

16 August 2019

Senator the Hon Ian Macdonald
Chair, Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: legcon.sen@aph.gov.au

Dear Chair

Combating Child Sexual Exploitation Legislation Amendment Bill 2019

The ACT Law Society welcomes the opportunity to provide this submission to the Senate Legal and Constitutional Affairs Legislation Committee's (the Committee) inquiry into the Combating Child Sexual Exploitation Legislation Amendment Bill 2019 (the Bill).

The ACT Law Society welcomes the Bill as an important part of implementing recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). The ACT Law Society is supportive of the measures taken within the Bill to protect children from sexual exploitation by improving the Commonwealth framework of offences relating to child abuse material, strengthen overseas persistent child sexual abuse law, improving the definition of forced marriage, and creating offences for failing to report child sexual abuse and failing to protect children from such abuse.

The ACT Law Society makes the following comments in relation to the proposed Bill.

1. The references to "conduct" in proposed sections 273B.4 and 273B.5 should be amended to clarify specifically what constitutes such conduct. It must be clear that the conduct is sexual, or is conduct which could amount to a child sexual abuse offence (which is a defined term).
2. The proposed measures in the Bill should not incur a potential mandatory minimum sentence.
3. For the proposed subsection 273B.5(5), a witness ought to be entitled to both direct use and derivative use immunity, in relation to evidence or information provided in response to questioning by law enforcement.
4. The proposed paragraph 474.22A(1)(b) requires the material to be 'held in a computer' or contained in a 'data storage device' for prosecution to be successful. The language is consistent with the current language of the Criminal Code, noting that the explanatory memoranda provides an explanation of such terms. Nonetheless, this provision could soon be outdated, given the rapid progress in technological development. It is possible that that this terminology may not capture future data storage options.

Thank you for providing the ACT Law Society with the opportunity to comment on the Bill.

Yours sincerely

Dianne O'Hara
Chief Executive Officer