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Submission to the Inquiry into law enforcement capabilities in relation to child exploitation

Parliamentary Joint Committee on Law Enforcement

Attorney-General's Department

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Overview of Submission

The Department of Home Affairs provided a written submission to the Parliamentary Joint Committee on Law Enforcement (the Inquiry) on 3 September 2021 and appeared at a public hearing on 10 December 2021. A supplementary written submission was submitted to the Inquiry on 12 January 2022 to provide additional context to the statements made by witnesses at the public hearings on 9 and 10 December 2021. The inquiry lapsed in April 2022 when the House of Representatives was dissolved for the general election.

On 3 August 2022 the Committee re-initiated the Inquiry and invited submissions of relevant updates and new evidence. Following the Administrative Arrangements Order of 1 June 2022, responsibility for policy areas that contributed to the first two submissions prepared by the Department of Home Affairs have since transferred to the Attorney-General's Department.

The Attorney-General now has policy responsibilities for the AUS-US Data Access Agreement, and the Budapest Convention on Cybercrime and its Second Additional Protocol. Similarly, the Attorney-General is now responsible for administering the *Telecommunications (Interception and Access) Act 1979* (TIA Act) and relevant offences in the *Criminal Code Act 1995* (Cth), including telecommunications services and computer offences.

This submission provides an update to information previously provided by the Department of Home Affairs relevant to the Inquiry. This submission includes input from portfolio agencies, including the Commonwealth Director of Public Prosecutions (CDPP), Australian Federal Police (AFP) and the Australian Criminal Intelligence Commission (ACIC), Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Australian Institute of Criminology (AIC). This submission should be read alongside the two previous submissions provided by the Department of Home Affairs.

Trends in sentencing, prosecution and offending

Sentencing and prosecution referral

A number of matters have been dealt with under the mandatory minimum sentencing regime, introduced in the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2020* which applied to relevant offences committed on or after 23 June 2020.

As at 30 September 2022, 49 offenders were sentenced for offences that had mandatory minimum penalties. 42 of these offenders were subject to the mandatory minimum penalties because they were recidivists, previously convicted of a prescribed child sexual abuse offence and 8 of these offenders were sentenced for the most serious Commonwealth child sex offences which carry mandatory minimum penalties, including for first time offenders.

The number of referrals of matters involving Commonwealth online child sex exploitation offences to the CDPP have increased as follows:

2019-20	229
2020-21	347
2021-22	385
2022-23	387

In the period 1 July 2022 to 30 September 2022, there have been an average of 41 referrals per month of matters involving Commonwealth online child sex exploitation offences. If this trend is maintained, the CDPP will receive almost 500 referrals in the 2022-23 financial year, which would be an increase of 27% in a single year. When compared against data from 2018-19, this referral rate is more than a 100% increase of referrals compared to 5 years ago.

Recent prosecution outcomes

Case Study – Offender identified through payments to known overseas facilitator

AUSTRAC financial intelligence identified a Western Australian man sending funds to a known child sexual exploitation facilitator in the Philippines. Analysis identified payments consistent with the purchase of child abuse material with the offender watching online while victims were exploited in the Philippines. Additional payments were identified being sent to multiple adult facilitators within the Philippines, as well as the use of telecommunication applications to enable the live-distance child abuse to occur. The man procured children as young as seven to engage in sexually explicit acts or be sexually abused on camera, which he watched live from his home.

Following referral to law enforcement, the offender was arrested and was charged with 58 offences including persistent sexual abuse of a child outside Australia, procuring a child to engage in sexual activity outside Australia and soliciting and possessing child abuse material. The Western Australian man pleaded guilty and was sentenced in May 2022 to over 14 years imprisonment after being identified as paying more than \$400,000 to sexually abuse children overseas through a home webcam.

