



Uniting Church in Australia
SYNOD OF VICTORIA AND TASMANIA

**SUBMISSION TO THE SENATE LEGAL AND CONSTITUTIONAL
AFFAIRS COMMITTEE
INQUIRY INTO *CRIMES LEGISLATION AMENDMENT (SEXUAL
CRIMES AGAINST CHILDREN AND COMMUNITY PROTECTION
MEASURES) BILL 2019*
30 September 2019**

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The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes the opportunity to make a submission on the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019*. The Uniting Church in Australia has a strong commitment to protect children from child sexual abuse. The Synod supports the majority of the Bill, but is concerned at the sections imposing mandatory minimum sentences and compulsory prison terms in the absence of any proper analysis of why courts are currently imposing the sentences they do.

Uniting Church in Australia resolutions on addressing child sexual abuse

The 1991 National Assembly meeting of church representatives from across Australia resolved:

- 91.18.1/2 *The Assembly resolved:*
To receive the report (of the Commission for Women and Men)
(a) That sexual violence be deplored as a sin against God and humanity.
(b) That it be recognized that the origin of sexual violence lies in the practice of inequality of the sexes;
(c) That it be confessed that sexual violence is disturbingly frequent within the Uniting Church community as it is in the wider community;
(d) That it be acknowledged that in the past, the church has often made inappropriate responses or no response to victims/survivors of sexual violence. This has been experienced by many as a further violation;
(e) That the church be committed to hearing the voices of those who are victims of sexual violence;
(f) That the actions of people who work for the end of such violence and who support its victims/survivors be supported;
(g) That the urgent need for the church community to become part of a "network of prevention" in the area of sexual violence be recognized;
(h) That the publication "The Pastoral Report to the Churches on Sexual Violence Against Women and Children of the Church Community" be commended to presbyteries and parishes as a guide for study and action.

This resolution committed the Uniting Church to hearing the voices of survivors of sexual abuse and to be part of wider efforts to prevent sexual violence.

There is an explicit statement opposing child sexual abuse from the Uniting Church National Assembly Standing Committee meeting of March 2013 (ASC Minute 13.07.03):

The sexual abuse of children is criminal behaviour that is totally abhorrent and unacceptable.

The National Assembly has issued a Uniting Church values statement in relation to the Royal Commission into Institutional Responses to Child Sexual Abuse:¹

The Uniting Church believes that God has given us the gift of the Spirit to "constantly correct that which is erroneous" in our life (Basis of Union, Para 18). Therefore, we will not hide from the truth, however painful that may be, and we will seek, with compassion and humility, to address whatever issues and challenges may emerge for us. We will say "sorry" to anyone who was sexually abused when in our care and, in consultation with those so affected, actively seek for ways to make amends for what happened in the past and identify how we can best offer support into the future. In all of this we are guided by the Word of God, remembering the teaching of the Apostle Paul: "Whatever is true, whatever is honourable, whatever is just, whatever is pure, whatever is pleasing, whatever is commendable... think about these things" (Philippians 4:8).

From the beginning of our life together as the people of God within the Uniting Church in Australia, we have sought through prayer, and a spirit of consensus, to discern what it means to confess Jesus as Lord and Head over all things (Basis of Union, Para 3). At the time of Inauguration, the Assembly spoke to the nation in a statement that has guided and encouraged us ever since to be a church that honours Christ in all that we say and do. The statement declared, in part, that "we affirm our eagerness to uphold basic Christian values and principles, such as the importance of every human being, the need for integrity in public life, and the proclamation of truth and justice... We pledge ourselves to seek the correction of injustices wherever they occur" (Statement to the Nation, National Assembly, June 1977).

To adopt such a stance in the life of our nation means that we must be willing to examine our own motives and behaviour and be open to accept the close scrutiny of others. In that regard the Uniting Church welcomes the decision of the Federal Government to establish a Royal Commission on the sexual abuse of children in both public and church institutions, and pledges itself to cooperate fully and honestly with the process the Commission will implement. The sexual abuse of children is criminal behaviour that is totally abhorrent and unacceptable.

