



Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

October 6, 2017

Dear Committee Members,

Re: Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 [Provisions]

Collective Shout is pleased to be given this opportunity to provide a submission to the Committee on this most urgent matter of child sexual exploitation.

Collective Shout is a grassroots campaigning against the objectification of women and the sexualisation of girls. We address the exploitation of women and girls in all forms, including in media, advertising, and popular culture through to pornography, prostitution and trafficking.

We commend the Federal Government for responding to community distress about the growing number of offences being committed against children, including by Australian child abuse networks, through introducing new measures to address the global crime of online child sexual exploitation and to protect its vulnerable victims.

The severity of the crimes committed against children must be understood and acknowledged. Our co-founder Melinda Tankard Reist has described the practice of 'Live Distant Child Abuse' as 'paid-per-view torture'.

To all the piteous horrors inflicted on the youngest members of the human family around the world, a new atrocity has been added: "Live Distant Child Abuse." There is a growing pandemic of this practice of paid-per-view torture. This practice involves the real-time rape and torture of babies, infants and pre-pubescent children. According to a report from the Canadian Centre for Child Protection, "59.72% of the abuse acts against babies and toddlers involved explicit sexual activity/assaults and extreme sexual assaults." These are acts that are at the highest levels of the Copine scale - a rating system used to categorise the severity of images of child sex abuse.¹

Data about the growing scourge of online child sexual exploitation casts light on why this is now a pandemic.² We share the frustration of law enforcement officers who report the noncooperation of

¹ Tankard Reist M (2017). Why are Australian Telcos and ISPs enabling a child sexual abuse pandemic? *ABC Religion and Ethics* 6 July. <http://www.abc.net.au/religion/articles/2017/07/06/4697504.htm>

² Drawn primarily from Burn J, Dobinson I, Neilson B, Scully-Leaf S, Chandrasekera I and Sheridan E (2017). *Behind the Screen: Online Child Exploitation in Australia*, Anti-Slavery Australia. <http://www.antislavery.org.au/images/behind%20the%20screen%20-%20report.pdf>



ISPs as one of the barriers to successful prosecutions and rescues. We are also disturbed by manifestly inadequate sentencing for child sexual exploitation offenders.

- There are currently more than 150 million images and videos documenting child exploitation available online.
- INHOPE, a network of 46 hotlines in 40 countries to assist in the fight against child sexual abuse, has confirmed 83,644 unique URLs as containing materials from 45 countries.
- INTERPOL's International Child Sexual Exploitation image database records an average of seven unique child sexual exploitation victims made per day.
- Internet Watch Foundation (IWF) found that reports of child sexual abuse imagery rose by 417% between 2013 and 2015.
- In 2015, 68,092 reports were confirmed as illegal images or video, an increase of 417%, since 2013.
- 69% of victims were assessed as aged 10 or under;
- 1,788 of the victims were assessed as aged 2 or under;
- 34% of images were category A, involving the rape or sexual torture of children.
- Those working in the field say infants are increasingly attractive to abusers, because they can't speak or defend themselves.

Collective Shout fully supports the intention of the Bill.

1. Collective Shout supports the provision of more resources to enable law enforcement agencies to investigate and tackle online child sexual exploitation crimes.

Collective Shout recommends that law enforcement agencies be adequately equipped to develop analytical tools and new techniques to identify perpetrators and rescue victims. We urge the greatest possible cooperation across agencies and borders to allow information exchange so that all such cases can be prosecuted.

2. Collective Shout supports the amendment to replace the term 'child pornography' with the more appropriate term 'child abuse material' to reflect the reality of such crimes.

Changing definitions within legislation and policy documents better reflects the realities of the crimes, and aligns with international standards. We refer to the report by the Interagency Working



Group on Sexual Exploitation of Children (Luxembourg, ECPAT)³ which draws on experts from around the world to clarify terminology in relation to child exploitation and abuse, and child protection. It is unfortunate that the public understanding of the term 'pornography' has become distant from the reality of sexual exploitation and abuse.

