

Additional comments from the Nick Xenophon Team

1.1 The Nick Xenophon Team (NXT) is highly concerned about the relatively new and rapidly growing form of human trafficking, cybersex trafficking.

1.2 NXT acknowledges the committee's comments in relation to this issue, however we believe the committee could have gone further in its recommendations.

1.3 NXT agree with the International Justice Mission (IJM), which stated in its submission that 'not enough is currently being done to address these crimes in the Australian intergovernmental response to human trafficking'.¹

1.4 During committee hearings Senator Skye Kakoschke-Moore put questions to representatives from the United Nations Office on Drugs and Crime (UNODC) regarding their concerns about cybersex trafficking.² Mr Benjamin Smith of UNODC stated that their understanding is that the incidents of cybersex trafficking are quite high.³ In their submission to this inquiry IJM also noted that both the Australian Federal Police (AFP) and the Commonwealth Director of Public Prosecutions (CDPP) have reported increases in cybersex trafficking cases over the past three years.⁴

Adequate Resourcing

1.5 NXT agree with the committee's recommendations regarding the adequate funding of: Commonwealth government programs, Australian Federal Police staffing and training, and of the *National Action Plan to Combat Human Trafficking and Slavery 2015-19*. NXT agrees that adequate funding be provided to Australian law enforcement agencies to ensure that they are able to effectively combat and investigate human trafficking offences.

1.6 In their submission IJM call for the Australian Government to provide adequate resources to improve their investigation of cybersex trafficking cases.⁵ IJM state that 'the successful identification and arrest of cybersex traffickers requires further enhancement of state and federal capabilities with respect to covert investigation techniques'.⁶ As noted in the committee report a number of witnesses and submissions recommended that adequate funding be provided to further the aims of the *National Action Plan to Combat Human Trafficking and Slavery 2015-19*.

1.7 During Committee hearings Senator Kakoschke-Moore asked UNODC whether they believed Australian law enforcement agencies are sufficiently resourced to sufficiently manage matters of cybersex crime.

1 International Justice Mission, *Submission 31*, p. 2.

2 *Committee Hansard*, 4 May 2017, p. 47.

3 Mr Benjamin Smith, Regional Programme Coordinator, Human Trafficking/Smuggling of Migrants, United Nations Office on Drugs and Crime, *Committee Hansard*, 4 May 2017, p. 47.

4 International Justice Mission Australia, *Submission 31*, p. 8.

5 International Justice Mission Australia, *Submission 31*, p. 13.

6 International Justice Mission Australia, *Submission 31*, p. 12.

Senator KAKOSCHKE-MOORE: I was just asking whether, in your view, Australian law enforcement officers operating overseas have sufficient resources to do their job in respect to human trafficking?

Mr Douglas: I must say we have a very good working relationship with Australian law enforcement overseas, both with the Australian Federal Police and with the Australian Border Force where we see them located. We do see this as a transnational crime from our perspective in the way we are looking at it and discussing it to today. The resource needs to address transnational crime are growing.

...What I am getting at is the capacity of the public security systems to keep up with that movement is not necessarily there, and Australia is heavily networked to this region so probably you will see increasing connection of people coming through this region towards Australia for different types of opportunities so potentially there would be need for more resources to be able to handle the operational needs here in the region. You could probably say that is in relation to the number of crimes but this is definitely one area where, while there is some capacity, in some places there is probably more capacity needed.

1.8 NXT are concerned that Australian law enforcement bodies are not adequately resourced to manage the recent increase in cybersex crime due to the unfortunate rapid expansion of criminal activity in this area.

Recommendation 1

1.9 NXT recommend that further funding be provided to Australian law enforcement agencies to adequately combat cybersex trafficking.

Legislative Reform

1.10 NXT agrees with the committee's recommendation that the Commonwealth government investigate the adequacy of current legislative provisions and criminal offences.

Recommendation 2

1.11 NXT recommends that the federal government amend offences under the Commonwealth legislative provisions to ensure that the conduct of offenders engaging in cybersex trafficking falls within the relevant criminal provisions and can be effectively prosecuted by Australian law enforcement bodies.

1.12 NXT also believe that the efforts of law enforcement agencies must not be hampered by internet service providers being unwilling to cooperate with Australian agencies undertaking investigative work into cybersex trafficking.

