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Catholic Women's League Australia Inc

**Member Organisation of the World Union of Catholic Women's Organisations
(WUCWO)**

**NGO Consultant (roster) status with the Economics and Social Council of the
United Nations**

"Behold the Miracle of Creation"

Submission from the Catholic Women's League Australia

Crimes Legislation Amendment (Sexual Crimes against Children and Community Protection Measures) Bill 2019

30 September 2019

**"See that you do not despise one of these little ones. For
I tell you that in heaven their angels always see the face of my
Father who is in heaven."**

Mathew 18:10

1. Introduction

The Catholic Women's League Australia Inc. (CWLA) is the national peak body representing the League's six member organisations located throughout Australia. We are a Non-Government Organisation and have consultative (roster) status with the Economic and Social Council of the United Nations. We are also a member of the World Union of Catholic Women's Organisations (WUCWO). One of CWLA's four principle aims is to influence legislative and administrative bodies at all levels of government in order to preserve the dignity of the human person. We therefore take this opportunity to make a submission to the Senate Inquiry "Crimes Legislation Amendment (Sexual Crimes against Children and Community Protection Measures) Bill 2019".

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2. Human Rights Framework

The international human rights framework supports the argument that all Australians have the right to enjoy adequate standards of living.

Australia is a signatory to the United Nations Convention on the Rights of the Child 1989. This convention is very clear, that children should be afforded all available legislative protection. Within the Convention are the following provisions:

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

We are in agreement that every legislative measure should be undertaken to ensure the protection of all children. Such measures would be consistent with the above detailed human rights framework.

3. Proposed Sentencing Reforms

The proposed sentencing reforms are as follows:

- mandatory minimum sentences for the most serious child sex offences and for recidivist offenders
- increased maximum penalties across the spectrum of child sex offences, including up to life imprisonment for the most serious offences
- presumptions in favour of cumulative sentences and actual imprisonment ensuring that all sex offenders, upon release from custody, are adequately supervised and subject to appropriate rehabilitative conditions
- an overhaul of the sentencing factors for all federal offenders preventing courts from discounting sentences on the basis of good character where this is used to facilitate the crime, and
- emphasising the importance of access to rehabilitation and treatment when sentencing child sex offenders.
- This bill addresses this unacceptable situation by introducing a sentencing presumption in favour of actual imprisonment, rebuttable only in exceptional circumstances.
- The bill introduces minimum terms of five to seven years for the most serious child sex offences.
- In all cases judges will retain complete discretion in the setting of the minimum amount of time the offender spends in custody. This will ensure they retain broad capacity to tailor sentences that foster rehabilitation and allow for suitable post-release supervision of offenders. This means that offenders should no longer be released unconditionally back into the community and will instead be supervised and subject to strict conditions—ensuring the best outcomes for community safety.
- Judges will also retain discretion to deviate from the minimum terms set statutorily by up to 25 per cent each, to allow for the recognition of early guilty pleas and cooperation with law enforcement. This is an important provision to ensure we do not disincentivise demonstrations of remorse by offenders that facilitate the administration of justice.

- The bill also contains exemptions to the minimum sentencing scheme for offenders who are under 18 when they commit an offence. Young people engaging in conduct such as 'sexting' will therefore not be caught up in the mandatory imprisonment scheme.
- The existing protections in the Crimes Act for persons suffering from a mental illness or intellectual disability will still apply to people charged with child sex offences—the bill will just ensure that a court can make a residential treatment order, if they consider that order appropriate in all the circumstances, and where available under state and territory law.
- A further safeguard is that law enforcement officers and prosecutors will retain their broad discretion regarding whether or not to charge or prosecute individuals.
- The introduction of mandatory sentencing complements a new presumption in favour of cumulative sentences for multiple child sex offences. This will ensure that sentences imposed adequately reflect the harm done to each individual victim, or the harm done by each distinct individual crime.
- The presumption in favour of cumulative sentences can be set aside if the court is satisfied that imposing sentences concurrently or with only partial cumulation will produce a sentence of appropriate severity. The principle of totality will also continue to apply in the sentencing exercise to guard against unjust outcomes.
- This bill will fill gaps in the existing framework by introducing new offences to cover emerging forms of child sex abuse.
- This bill will introduce a new offence allowing a sentence of up to 20 years imprisonment, to ensure the providers of such services can be held to account for facilitating access to, and encouraging the production of, child abuse material.
- The bill also introduces a new offence criminalising the grooming of third parties to make it easier to procure children to engage in sexual activity in Australia and overseas.
- The bill also clarifies the scope of existing offences to create greater certainty regarding the types of acts covered. For example it clarifies that engaging in sexual activity with a child will include live online streaming of sexual abuse of children.

- The bill will criminalise activities that aggravate particular types of sexual offending such as subjecting a child to cruel, inhuman or degrading treatment, or causing the death of the child.
- This bill also introduces new aggravating factors that a court must take into account when sentencing an offender for a relevant offence. These would apply if the victim was under the age of 10 at the time of the offending and if multiple people were involved in the offending.
- This bill improves justice outcomes by limiting the re-traumatisation of vulnerable witnesses by removing barriers to the admission of prerecorded video evidence and ensuring that they are not subject to cross-examination at committal and other preliminary hearings, thus allowing them to put their best evidence forward at trial. These measures are also in line with recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse.
- Another important community protection measure introduced through this bill is the establishment of a presumption against bail for recidivist child sex offenders or those charged with the most serious child sex offences. This presumption against bail is rebuttable and courts may still grant bail if satisfied that it is appropriate in all the circumstances to do so.
- In considering bail for repeat child sex offenders or those charged with the most serious child sex offences, there is an expectation that, for the safety of the community, bail should be refused, unless the accused person can satisfy the court there are circumstances which justify their conditional release.
- With respect to post release options, at the other end of the justice process, this bill introduces a requirement for the courts to set treatment and supervision conditions for all child sex offenders upon sentencing to prevent such offenders from being released without supervision and appropriate treatment conditions.
- To better protect the community, this bill also introduces community safety as a primary consideration when deciding whether a federal offender's parole should be revoked.
- The bill will also ensure that where an offender's parole has been revoked they can expect to serve a period of time in custody.

5. Recommendations of the CWLA

The CWLA has carefully considered all of the proposed amendments outlined in this bill. The CWLA considers the safety and protection of all children to be of the utmost importance. The abuse of children has become a concerning occurrence throughout the world and it is evident that the steps being taken to prosecute and punish abusers of vulnerable children has not gone far enough. There exists provisions in the criminal legislation in Australia to prosecute child abusers but these are insufficient, as is evidenced by repeat offenders and the number of people who commit these crimes without facing prosecution.

Children are vulnerable and need the highest level of protection possible. It is incumbent on the legal system to send a message to Australian society: that persons who commits such heinous crimes will become the subject to the harshest penalties possible. Thus, the proposed amendments are both supported and welcomed by our organization.

We wish the Committee all the best in its deliberations. It is our sincere hope that the proposed amendments will be eventually enacted and become part of our legislation.

Yours sincerely,

Valma Ivory
President
Catholic Women's League Australia Inc.