The Synod of Victoria and Tasmania has three resolutions explicitly addressing child sexual abuse. The first is from the 1993 meeting of Synod representatives and urges the Victorian Government to adopt measures to prevent the sexual abuse of women and children and to assist survivors of sexual abuse:

93.4.3.5 *The Synod resolved:*

That the Victorian Government be requested to provide for the protection of women and children from rape, domestic violence and incest by:

- (i) Developing and maintaining long term programs of preventative community education.*
- (ii) Requiring the Department of Public Prosecutions to provide information and advice to victims.*
- (iii) Collecting and publishing accurate information concerning sex crimes.*
- (iv) Enhancing education for police officers, in particular for the officers of the Uniform and Community Policing Unit, so that they better understand and can better implement codes of practice for sexual assault victims.*
- (v) Increasing support for victims of sexual assault by resourcing programs specializing in offering services to victims.*

¹ <https://assembly.uca.org.au/rcvalues>

(vi) Encouraging and resourcing research and education designed to assist judges in sentencing, particularly sentencing involving crimes of sexual assault.

The second is from the 1994 meeting calling on the Victorian Government to take a holistic response to child sexual abuse in the community:

94.2.4.1 The Synod resolved:

(a) That the Synod call on the Victorian Government to provide additional funding for preventative services to assist children "at risk" of child abuse.

(b) That the Synod request the Victorian government to develop a "holistic" strategy to respond to child abuse which ensures that once reports are investigated that families receive long term support.

(c) That the Synod encourage Ministers and Parish leaders to attend the "Strengthening Vulnerable Families" day and/or use the resources developed.

The third is from the 2011 meeting of representatives of congregations across both states and explicitly addresses online child sexual abuse, calling on the Federal Government to adopt measures to deter online child sexual abuse, increase its detection and resource police to address all cases where Australians are involved in online child sexual abuse:

11.6.18.2.4 The Synod resolved:

a) To call on the Federal Government to adequately resource the Australian Federal Police to investigate all cases of online child sexual abuse where either the perpetrator or the victim is Australian;

b) To call on the Federal Government to require Internet Service Providers (ISPs) to take action to assist in combating the sale, transmission and accessing of child sexual abuse images, which are always produced through human trafficking, forced labour, slavery or other means of manipulation and coercion. To that end the Federal Government is requested :

- To leave the IT industry in no doubt that they have a legal obligation to report clients accessing child sexual abuse material when they detect it, regardless of privacy legislation; and*
- To legislate to require ISPs to block client access to all websites that contain material classified as 'Refused Classification', regardless of where such sites are hosted, and to log attempts by clients to access child sexual abuse sites and provide this information to the authorities for investigation;*

c) To call on the Federal Government to urge those countries that have not yet criminalised the production, distribution, use and possession of child sexual abuse material to do so; and

d) To write to the Prime Minister, the Minister for Home Affairs, the Minister for Broadband, Communications and the Digital Economy, the Leader of the Opposition, the Shadow Minister for Home Affairs, the Shadow Minister for Broadband, Communications and the Digital Economy, and the Leader of the Greens to inform them of this resolution.

Comments on the Bill

The Synod supports Schedule 1 to allow parole to be revoked without notice if it is necessary to protect the safety of the community or another person. We note that this does not change the test for when parole can be revoked, only if the offender needs to be notified that their parole is being revoked.

The Synod strongly supports Schedule 2 regarding the use of video recordings to strengthen the protections of Part IAD of the *Crimes Act* for vulnerable witnesses (such as children) who give evidence in particular criminal proceedings. The offences in question include for Commonwealth child sex offences and human trafficking and slavery offences. The Synod

notes that the amendment to not have to seek leave to use a video recording of a vulnerable witness is an approach already adopted by States and Territories.

