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**Submission of the Synod of Victoria and Tasmania, Uniting Church in Australia to the Senate Legal and Constitutional Affairs Committee
Inquiry into *Combating Child Sexual Exploitation Legislation Amendment Bill 2019*
16 August 2019**

The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes the opportunity to make a follow-up submission to the inquiry into the *Combating Child Sexual Exploitation Legislation Amendment Bill 2019* and supports its passage through the Parliament.

As stated in our submission in March the Synod supports the Bill:

- Introducing an offence for a Commonwealth officer who negligently fails to reduce or remove the risk a child under their care, supervision or authority being sexually abused, if it is part of their actual or effective responsibilities as a Commonwealth officer to reduce or remove that risk.
- Introducing an offence for a Commonwealth officer who exercises care or supervision over children, will be guilty of an offence if they know of information that would lead to a reasonable person to believe or suspect that another person has or will engage in conduct concerning a child that constitutes a child sexual abuse offence. Care needs to be taken in setting the threshold for reporting. A low threshold will lead to the banning of many types of behaviour involving interaction with children (including behaviour that can be very beneficial for children) and to a large number of 'false positive' reports (concerns that turn out to be unfounded). A high threshold will allow behaviour that can be used by perpetrators as opportunities for grooming and a large number of 'false negatives' (failure to report concerns which hindsight shows were evidence of grooming or abuse).¹
- Introducing offences to criminalise the use of a carriage service to advertise or solicit child-like sex dolls, use of a postal service to send child-like sex dolls.
- Introducing an offence to possess child-like sex dolls.
- Introducing offences for possessing or controlling child abuse material in the form of data held in a computer or contained in a data storage device, obtained or accessed via a carriage service, to ensure that possession of child abuse material is criminal behaviour.

¹ Eileen Munro and Sheila Fish, 'Hear no evil, see no evil: Understanding failure to identify and report child sexual abuse in institutional contexts', Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, Social Care Institute for Excellence, September 2015, 33-34.



- Including all marriages involving children under the age of 16 in the definition of forced marriage in subsection 270.7A(1) of the *Criminal Code*.
- Removing Section 272.17 of the *Criminal Code* to ensure the existence of a marriage between the defendant and a child under the age of 16 is no longer a valid defence to conduct that is otherwise criminal.
- Replacing references to 'child pornography material' with 'child abuse material' through the *Criminal Code* and other Commonwealth legislation.

The offence for a Commonwealth officer negligently failing to reduce or remove the risk a child under their care, supervision or authority being sexually abused needs to be supported by ensuring that such Commonwealth officers have the authority and resources to reduce or remove such risks.

The Synod asks that the Bill be amended to include a strict liability offence for an online platform to allow the sale of childlike sex dolls from their platform. The offence should include a defence that the platform took all reasonable steps to ensure childlike sex dolls could not be sold on their platform. Such a measure is needed to ensure that companies like Amazon are required to screen advertisements they host to prevent the sale of childlike sex dolls.

Child Abuse Material

The Synod is pleased that the Bill has been amended to include the provision that all references in the *Criminal Code* and throughout Commonwealth legislation of 'child pornography material' and replacing these references with a single definition of 'child abuse material'. The use of 'child abuse material' reflects the terminology used by those who work with survivors of child sexual abuse and law enforcement. 'Child pornography' still appears in some international conventions and in early laws written to criminalise the material. Given the growing acceptance of pornography as a legitimate product in Western societies, the term 'child pornography' is now seen to offer some legitimacy to the material in question when it should be regarded as unacceptable and criminal. The term 'child pornography' is also used by opponents of the full range of measures needed to eliminate such material. The AFP has for years provided advice to media at the bottom of media releases related to offences committed in relation to child sexual abuse material stating:

Note to media: CHILD EXPLOITATION IMAGES, NOT 'CHILD PORNOGRAPHY'

Use of the phrase 'child pornography' actually benefits child sex abusers:

- *It indicates legitimacy and compliance on the part of the victim and therefore legality on the part of the abuser*
- *It conjures up images of children posing in provocative positions, rather than suffering horrific abuse*
- *Every photograph captures an actual situation where a child has been abused. This is not pornography.*

It would make sense for Commonwealth legislation to reflect the advice of the law enforcement agency with the responsibility of combating the production, distribution and consumption of child sexual abuse material.

Child-Like Sex Dolls

Since March, when the Synod provided its previous submission, there has been significant additional action in other jurisdictions to address the issue of child-like sex dolls.



A Bill to outlaw childlike sex dolls passed the Tennessee House in April 2019.²

In May 2019 the state of Florida passed a law to make it illegal to possess, sell, gift or display a childlike sex doll, with a penalty of up to five years in prison.³ The law will take effect on 1 October 2019.

