

# Chapter 1

## Introduction and background

1.1 On 14 September 2017 the Senate referred the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 [Provisions] (the bill) for inquiry and report by 16 October 2017.<sup>1</sup>

1.2 The Senate Selection of Bills Committee recommended that the bill be referred for inquiry, in order to:

Investigate how the Bill works to protect vulnerable children and the community from child sex offenders.<sup>2</sup>

1.3 Additionally, the Selection of Bills report noted that:

This Bill deals with the protection of children from the dangers of child sexual abuse. The Bill targets all aspects of the child sex offender cycle from the commission of an offence, to bail, sentencing and post-imprisonment<sup>3</sup>

1.4 The Selection of Bills report also highlighted the:

...importance of the subject matter, the complexity of some of the Bill's provisions, and the broad scope of the Bill.<sup>4</sup>

### Background and purpose of the bill

1.5 The Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, the Hon Michael Keenan MP (the Minister), introduced the bill into the House of Representatives on 13 September 2017. In his second reading speech, he stated that the bill's provisions would provide 'a broad package of measures which will strengthen the laws that safeguard children in Australia from sexual abuse'.<sup>5</sup>

1.6 The Minister commented that the bill contained the 'most comprehensive and significant Commonwealth child sex offender reforms since the introduction of the Criminal Code in 1995'. In particular, he noted the bill would address:

...inadequacies in the criminal justice system that result in outcomes that do not sufficiently punish, deter and rehabilitate offenders. It also introduces

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1 *Journals of the Senate, No. 63*, 14 September 2017, p. 2007.

2 Senate Selection of Bills Committee, *Report No. 11 of 2017*, 14 September 2017, Appendix 1.

3 Senate Selection of Bills Committee, *Report No. 11 of 2017*, 14 September 2017, Appendix 2.

4 Senate Selection of Bills Committee, *Report No. 11 of 2017*, 14 September 2017, Appendix 2.

5 The Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, *House of Representatives Hansard*, 13 September 2017, p. 6.

new offences directed at the use of the internet for the sexual abuse of children.<sup>6</sup>

1.7 The Attorney-General's Department informed the committee that the bill is intended to target all aspects of the child sex offender cycle, 'from the commission of the offence through to bail, sentencing and rehabilitation', particularly through provisions to:

- increase the length of sentences for Commonwealth child sex offenders to reflect the gravity of these offences and strengthen sentencing and parole outcomes for all Commonwealth offenders, including those convicted of a Commonwealth child sex offence
- ensure all Commonwealth child sex offenders are supervised and placed under appropriate conditions once released
- criminalise emerging forms of child sexual abuse, including through the use of the internet
- update the terminology used in Commonwealth legislation to better reflect the seriousness of child sexual abuse, and
- improve protections for vulnerable witnesses.<sup>7</sup>

1.8 The Department informed the committee that the bill would complement the recently-introduced broader package of reforms to Commonwealth legislation:

...aimed at criminalising child sexual abuse and strengthening protections for the community—including the tough new measures to stop child sex offenders from travelling overseas to commit criminal acts against children introduced under the *Passports Legislation Amendment (Overseas Travel by Child Sex Offenders) Act 2017* and the recent introduction of Carly's Law, which targets online predators preparing or planning to cause harm to, procure, or engage in sexual activity with a child (*Criminal Code Amendment (Protecting Minors Online) Act 2017*).<sup>8</sup>

1.9 The Explanatory Memorandum indicates that the bill has been designed to :

...[combat] the evolving use of the internet in child sexual abuse and addresses community concern that the sentencing for child sex offences is not commensurate to the seriousness of these crimes.<sup>9</sup>

1.10 This focus on new, technologically-enabled offences was also noted in the Attorney-General's Department's submission:

Advances in technology, and increasing access to those technologies, is facilitating a progressive increase in the number of charges and

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6 The Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, *House of Representatives Hansard*, 13 September 2017, p. 6.

7 *Submission 4*, p. 2.

8 *Submission 4*, p. 2.

9 Explanatory Memorandum, p. 2.

prosecutions for online sexual abuse of children. Offenders are using more technologically sophisticated networks to distribute child sexual abuse material, using the dark web, encryption and online 'cloud' storage. For example, in 2016 the *Internet Watch Foundation* reported that 1,572 commercial child sexual abuse websites were found to be using sophisticated anonymity technologies to hide their presence, an increase of 112% from the 743 disguised websites identified in 2015.

Australia's laws should reflect the changing landscape of offending, and appropriately reflect the impact that online sexual abuse can have on child victims. Penalties should adequately reflect the severity of the offences.<sup>10</sup>

1.11 The Government has also stated that the bill is consistent with the recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse, and that it complements the work of Commonwealth, state and territory governments through the Ministerial Council for Police and Emergency Management child sex offender reform working group.<sup>11</sup>

1.12 Additionally, the Attorney-General's Department informed the committee that the legislation has been developed in consultation with the Australian Federal Police, the Commonwealth Director of Public Prosecutions, and the Department of Immigration and Border Protection.<sup>12</sup>

## Overview of the bill

1.13 The Explanatory Memorandum notes the bill would amend a number of Commonwealth Acts, namely: the *Crimes Act 1914* (Crimes Act); the *Criminal Code Act 1995* (Criminal Code); the *Customs Act 1901* (the Customs Act); and the *Telecommunications (Interception and Access Act) 1979* (the TIA Act).<sup>13</sup>

1.14 The bill contains 15 schedules, namely:

- Schedule 1—Revocation of parole order or licence to protect safety;
- Schedule 2—Use of video recordings;
- Schedule 3—Cross-examination of vulnerable persons at committal proceedings;
- Schedule 4—Strengthening child sex offences;
- Schedule 5—Increased penalties;
- Schedule 6—Minimum sentences;

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10 *Submission 4*, pp. 2–3.

