



Inquiry into Combatting Child Sexual Exploitation Legislation Amendment Bill 2019 [Provisions]

Department of Home Affairs responses to Questions on Notice.

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**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Legal and Constitutional Affairs

27 August 2019

QoN Number: SLCA/001

Subject: Child Sexual Exploitation - Scope of Bill

Written

Question Submitted by: Kim Carr

Question:

Senator KIM CARR: That's all right; thank you. That's your time line. Can I go to the issue of the scope of this bill. It's not just 'Commonwealth officers', is it? It goes to ministers; it goes to parliamentary secretaries, so members of parliament. They're not normally described as 'Commonwealth officers'.

Mr Hansford: Indeed; maybe I was generalising with 'Commonwealth officers'.

Senator KIM CARR: Yes.

Mr Hansford: But ministers and members of parliament to the extent that they have responsibilities, Commonwealth officers and contractors.

Senator KIM CARR: It also goes to members of the Defence Force, members of the police—basically anyone on the Commonwealth payroll.

Mr Hansford: Indeed.

Senator KIM CARR: And it goes to any contractor, any subcontractor and anyone that's actually assigned to work for the Commonwealth. Does that mean anyone issued with a grant from the Commonwealth?

Ms Spencer: The explanatory memorandum makes it clear that it doesn't cover grant recipients.

Senator KIM CARR: Right, but it covers the ANU though.

Ms Spencer: I may have to take that on notice.

Senator KIM CARR: It's all CAC Act agencies?

Ms Spencer: Yes, that's right.

Senator KIM CARR: Does it include people on the territories—Norfolk Island, Christmas Island? Is that right?

Ms Spencer: That's right, to the extent that they have 'care, supervision or authority'.

Senator KIM CARR: Yes, of course; to the extent that they have contact with children.

Ms Spencer: Yes.

Senator KIM CARR: It includes contractors. Would it include, for instance, the Catholic Church, which has a contract with the Australian Electoral Commission in Melbourne? They rent buildings to the AEC. Would they be covered?

Mr Hansford: I think it's fair to say it's an expansive definition. The particulars that you're raising—we'll have to take on notice each particular, but you're right in the general assertion that it is an expansive definition.

Senator KIM CARR: I am trying to get to the scope of the bill, that's all, because it's not just 'Commonwealth officers'.

Mr Hansford: No.

Ms Spencer: No, but it is those who 'exercise powers or perform functions under the law of the Commonwealth'. So in terms of a rental agreement or something—

Senator KIM CARR: But I'm saying to you that 'contractor' includes people who have contracts with a Commonwealth office, have contracts for a Commonwealth office or an agency of the Commonwealth, have the statutory authority of the Commonwealth or are assigned to work for the Commonwealth. That's the definition of a contractor, isn't it?

Mr Hansford: Yes.

Senator KIM CARR: And that includes the Catholic Church.

Mr Hansford: I said we'd take that on notice.

Senator KIM CARR: Thank you. If I might be clear about this: it includes anyone who has anything to do with a detention centre?

Mr Hansford: Yes.

Answer:

Definition of 'Commonwealth officer'

The definition of a 'Commonwealth officer' is outlined in proposed section 273B.1. This definition includes contractors of the Commonwealth or a Commonwealth authority and an 'officer or employee of a Commonwealth authority'. Commonwealth authority is defined in the Commonwealth *Criminal Code Act 1995* (Criminal Code) as a body established by or under a law of the Commonwealth such as the Australian National University (ANU).

The definition of 'Commonwealth officer' is directed to 'individuals', which are defined in section 2B of the Commonwealth *Acts Interpretation Act 1901* as a 'natural person'. Entities such as the Catholic Church or a Commonwealth Department, are not a 'Commonwealth officer' for the purposes of the proposed Division 273B offences.

The scope of application

While the definition of Commonwealth officer is intentionally broad, the failure to protect offence will only capture those officers with children in their care, supervision or authority in their capacity as a Commonwealth officer. The failure to report offences will only capture those officers with children in their care or supervision in their capacity as a Commonwealth officer.

Safeguards and protections

The Attorney-General's consent is required under proposed section 273B.9 to commence proceedings for a failure to report and failure to protect offence. This is intended to ensure that a proposed prosecution is scrutinised and a judgement made about its appropriateness before it proceeds.