In February 2019 the Singapore Parliament had a Bill introduced that included offences for the possession, production, sale and distribution of child sex dolls.⁴

The UK Crown Prosecution Service has issued new legal guidance to help bring charges against importers of child-like sex dolls and imprison them for up to seven years.⁵ Importers in the UK will be charged under violations of section 42 of the *Customs and Consolidation Act 1876* and section 170(1)(a) of the *Customs and Excise Management Act 1979*.⁶ The maximum sentence is seven years' imprisonment or an unlimited fine.⁷ Sellers and distributors will face up to five years in prison or an unlimited fine under violations of section 2(1) the *Obscene Publications Act*.⁸ Sending such dolls through the post will be prosecuted as a violation of section 85(3)(b) of the UK *Postal Services Act 2000* with a prison term of up to a year or an unlimited fine.⁹ As of the end of March 2019, UK Border Force seized 230 suspected child sex dolls and referred to UK police since September 2016. Most had been purchased online.¹⁰ However, independent legal opinions are that there remains a gap in the UK law so that it is not illegal to possess a childlike sex doll in England and Wales.¹¹ If a child sex doll was manufactured and warehoused in the UK before purchase, the purchaser would not have committed an offence.¹²

Bizarrely, while possession of a childlike sex doll is not illegal in England and Wales, possessing a photograph of one might be. If the doll was to be photographed naked, it could be argued that

² 'Bill banning child sex dolls heads to governor's desk', <https://www.tennessean.com/>, 21 April 2019.

³ 'Governor DeSantis Signs Ban On Child-Like Sex Dolls', CBS Miami, 23 May 2019.

⁴ Tan Tam Mei, 'Parliament: New Bill seeks to criminalise exploitative sexual relationships and child sex dolls', *The Straits Times*, 11 February 2019.

⁵ Lizzie Dearden, 'Hundreds of child sex dolls seized at UK borders, sparking legal crackdown', *The Independent*, 28 March 2019.

⁶ UK Crown Prosecution Service, 'CPS takes action to tackle childlike sex dolls', Media Release, 28 March 2019.

⁷ UK Crown Prosecution Service, 'CPS takes action to tackle childlike sex dolls', Media Release, 28 March 2019.

⁸ UK Crown Prosecution Service, 'CPS takes action to tackle childlike sex dolls', Media Release, 28 March 2019.

⁹ UK Crown Prosecution Service, 'CPS takes action to tackle childlike sex dolls', Media Release, 28 March 2019.

¹⁰ UK Crown Prosecution Service, 'CPS takes action to tackle childlike sex dolls', Media Release, 28 March 2019.

¹¹ Alex Chapman, 'New Guidance issued by CPS about childlike sex dolls', Hodge, Jones & Allen Solicitors, 29 March 2019; and Bela Bonita Chatterjee, 'Child sex dolls and robots: challenging the boundaries of the child protection framework', *International Review of Law, Computers & Technology*, 21 April 2019, 3.

¹² Alex Chapman, 'New Guidance issued by CPS about childlike sex dolls', Hodge, Jones & Allen Solicitors, 29 March 2019.



the photograph then constitutes a 'pseudo' indecent image under the *Protection of Children Act 1978*.¹³

The first successful prosecution for importing a child sex doll in the UK was completed in June 2017. A man had purchased the child sex doll online on eBay and it was shipped to him from Hong Kong.¹⁴ It was seized by authorities on route at East Midlands Airport and he was arrested. He was ultimately sentenced to two years and eight months' imprisonment for his offending.¹⁵

In February 2019, Brian Leach, a 62-year-old from Maidstone, Kent, was sentenced to 28 weeks in prison for having ordered a one metre tall doll from China for £500, which included a package of accessories which clearly indicated it was intended for sexual gratification.¹⁶

The US Senate has failed to pass the *Curbing Realistic Exploitative Pedophilic Robots (CREEPER) Act*.

A media article from December 2018 reported that the Canada Border Services Agency intercepted at least 42 childlike sex dolls between January 2016 and August 2018, seizing them as illegal child abuse material.¹⁷ Officials estimated the values of the dolls ranged from \$50 to \$9,000.¹⁸ Companies operating in China and Japan were the main source of the dolls that had been seized.

In March 2019 there were media reports that a company, DVKFP, was caught allegedly selling childlike sex dolls on Amazon.¹⁹ It was reported that the company promised the dolls would be sent via a "hidden delivery". One of the dolls appeared to resemble a prepubescent little girl wearing a child's headband. Another doll appeared to be a teen wearing torn clothing that exposed her bra, had a gag in her mouth and her hands tied behind her back. It was reported DVKFP wrote that the dolls were "suitable for games with different clothing." Amazon removed the dolls from sale after the issue became public.²⁰ However, this was not the first time Amazon was found to be hosting the sale of childlike sex dolls. In April 2018, Amazon removed more than a dozen postings selling childlike sex dolls after being publicised by the BBC and public criticism from the Children's Commissioner for England.²¹ In the pictures posted with the

¹³ Alex Chapman, 'New Guidance issued by CPS about childlike sex dolls', Hodge, Jones & Allen Solicitors, 29 March 2019.

¹⁴ Bela Bonita Chatterjee, 'Child sex dolls and robots: challenging the boundaries of the child protection framework', *International Review of Law, Computers & Technology*, 21 April 2019, 2.

