

# CHAPTER 1

## INTRODUCTION

### Purpose of the Bill

1.1 On 4 February 2010, the Senate referred the Crimes Legislation Amendment (Sexual Offences Against Children) Bill 2010 (the Bill) for inquiry and report by 15 March 2010. On 15 March 2010, the Senate agreed to extend the reporting date to 18 March 2010.

1.2 The Bill amends the *Australian Crime Commission Act 2002*, the *Crimes Act 1914*, the *Criminal Code Act 1995*, the *Surveillance Devices Act 2004* and the *Telecommunications (Interception and Access) Act 1979* to ensure there is in place a comprehensive regime of sexual offences against children, where those offences occur across or outside Australian jurisdictions (such as over the Internet or overseas).

1.3 In summary, the Bill seeks to:

- strengthen the existing child sex tourism regime;
- introduce new offences relating to child pornography, child abuse material and use of a postal service for child sex-related activity;
- enhance the coverage of offences relating to use of a carriage service for sexual activity with a child, child pornography or child abuse material;
- make minor amendments relating to existing and relevant law enforcement powers; and
- introduce a new forfeiture scheme relating to child pornography and child abuse material.

### Background

1.4 The explanatory memorandum (EM) to the Bill notes that the sexual exploitation of children is a devastating and widespread form of criminal activity. In the second reading speech to the Bill, the Minister for Home Affairs, the Hon. Brendan O'Connor MP, emphasised the government's commitment to taking all necessary action to prevent harm to children from sexual exploitation. The Minister noted that Australia has obligations at both the national and international level to protect children from sexual exploitation and child abuse, arising from Australia having ratified the (1989) Convention on the Rights of the Child in 1990.<sup>1</sup>

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1 The Hon. Brendan O'Connor MP, Minister for Home Affairs, *House of Representatives Hansard*, 4 February 2010, p. 3. Under Article 34 of the Convention on the Rights of the Child signatories undertake all appropriate national, bilateral and multilateral measures to protect children from all forms of sexual exploitation and sexual abuse.

1.5 In Australia, responsibility for combating child sexual exploitation is shared between the Commonwealth and the states and territories. While the states and territories are responsible for child sex-related offences occurring domestically within their respective jurisdictions, the Commonwealth has responsibility for child sex-related offences occurring across or outside Australian jurisdictions (for example, where the Internet is involved or the offence is committed overseas). This sharing of responsibilities reflects the division powers between the Commonwealth and the states under section 51 of the Constitution.

1.6 The Minister's second reading speech states that consultation over the proposed reforms to the sexual offences against children regime has been undertaken. This process 'indicated strong support' for the measures in the Bill, including from state and territory governments, child safety commissioners, and child protection organisations such as Child Wise and Save the Children.<sup>2</sup> These groups reportedly commented that the changes would 'definitely strengthen Australia's capacity to prosecute would-be child sex offenders' and would see Australia 'again be the leaders in international best practice in relation to the legislation and policing of child sex tourism'.<sup>3</sup>

### ***Current legislation***

1.7 In 1994, the Keating Government introduced the *Crimes (Child Sex Tourism) Amendment Act 1994* (the Act) to put in place a suite of new criminal offences targeting Australians who engage in the sexual exploitation of children overseas. The legislation was not limited only to child sex tourism, but also covered a wide range of sexual offences committed overseas against children (defined as a person under the age of 16). The premise underpinning the legislation was that countries are themselves primarily responsible for sexual abuse and exploitation of children committed in their own jurisdictions. The extra-territorial application of the Act was therefore intended to fill the gap only in those cases where another country was unwilling or unable to take action.

1.8 In 2005, the Howard Government introduced the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) (No. 2) Act 2004*, which put in place a range of offences related to the use of a telecommunications network or carriage service,<sup>4</sup> such as the Internet or a mobile phone, in relation to child pornography or child abuse material, or to procure or 'groom' a person under 16 years of age for a sexual purpose. These offences were enacted in response to the

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2 The Hon. Brendan O'Connor MP, Minister for Home Affairs, *House of Representatives Hansard*, 4 February 2010, p. 3.

3 The Hon. Brendan O'Connor MP, Minister for Home Affairs, *House of Representatives Hansard*, 4 February 2010, p. 3.

4 'Carriage service' is defined in the *Telecommunications Act 1997* to mean a service for carrying communications by means of guided and/or unguided electromagnetic energy (section 7).

increasing use by offenders of new technologies such as the Internet to engage in the sexual exploitation of children.

1.9 In introducing the current Bill, the Minister stressed that the current child sexual offences regime provides an extensive framework for the prevention, investigation and prosecution of all forms of child exploitation. However, he also noted the need to update existing laws in light of the volume of overseas travel by Australians. Further, rapidly changing technologies, particularly the Internet, have made information about overseas travel more accessible, which has both fuelled the propensity of Australians to travel overseas and provided offenders with unprecedented opportunities and anonymity.<sup>5</sup> The Minister commented:

This bill will implement a range of reforms to the...[existing] offence regimes to ensure that they remain effective and continue to meet the needs of law enforcement agencies in combating contemporary offending.<sup>6</sup>

### **Conduct of the inquiry**

1.10 The committee advertised the inquiry in the *Australian* newspaper on 10 February 2010, and invited submissions by 19 February 2010. The committee also wrote to over 50 organisations and individuals inviting submissions. Details of the inquiry, the Bill and associated documents were placed on the committee's website.

1.11 The committee received 8 submissions, which were placed on the committee's website for ease of access by the public. These are listed at Appendix 1.

1.12 The committee held a public hearing in Canberra on 9 March 2010. Witnesses who appeared at the hearing are listed at Appendix 2. The *Hansard* transcript is available through the Internet at <http://aph.gov.au/hansard>.

### **Acknowledgement**

1.13 The committee thanks the organisations and individuals who made submissions and gave evidence at the public hearing.

### **Note on references**

1.14 Submission references in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcripts.

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5 The Hon. Brendan O'Connor MP, Minister for Home Affairs, *House of Representatives Hansard*, 4 February 2010, p. 3.

6 The Hon. Brendan O'Connor MP, Minister for Home Affairs, *House of Representatives Hansard*, 4 February 2010, p. 3.

