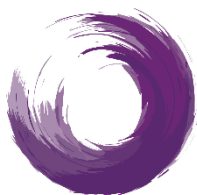

Combating Child Sexual Exploitation Legislation Amendment Bill 2019

Sexual Assault Support Service Inc. (SASS) Submission

March 2019



Sexual
Assault
Support
Service

For further information please contact:

**Jill Maxwell, CEO – Sexual Assault Support Service Inc.
(SASS)**

Phone: (03) 6231 0044

Postal: 31-33 Tower Road, New Town, Tasmania, 7008

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SASS submission

Introduction

Sexual Assault Support Service (SASS) is a free and confidential service for people of all ages who have been affected by any form of sexual violence, including intimate partner sexual violence. We also provide counselling to children and young people who are displaying problem sexual behaviour (PSB) or sexually abusive behaviour (SAB), along with support and information for their family members and/or carers.

The range of support options available at SASS includes counselling, case management and advocacy. We also provide information and support to professionals, and deliver training workshops and community education activities in a range of settings including schools and colleges.

SASS welcomes the opportunity to respond to the Combatting Child Sexual Exploitation Legislation Amendment Bill 2019.

Comments

We strongly support all elements of the Bill to:

- Create an offence of failure to protect a child at risk of a child sexual abuse offence;
- Create an offence of failure to report a child sexual abuse offence;
- Strengthen overseas persistent child sexual abuse laws;
- Criminalise the possession or control of child pornography material or child abuse material in the form of data that has been obtained or accessed using a carriage service;
- Prevent certain dealings with child-like sex dolls;
- Criminalise the possession of child-like sex dolls;
- Improve the definition of forced marriage; and
- Restrict the defence based on a valid and genuine marriage to overseas child sex offences.

Whilst the following is outside the scope of this Bill, we wish to bring it to the attention of the Senate Legal and Constitutional Affairs Legislation Committee.

We note that much attention has been (validly) paid to the issues of grooming of children through online mediums, and overseas child sex tourism. We strongly support efforts in this area. We do however also note that a significant amount of grooming of children for the purpose of committing child sexual assault occurs offline, and we note with concern that legislation in Australia is currently very limited in this area.

Current best practice in this area comes from England and Wales under the *Sexual Offences Act 2003*.

S14 Sexual Offences Act 2003

Under section 14 of the Act it is an offence to arrange a meeting with a child under 16, for oneself or someone else, with the intent of sexually abusing the child. A person commits such an offence if:

- they intentionally arrange or facilitate something that they intend to do, intend another person to do, or believe that another person will do, in any part of the world; and

- doing it will involve the commission of an offence (ie, sexual activity with a child; causing or inciting a child to engage in sexual activity; engaging in sexual activity in the presence of a child; or causing a child to watch a sexual act).

Someone found guilty of this offence will, on summary conviction, face up to six months imprisonment and/or a fine. If they are convicted in the Crown Court the maximum prison sentence is 14 years.

S15 Sexual Offences Act 2003

Section 15 of the Act also make it a criminal offence to meet a child following the grooming process. Someone aged 18 or over (A) commits this offence if they have met or communicated with another person (B) on at least two occasions and later intentionally meet B; arrange to meet B; A or B travel anywhere in the world with the intention of meeting each other and A has the intention of abusing them. For the offence to be committed, B must be under 16, and A does not reasonably believe that B is 16 or over.

If guilty of this offence, the offender will face up to six months imprisonment and/or a fine if tried in the magistrates' court, or a maximum prison sentence of 10 years if they are convicted in the Crown Court.

Anyone convicted of a grooming offence under either of these sections is required to notify the police of certain details, either for a period of time or for life. These are known as 'notification requirements'.

England and Wales also have three civil orders that aim to protect children from sexual abuse. These are Sexual Risk Orders, Sexual Harm Prevention Orders and Sexual Harm Notification Orders, which are all available under Part 2 of the Sexual Offences Act 2003:

Sexual Harm Prevention Orders

A Sexual Harm Prevention Order (SHPO) can be made by a court in respect of an individual who has been convicted, or cautioned ('cautioned' for the purposes of this Guidance includes those who have received a reprimand, final warning or youth caution) for a relevant offence and who poses a risk of sexual harm to the public in the UK or children or vulnerable adults abroad.

An SHPO may impose any restriction the court deems necessary for the purpose of protecting the public from sexual harm, and makes the offender subject to the notification requirements for the duration of the order. SHPOs are available to the court at the time of sentencing for a relevant offence, or on free-standing application to the magistrates' court by the police or National Crime Agency after the time of the conviction or caution.

Sexual Risk Orders

A Sexual Risk Order (SRO) can be made by a court in respect of an individual who has done an act of a sexual nature and who, as a result, poses a risk of harm to the public in the UK or children or vulnerable adults abroad. For an SRO to be imposed, the individual does not need to have committed a relevant (or any) offence.

An SRO may impose any restriction the court deems necessary for the purposes of protecting the public from harm (this includes harm from the defendant outside the United Kingdom where those to be protected are children and vulnerable adults), and requires the individual to notify the police of their name and address, including where this information changes. An SRO is available on free-standing application to a magistrates' court by the police or National Crime Agency.

Notification Orders

A Notification Order can be made by the court, on application by a chief officer of police, in relation to individuals who have been convicted, cautioned or had a relevant finding made against them for specified sexual offences in a country outside the United Kingdom. The effect of the order is broadly to make such offenders subject to the notification requirements of Part 2 of the 2003 Act as if they had been convicted of or cautioned for a relevant offence in the United Kingdom.

We are very concerned about the lack of comparable legislation in Australia. We are also concerned that the draft Bill hasn't considered the following in relation to Child Sexual Exploitation:

- The lack of nationally consistent definition of child sexual exploitation in Australia. We recommend adoption of the definition used in the UK, 'Child sexual exploitation is a form of child sexual abuse. It occurs where an individual or group takes advantage of an imbalance of power to coerce, manipulate or deceive a child or young person under the age of 18 into sexual activity (a) in exchange for something the victim needs or wants, and/or (b) for the financial advantage or increased status of the perpetrator or facilitator. The victim may have been sexually exploited even if the sexual activity appears consensual. Child sexual exploitation does not always involve physical contact; it can also occur through the use of technology.'
- The limited amount of Australian research on child sexual exploitation
- That the Royal Commission only contained two recommendations relating to child sexual exploitation (Recommendations 12.14 and 12.15); and
- The lack of attention paid to child sexual exploitation within state and territory child protection legislation and procedures.

Remedying these gaps requires research, collaboration, policy and legislative reform at both the national and state/territory levels. We are pleased to note the recent establishment of the Australian Centre to Counter Child Exploitation (ACCCE), and hope that the ACCCE can be a strong leader in this area.