3. Collective Shout supports the amendments to insert a presumption against bail for certain Commonwealth child sex offences and offenders, presumptions in favour of cumulative sentences and actual terms of imprisonment for Commonwealth online child sexual exploitation offenders, to increase the maximum penalties for certain Commonwealth offences and breaches of reporting requirements, and to insert new additional factors for mandatory consideration at sentencing.

Collective Shout supports these measures as deterrents and as appropriate for the gravity of the crime.

ECPAT International recommended a presumption against bail based on its findings in a 2016 report *Offenders on the Move*, partly because of the known occurrence of aggression and threats toward victims and informers by some individuals who have been charged with child sexual exploitation crimes.⁴

Stronger maximum penalties, cumulative sentences and actual terms of imprisonment are, we believe, appropriate for the nature of online child sexual exploitation crimes. International reports indicate that some offenders believe, or at least claim to believe, that what they are doing is not so bad:

Social distancing allows offenders to argue that child sexual exploitation or prostitution is acceptable in the 'other' culture, so they are not doing anything wrong, or to convince themselves that they are doing the children a favour by giving them cash to survive. They also rely on the argument that the child wanted the interaction – or at the very least did not object. One offender remarked of his experience in a commercial brothel for children in South America: "The kids didn't seem upset about it... they just... you know, it was just, I guess, their life...". Underlying these rationales is the essentially racist view that people (especially

³ Greijer S and Doek J (2016). Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse. Guidelines, Terminology and Semantics Interagency Working Group on Sexual Exploitation of Children, 28 January 2016. <http://cf.cdn.unwto.org/sites/all/files/docpdf/terminologyguidelines.pdf>

⁴ Hawke A and Raphael A (2016). *Offenders on the Move: Global Study Report on Sexual Exploitation of Children*, ECPAT International, p74. <http://globalstudysectt.org/wp-content/uploads/2016/05/Global-Report-Offenders-on-the-Move-Final.pdf>



children) in other countries are different and probably inferior, so exploiting them is not the morally repugnant act that it would be at home.”⁵

4. Collective Shout supports mandatory minimum penalties

We share the frustration and distress of other experts, advocacy groups and law enforcement agencies about weak sentencing in past cases, which have not reflected the fact that despite not being a contact crime, real children were abused. On average, fewer than half of all convicted offenders are given prison terms.⁶ Anti-Slavery Australia reports:

Our findings, based on a review of recent case law, indicate that on average, defendants charged and convicted under Commonwealth provisions receive at most 2 to 3 years imprisonment, and where multiple charges are involved, these sentences are served concurrently ... Even in cases where offenders have vast collections of child exploitation material, and have used internet services to groom and procure more than one child for the purposes of contact offending, the case law indicates that such aggravating elements increase the overall sentence only marginally.”⁷

We support Anti-Slavery Australia’s recommendation that further consultation be conducted into the potential effects of mandatory minimum sentencing, with the view to ensuring prosecutors have maximum leverage to obtain information from individuals charged with these crimes.

Mandatory minimum penalties also serve to remove some nuance from such cases; there is a broad spectrum of harm and culpability and judges should be able to determine appropriate penalties based on all the factors. We welcome the amendments that introduce more aggravating circumstances to inform sentencing, as well as harsher maximum penalties.

5. Collective Shout supports the amendment to insert a range of new aggravated offences for child sexual abuse, as well as new offences related to 'grooming' and the provision of electronic services to facilitate dealings with child abuse material online.

We acknowledge the need for governments to be proactive in broadening legislation as technological advancements produce new opportunities to exploit children.

The amendments relating to the provision of electronic services to facilitate child exploitation online are important; such services function by causing sexual exploitation of children to proliferate, as well

⁵ Hawke and Raphael (2016) *op cit* p58

⁶ Burn, Dobinson, Neilson *et al* (2017) *op cit*.