Case study – South Australian travelling child sexual offender jailed for 25 years

AUSTRAC financial intelligence identified a 68-year-old South Australian man making payments consistent with the purchase of live-distance child abuse. Additional payments for accommodation and travel in South-East Asia suggested the man was travelling overseas to contact offend against children. The man was arrested when returning to Australia; he had offended against female victims aged between three and nine years of age, with more than 55,000 images and videos of child exploitation material found in his possession.

The man was sentenced in August 2022 to 16 years imprisonment for travelling overseas to sexually abuse children. The offender pleaded guilty to 50 offences, including 41 counts of engaging in sexual activity with a child outside of Australia, using a carriage service to access child exploitation material and possessing child

exploitation material. Following AFP investigation, five alleged facilitators of the abuse were arrested in the Philippines and 15 victims were rescued.

Case study – Australian man charged with possessing child like sex doll

A 46-year-old male was sentenced to two years imprisonment after investigators from the Brisbane Joint Anti Child Exploitation Team located six child-like sex dolls during the execution of a search warrant at the man's home. Police also located a laptop at the house which contained child abuse material.

The investigation was launched after AUSTRAC financial intelligence detected financial indicators and purchases of children's clothing including underwear and the Australian Border Force detected a child-like sex doll in a shipment from China on 20 January 2020.

The man was found guilty of two counts of possessing a child-like sex doll or other object that resembles a child (or part of a child) under the age of 18; one count of attempting to possess a child-like sex doll and one count of possessing child exploitation material. The man is the first person in Queensland to be charged and sentenced for this offence, which came into force on 20 September 2019 as part of the *Combatting Child Sexual Exploitation Legislation Amendment Act 2019* (Cth).

Sexual extortion – an emerging online child exploitation trend

Sexual extortion, sometimes called sextortion, is a crime that can involve child victims being coerced by online offenders into sending sexualised images, often through the offender pretending to be another young person. An offender then threatens to on-share the content to others unless their demands are met. These demands can include large amounts of money, gift cards, online gaming credits, more child abuse images, and sexual favours. Despite complying with an offender's demands, the victim may continue to be threatened or extorted. When this happens to someone under the age of 18, it is online child sexual abuse. The coercion and sextortion used by the online offenders causes significant fear and trauma to victims.

Authorities globally are seeing a significant increase in offshore criminal syndicates preying on Australian children, particularly teenage males, coercing them into producing explicit images and then extorting them for money. Despite the increase in reports, it is suspected that the offending is far greater, with many victims not reporting to authorities.

The Attorney-General's Department continues to work closely with law enforcement and prosecutorial agencies to address this trend through awareness raising and reviewing and strengthening legislation to ensure sextortion can be adequately prosecuted.

The AIC has made an updated submission to the current Inquiry outlining recent findings and research related to the emergence of sextortion.

Case Study – Man sentenced for sextortion of young girls

A Sri Lankan national residing in Melbourne was sentenced to jail, after coercing young girls into sending sexually explicit images and videos of themselves and then blackmailing them and distributing the child abuse material to their family and friends, and posting the material to an adult pornography website. The man contacted multiple girls in the United Kingdom, United States of America and Australia, using a fake social media identity. After gaining their trust, the girls sent child abuse material to the man. He then used these

images and videos to blackmail them for more content and for money, threatening to share the previously sent material with their friends and family.

AUSTRAC financial intelligence allowed investigators to identify further victims sextorted by this offender. The man was convicted of 25 online child abuse-related offences and sentenced in March 2022 to 13 years and six months' imprisonment with a non-parole period of eight years and six months.

Legislation update

Since the original submission, the *Surveillance Legislation Amendment (Identify and Disrupt) Act 2021* (the SLAID Act) commenced on 4 September 2021. The SLAID Act introduced three new powers for the AFP and the ACIC to identify and disrupt serious online criminal activity. Agencies have commenced using these powers including to target alleged child sexual offenders and drug, firearms and money laundering activities.

