

GOVERNMENT RESPONSE

TO THE REPORT OF THE PARLIAMENTARY JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY:

ORGANISED CRIMINAL PAEDOPHILE ACTIVITY

The Report of the Parliamentary Joint Committee (PJC-NCA), on the extent of organised criminal activity by paedophiles in Australia, was tabled in the Parliament on 20 November 1995.

The Committee has concluded that most sexual offences against children are committed, in an opportunistic fashion, by relatives or neighbours, and that there is little evidence to support the notion that paedophiles are organised into hierarchical, structured groups. Most paedophile contacts appear to consist of loose, informal networks and on a peer-to-peer basis.

Nevertheless, the Committee acknowledges the abhorrence with which paedophile activity is regarded by the Australian community, and makes a number of recommendations for consideration by Government with a view to improving the capacity of law enforcement to pursue the perpetrators of such activity, both within Australia and overseas.

In considering its response to this report, the Government has been mindful of the fact that the National Crime Authority (NCA) has been undertaking its own strategic assessment of the extent of organised paedophile behaviour, as recommended in the Review of Commonwealth Law Enforcement Arrangements of 1994. This assessment has proved to be more complex than originally anticipated and has not yet been finalised.

The recommendations, together with the Government response to each recommendation, are set out below:

- (i) **The Committee recommends that the Minister for Justice raise with the Australasian Police Ministers' Council the issue of how the improved flow of information on paedophile offenders and suspects between Australian law enforcement agencies can best be achieved, and in particular:**
 - whether enhancing the Australian Bureau of Criminal Intelligence's database is the most appropriate avenue along which to proceed; and
 - whether formal agreements between relevant law enforcement agencies on information sharing should be put in place.

The Government accepts this recommendation and considers that there is already a high level of cooperation and information sharing between Australian law enforcement agencies in relation to child-sex offences and offenders. Nonetheless, because many paedophiles are known to move interstate, and often change their name, once they suspect police interest in their activities, it is clearly important to maintain an effective national database which is readily accessible to investigators in all jurisdictions.

To ensure that the sharing of this information is as effective as it could be, the Australian Bureau of Criminal Intelligence (ABCI), which is one of the National Common Police Services established by the Australasian Police Ministers' Council (APMC), has been requested to consult with appropriate law enforcement agencies and prepare a report on how the flow of information on paedophile suspects between law enforcement and related agencies (eg Community Services) can be enhanced. This report was presented to Ministers at the July 1996 meeting of the Australasian Police Ministers' Council. The Government has concerns, which remain to be addressed, about privacy issues connected with some of the report's recommendations, but it is expected that many of the recommendations for action contained in this report will be implemented by jurisdictions.

- (ii) **The Committee recommends that the Minister for Justice take up with the Australasian Police Ministers' Council the need to ensure as a matter of priority that all Australian law enforcement agencies act collectively to equip themselves with the necessary training, the access to specialist expertise, and the access to specialised software and hardware tools needed to keep them abreast of actual and potential use of computers by paedophiles for the purposes of record-keeping, networking and accessing child pornography.**

The Government supports this recommendation and understands that all Australian law enforcement agencies have been continually upgrading their expertise in combating computer-based crime, and it would be expected that agencies would draw on such expertise to combat paedophile activity in the same manner as other forms of computer crime. The capacity for agencies to act cooperatively and collectively in this area has obvious financial and resource advantages for individual agencies.

There is also an obvious need for police services to be proactive in the pursuit of criminal paedophile activity. Strategies such as training, development of expertise, and the acquisition and use of software and hardware will be more effectively and efficiently undertaken if resources and knowledge are shared between jurisdictions, as suggested in the recommendation. A cooperative national effort in this area will also have application in the investigation of other crimes involving the use of computers, eg fraud, money laundering, terrorist networks.

The National Police Research Unit (NPRU), which is another of the National Common Police Services established by the APMC, is currently undertaking work through its Computer Investigation Techniques Program, having monitored the international law enforcement response to computer crime for a number of years, and having developed working relationships with a number of overseas agencies.