⁷ *ibid*



as sometimes demanding ongoing exploitation of children as a requirement of members, as was the case for Australian offenders Shannon McCooles and Graham ('Lux') in recent years. This amendment will prevent administrators of these networks from arguing that they themselves never harmed a child. It takes into account the horrific abuse of children that occurred as a result of this person's administrative role.

We note also the connection between online offences and contact crimes. Convicted sex offender Brett Le Gassick streamed sexual abuse of Filipino children to his home in Melbourne, but was also planning to meet with girls for sex in the Philippines.⁸ ECPAT also found that in the Netherlands livestreaming may increase the risk of actual contact with children.⁹

6. Collective Shout supports the amendment to clarify the scope of the definition of 'engage in sexual activity' so as to encompass the crime of online child sexual exploitation.

It is appropriate that in the case of online exploitation, while no physical contact has taken place between the offender and any children, the offender has nonetheless directly caused sexual exploitation to occur. 'Engage in sexual activity' is a term that can encompass involvement in sexual activity via various media. Furthermore, as recommended by Greijer and Doek (2016, Luxembourg Report), 'sexual activity' should include both explicit and non-explicit sexual activities that cause such harm to the sexual integrity of the child.¹⁰

7. Collective Shout recommends consideration of increasing the age of majority to 18 when investigating and prosecuting child sexual exploitation crimes in an international context, in accordance with the Convention on the Rights of the Child (CRC).

We believe this is important in achieving legal clarity for transnational criminal activity, and was agreed upon by all participating organisations in the Luxembourg Report.¹¹ Further consultation may be required to analyse how this might work in the Australian legal context. We note that Subdivision F of Division 474 relates to sexual activity with person under 16, and we recommend that the Committee consider aligning this to 18.

⁸ *DPP v Le Gassick* [2014] VCC 1288

⁹ Hawke and Raphael (2016) *op cit* p63

¹⁰ Greijer and Doek (2016) *op cit* p3

¹¹ *ibid*



This does not mean that the age of consent, or marriage, or criminal responsibility becomes 18. The Luxembourg Working Group note that “these documents do not necessarily define *who is a child* but rather the scope of their applicability under international law: the provisions are applicable to all persons below the age of 18, with or without exceptions.” This definition of “child” offers the protection and rights of childhood to all those aged less than 18.¹² We believe this is appropriate given the horrific nature of the crime.

The Working Party explains thus:

To avoid possible misunderstandings or grey areas in the law, it should be clear that the age of sexual consent as defined by law means that engaging a child below that age in sexual activities is prohibited under all circumstances, and that the consent of such a child is legally irrelevant. A child at or above the age of sexual consent may, with her/his consent, be engaged in sexual activities. However, no child should ever, under any circumstances, be able to legally consent to her/his own exploitation or abuse. It is therefore important that States criminalise all forms of sexual exploitation of children up to the age of 18 years, and consider any presumed “consent” to exploitative or abusive acts as null and void.¹³

8. Collective Shout recommends an amendment to remove a defence to child exploitation if the defendant believes that he is married to the victim.

We refer to this evidence from ECPAT International:

*In 2012 South Asia accounted for nearly half of all child marriages in the world. Under the Islamic tradition of *Seigha* a judge or cleric can perform a temporary marriage, with the timing and conditions agreed in advance. Such marriages can range from one hour to 90 years; their original purpose was to protect women during times of war. However temporary marriage now attracts child sex offenders to India: these men, often from the Gulf States, visit India to marry a young girl, exploit her and then return to their country of origin. In Hyderabad, 15 temporary marriages are estimated to take place each month. When foreigners marry a girl ‘for the wedding night’, and then return home, the child is labelled as ‘spoiled’ or ‘ruined’, creating a pathway that can lead to a life of sexual exploitation. In other cases, travelling offenders ‘marry’ a child and take her with them to their country of origin, where the sexual exploitation continues.¹⁴*

In Australia, a marriage is not valid if at least one party is a minor because it is presumed that minors cannot give free and full consent. We recommend that this standard be applied to children internationally as well.

