

Australian Greens–Additional Comments

1.1 The Australian Greens are supportive of legislative measures that address protecting children against sexual abuse and harm. The Australian Greens are concerned that some aspects of Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 (the Bill) will have negative and unintended consequences.

1.2 Considering the serious nature of the Bill, the Greens agree with the Law Council of Australia that it is concerning that the Bill is being introduced before the Royal Commission into the Institutional Responses to Child Sexual Abuse (Royal Commission) releases its final report. The Greens are also concerned that the Bill does not take into consideration the Royal Commission's *Criminal Justice Report*.

1.3 Due to the serious systematic, social and individual harms of child sexual offences, legislation aimed at combatting such offences should be fit for purpose and shaped by expert advice. Therefore, the Australian Greens consider it is important that legislation of this nature should be informed the findings of the Royal Commission.

1.4 The Australian Greens also share the Law Council of Australia's concern that the Bill has been introduced prior to the completion of the Australian Law Reform Commission's inquiry into Incarceration Rates of Aboriginal and Torres Strait Islander Peoples.

1.5 The Australian Greens share the concern of the Law Council of Australia and Associate Professor Lorana Bartels in regards to the Bill's inclusion of mandatory minimums.¹ The Australian Greens have consistently opposed mandatory minimums.

1.6 The Australian Greens agrees with the Law Council of Australia that:
...the imposition of mandatory minimum sentences upon conviction for criminal offences imposes unacceptable restrictions on judicial discretion and independence, and undermines the fundamental rule of law principles and human rights obligations.²

1.7 The inclusion on the presumption against bail within the Bill is inconsistent with the presumption of innocence. The Australian Greens share the view of the Law Council of Australia:

...that section 15AAA runs counter to the long held presumption in Australian criminal law in favour of bail. In respect of most criminal charges, the person charged is entitled to be released on bail unless the police demonstrate to the court particular grounds on which bail should be refused.³

1 Law Council of Australia, *Submission 5*, p. 5; Associate Professor Lorana Bartels, *Submission 2*, p. 2.

2 Law Council of Australia, *Submission 5*, p. 10.

3 Law Council of Australia, *Submission 5*, p. 15.

1.8 The Australian Greens agree with the Law Council of Australia that the presumption in favour of cumulative sentences contained within the Bill will lead to unfair and unjust outcomes.⁴

1.9 The Greens also agree with the Law Council that unjust and unfair outcome are particularly likely as :

...there is significant overlap in the both State/Territory and Commonwealth charges being laid in child sexual abuse cases where offences will often have different maximum penalties. The presumption is likely to lead to significant legal challenges and delays in the courts.⁵

1.10 The key purpose of sentencing should always be rehabilitation. However, the Australian Greens share the Law Council of Australia's concern that, due to lack of funding, states would not be able to provide enough rehabilitation places to constraints on resourcing.

1.11 The Law Council of Australia noted in their submission that currently, due to resourcing constraints and prison overcrowding, offenders are often released on parole where they wait to undertake rehabilitation.⁶ The Law Council raised concerns that:

This may impact on the ability of this measure to be effectively implemented and may also result in disproportionate sentences. That is, sentences that are longer than necessary to address the conduct and the objective of protecting the community.⁷

Senator Nick McKim

Australian Greens

4 Law Council of Australia, *Submission 5*, p. 17.

5 Law Council of Australia, *Submission 5*, p. 17.

6 Law Council of Australia, *Submission 5*, p. 21.

7 Law Council of Australia, *Submission 5*, p. 21