The Synod supports Schedule 3 to remove the requirement for vulnerable witnesses to be available to give evidence at committal proceedings. The Synod agrees that the amendment, by prohibiting cross-examination at committal proceedings or proceedings of a similar kind, means vulnerable witnesses will be spared an additional risk of re-traumatisation. As noted in the Explanatory Memorandum, it will bring the Commonwealth into line with practice in other Australian States and Territories. A survey of 150 survivors of child sexual abuse globally conducted by the Canadian Centre for Child Protection found 58% had not reported the abuse to police.² In general fear was a key reason why survivors had not reported their abuse to police. There was fear of repercussions from the offender or offenders, fear of not being believed, and fear of the legal system itself.³ Some survivors spoke of the trauma caused by the legal process itself:⁴

It's a bit of a blur when I think back to that time. I was 12 years old when I went to court to confirm the photos that were taken of me. I had to identify one of the men that abused me. He sat in the same room as me, I had to identify him to the court. I just felt hatred searing from him towards me. Like I was the one in the wrong. The judge asked me many questions but I can't think of any specific question at the moment. I just remember thinking "when is this over, when can I go home?" It's a nightmare that still reoccurs in my mind to this day. Because of the trauma, that I went through at such a young age, most of my memories are fuzzy or black. My therapist told me it's Post Traumatic Stress Disorder.

Another child survivor of sexual abuse stated:⁵

My experience with the legal system was overwhelming. I just didn't feel safe, I didn't know who to turn to and I felt like half of the time I was the one being interrogated rather than the criminals. So many different people were asking me different questions, consistently pressuring me to provide answers that I didn't even understand myself. I never got a chance to process anything and therefore I didn't know what to say. I wish that I had one person to help me through everything and make sense of it all.

The Synod therefore supports measures that the Commonwealth Government is willing to take to reduce the fear created by the legal system to encourage more survivors to come forward and report the abuse they have suffered to police. It is important both to ensure justice for the survivor and to protect other children and vulnerable people from further abuse by the offender.

The Synod supports Schedule 4 to introduce new aggravated offences that relate to child sexual abuse. While the Synod supports the increased penalties for these serious acts of harm against children, the Synod believes that greater impact in terms of deterrence is achieved through increasing the risk of detection and this is where more impact can be achieved. The risk of getting caught and the public shame that follows, with loss of relationships and employment in addition to any length of time in prison, is far more likely to deter many offenders than a threat of a longer prison term if the would-be offender believes their chance of getting caught is small.

To that end the Synod welcomes the Commonwealth Government funding for research through the Australian Institute of Criminology into identifying measures to reduce online child sexual abuse.

² Canadian Centre for Child Protection, 'Survivors' Survey', 2017, 288.

³ Canadian Centre for Child Protection, 'Survivors' Survey', 2017, 289.

⁴ Canadian Centre for Child Protection, 'Survivors' Survey', 2017, 309.

⁵ Canadian Centre for Child Protection, 'Survivors' Survey', 2017, 324.

The Synod supports the insertion of a new offence to criminalise using a postal or similar services to “groom” another person to make it easier to procure persons under 16 years of age for sexual activity. The Synod supports this offence having extra-territorial reach as is proposed in the Bill. The Synod notes the 2017 estimate from the US-based International Centre for Missing & Exploited Children that there are 750,000 predators online at any given moment.⁶ The International Centre for Missing & Exploited Children has assessed Australia’s anti-grooming legislation as already amongst the best in the world.⁷

The International Centre for Missing & Exploited Children has recommended that cases where parents have been groomed to support the commission of the sexual abuse of the children in their care should be differentiated from those involving parents who are complicit in the grooming of their own child.⁸

The International Centre for Missing & Exploited Children has stated in relation to extra-territorial jurisdiction:⁹

Extraterritorial jurisdiction regarding the commission of sexual offenses against children is crucial. Extraterritorial jurisdiction offers a country a mechanism to hold its offenders accountable by providing the authority needed to prosecute its nationals for criminal acts committed beyond its borders. Dual criminality provisions, which require that a crime committed abroad must also be a crime in their home country, should be eliminated as they pose significant obstacles to the effectiveness of extraterritorial jurisdiction.

