

**SENATE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS**

AUSTRALIAN FEDERAL POLICE

Inquiry into Crimes Legislation Amendment (Child Sex Tourism Offences and Related Measures) Bill 2007

Question No. 9

The Committee asked the following question on 24 September 2007:

Can you provide details of child sex offence investigations, charges or convictions under the existing provisions in Part IIIA of the *Crimes Act 1914*. Please provide a break up by year of the number of child sex offence investigations, charges or convictions since the provisions were introduced in 1994?

The answer to the Committee's question is as follows:

Australians have been charged with the range of offences under Part IIIA of the *Crimes Act 1914* including, while outside Australia;

- Engage in sexual intercourse with a person under the age of 16 (50BA);
- Commit acts of indecency on person under the age of 16 (50BC);
- Encourage sexual conduct which constitutes an offence under part IIIA (50DB);
- Induce person under the age of 16 to engage in sexual intercourse (50BB); and
- Induce person under the age of 16 to engage in sexual conduct (50BD).

In terms of numbers, the following table outlines for each year how many investigations, persons charged and convictions.

Year	Investigations	No of persons Charged*	Convictions*
1995	1	1	0
1996	3	3	1
1997	2	4	2
1998	9	2	2
1999	1	1	1
2000	4	0	1
2001	5	2	1
2002	13	3	1
2003	10	0	2
2004	30	5	0
2005	51	3	3
2006	13	3	3
2007	16	1	2
TOTALS	158	28	19

(*Note: an offender may be charged in one year and convicted in another year)

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Question No. 10

The Committee asked the following question on 24 September 2007:

Has the AFP investigated or laid charges in relation to *attempts* to commit the existing child sex tourism offences? If so, what was the outcome of these cases?

The answer to the Committee's question is as follows:

The AFP has not investigated or laid charges in relation to attempts to commit the existing child sex tourism offences.

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Question No. 11

The Committee asked the following question on 24 September 2007:

What difficulties, if any, has the AFP experienced in relation to enforcement of the existing child sex tourism offences including attempts to commit these offences?

The answer to the Committee's question is as follows:

Since 1994, when these offences were introduced, the AFP has identified three areas of concern during the investigation of allegations of sexual abuse of children by Australians overseas.

Firstly, the focus of benefiting and encouragement offences were aimed at the "child sex tour" operator rather than the individual committing the sexual abuse. This left a gap in the offence structure which did not address the actual child abuse.

Secondly, the practice in some countries of victim compensation – that is where an alleged offender may pay compensation to the victim's family – has resulted in the withdrawal of a complaint or statement by a victim, making any further investigation or prosecution very difficult under foreign or Australian law.

Thirdly, the nature of child sex abuse by Australians overseas brought to the attention of the AFP has changed since these offences were introduced. The lack of relevant legislation, policy or law enforcement capability in foreign jurisdictions creates opportunities for the exploitation of gaps in the legislation for the protection of children. For example, where possession of child pornography is not an offence in a foreign jurisdiction, an Australian alleged to have such material in their possession in that country can not be prosecuted in that country or under Australian law. In relation to the proposed new preparatory and grooming offences, the AFP has found that Australian child sex offenders travel to locations where they are able to take advantage of socioeconomic factors and lower law-enforcement capacity to exploit children sexually. Developing countries have been targeted, with Thailand, Cambodia and the Philippines being prominent.

The Bill has been developed in consultation with the AFP to address these issues, to the extent that these issues are capable of being addressed by Commonwealth legislation.

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Question No. 12

The Committee asked the following question on 24 September 2007:

What use, if any, has the AFP made of the powers under the *Australian Passports Act 2005*, to request refusal or cancellation of a passport, where there were suspicions an individual intended to engage in child sex offences overseas? What difficulties, if any, has the AFP experienced in relation to the exercise of those powers?

The answer to the Committee's question is as follows:

The AFP has made a number of applications for passport cancellations and refusals relating to convicted travelling sex offenders in accordance with section 14 (reasons relating to potential for harmful conduct) of the *Australian Passports Act 2005* (the Act), resulting in the Minister for Foreign Affairs, at the AFP's request, refusing to issue a passport to one individual, and to cancel and refuse to issue a passport to ten others.