Under the *Surveillance Devices Act 2004* and the *Crimes Act 1914*, the AFP Commissioner and the Chief Executive Officer of the ACIC are required to report to the Attorney-General as soon as practicable after the end of each financial year on how agencies have used the powers available under these Acts. This includes details about agencies' use of powers introduced by the SLAID Act. Reports must be tabled in both Houses of Parliament within 15 days of the Attorney-General receiving it. The first reports following the commencement of the new powers will be publicly available in late 2022.

International update

Telecommunications Legislation Amendment (International Production Orders) Act 2021

The *Telecommunications Legislation Amendment (International Production Orders) Act 2021* (IPO Act), was passed by Parliament on 24 June 2021, inserting a new Schedule 1 to the TIA Act. This legislation establishes a legal framework for designating enhanced data access agreements to facilitate law enforcement and national security authority access across borders subject to robust safeguards and criteria.

AUS-US Data Access Agreement

The United States is the largest data controller in terms of communications technologies, services and platforms, which means critical evidence of child exploitation offences is most often located within the United States. On 15 December 2021, the United States and Australia signed the *Agreement between the Government of Australia and the Government of the United States of America on Access to Electronic Data for the Purpose of Countering Serious Crime* (AUS-US Data Access Agreement – previously referred to as the AUS-US CLOUD Act Agreement).

Together with the International Production Order (IPO) framework, the Agreement will reshape Australia's international crime cooperation efforts by expediting the process for obtaining electronic data held in foreign countries. The Agreement achieves this by facilitating direct access to electronic data for investigations of serious crime between the jurisdictions of a foreign country and Australia. The Agreement enables authorities in each country to obtain certain electronic data directly from prescribed communication providers operating in the other's jurisdiction, significantly reducing the time taken to obtain information relevant to the ongoing

detection, prevention, investigation and prosecution of serious crime. The Agreement will complement existing international crime cooperation mechanisms, sitting alongside current frameworks such as mutual legal assistance. This provides additional options for Australian agencies to obtain electronic data relating to serious crime from foreign countries.

Australia's use of the Agreement is subject to a range of transparency measures. The IPO Act requires yearly reports to be publicly tabled before the Australian Parliament outlining information on the use of these powers including the number of IPOs obtained, the crime types they related to, the number of arrests, prosecutions and convictions that resulted, and the dissemination of data to Australian law enforcement agencies.

The Agreement is currently subject to consideration by the Joint Standing Committee on Treaties. Once the Australian Parliamentary review process is complete, the Agreement will enter into force upon exchange of diplomatic notes with the US. This will be announced by the Attorney-General by notifiable instrument.

Budapest Convention and Second Additional Protocol

Since the submission provided by the Department of Home Affairs, dated 3 September 2021, there are now over 67 Parties to the Council of Europe Convention on Cybercrime (Budapest Convention) from around the world, with a further 15 countries that are signatories or have been invited to accede.

Australia is an active member of the Cybercrime Convention Committee which represents the State Parties to the Budapest Convention and monitors the effectiveness of the Budapest Convention framework. State Parties to the Convention, including Australia, have the opportunity to shape the development of the committee's position on emerging cybercrime issues. This allows Australia to be involved in meaningfully shaping cybercrime policy to ensure best practice amongst Budapest Convention State Parties. During the period from September 2017 to May 2021, the Cybercrime Convention Committee developed the *Second Additional Protocol on Enhanced Cooperation and Disclosure of Electronic Evidence* to the Budapest Convention. The Protocol opened for signature in May 2022.

The Second Additional Protocol was developed by the State Parties to the Budapest Convention, including Australia, ensuring the Protocol represents the diverse range of legal systems in the international community. The Protocol is anticipated to enhance international cooperation between Parties. As of 28 September 2022, there are 24 signatories to the Protocol.