The Synod supports the insertion of ‘fictitious persons’ in the *Criminal Code* in relation to grooming offences to allow for the use of standard investigatory techniques for this crime type, whereby a law enforcement agent assumes the identity of a fictitious person (whether a child or a third party) and interacts with potential offenders before they have an opportunity to sexually abuse a real child. Canada, Greece and New Zealand, among other countries, have updated their legislation to ensure that online undercover operations used to apprehend online offenders are admissible in court proceedings.¹⁰ The International Centre for Missing & Exploited Children has similarly recommended that “Legislation must stipulate that a real child need not be involved to effectively prosecute offenders caught in such undercover operations.”¹¹ Further they state:¹²

.... undercover operations can give law enforcement an advantage in the detection, prevention, and prosecution of child sexual abuse and exploitation, especially offenses involving online abuse. Covert online operations are a proactive method allowing investigators to pose as children and enter chatrooms and other online

⁶ International Centre for Missing & Exploited Children, ‘Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review’, 1st Edition, 2017, p. 1; United Nations UNICEF Report, 2009; Lesa Gale, ‘World Congress speech: Global realities of child exploitation’, Australian Federal Police, 5 June 2017, <https://www.afp.gov.au/news-media/national-speeches/world-congress-speech-global-realities-child-exploitation>; and Canadian Centre for Child Protection, ‘Australia’s hotline joins global project combating online child abuse’, 5 June 2019.

⁷ International Centre for Missing & Exploited Children, ‘Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review’, 1st Edition, 2017, p. 40.

⁸ International Centre for Missing & Exploited Children, ‘Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review’, 1st Edition, 2017, p. 17.

⁹ International Centre for Missing & Exploited Children, ‘Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review’, 1st Edition, 2017, p. 18.

¹⁰ International Centre for Missing & Exploited Children, ‘Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review’, 1st Edition, 2017, p. 31.

¹¹ International Centre for Missing & Exploited Children, ‘Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review’, 1st Edition, 2017, p. 29.

¹² International Centre for Missing & Exploited Children, ‘Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review’, 1st Edition, 2017, pp. 29-30.

communities without needing to alter their physical identity or investing months in establishing a cover identity, as offline investigations require. In proactive operations, a crime has not yet been reported and law enforcement officers work to deter criminal offense before it occurs, as opposed to reactive operations after the commission of a crime....

Specifically with regard to online grooming, in the absence of a meeting occurring between an offender and a victim, sexually exploitative interactions, via computer-mediated communication, may only ever come to the attention of police authorities when a victim comes forward or discloses the abuse, or as a result of proactive undercover police operations. Thus online undercover operations help law enforcement to proactively identify offenders and possible offenders without waiting for child victims to come forward. Beyond detecting criminal activity, undercover operations can also aid prosecutions and deterrence by providing credible, direct (as opposed to circumstantial) evidence.

Strike Force Trawler and the NSW police reported nearly one arrest per week in 2016, largely as a result of covert operations online. Those arrested ranged from teenagers to 70-year-olds, including teachers, fathers, priests and police academy students. While some cases involve a fictitious child, the majority of cases, nearly 70%, begin with a real child and a tip from parents who noticed a worrisome online conversation that they reported to police.¹³

The Synod supports the amendment to subsections 471.27(3) and (4) and 474.28 (3) and (4) of the *Criminal Code* so that evidence that a person was represented to the defendant as being under a particular age, in the absence of evidence to the contrary, proof the defendant believed the person to be under that age.

The Synod supports the insertion of a new section 474.23A to criminalise the provision of an electronic service with the intention that the service will facilitate the commission of an offence against sections 474.22 (using a carriage service for child abuse material) or 474.23 (possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service) of the *Criminal Code*.