11 See the Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, *House of Representatives Hansard*, 13 September 2017, p. 6; and the Attorney-General's Department, *Submission 4*, p. 2.

12 *Submission 4*, p. 2.

13 Explanatory Memorandum, p. 2.

- Schedule 7—Presumption against bail (Part 1—Court records; Part 2—Commonwealth child sex offenders);
- Schedule 8—Matters court has regard to when passing sentence etc.;
- Schedule 9—Additional sentencing factors for certain offences;
- Schedule 10—Cumulative sentences;
- Schedule 11—Conditional release of offenders after conviction;
- Schedule 12—Additional sentencing alternatives;
- Schedule 13—Release on parole;
- Schedule 14—Revocation of parole order or licence; and
- Schedule 15—Expanding the meaning of child abuse material and other consequential amendments (Part 1—Amendments; Part 2—Application and transitional provisions).<sup>14</sup>

1.15 The Explanatory Memorandum provides an overview of the amendments that would be made by the bill, including provisions to:

- insert community safety as a factor that can be taken into account to revoke the parole of a federal offender without notice;
- remove the requirement to seek leave before a recorded interview of a vulnerable witness can be admitted as evidence in chief;
- prevent children and other vulnerable witnesses from being cross-examined at committal proceedings;
- insert notes in the Criminal Code to provide additional clarity regarding the scope of conduct captured by child sex offences;
- insert new aggravated offences for child sexual abuse that involves subjecting the child to cruel, inhuman or degrading treatment, or which causes the death of the child;
- insert new offences to criminalise the grooming of third parties for the purpose of procuring a child for sexual activity;
- insert a new offence to criminalise the provision of an electronic service to facilitate dealings with child abuse material online;
- increase the maximum penalties for certain Commonwealth child sex offences and for breach of the obligation on internet service providers and internet content hosts to report child abuse material to police;
- introduce a mandatory sentencing scheme to apply to the Commonwealth child sex offences that attract the highest maximum penalties, and all other Commonwealth child sex offences if the offender is a repeat child sex offender;

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14 Explanatory Memorandum, p. ii.

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- insert a presumption against bail for Commonwealth child sex offences that attract the highest maximum penalties;
  - revise the factors which must be taken into account when sentencing all federal offenders to ensure that consideration of a guilty plea covers any benefit to the community, or any victim of, or witness to, the offence;
  - make it an aggravating factor in sentencing if a federal offender used their standing in the community to assist in the commission of an offence;
  - ensure that when sentencing a Commonwealth child sex offender, the court must have regard to the objective of rehabilitating the person, including by considering whether to impose any conditions about rehabilitation and treatment and considering if the length of sentence is sufficient for the person to undertake a rehabilitation program while in custody;
  - insert additional aggravating sentencing factors that apply when a court is sentencing for certain child sex offences, including considering the age and maturity of the victim and the number of people involved in the commission of the offence;
  - insert a presumption in favour of cumulative sentences for Commonwealth child sex offences;
  - insert a presumption in favour of Commonwealth child sex offenders serving an actual term of imprisonment;
  - require that if a court is releasing a Commonwealth child sex offender on a recognizance release order, the offender must be supervised in the community, and undertake such treatment and rehabilitation programs as their probation officer directs;
  - add 'residential treatment orders' as an additional sentencing alternative to allow intellectually disabled offenders to receive access to specialised treatment options;
  - allow certain information to be withheld from an offender where it affects the decision about their release to parole in limited national security circumstances;
  - reduce the amount of 'clean street time' that can be credited by a court as time served against the outstanding sentence following commission of an offence by a person on parole and license;
  - require a period of time to be served in custody if a federal offender's parole order is revoked; and
  - remove references to 'child pornography material' within Commonwealth legislation and replace with 'child abuse material'.<sup>15</sup>

## Conduct of the inquiry

1.16 Details of this inquiry were advertised on the committee's website, including a call for submissions to be received by 29 September 2017.<sup>16</sup> The committee also wrote directly to some individuals and organisations inviting them to make submissions.

1.17 The committee received eight submissions, which are listed at appendix 1 of this report. All submissions are available in full on the committee's website.

## Financial implications

1.18 The Explanatory Memorandum states that the bill has a limited financial impact, mostly coming from the housing costs associated with housing federal prisoners on remand and sentence, as well as a small increase in costs coming from the investigation and prosecution of new offences.<sup>17</sup>

## Compatibility with human rights

1.19 According to the Explanatory Memorandum, the bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.<sup>18</sup> It notes:

This Bill is designed to protect the rights of children, in particular the right of children to be protected from sexual abuse. The measures adopted in the Bill are both proportionate and appropriate to address the risks faced by children.<sup>19</sup>

## Structure of this report

1.20 This report consists of two chapters:

- This chapter provides a brief background and overview of the bill, as well as the administrative details of the inquiry.
- Chapter 2 outlines the provisions of the bill in more detail, discusses matters raised by submitters about the proposed amendments, and outlines the committee's views.

## Acknowledgements

1.21 The committee thanks all organisations and individuals that made submissions to this inquiry.

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16 The committee's website can be found at [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs).

17 Explanatory Memorandum, pp. 3–4.

18 Explanatory Memorandum, p. 4.

19 Explanatory Memorandum, p. 4.