

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
BUDGET ESTIMATES 2017

Commonwealth Director of Public Prosecutions

Question No. BE17-218

Senator Kakoschke-Moore asked the following question on 18 August 2017:

Senator KAKOSCHKE-MOORE: I want to ask questions about prosecutions for conduct that has become known as cybersex trafficking—where a person in Australia commissions the sexual abuse of a child overseas and watches that abuse happening online. Of the prosecutions that have taken place that would capture that sort of conduct, have all of those prosecutions taken place under sections 272.8 and 272.9 of the Criminal Code?

Ms McNaughton: That is a bit too detailed, I am afraid. We would have to take that on notice. Senator KAKOSCHKE-MOORE: Which means you may need to take my other questions on notice, but I will give them a go. I would like to know how many prosecutions in total, say over the last three financial years, have taken place for conduct that could be described as cybersex trafficking? I am fairly certain those prosecutions have taken place under 272.8 and 272.9 of the Criminal Code, but if there were any other charges I would be interested in those statistics as well.

Ms McNaughton: Certainly.

The response to the honourable Senator's question is as follows:

In the last three financial years the CDPP conducted prosecutions for the offences below in the *Criminal Code* where the alleged conduct involved a person engaging in, or causing, sexual activity involving a child who is overseas, using live-streaming technology, and referred to as 'live streamed child abuse'.

- s474.25A Using a carriage service for sexual activity with a person under 16 years of age
- s272.8(1) Engaging in sexual intercourse outside Australia with a child under 16.
- s272.8(2) Causing a child under 16 to engage in sexual intercourse outside Australia in the presence of the defendant.
- s272.9(1) Engaging in sexual activity (other than sexual intercourse) outside Australia with a child under 16.
- s272.9(2) Causing a child under 16 to engage in sexual activity (other than sexual intercourse) outside Australia in the presence of the defendant.
- s272.11 Persistent sexual abuse of a child outside Australia.
- s272.14 Procuring a child to engage in sexual activity outside Australia.

Several prosecutions of live-streamed child abuse have involved convictions contrary to sections 272. 8, sections 272.9 and/or sections 272.11 eg *R v Goggins* [2014] VCC 1086, *DPP v Le*

Gassick [2014] VCC 1288. Other offence provisions have also been used, including section 474.25A, eg *R v Leask* [2013] WASCA 243.

The *Criminal Code* definitions of ‘sexual activity’ and ‘engage in sexual activity’ apply to these offences. The definitions provide that the ‘sexual activity’ can occur ‘whether or not the activity involves physical contact between people’. The definition of ‘engage in sexual activity’ includes where the child or defendant engages in sexual activity in the presence of each other, ‘including by any means of communication that allows the person to see or hear the other person’. The sexual activity includes acts performed on or by the child and includes acts done by the offender or another adult in the presence of a child.

CDPP statistical data does not:

- for Division 272 offences, differentiate between situations of remote on-line offending from situations involving physical contact by the offender
- for Division 474 offences, differentiate between whether the child is in Australia, overseas or in a location unknown.

Data for those offences, which is not limited to live-stream offending, is:

Offence	Prosecutions commenced 2014/15 – 2016/17	Convictions 2014/15 – 2016/17
s272.8(1)	2	3
s272.8(2)	1	2
s272.9(1)	6	4
s272.9(2)	1	1
s272.11	2	2
s474.25A*	19	11

*There are many different factual situations where the offending may satisfy the elements of s474.25A *Criminal Code* if proven beyond reasonable doubt. It may apply to situations where the child is in Australia and is identified. It may also apply to online offending where the identity of the child is not ascertained by authorities or the place where the sexual activity occurred is not known or to situations where the evidence is obtained through digital forensic analysis of the offender’s electronic devices.

An example of a prosecution conducted by CDPP under section 474.25A was *DPP v Dougherty* [2016] VCC 639.

The CDPP is aware of at least one case where the offence contrary to section 272.14 procuring a child to engage in sexual activity outside Australia, has been proven in a factual situation which involved live-stream sexual abuse of a child overseas. (*R v Dawson*, District Court of Queensland at Brisbane 28 July 2016).

There may be other prosecutions contrary to the *Criminal Code* or under State or Territory law conducted by other prosecution agencies.

It is noted that one offender may be charged or convicted under more than one of the above offence provisions.

The above data reflects matters received within a given financial year and does not provide a percentage basis for the number of matters prosecuted as matters received in one year may be finalised in another financial year.

These figures do not represent a conviction rate as a matter may be prosecuted in one year but finalised in another year.