Project Arachnid of the Canadian Centre for Child Protection (CCCP) has so far detected 11.4 million images of potential child sexual abuse online that require review¹⁴ and is detecting more than 500,000 unique images of suspected child sexual abuse material requiring assessment each month.¹⁵ The CCCP has issued more than 4.2 million notices to content hosts to remove the material in question.¹⁶ The top 10% of content hosts take under 2.5 days to remove the material. Half of content hosts remove the material within 3.5 days of notification. The worst 10% of content hosts often seek to delay removal and dispute the removal request. They take more than 25 days to remove the material. One content host took 360 days to remove child sexual abuse material after it was brought to their attention.

The Financial Times reported that videos and images of children being sexually abused were being openly shared on Facebook's WhatsApp on a vast scale.¹⁷ Israeli researchers warned Whatsapp that it was easy to find and join dozens of chat groups where people were sharing

¹³ International Centre for Missing & Exploited Children, 'Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review', 1st Edition, 2017, p. 30.

¹⁴ <https://projectarachnid.ca/en/#shield>

¹⁵ Canadian Centre for Child Protection, 'Australia's hotline joins global project combating online child abuse', 5 June 2019.

¹⁶ <https://projectarachnid.ca/en/#shield>

¹⁷ Leila Abboud, Hannah Kuchler and Mehul Srivastava, 'WhatsApp fails to curb sharing of child sex abuse videos', *The Financial Times*, 20 December 2018, <https://www.ft.com/content/bff119b8-0424-11e9-99df-6183d3002ee1>

images and videos of children being sexually abuses. In one case, one of these groups had 256 members.

It is clear that law enforcement need increased powers to compel cooperation from technology corporations in addressing online child sexual abuse material.

The UK Internet Watch Foundation reported that in 2017 they detected 78,589 urls containing child sexual abuse imagery up from 13,182 urls hosting child sexual abuse material in 2013.¹⁸ There was also an increase in the number of individual images of children being hosted, with 293,818 images being viewed.¹⁹ Trend data from the UK Internet Watch Foundation has shown the proportion of images of victims of child sexual abuse under the age of 10 has been decreasing from 74% in 2011 to 81% in 2012 and 2013 to 69% in 2015 to 53% in 2016 and 55% in 2017.²⁰ In 2016 and 2017 2% of the images detected by the Internet Watch Foundation involved the sexual abuse of children aged two or under.²¹ At the same time the proportion of images of child sexual abuse showing sexual activity between adults and children including rape and sexual torture decreased, as shown in Table 1.

Table 1. Proportion of images viewed by the Internet Watch Foundation showing penetrative sexual activity involving children including rape and sexual torture 2011 – 2017.²²

Year	2011	2012	2013	2014	2015	2016	2017
Proportion of images showing penetrative sexual activity with children	64%	53%	51%	43%	34%	28%	33%

The Internet Watch Foundation reported detecting 571 newsgroups that hosted child sexual abuse material in 2017 compared to 455 in 2016.²³

The Internet Watch Foundation reported that in 2016 image hosts are most consistently abused for distributing child sexual abuse imagery. Offenders distributing child sexual abuse imagery commonly use image hosts to host the images which appear on their dedicated websites, which can often display many thousands of abusive images.²⁴

In terms of online media hosting child sexual abuse images, in 2016 the Internet Watch Foundation reported 41,364 image hosts, 6,223 cyberlockers, 2,776 banner sites, 1,681 image boards, 826 blog sites, 803 online forums, 727 web archives, 643 social networking sites and 634 images stores.²⁵

¹⁸Internet Watch Foundation ‘Internet Watch Foundation Annual Report 2017’, p. 15; and Internet Watch Foundation, ‘Internet Watch Foundation Annual & Charity Report 2013’, pp. 6, 17.

¹⁹ Internet Watch Foundation, ‘IWF Annual Report 2016’, p. 6.

²⁰ Internet Watch Foundation, ‘Internet Watch Foundation Annual and Charity Report 2012’, p. 11; Internet Watch Foundation, ‘Internet Watch Foundation Annual & Charity Report 2013’, p. 6; Internet Watch Foundation, ‘IWF Annual Report 2016’, p. 9; Internet Watch Foundation ‘Internet Watch Foundation Annual Report 2017’, p. 6.