¹⁵ Alex Chapman, 'New Guidance issued by CPS about childlike sex dolls', Hodge, Jones & Allen Solicitors, 29 March 2019.

¹⁶ Neil Shaw, 'New rules on child sex dolls after Devon man jailed', <https://www.devonlive.com>, 29 March 2019.

¹⁷ Rita Celli and Kathleen Harris, 'Dozens of child sex dolls seized by Canadian border agents', CBC News, 12 December 2018.

¹⁸ Rita Celli and Kathleen Harris, 'Dozens of child sex dolls seized by Canadian border agents', CBC News, 12 December 2018.

¹⁹ Leigh Egan, 'Company allegedly caught selling child sex dolls, rape victim dolls on Amazon: Report', <https://www.crimeonline/>, 26 March 2019

²⁰ <https://www.snopes.com/fact-check/amazon-child-sex-dolls/>

²¹ Patrick Evans, 'Children's Commissioner criticises Amazon over Child Sex Dolls', BBC News, 12 April 2018; and Kieran Guilbert, 'Amazon pulls child sex dolls after criticism from UK watchdog', Reuters, 13 April 2018.



advertisements the dolls had been placed in sexual poses with descriptions such as “Mannequin Sexy” and “100% mimics girl’s body”.²² Several of the dolls were described as coming with “sexy lingerie”.²³ The BBC reported that it alerted Amazon to the sale of a childlike sex doll and Amazon removed the advertisement, only to allow it to be posted again three days later.²⁴

Forced Marriage

With regards to the section on forced marriage in the Bill, while supporting the proposed changes, the Synod would again urge that much more is needed to address the issue and, ideally, prevention is much more desirable in many cases than prosecution and imprisonment. Prosecution and imprisonment assume that prosecution is in the best interest of the victim and is the best indicator for success in ending the practice of forced marriage. However, the inherently personal relationship between offenders and victims often means the person being forced to marry does not regard prosecution as a desirable outcome—they do not want to get married or are seeking support to leave the marriage safely. In such situations, requiring cooperation with the criminal justice system could be preventing women and girls from leaving dangerous, if not life-threatening circumstances.

Decentralising the role of law enforcement would fundamentally change how we approach the issue to allow more significant consideration of non-criminal justice outcomes as determiners for success. Currently, being able to access 200 days of support services for victims of forced marriage or those in danger of forced marriage still needs to be made via a referral from the Australian Federal Police. Beyond the interests of the individual are those of the individual's community, which includes other young women at risk. The unbalanced emphasis on prosecution to reduce the practice of forced marriage poses the risk of driving communities into further isolation. It also dramatically limits the tools and strategies being developed and made available to crucial responders and to community members themselves to address the reasons why forced marriage is practised so it can be ended once and for all.

A problematic gap in addressing needs of individuals at risk of early and forced marriage is the lack of a localised, operational framework that stipulates the roles and responsibilities of state and federal government agencies and how they should coordinate to serve victims and people at risk best.

There remains little acknowledgement of the intersection of forced marriage with other complex social problems including family violence, child abuse, sexual assault/rape, stalking, female genital mutilation and homelessness. Various front line responders such as state police, school teachers and health care providers are positioned in the community to identify and respond to forced marriage cases; however, across the country, many remain unaware of the national policy framework and do not have the knowledge, resources and mechanisms necessary to provide appropriate direct support. As such, women and girls are reliant on a precarious

²² Patrick Evans, ‘Children’s Commissioner criticises Amazon over Child Sex Dolls’, BBC News, 12 April 2018.

²³ Patrick Evans, ‘Children’s Commissioner criticises Amazon over Child Sex Dolls’, BBC News, 12 April 2018.

²⁴ Patrick Evans, ‘Children’s Commissioner criticises Amazon over Child Sex Dolls’, BBC News, 12 April 2018.



culmination of circumstances that may or may not serve their best interests, as illustrated in the below case studies.

In the absence of a clear, nationwide operational framework, too much is left to chance. The current approach consists of an ad hoc, personalised response that depends upon the knowledge, decisions and actions of individuals which vary significantly within and across the states. Taking the child protection system as an example, the lack of clarity is resulting in a broad interpretation of the system's role and obligations, particularly concerning young women approaching the age of 18. In cases where child protection authorities do not accept they have a duty of care, there are no provisions for legal guardianship.

Establishing a national framework for case coordination would not only assist responders to do their jobs better, but it would also facilitate a more rights-based response that strikes a better balance between the public interest and the interests of the young women most directly impacted by forced marriage.

A more coordinated response would also provide a process where a young woman's needs determine the best outcome for safety and stability rather than by a prescribed government framework.

To address the above issues, Australia must build a nuanced and comprehensive response that addresses the complexity of early and forced marriage and meets the distinct needs of the young people affected.

With the increase in referrals, along with the results of recently completed pilot programs, we are getting a clearer picture of early and forced marriage in Australia. There is also a growing body of research and good practice examples from overseas, where efforts to curb forced marriage have been underway for several years. There is a distinct opportunity for the Australian Government to build on this knowledge and strengthen its approach to early and forced marriage.