



CDPP

Australia's Federal Prosecution Service

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Dr Sean Turner
Committee Secretary
Parliamentary Joint Committee on Law Enforcement
PO Box 6100
Parliament House
Canberra ACT 2600

By email: le.committee@aph.gov.au

Dear Dr Turner,

**Responses to Questions Taken on Notice from the Parliamentary Joint Committee on Law
Enforcement Inquiry into Law Enforcement Capabilities in Relation to Child Exploitation**

The Commonwealth Director of Public Prosecutions (CDPP) appreciates the opportunity to respond to questions taken on notice. As requested, the relevant portions of the transcript containing the questions have been extracted and the CDPP's response to the respective questions are set out below the respective extract.

Question 1:

CHAIR: Understood. Your submission particularly talks about instances having increased of prosecuting an offender for online live cam. I wonder if you could quantify that, for the committee, within your broader statistics?

Mr de Crespigny: I don't have exact statistics to hand. But, whereas several years ago such cases would have been the exception rather than the norm, now we would have a regular flow of those cases, and we regularly have those matters before the court. They largely involve cases of children being exploited online, mainly in the Philippines.

CHAIR: Would you be willing to take that on notice for us? We're happy to have it in confidence, if that's what you're concerned about, just to help us understand the breakdown.

Mr de Crespigny: I'm happy to take it on notice, and we'll try to provide some meaningful statistics about the process. I'm wary because statistics in this area get very complicated, because none of these matters are simple. What we find is that unlike with a lot of offending—for instance, with drug importation, you would have one charge: that the person has imported a commercial quantity of cocaine or whatever—in this area, because you're dealing with people offending over a considerable period of time and doing a lot of different offending, we end up with a very large number of different charges. So a person who was doing live streaming quite possibly has also accessed child abuse material, may

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possess child abuse material, may have sought to groom or procure a child within Australia et cetera. So it can start getting quite challenging for us to provide a breakdown of statistics, and it would be very time consuming. But, if we can provide you with some generalised information—maybe not to the decimal point—we'd be very happy to.

CDPP's response:

Live streaming of child abuse material in return for payment predominantly involves material streamed from overseas. Such offending is normally prosecuted under s272.9(1) of the *Criminal Code* (Cth), engaging in sexual activity with child, or s272.11(1), persistent sexual abuse of child outside Australia.

The number of individual offenders convicted for an offence under s 272.9(1) involving the live streaming of child abuse material over the last five financial years are as follows:

- Financial year 2016/17: 1
- Financial year 2017/18: 0
- Financial year 2018/19: 2
- Financial year 2019/20: 0
- Financial year 2020/21: 1
- Financial year 2021/22 (as at 20/1/2022): 1

4 offenders who are charged with an offence under s 272.9(1) involving the live streaming of child abuse material are currently before the Court.

The number of individual offenders convicted for an offence under 272.11(1) involving the live streaming of child abuse material over the last five financial years are as follows:

- Financial year 2016/17: 0
- Financial year 2017/18: 0
- Financial year 2018/19: 1
- Financial year 2019/20: 0
- Financial year 2020/21: 0
- Financial year 2021/22 (as at 20/1/2022): 2

Question 2:

CHAIR: We've been hearing that these communities are very collaborative with one another. So, in the case where they are not sharing CAM but are sharing manuals of how to evade law enforcements or techniques of how to groom a child, would you be comfortable with there being appropriate offences to cover those cases so that they could be charged with something before it escalated to the more serious offence of producing CAM?

Mr de Crespigny: Possibly. I'd like to take those two examples on notice.

CDPP's response:

Whether or not conduct of sharing manuals on how to evade law enforcement or techniques of how to groom a child is able to be prosecuted under a Commonwealth offence would depend on the exact circumstances of the offending.

If the subject of the manuals is overseas offending, the sharing of them may be captured by section 272.19(1) of the *Criminal Code* (Cth) which criminalises conduct that is done with the intention of encouraging a child sex offence outside of Australia. The provision is as follows:

272.19 Encouraging offence against this Division

(1) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the person does so with the intention of encouraging an offence against this Division (other than this section or section 272.20); and
- (c) the conduct is reasonably capable of encouraging such an offence.