²¹ Internet Watch Foundation, ‘IWF Annual Report 2016’, p. 9 and Internet Watch Foundation ‘Internet Watch Foundation Annual Report 2017’, p. 6.

²² Internet Watch Foundation, ‘Internet Watch Foundation Annual and Charity Report 2012’, p. 11; Internet Watch Foundation, ‘Internet Watch Foundation Annual & Charity Report 2013’, p. 6; Internet Watch Foundation, ‘IWF Annual Report 2016’, p. 9; and Internet Watch Foundation ‘Internet Watch Foundation Annual Report 2017’, p. 16.

²³ Internet Watch Foundation, ‘IWF Annual Report 2016’, p. 8; and Internet Watch Foundation ‘Internet Watch Foundation Annual Report 2017’, p. 15.

²⁴ Internet Watch Foundation, ‘IWF Annual Report 2016’, p.11.

²⁵ Internet Watch Foundation, ‘IWF Annual Report 2016’, p.11.

The Internet Watch Foundation also reported that in 2016 and 2017 they have seen criminals increasingly using masking techniques to hide child sexual abuse images and videos on the internet and leaving clues to paedophiles so they can find it. Since 2011, the Internet Watch Foundation has been monitoring commercial child sexual abuse websites which only display child sexual abuse imagery when accessed by a “digital pathway” of links from other websites. When the pathway is not followed or the website is accessed directly through a browser, legal content is displayed. This means it’s more difficult to find and investigate the illegal imagery. They saw a 112% increase in this technique in 2016 over 2015, with 1,572 sites using this technique in 2016.²⁶ This increased again in 2017, with 2,909 websites using this method to hide child sexual abuse material.²⁷

The number of newly identified hidden services (on the ‘dark web’) detected by the Internet Watch Foundation declined from 79 in 2015 to 41 in 2016 and then increased to 44 in 2017. They postulated that it is possible this could be the result of increased awareness by law enforcement internationally about hidden services distributing child sexual abuse imagery. Hidden services commonly contain hundreds or even thousands of links to child sexual abuse imagery that’s hosted on image hosts and cyberlockers on the open web.²⁸

Particularly problematic in failing to cooperate with law enforcement in removing child sexual abuse material online have been image hosts like Imager and TOR, including Depfile, which uses fastfluxing to change IP address rapidly in an effort to frustrate the efforts of law enforcement. The child sexual abuse site Playpen was established on TOR.²⁹

The Financial Coalition Against Child Pornography has also reported criminal businesses that provide “bulletproof hosting” to defeat the system of take down notices against child sexual abuse material. These hosts promise customers their websites will not be taken down, regardless of complaints or content. Bulletproof hosts use a combination of distributed services to maintain uptime for their customers. Specific tactics they use include:³⁰

- Registering the domain name with a registrar with relaxed enforcement. Depending on the location and enforcement policies, some registrars are used more heavily than others for illicit activities.
- Sharing and shuffling IP addresses to minimise downtime if particular IPs are shut down. This ensures content remains up while being indifferent to the status of particular domains. Instead of relying on one IP, bulletproof hosting relies on multiple IPs that can keep the content up independent of specific IP shut downs.
- Using a standardised yet specific naming methodology for name servers to minimise service interruption.
- Soliciting business and communicating with customers using unmonitored, private media. Bulletproof hosts frequently advertise their services on message boards frequented by their target customer base. From there, e-mail, instant messaging and other non-public options are used to further business dealings. This allows bulletproof hosting services to remain largely underground and reduces exposure to enforcement entities.
- Collecting payment using unregulated payment services to limit scrutiny and preserve anonymity. The use of small payment processors originating from outside the US is

²⁶ Internet Watch Foundation, ‘IWF Annual Report 2016’, pp. 5, 17.

²⁷ Internet Watch Foundation ‘Internet Watch Foundation Annual Report 2017’, p. 24.

²⁸ Internet Watch Foundation, ‘IWF Annual Report 2016’, p. 13 and Internet Watch Foundation ‘Internet Watch Foundation Annual Report 2017’, p. 20.