There are similar ministerial powers under section 15 of the *Foreign Passports (Law Enforcement and Security) Act 2005* (Foreign Passports Act) which provide that a request may be made to the Minister to order the surrender of foreign travel documents. To date, the AFP has not utilised the provisions of the Foreign Passports Act.

Requests for refusals and/or cancellations under section 14 of the Act rely on an assessment by a competent authority such as the AFP, that, if a passport were issued to a person, the person would be likely to engage in conduct that might endanger the health or physical safety of other persons (whether in Australia or a foreign country), and might constitute an indictable offence against a law of the Commonwealth. Individuals affected by section 14 passport cancellation and refusal determinations, may seek a review of the Minister's decision by the Administrative Appeals Tribunal (AAT).

The AFP has experienced difficulties in relation to the exercise by the AAT of its powers to review ministerial decisions.

If an individual appeals the cancellation of their passport - in effect seeks its reinstatement - the AAT requires the AFP to provide evidence that the individual has consistently demonstrated behaviour which raises a reasonable suspicion that the person is likely to engage in harmful conduct offshore, that is, child sex offences. Provision of such evidence can be a challenging task for the AFP as it involves regularly undertaking complex risk assessments of, for example, intention to/ pattern of engaging in a position of trust to gain access to children overseas.

In reviewing one Ministerial decision to cancel a passport, the AAT distinguished between the risk of possible harm and the immediate threat of harm. In the case of *Thompson*,¹ the AFP made a judgment that this particular person's consistent preference for seeking employment teaching children overseas, coupled with his failure to report his overseas travel as required under the *Community Protection (Offender Reporting) Act 2004*, indicated the risk/threat of harm was sufficiently immediate. However, the AAT rejected the occupational implications of the AFP's case and ordered the reinstatement of his passport because there was no evidence of contemporary charges or complaints against Thompson in relation to sexual misconduct involving children,

This distinction may leave a competent authority in the position of needing to have received a complaint that harmful conduct has occurred before it can act to request a passport cancellation/refusal. This would appear to be contrary to the policy of Australian States which recognises that some sex offenders should be prohibited from working with children, and are able to impose court orders to that effect. As this is a fairly recent decision by the AAT, the AFP is considering whether a review of its competent authority request policies and procedures may be required to avert a similar AAT outcome in the future.

It is currently unclear whether passport cancellations should be permanent or only valid for a period of time. The AFP understands that section 19 of the Act requires the Minister not to act on a passport refusal request if that request can no longer be regarded as current in accordance with usual administrative practice. Therefore, a competent authority may need to revisit the reasons for making its original passport cancellation/refusal request if a person lodges an application for another passport during the open-ended period of cancellation (potentially their lifetime). In the majority of such cases, the AFP usually will not have additional information to provide to the Minister about a person's domestic behaviour since passport cancellation occurred. The competent authority would then have to rely only on the original grounds for refusing a passport. As a person's domestic behaviour will usually be a State and Territory matter, the AFP would consult the States and Territories, but unless the person had been charged or convicted with child sex offences in Australia after their passport was cancelled, this consultation is unlikely to yield information relevant to the potential risk the person may pose to foreign children.

¹ *Thompson and Minister for Foreign Affairs and Trade* [2007] AATA 1244 (20 April 2007)

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Question No. 13

The Committee asked the following question on 24 September 2007:

Why are the offences in the Bill required, in addition to the powers under the Australian Passports Act, in order to prevent the commission of child sex offences by Australian citizens or residents overseas?

The answer to the Committee's question is as follows:

The existing offences which the Bill transfers to the Criminal Code remain an important element of Australia's framework for preventing and investigating the commission of child sex offences by Australian citizens or residents overseas.

The new offences in relation to child pornography and preparatory steps address gaps in the existing offence framework that have been identified by operational experience.

At present an Australian citizen or resident can travel overseas and in certain countries freely create, manage, possess, and distribute child pornography and child abuse material.

The addition of offences relating to acts in preparation (procuring/ grooming a victim) reflects the growing trend showing a move away from the 'sex tourist' towards spending extended periods of time offshore, often engaged in a position of trust within a local community, to gain ongoing access to children in remote, foreign environments.

These provisions are necessary in order to ensure these offences against children, committed abroad should be punished in the same manner as that committed within Australia's borders.