United Nations Cybercrime Convention

In December 2019, the United Nations General Assembly adopted a resolution to establish an Ad-Hoc Committee process to develop a new United Nations convention on countering the use of information and communications technologies for criminal purposes (sometimes referred to as the UN cybercrime convention). Due to the COVID-19 pandemic, negotiations for this new international treaty were delayed until January 2022. The negotiations are ongoing, with a draft treaty text due to be formulated in early 2023. The Australian delegation is led by the Department of Foreign Affairs and Trade.

During the second negotiating session (30 May – 10 June 2022), the Australian delegation put forward a proposal (publicly available on the [Ad Hoc Committee - Home \(unodc.org\)](https://www.unodc.org/ad-hoc-committee/home) website) to include provisions criminalising specific online child sexual abuse and exploitation offences in the new convention. This reflects Australia's efforts to raise global standards to combat child sexual abuse and exploitation online. The

acceptance of such a proposal as part of the new convention remains outstanding as the text of the proposal has not yet been drafted or finalised.

Five Country Ministerial Forum

To support a holistic response in combatting online child sexual exploitation and abuse, the department is continuing to work with international partners and industry through the Five Country Ministerial ¹ to encourage technology companies to voluntarily endorse and implement the *Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse* (the Voluntary Principles)². The department is funded to drive implementation of the Voluntary Principles under the *National Strategy to Prevent and Respond to Child Sexual Abuse*.

The Voluntary Principles were developed in partnership with digital industry (Facebook, Google, Microsoft, Roblox, Snap, TikTok and Twitter), non-government organisations and academia. The Voluntary Principles cover issues ranging from online grooming and livestreaming of child sexual abuse to industry transparency and reporting. Domestic and international governments have partnered with the WeProtect Global Alliance—an international body comprising government, industry and civil society members—to promote the Voluntary Principles globally and drive collective industry action. To date, 16 companies have endorsed the Voluntary Principles, which provide a high-level best practice framework for online platforms and services to combat child sexual abuse and outline ways for companies to take action against online child sexual abuse.

The Five Country Ministerial, through its Digital Industry Engagement Senior Officials Group of which the department is a member, continues to apply pressure on industry to develop baseline voluntary transparency standards to demonstrate how they are tackling child sexual exploitation and abuse on their platforms and services. In June 2022, the Tech Coalition launched their *TRUST: Voluntary Framework for Industry Transparency*³ which sets out a suggested baseline for industry transparency. The TRUST framework is an important first step in industry-led voluntary frameworks, but does not go far enough in encouraging the sharing of expertise and data.

Vulnerable Populations Community of Practice Working Group

The Vulnerable Populations Community of Practice Working Group (VPCoP) was set up at the end of 2021. It provides a forum for Five Eyes Law Enforcement Group agencies to collaborate on the identification of vulnerable populations being targeted by technology crime enactors involved in child sexual abuse and exploitation. The purpose of the VPCoP is to develop subject matter expert communities of practice focussed on live online child sexual abuse (also known as live streaming of child sexual abuse).

Members of the VPCoP are the ACIC, AFP, ACCCE, US Drug Enforcement Administration, US Federal Bureau of Investigation, US Homeland Security Investigations, UK National Crime Agency, New Zealand Police and Royal Canadian Mounted Police.

¹ The Five Country Ministerial is a forum for the Five Eyes security ministers to meet and discuss opportunities for collaboration on public safety and national security issues.

² [Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse - WeProtect Global Alliance](#)

³ [Tech Coalition | TRUST: Voluntary Framework for Industry Transparency \(technologycoalition.org\)](#)

Meetings increase collaboration and develop a common understanding of threats relevant to Five Eyes Law Enforcement Group agencies, exchange information on methodologies and trends and identify and fill intelligence gaps.

United Nations Commission on Crime Prevention and Criminal Justice

Australia contributed to a strong international focus on child sexual exploitation and abuse at the 31st Session of the United Nations Commission on Crime Prevention and Criminal Justice (CCPCJ) held in May 2022. Australia contributed to a strong international focus on tackling child sexual exploitation and abuse across a range of CCPCJ activities.

