

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
BUDGET ESTIMATES 2017

Australian Federal Police

Question No. BE17-062

Senator Kakoschke-Moore asked the following question on 25 May 2017:

Senator KAKOSCHKE-MOORE: But, in terms of people here in Australia requesting that sexual abuse occur of a child in a different country so that they can watch it on the internet?

Mr Colvin: Yes, there are offences for that.

Senator KAKOSCHKE-MOORE: Which offences are they?

Mr Colvin: They would be in our child exploitation and online child exploitation offences.

Senator KAKOSCHKE-MOORE: Do those sections require the person who has commissioned the abuse to physically be in the presence of the child in order for that conduct to be captured by that offence?

Mr Colvin: I would think not—no.

Senator KAKOSCHKE-MOORE: If you could take that on notice to get a definite answer.

Mr Colvin: I am quite confident that no, it would not require them to be.

Ms Close: That is correct. It does not require that, and there are a raft of offences that we can certainly outline for you on notice.

The response to the honourable Senator's question is as follows:

There are offences under the Commonwealth *Criminal Code Act 1995* that could be used to prosecute a person in Australia using the internet to request and watch child sexual abuse in another country.

These include:

- s272.9 Sexual activity (other than sexual intercourse) with a child outside Australia
- s474.14 Using a telecommunications network with intention to commit a serious offence
- s474.20 Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service
- s474.22 Using a carriage service for child abuse material
- s474.23 Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service
- s474.24A Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people
- s474.25A Using a carriage service for sexual activity with person under 16 years of age

- s474.26 Using a carriage service to procure persons under 16 years of age, and
- s474.27 Using a carriage service to “groom” persons under 16 years of age.

These offences do not require the person who has commissioned the abuse to physically be in the presence of the child in order for that conduct to be captured.

For example, offences that criminalise engaging in sexual activity capture sexual activity that occurs over the internet. Engaging in sexual activity is defined in the Criminal Code to include:

‘the person in the presence of another person (including by means of communication that allows the person to see or hear the other person) while the other person engages in sexual activity.’