²⁹ ‘Child abuse site creator jailed for 30 years’, BBC News, 8 May 2017, <http://www.bbc.com/news/technology-39844265>

³⁰ Financial Coalition Against Child Pornography, ‘Report on Trends in Online Crime and Their Potential Implications in the Fight Against Commercial Child Pornography’, 1 February 2011, pp. 12-13.

popular due to lax regulatory environments and lessened cooperation with law enforcement agencies.

The hosting of child sexual abuse material online is the result of those in charge of the various online media either not being vigilant, through to having a reckless disregard for what is being hosted to deliberate facilitation. There is a need for the law to deal with those that intentionally facilitate distribution and hosting of child sexual abuse material and this Bill does address this problem. The Synod supports the extraterritorial jurisdiction that will be applied to this offence in the Bill.

The Unit supports the clarification of section 474.25A of the *Criminal Code* in the Bill of the scope of the conduct captured by the offence including live-streamed child abuse. The involvement of Australians as both producers and consumers of live-streamed child abuse on a commercial basis was noted by UNICEF in the Philippines as far back as 2005:³¹

In recent times, coinciding with the Internet boom, cybersex joints have opened. These are establishments that employ men, women and children to perform live sexual acts, which are then broadcast on the Internet via webcam. These sexual acts range from taking their clothes off to masturbating for the customers and doing other similar acts. It is also reported that there are cybersex joints where both heterosexual and homosexual acts are caught on webcam. Customers with Internet connections and credit cards may view these from a computer at home anywhere in the world.

A number of these joints are found in Central Luzon. Lani (not her real name), who works full time for a local NGO, confirms the existence of numerous cybersex joints in their area. Most of these joints are operated by foreigners, mostly Australians and Americans, who have made the country their home. Usually, these foreigners have Filipino partners for their front men. She suspects that the owners of these joints have business partners abroad. Moreover, she also confirms that these cybersex joints employ children as young as 15 years old.

*The NBI [National Bureau of Investigation] also confirms that adult online entertainment providers exist in the country. These joints are offshore offices of adult online service providers in Western countries such as the United States. In May 2003, the NBI raided one of these joints, located at the plush San Lorenzo Village in Makati. According to the *Inquirer* (2003), the company was run by an American national. The joint's main office, however, is located somewhere in Nevada. It keeps an offshore office in the Philippines because it is much cheaper to operate here; Filipinas are paid much less than their US counterparts, and less money is spent on office maintenance. The company set up shop in a Makati mansion, which they subdivided into 10 different rooms, each room having two computers each complete with web cameras.*

The company, according to a NBI agent interviewed for the report, employed more than 20 women who went on eight hour shifts, twenty-four hours a day. Not surprisingly, the company also employed teenage children. In the raid, the NBI were able to rescue two children aged 16 and 17. The women and girls who worked for the company were not regular women in prostitution, as some were found to be college students while others were waitresses who were either recruited directly by the owners or by their friends.

Since then live streaming of child sexual abuse on demand, known as 'live distance child abuse', has involved hundreds of Australians. Many of the victims are Filipino children, as in the Philippines there are large numbers of people who speak English, there is high speed

³¹ Arnie Trinidad, *Child Pornography in the Philippines*, Psychosocial Trauma and Human Rights Program UP Centre for Integrative and Development Studies and UNICEF Manila, 2005, pp. 48-49.

internet services and there are remittance providers who are willing to look the other way and process the payments for the child sexual abuse sessions. The International Justice Mission stated that reporting of such 'cybersex trafficking' cases in the Philippines increased six-fold between 2014 and 2017.³² Australian offenders also target children in Cambodia, Thailand and Vietnam.³³