The AIC moderated a workshop on Improving Criminal Justice Responses to Internet Crimes Against Children, on behalf of the United Nations Crime Prevention and Criminal Justice Programme Network Institutes. The workshop included a presentation showcasing research that explores different ways in which online child sexual abuse is being addressed.

Australia provided support for a UK resolution on protecting children from sexual exploitation and abuse which builds on Australia's 2019 CCPCJ and General Assembly resolutions.

National Strategy to Prevent and Respond to Child Sexual Abuse

The *National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030* (National Strategy) is a 10-year whole-of-nation framework that provides a coordinated and consistent approach to preventing and better responding to child sexual abuse. The National Office of Child Safety was responsible for designing, and is now responsible for overseeing implementation of the National Strategy. Following the Administrative Arrangements Order of 1 June 2022 the National Office of Child Safety and responsibility for National Strategy oversight has transferred to the Attorney-General's Department.

Initiatives progressed under the National Strategy

The department has progressed a number of activities funded under the National Strategy, including:

- establishing a Digital Industry Officer position in Washington
- implementing the Indo-Pacific Child Protection Program, and
- driving engagement across government, industry, civil society and academia to raise community and global awareness of law enforcement efforts to target online child sexual exploitation and abuse offenders.

Initiatives aim to stimulate informed debate on digital industry's crucial role in protecting children from exploitation and abuse online and to support law enforcement and criminal justice policy outcomes. Further

information on law enforcement and intelligence related measures can be found under the National Strategy Commonwealth Action Plan and National Action Plan Theme 4.⁴

Screenings of ‘The Children in the Pictures’

The documentary ‘The Children in the Pictures’ follows the investigators and operations initially of the Queensland Police Service Victim Identification Team Taskforce Argos, later located within the Australian Centre to Counter Child Exploitation’s (ACCCE), as they attempt to identify victims of child abuse over a 10-year period.

Over the past 12 months, the department has facilitated international screenings of the documentary in Vienna, New York, London and Ottawa, providing opportunities to engage with like-minded international counterparts. The documentary has highlighted and raised awareness of Australia’s successful law enforcement efforts to counter online child sexual exploitation and abuse.

The department is co-hosting a screening in Washington on 16 November 2022 with the Department of Home Affairs through our Digital Engagement Officer. This event will provide an opportunity to bring in key American senators and decision-makers, and technology industry representatives to view the documentary and facilitate engagement.

Domestically, the department is committed to engaging with industry and non-government partners to screen and utilise the documentary to raise community awareness of the ACCCE and broader law enforcement efforts. Currently, the department is working alongside the non-government organisation, ‘International Justice Mission’ to deliver a screening of the documentary with Australian parliamentarians, senators and government officials at Australia’s Parliament House on 8 November 2022. The event will include a panel discussion on child sexual exploitation and abuse.

Digital Industry Engagement

The department hosts an annual digital industry event which brings together key law enforcement and digital industry representatives to collaborate on initiatives to best support the ACCCE’s operational requirements.

The February 2022 event brought together stakeholders from digital industry, law enforcement, academia, civil society and policy makers to discuss the challenges for law enforcement posed by livestreaming technology as it relates to the distribution of online child sexual abuse. The event provided a valuable forum for building collaborative networks across the many disciplines and organisations that are involved in combatting this crime.

A Washington-based Digital Industry Officer role was established under the National Strategy to build strategic relationships with the technology industry, civil society and academia to combat online child sexual exploitation and abuse. The establishment of the Digital Industry Officer position strengthens the Australian Government’s presence and relationships with international counterparts and industry and provides valuable insight on international efforts and initiatives which will inform Australia’s law enforcement response to online child sexual exploitation and abuse.

⁴ Theme 4 of the National Strategy is offender prevention and intervention. Measures under this theme strengthen our criminal justice, law enforcement and intelligence responses to child sexual abuse.