At the July 1996 meeting of the APMC, the Attorney-General proposed that the NPRU, in consultation with jurisdictional agencies, consider this recommendation of the PJC-NCA Report, and report to the November 1996 APMC meeting on any additional strategies which could be implemented to enable improved coordination by Australian law enforcement agencies in the investigation of the use of computers for paedophile activity.

- (iii) The Committee recommends that the Minister for Justice take steps to ensure that Australian law enforcement agencies contribute to and draw on the expertise and software tools of overseas law enforcement agencies.**

The Government agrees that the issue of criminal paedophile activity is an international concern and is thus beyond the control of any one agency or country. The sharing of information, expertise and technology is a necessary component of effective international law enforcement, and is gradually being achieved.

The Australian Bureau of Criminal Intelligence already has some international arrangements with counterpart agencies in other parts of the world. It has established arrangements through the AFP overseas network and through Interpol to service enquiries relating to the National Missing Persons Unit, and has access to the National Center for Missing and Exploited Children run by the US Department of Justice.

The ABCI has also installed a Canadian designed program called the Violent Crime Analysis System (ViCLAS) which collects data on a variety of serious offences, including all child sexual abuse cases (except those involving the immediate family) and certain categories of missing persons. The program enables information searches within or across jurisdictions, an important facility when dealing with paedophiles.

This is supported by the Australian Federal Police (AFP) liaison network which monitors developments in both paedophile activity and law enforcement countermeasures at the international level. As such, the machinery is in place to ensure effective exchange of information relating to information technology developments.

- (iv) The Committee recommends that the Minister for Justice explore the possibility of establishing a single, well-publicised, e-mail address accessible through the Internet to which computer users can report any indications they come across of computer distribution of child pornography.**

The use of the Internet by paedophiles and other criminals is a matter of significant concern to the Government, but it considers that there are a number of technological and jurisdictional issues associated with regulating on-line information services, including the Internet, which need to be addressed.

For instance, the Internet is an international communications system and much of the pornographic material to be found on it has originated from overseas, where the laws relating to child pornography may be quite different from our own. Information transmitted on the Internet can be done so securely and anonymously through the use of international remailers. Nonetheless, progress is being made in detecting such transmissions and a few recent well-publicised prosecutions have resulted.

However, as paedophiles perceive the risk of detection increasing, they are likely to make greater attempts to avoid detection, for example, through the use of encrypted material or hiding the material in seemingly innocent files. A digitised photograph of, say, a kitten, could hide text, pictures or sound within the millions of bytes which comprise the original. Even if it is known to be there, it may not be detectable without the key.

The Australian Broadcasting Authority (ABA) has recently concluded a wide-ranging investigation into the Content of On-Line Services and has made a number of recommendations, which the Government is considering, relating to the implementation of an industry-based self-regulatory framework for on-line information services. The report suggested that there should be a requirement for service providers to develop codes of practice, which would be registered with and monitored by the ABA.

Nevertheless, the Government accepts that the Committee's recommendation is a worthwhile proposal and will be seeking further advice as to the feasibility and usefulness of establishing an address where information regarding the whereabouts of child pornography could be reported.

Given the sensitive nature of the information regarding both the reporting individual and the alleged offender, it may be more appropriate to consider establishing a *World Wide Web site with an inherent encryption device* (as used, for example, by banks providing services over the Internet) rather than an e-mail address. The Web site could provide a down-loadable form, which, when completed would transmit its contents in encrypted form, thus protecting both the identity of the reporter and the information provided from public access. This could possibly be done in cooperation with the Australian Bureau of Criminal Intelligence and its Board of Control, as it would be in the best position to disseminate information to Australian law enforcement agencies.

- (v) The Committee recommends that the Government take steps to improve the arrangements between the Thai Police and the Australian Federal Police with a view to improving the detection and prosecution of Australian child sex tourists.**

The Government agrees that it is vital for the Australian Federal Police International Liaison Network to maintain cooperative arrangements with the Thai Police, as well as with other law enforcement agencies.