1.13 As raised by Ms Kimberly Randle during committee hearings, IJM recommends that:

[R]eporting requirements on internet service providers—legislation in the Commonwealth Criminal Code relating to internet service providers and their duty to report—be amended. In terms of an internet service provider's responsibility to report this abhorrent crime on their own network, Australia's legislation, I would submit, is not as tight as it could be. There is

international legislation that could be used as a guide to amend those provisions in the Commonwealth code so that internet service providers have a greater responsibility to report information when this occurs on their networks.⁷

1.14 As reported by Alex McDonald on the *7.30 Report*, ABC, in almost a fifth of cybersex trafficking cases police are not getting the vital information they need from internet service providers (ISPs). McDonald reports that cooperation from ISPs is not always forthcoming, and that it is often difficult to obtain the crucial evidence from ISPs such as subscriber records, IP addresses and mobile data.⁸

Recommendation 3

1.15 NXT recommends that amendments be made to strengthen the Criminal Code by clarifying 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. The type of information NXT believe must be handed over includes names, email addresses, billing addresses, geographic location and user names.

1.16 IJM also raised concerns within their submission about the appropriateness of the current provisions within the Criminal Code (Cth), as they relate to cybersex offences. IJM recommends that ‘the Australian government should give consideration to legal avenues by which to prosecute cybersex trafficking offences as a sexual servitude or slavery offence, or as aiding or procuring such offences’.⁹ IJM put to the committee that there are ten provisions within the Criminal Code (Cth) through which a cybersex crime may be prosecuted, but claim that further clarity and consideration of the current laws be undertaken.¹⁰

1.17 NXT are concerned about the lack of aggravated offences within the relevant aspects of the Criminal Code. NXT believe that such horrific offences should include aggravation provisions.

1.18 IJM note in their submission that the updating of offences relating to cybersex trafficking should include provisions relating to aggravated offences. IJM laments the lack of aggravated offences in the current Criminal Code and compares it to similar aspects of the NSW Crimes Act:

For example, under the *Crimes Act 1900* (NSW) s 66C(5), the presence of another person is a circumstance of aggravation that effectively increases the sentences for the offences of sexual intercourse with persons between 10 and 14 and between 14 and 16. The explanation of this circumstance of

7 Ms Kimberly Randle, Director, Corporate and Legal, International Justice Mission Australia, *Committee Hansard*, 5 May 2017, p. 11.

8 Mr Alex McDonald, ‘*Are telcos doing enough to help combat child sexual abuse overseas?*’, Australian Broadcasting Corporation, broadcast 26 June 2017, <http://www.abc.net.au/7.30/content/2017/s4692124.htm> (accessed 17 July 2017).

9 International Justice Mission Australia, *Submission 31*, p. 14.

10 International Justice Mission Australia, *Submission 31*, p. 15.

aggravation is that it can work to ‘embolden or reassure the offender in committing the crime’. The Commonwealth offences involving sexual activity with or procurement of a child via the internet and the State offences concerning child abuse material do not have similar aggravating circumstances, despite the fact that third parties are often present and produce the same effect.¹¹

Recommendation 4

1.19 NXT recommends amendments be made to the Criminal Code to include the following situations:

- **Where the child is, or reasonably appears to be, under 10 years of age.**
This is designed to capture offences committed against very young children. NXT recognises that it may be difficult for law enforcement agencies to obtain birth certificates to confirm the exact age of the victim.
- **Where an act of torture, cruelty or degrading treatment is done to the child while the underlying offence is being committed.**
For example babies having hot wax dripped on them.
- **Where a person pays a fee or reward for the abuse to be perpetrated against a child.**
NXT understand that not all abuse against a child is paid for. This amendment recognises that where a fee or reward is paid, profit is essentially being derived as a result of a child being abused.

1.20 Nxt is highly concerned about the increase in cybersex trafficking, and in particular cyber trafficking and exploitation of children. Nxt wish for Australia to take a strong stance against cybersex trafficking and for it to be a world leader in the prevention and eradication of cybersex trafficking.

Senator Skye Kakoschke-Moore
Senator for South Australia

11 International Justice Mission Australia, *Submission 31*, p. 17.