Indo-Pacific Child Protection Program

The Indo-Pacific Child Protection Program delivered its inaugural activity in June 2022, training a cohort of Thai prosecutors on prosecuting online child sexual exploitation and abuse offences, using trauma-informed approach to dealing with child victims and witnesses, and using culturally sensitive practices in dealing with vulnerable victims. The training was well received and shown to fill crucial capacity gaps. The department is currently planning the 2022-23 program of activities for the Indo-Pacific Child Protection Program, which is anticipated to include an environmental scan of the Pacific region, and direct assistance and training across the Indo-Pacific region.

Opportunities to enhance responses

Building the evidence base

One of the most critical aspects of developing effective policy, legislative and operational responses to prevent child sexual abuse is a strong evidence base. In response to the rapid growth of online child sexual exploitation, the AIC has invested significant research effort in better understanding and identifying ways to reduce the problem. The updated AIC submission provided to the Inquiry provides a comprehensive summary of the developments in research and data since submissions to the Inquiry last year, specifically in relation to use of end-to-end encryption by offenders, the link between online and offline sexual offending, sextortion and the role of technology companies in protecting children from harm.

National Child Safety Research Agenda

Recommendation 6.3 of the Final Report of the *Royal Commission into Institutional Responses to Child Sexual Abuse* identified significant gaps in data on the prevalence, nature, extent and impact of child sexual abuse in Australia, and recommended that research be used to build the evidence base.

In response to this recommendation, the National Office for Child Safety is leading the development and delivery of a National Child Safety Research Agenda (CSRA). The CSRA is First National Action Plan Measure 23 of the National Strategy, designed to coordinate and drive national research on child sexual abuse by:

- building evidence on trends and changes in relation to the risk, extent and impact of child sexual abuse victimisation in Australia and offending in Australia and by Australians, for example the link between accessing online child sexual abuse material and contact offending
- assessing the effectiveness of programs, for example legislative tools and law enforcement tactics, that aim to prevent and respond to child sexual abuse
- guiding the development and improvement of new program, legislative and operational reforms, including identifying areas for action under future National Strategy action plans
- linking government and non-government stakeholders with researchers, particularly in areas where research is required to target rapidly evolving trends in offending
- providing incentives for researchers to undertake work aligned with CSRA outcomes.

The National Office for Child Safety is conducting initial consultation and scoping activities this year and throughout 2023, and plans to publish the CSRA in late-2023. As part of these scoping activities, the National

Office for Child Safety will map existing research and identify gaps and limitations in the child safety evidence base, with a particular focus on child sexual abuse. This will inform the nature and prioritisation of future research and the CSRA's research streams.

Throughout CSRA development and delivery, the National Office for Child Safety will work with key stakeholders, including governments, researchers and law enforcement agencies, to identify emerging research needs and coordinate CSRA-aligned research.

Continued need for information and intelligence sharing

The ACIC and AUSTRAC have identified that access to the National Child Offender System remains a significant need. As outlined in the earlier submissions to the Inquiry, access to National Child Offender System would enable the ACIC to undertake data analysis and matching against criminal intelligence and national policing information holdings. Additionally, AUSTRAC's growing role in combatting child sexual exploitation, evidenced by the case studies outlined in this submission, would be further enhanced by access to the National Child Offender System. AUSTRAC's ability to detect child abuse by matching suspicious financial payments with offending, would prioritise actionable intelligence and allow law enforcement to monitor financial activity of registered offenders.

Equally, direct access to the ACIC-managed National Police Record System database would enhance AUSTRAC's capacity to efficiently respond to high priority detection and disruption of child sexual exploitation activities.

Expanding the ACIC and AUSTRAC to access the National Child Offender System would require reforms to relevant State and Territory legislation. Enabling AUSTRAC access to the National Police Record System would require amendments to the Australian Crime Commission Regulations 2018, to make AUSTRAC a prescribed body.