Since the *Crimes (Child Sex Tourism) Amendment Act 1994* came into force on 5 July 1994, it has been possible to prosecute Australian citizens or residents involved in child sex activities in any country, including Thailand. The Act not only makes it an offence to engage in sexual conduct, while overseas, with persons under the age of 16 years, but also makes it an offence to organise, promote or encourage child sex tours.

The Act is intended as a back-stop in order to allow the prosecution of Australian citizens and residents who engage in sexual conduct with minors while overseas and escape the criminal justice system of the foreign country in which the offence was committed. This accords with the philosophy of the Act, which is that the primary responsibility for protecting children from sexual exploitation rests with the countries where they are exploited. To date, however, one person has been successfully prosecuted under the Act for offences committed in the Philippines.

Australia currently enjoys cooperative relationships on law enforcement matters with many countries in the region and the Australian Federal Police maintains liaison officers in a number of South-East Asian countries, including Thailand and the Philippines. These liaison officers maintain close contact with each host country's law enforcement agencies and encourage them to investigate information concerning Australian nationals suspected of visiting for paedophile activity. However, the AFP officers do not have enforcement powers in another country, so progress in investigations depends on the priority given to the matter by law enforcement agencies in the relevant country.

- (vi) The Committee recommends that the Government take steps to ensure that all its personnel working overseas in countries believed to be attractive to visiting Australian paedophiles are made aware that any information that they happen to come across about the illegal activities of such paedophiles should be reported to the Australian Federal Police. The Committee further recommends that similar steps be taken in relation to the personnel of non-government aid and other organisations funded in whole or in part by the Australian Government.**

Although the Government has no formal arrangements in place for public servants serving overseas to report suspected criminal activity, it does rely on its public servants adopting an ethical approach and using their common sense in such situations. As the AFP has liaison officers posted to many of the countries where such problems are likely to arise, information can be readily passed to the AFP where it is considered appropriate. The Government would also expect its public servants serving overseas to report any suspected criminal activity to the appropriate local authorities.

With regard to other Australian citizens travelling abroad, the publication prepared by the Department of Foreign Affairs and Trade, entitled "Hints for Australian Travellers", which is issued with every new and replaced Australian passport, contains an item about the *Crimes (Child Sex Tourism) Act 1994*. In addition, recent media reports of prosecutions for paedophile activities by Australian citizens both here in Australia and overseas have increased public awareness of the role of the AFP and of the potential consequences for those who engage in such undesirable behaviour.

- (vii) **The Committee recommends that the Government seek treaty relationships with the Cambodian and other South-East Asian Governments to assist in the detection and obtaining of evidence to enable the prosecution of Australians committing child-sex offences in those countries.**

The Government agrees that there is a need to cooperate with countries in our region with respect to the investigation and prosecution of child sex offences. The Parliament has recently amended the *Mutual Assistance in Criminal Matters Act 1987* so as to make fundamental changes to the scheme of that Act. Under the old scheme the Act did not apply to other countries of its own force and had to be applied, either wholly or in part, to a specified country by regulation. This application by regulation could either give effect to a treaty or apply the Act on a non-treaty basis. Either way, in the absence of a regulation there was no mutual assistance relationship with the other country.

Once the amendments to the *Mutual Assistance in Criminal Matters Act 1987* come into force, the Act will have a 'passive' application. This means that it will provide that Australia is able to make requests for all types of mutual assistance to other countries and conversely Australia is able to provide such mutual assistance as is permitted under its law to any country that requests it. Significant barriers to requesting and providing mutual assistance in criminal matters will be removed. As a safeguard, the Attorney-General will have a discretion to refuse assistance in inappropriate cases. It is proposed that the amendments will come into force early in 1997.

Having significantly simplified the scheme of the *Mutual Assistance in Criminal Matters Act 1987* the Government has now removed the need to negotiate treaties in all but the most exceptional circumstances. While the Government is not prepared to pursue treaties with Cambodia and other South East Asian countries, it considers that the changes it has made to the scheme of the *Mutual Assistance in Criminal Matters Act 1987* will remove significant impediments to, and thus facilitate greater cooperation with, countries in our region in the investigation and prosecution of child sex offences.