¹² Greijer and Doek (2016) *op cit* p6

¹³ Greijer and Doek (2016) *op cit* pp7-8

¹⁴ Hawke and Raphael (2016) *op cit* p40



9. Collective Shout supports amendments to aggravating factors to these crimes including acts of torture, cruelty or degrading treatment to the child, the presence of payment, where a child appears to be ten or under, and the presence of another person.

We welcome this amendment, especially the acknowledgment of the horrors of torture, cruelty and degrading treatment, the extra protection given to very young children and the acknowledgement that paid sexual activity is both coercive and abusive. We commend the government for avoiding terms like 'child prostitution', 'children selling sex', 'transactional sex', or 'child sex worker', all of which are victim-blaming and obscure the nature of the crimes.

10. Collective Shout recommends that measures to be taken to ensure ISPs cooperate with Australian agencies undertaking investigative work into online child sexual exploitation.

Collective Shout is concerned that the current requirement in the Telecommunications Act for ISPs to "do their best" is vague and ineffective. Community expectations and the safety of children require that more be done. Judge Pascoe explained to 7:30 Report; "I think the public does have a right to expect that they will be part of the social contract; that they will be aware of Australia's international obligations; and that they will do their part to protect children."¹⁵

We are not convinced that it is sufficient for these corporations to shift responsibility to users via terms and conditions or user agreements although it is understood that these companies do not have control over how their services are used, nor what kinds of data are accessed, and we agree that these customer agreements are essential. However, law enforcement officers have reported that Telcos are not always readily assisting with investigations of online child sexual exploitation.¹⁶ We note that at time of finalised our submission a report in *The Australian* that Apple had refused hundreds of requests from Australian law-enforcement officials for information from iPhones of suspected criminals including in child abuse investigations.¹⁷ Alex McDonald reported to the 7:30 Report that in almost a fifth of cybersex trafficking cases police could not obtain the necessary information from ISPs such as subscriber records, IP addresses and mobile data.¹⁸

¹⁵ Tankard Reist (2017) *op cit*.

¹⁶ Burn, Dobinson, Neilson *et al* (2017) *op cit* pp80-81.

¹⁷ Schliebs M (2017). Apple refuses Australian authorities seeking information on suspected criminals. *The Australian* Friday October 6, p1.

¹⁸ McDonald A (2017) *Are telcos doing enough to help combat child sexual abuse overseas?* Australian Broadcasting Corporation, 26 June 2017. <http://www.abc.net.au/7.30/content/2017/s4692124.htm>



Collective Shout hopes the Committee considers the recommendations made by the Nick Xenophon Team in their submission to the Inquiry into Human Trafficking, Slavery and Slavery-Like Practices (2017) to “clarify what information must be provided by internet service providers and internet content hosts where the information requested is in the possession or control of the internet service provider/content host.”¹⁹ We support a move to substantially increase fines for ISPs which do not cooperate with law enforcement efforts to investigate and prosecute these crimes. We also recommend considering the introduction of incentives for ISPs and Telcos to implement innovative policies and practices to reduce these offences and to assist law enforcement efforts in this area.

11. Collective Shout supports Anti-Slavery Australia's recommendation²⁰ that there be a new Industry Code to guide Internet Service Providers and Telecommunication Companies in their obligations to protect children.

We commend to you the excellent report *Behind the Screen: Online Child Exploitation in Australia* and support the recommendation of Anti-Slavery Australia to set up a new Industry Code to assist ISPs and Telcos in protecting children from harm. We believe this would be a step in the right direction to help facilitate industry cooperation in investigating and prosecuting such crimes, as well as assist in identifying and rescuing exploited children.

Collective Shout thanks the Committee for the opportunity to contribute to this important process of updating Australia’s legislation to better protect children both at home and abroad.

¹⁹ Kakosche-Moore S (2017). Additional comments from the Nick Xenophon Team. *Report: An inquiry into human trafficking, slavery, and slavery-like practices*. Commonwealth of Australia. http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Humantrafficking45/Report

²⁰ Burn, Dobinson, Neilson *et al* (2017) *op cit* p80.