The Synod supports the new aggravated offences in section 474.25B of the *Criminal Code*. However, again such increased penalties will increase the length of time the worst offenders will spend in prison, but may do little to act as general deterrence to prevent the abuse of children if the risk of detection of the abuse does not increase. Review of criminological literature on what works to deter crime finds that there is substantial evidence that it is the perceived risk of apprehension that is more effective in deterring crimes.³⁴ This literature finds that perceived certainty of punishment is associated with reduced intended offending.³⁵ The conclusion is that risk of apprehension and not the severity of the legal consequences ensuing from apprehension that is the more effective general deterrent.³⁶

However, the Synod is concerned with Schedules 6 and 11 of the Bill, as mandatory minimum sentences and required periods of imprisonment need to be approached with extreme caution. As noted above, criminological research finds the risk of apprehension serves as a more effective general deterrent than the severity of the punishment. Removing judicial discretion can send a signal to the community that the legislative arm of government lacks faith in the ability of the judicial arm of government to carry out its function appropriately. This Bill already increases the maximum penalty that a court can impose on many offences related to the abuse of children, increasing the discretion of the judiciary to impose longer prison sentences. The Government has not provided any evidence as to why the courts are imposing the sanctions they are currently imposing. The impression created is that the Government has assumed the courts are not performing their function adequately and must be compelled to impose longer prison sentences and send more offenders to prison. Instead there may be good reasons for the courts currently imposing the sanctions they are, but without a proper analysis it is not possible to assess that the current sanctions are inadequate in relation to cases of child sexual abuse in general and that the solution is to seek to compel the courts to hand down longer periods of imprisonment and impose periods of imprisonment.

The Synod is supportive of any mandatory minimum sentences not applying to children and minors in section 16AAC of the *Crimes Act 1914*.

The Synod supports Schedule 7 of the Bill in relation to the presumption against bail as a means to improve community safety where there is a risk the accused person will continue to offend while on bail, destroy evidence, intimidate witnesses or not appear for subsequent hearings. The Synod is aware that those who have committed child sexual abuse often have

³² Lesa Gale, 'World Congress speech: Global realities of child exploitation', Australian Federal Police, 5 June 2017, <https://www.afp.gov.au/news-media/national-speeches/world-congress-speech-global-realities-child-exploitation>;

³³ Lucy Cormack, 'Someday I will get found and locked up': Inside the global fight against online child sex abuse', *The Sydney Morning Herald*, 16 June 2019, <https://www.smh.com.au/national/nsw/someday-i-will-get-found-and-locked-up-inside-the-global-fight-against-online-child-sex-abuse-20190613-p51xkt.html>

³⁴ Daniel S Nagin, 'Deterrence in the Twenty-First Century', *Crime and Justice* Vol. 42, No. 1, (August 2013), 201.

³⁵ Daniel S Nagin, 'Deterrence in the Twenty-First Century', *Crime and Justice* Vol. 42, No. 1, (August 2013), 201.

³⁶ Daniel S Nagin, 'Deterrence in the Twenty-First Century', *Crime and Justice* Vol. 42, No. 1, (August 2013), 202.

a long history of intimidating and manipulating their victims, so protecting survivors from such interference should be a consideration of the court in granting bail.

The Synod supports the amendment to paragraph 16A(2)(g) of the *Crimes Act 1914* that an offender be offered a reduction in their sentence for an early guilty plea as it saves victims and witnesses from the often harrowing experience of giving evidence and being cross-examined in open court.

The Synod supports the proposed paragraph 16A(2)(ma) to the *Crimes Act 1914* that introduces as a new consideration whether the person's standing in the community was used to aid in the commission of the offence, as a factor in aggravating the seriousness of the criminal behaviour to which the offence relates.

The Synod supports the new subsection 16A(2AAA) to the *Crimes Act 1914* which will require a court to have regard to the objective of rehabilitation of the offender when determining the sentence to be passed or order to be made.

In addition to the measures in the Bill the Synod repeats its request from 2012 that the Commonwealth Government implement the recommendation of the UN Committee on the Rights of the Child from 19 June 2012 to develop and implement a comprehensive and systematic mechanism of data collection, analysis, monitoring and impact assessment of child sexual abuse offences. This should include data collected on the number of prosecutions and convictions, disaggregated by the nature of the offence.

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