

13 September 2017

## **PROPOSED AMENDMENTS ON CYBERSEX TRAFFICKING**

We welcome the comprehensive approach to updating offence provisions that the government has taken in the [Crimes Legislation Amendment \(Sexual Crimes Against Children and Community Protection Measures\) Bill 2017 \(Cth\)](#). Below we summarise how these amendments implement and exceed our recommendations and the [amendments](#) introduced by Senator Skye Kakoschke-Moore. We are encouraged that the government is recognising the existing provisions do not recognise the seriousness of these offences and that the sentences under the legislation have been inadequate.<sup>1</sup>

The areas addressed by the Bill that relate to cybersex trafficking include:

- Defining offences relating to cybersex trafficking;
- Aggravating circumstances;
- Sentencing; and
- Internet Service Providers.

### **1. DEFINING CYBERSEX TRAFFICKING**

#### **1.1. Inclusion of sexual activity via electronic communication**

Consistent with the prior proposal, the Bill has clarified that the offences under sections 272.9(1), 272.13(1) and 474.25A include where the abuse occurs via an electronic communication service: sch 4 item 27.

#### *Recommended Improvement*

However, the offences where a person causes a child to engage in sexual activity or sexual intercourse ‘in the presence of the person’ have not been clarified to include situations where the presence is via an electronic communication device. It is incongruous for the s 272.9(1) to include this situation but the related provision designed to cover analogous circumstances not to.<sup>2</sup>

Sections 272.8(2), 272.9(2), 272.12(2) and 272.13(2) should be amended to clarify that ‘in the presence of the person’ in these sections includes presence by means of an electronic communication device.

#### **1.2. New offences**

The Bill introduces new offences beyond what was originally proposed. These are extremely useful for targeting cybersex trafficking and include:

- Criminalising the setting up of electronic systems to facilitate the sharing of child abuse material (eg, setting up a peer to peer network on the Dark Web): sch 4 item 20; and
- Criminalising the grooming of third parties to make it easier to engage in sexual activity with a child (eg, forming a relationship with traffickers in the Philippines): sch 4 item 27.

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<sup>1</sup> [Explanatory Memorandum](#), Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 (Cth) 7–8.

<sup>2</sup> [Explanatory Memorandum](#), Crimes Legislation Amendment (Sexual Offences Against Children) Bill 2010 (Cth) 17–20.

These two targeted innovations will be very effective at addressing cybersex trafficking offences and the government should be commended for taking the initiative here.

### **1.3. Redefinition of child abuse material**

The Bill removes all references to ‘child pornography’ in the legislation and such material has been included within the definition of ‘child abuse material’. This helpfully removes terminology that diminishes the seriousness of the conduct: sch 15.

## **2. AGGRAVATING CIRCUMSTANCES**

### **2.1. Aggravated offence**

Consistent with the prior proposal, the Bill expands the aggravating factors in the offences under ss 272.10 and 474.25B to include ‘cruel, inhuman or degrading treatment’ or death: sch 4 items 2–3, 24–6.

#### *Recommended Improvement*

It would seem appropriate to have a similar aggravated offence with these two aggravating circumstances for the offence under s 272.13.

### **2.2. Aggravating factors for sentencing**

Consistent with the prior proposal, courts are now required to specifically consider whether the child was under 10 years of age and whether there were multiple people involved in the offence: sch 9.

#### *Recommended Improvement*

One factor from the prior proposal that has not been included at either the sentencing or offence definition stage is whether the offender ‘pays a fee or reward, or provides another benefit, in relation to the underlying offence’. This factor is particularly applicable to cybersex trafficking and should be included.

## **3. SENTENCING**

### **3.1. Increased maximum penalties**

Consistent with prior proposals, the maximum penalties for several offences that cover cybersex trafficking have been increased by 3 years: sch 5.

These increases are welcome and will address the existing sentencing gap between hands-on and online offending.

### **3.2. Introducing mandatory minimum sentencing**

A minimum sentence of five years has been introduced for offences of engaging in sexual activity with a child including via online means. A minimum sentence of six years has been introduced for the aggravated offence: sch 6.

Further, minimum offences have been introduced for child abuse material offences where the person has been convicted of such an offence on a prior occasion, which is consistent with the *Lanzarote Convention*.

### *Recommended Improvement*

While we welcome the seriousness this issue has been given, we recommend further debate be conducted on the issue of introducing mandatory minimum sentences, recognising that while all offences involving children are extremely serious even if committed online, there is a range of offending with respect to the impact on the victim and potential for escalation.

#### **3.3. Cumulative sentences**

The Bill requires courts not to lower the sentence by grouping like offences where the offences involve child sex offences, including those that cover cybersex trafficking, unless the overall sentence would still reflect the severity of the offence: sch 10. We welcome this development, particularly given offenders often have repeated their behaviour before being arrested.

#### **3.4. Imprisonment**

The Bill introduces a presumption that imprisonment is required for child sex offences, such as those that cover cybersex trafficking, unless exceptional circumstances apply: sch 11.

### **4. INTERNET SERVICE PROVIDERS**

The penalty for internet service providers that fail to report known use of their service for child abuse material has been increased from 100 penalty units to 800 penalty units: sch 5 item 7. This increases the maximum penalty for companies from \$105,000 to \$840,000.<sup>3</sup> This makes Australia a world leader in this area and will encourage more vigilant compliance from ISPs.

### **5. MISCELLANEOUS**

#### **5.1. Community protection**

The Bill also introduces a presumption against bail (sch 7) and greater severity in the parole regime (schs 1, 13–14) to protect the community from offenders.

#### **5.2. Witnesses**

The Bill makes it easier for vulnerable witnesses to give evidence by removing the requirement for leave to be given to use recorded interviews (schs 2–3) and preventing such witnesses from being cross-examined at committal proceedings.

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<sup>3</sup> [Crimes Act 1914 \(Cth\)](#) ss 4AA, 4B.