Penalty: Imprisonment for 25 years.

An 'offence against this Division' as set out in s 272.19(1)(b) refers to offences within Division 272 of the *Criminal Code* (Cth) which are child sex offences outside Australia. Some examples of these offences are: sexual intercourse with a child outside of Australia (s 272.8); sexual activity (other than sexual intercourse) with a child outside Australia (s 272.9); procuring a child to engage in sexual activity outside Australia (s 272.14); grooming a child to engage in sexual activity outside Australia (272.15); and grooming a person to make it easier to engage in sexual activity with a child outside Australia (s 272.15A).

It may also be captured by the offences under s272.20 of the Code:

272.20 Preparing for or planning offence against this Division

Offences involving sexual intercourse or other sexual activity with a child, and benefiting from the offence

(1) A person commits an offence if:

- (a) the person does an act; and
- (b) the person does so with the intention of preparing for, or planning, an offence against section 272.8, 272.9, 272.10, 272.11 or 272.18.

Penalty: Imprisonment for 10 years.

Offences involving sexual intercourse or other sexual activity with a young person

(2) A person commits an offence if:

- (a) the person does an act; and
- (b) the person does so with the intention of preparing for, or planning, an offence against section 272.12 or 272.13.

Penalty: Imprisonment for 5 years.

(3) Subsections (1) and (2) apply:

- (a) whether the act is done within or outside Australia; and
- (b) whether or not an offence against a provision referred to in paragraph (1)(b) or (2)(b) is in fact committed; and
- (c) whether or not the act is done in preparation for, or planning, a specific offence against a provision referred to in paragraph (1)(b) or (2)(b); and
- (d) whether or not the act is done in preparation for, or planning, more than one offence against a provision referred to in paragraph (1)(b) or (2)(b).

If the subject of the manuals is domestic offending, the sharing over the internet of manuals on how to evade law enforcement or techniques of how to groom a child may be captured by section 474.25C of the *Criminal Code* (Cth) which criminalises the conduct of preparing or planning to cause harm to, engage in sexual activity with, or procure for sexual activity, a person under 16 years of age. The provision is as follows:

474.25C Using a carriage service to prepare or plan to cause harm to, engage in sexual activity with, or procure for sexual activity, persons under 16

A person (the **first person**) commits an offence if:

(a) the first person does any act in preparation for doing, or planning to do, any of the following:

(i) causing harm to a person under 16 years of age;

(ii) engaging in sexual activity with a person under 16 years of age;

(iii) procuring a person under 16 years of age to engage in sexual activity; and

(b) the first person is at least 18 years of age; and

(c) the act is done using a carriage service.

Penalty: Imprisonment for 10 years.

Example: A person misrepresents their age online as part of a plan to cause harm to another person under 16 years of age.

This section is potentially capable of capturing the conduct of both the sender and the recipient of such manuals.

Furthermore, if the manuals are provided in the context of someone actually committing an offence, then the provision of the manuals may amount to the aiding, abetting, counselling, or procuring the offence. If the manuals are provided as part of the agreement that a serious offence will take place and one of the parties takes a step towards fulfilling that agreement, then the conduct may amount to conspiring to commit the offence.

If the manuals describe sexual activity with a child, then the manuals are likely to be child abuse material and subject to relevant offence provisions.

The CDPP has not considered any possible offences under State or Territory law.

Question 3:

Mr CONAGHAN: Just on that, then, Deputy Director—if you don't know, it would be very helpful to find out—were any of those acquittals as a result of a technicality because of changing technologies and the inability of legislation to keep up with that?

Mr de Crespigny: I'll take that on notice. My feeling is that that's not the case, but I'll take that on notice.

CDPP's response:

Having had the acquittals between the financial years of 2016/17 and 2020/21 reviewed, I can confirm that none of those acquittals were a result of a technicality because of changing technologies and the inability of legislation to keep up with the changes in technology.

Please do not hesitate to contact me if I can provide any further assistance.

Yours faithfully,

Mark de Crespigny
Deputy Director
Illegal Imports and Exports and
Human Exploitation and Border Protection