the Explanatory Memorandum is particularly concerning:

Mandatory minimum penalties do not limit judicial discretion of courts to set the non-parole period.⁴

20. As the Attorney-General, the Hon. Christian Porter MP, reflected in his second reading speech:

“In the majority of cases in the last five years where offenders did receive sentences of actual imprisonment, the most common total sentence was just 18 months with six months being served in custody.”⁵

⁴ Explanatory Memorandum, Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019, paragraph 195.

⁵ Commonwealth, *Hansard*, House of Representatives, 11 September 2019, 7 (Christian Porter, Attorney-General).

21. It appears that despite the best efforts of legislation to make available appropriate punishment and sentencing for these incredibly damaging offences, the judiciary is reluctant to sentence in line with community expectations, the impact the offending has on victims and with sufficient deterrence.
22. CRF cautiously hopes that in addition to mandatory minimum sentencing, that the presumptions of actual imprisonment and cumulative sentencing create a sentencing environment that mean an offender really *is* imprisoned for a significant time. And for those that believe the ability of these offenders to be rehabilitated, these treatment programs can be undertaken while imprisoned which may see more of the programs being completed and effective.

Closing remarks

23. There is a particular kind of insidiousness to child sex offences. For the majority of people, it is a level of offending that just cannot be comprehended. For law enforcement agencies and other organisations like the Carly Ryan Foundation who have some involvement in the space, the upward trend in the production and distribution of child abuse material combined with the trend in more violent assault can make us question where humanity is going wrong.
24. It cannot be a coincidence that this spike has occurred at the same time offenders have unfettered access to each other and offending communities thanks to the availability of an online architecture without consistent regulation or global law. The Carly Ryan Foundation speaks to parents on a daily basis about how, in any practical sense, they can protect their children from a world of lawlessness. It is our role to try and instill confidence in a generation of parents (who have never grown up in this world) that they can still be effective guides and guardians of their children's online journey.
25. Other than the concerns listed above, there is one other major factor that cannot be ignored; a factor we believe contributes to the rise of aggravated offences against children: violent, harmful pornography. Freely available to any child who willingly looks for it and available even to those who don't. Research confirms what common sense believes: pornography is unequivocally harmful to children. Worldwide, harmful pornography is now being framed as a Public Health Crisis by many governments, health, violence prevention and advocacy organisations.
26. Robust research confirms that areas of pornography's impact on children and young people are on the rise and include:
 - Poor mental health
 - Sexism and objectification
 - Sexual aggression and violence
 - Child-on-child sexual abuse
 - Shaping of sexual behaviours

This exposure in itself provides a perfect platform for serious sex offenders to coerce children into participating in degrading sexual acts and participate in the creation of child abuse material online by attempting to normalize these inappropriate and abusive behaviors.

27. It is beyond the remit of this committee to action these concerns. Nevertheless, it is something we feel is strongly connected to and symptomatic of the rise in child abuse material and we are compelled to address it.

28. The Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019 is a welcomed update that has built upon the previous Bill of the same name in 2017.

Submitted by:
The Carly Ryan Foundation