



Australian Government
Attorney-General's Department

Criminal Justice Division

07/14328

4 October 2007

Ms Jackie Morris
Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Morris

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

I refer to my letter to you dated 3 October 2007 attaching the Department's responses to the Senate Legal and Constitutional Committee's Questions on Notice concerning its inquiry into the Crimes Legislation Amendment (Child Sex Tourism Offences and Related Measures) Bill 2007.

I would like to correct an error contained in the answer the Department provided in response to question eight.

Question eight asked: *Why is it appropriate for penalties of the same length to apply to the preparatory offences under proposed section 272.17 as are provided for the offences under proposed sections 272.7-272.10 and 272.15?* The Department's answer, among other things, explained that this is in line with the extension of criminal responsibility offences such as attempt (see subsection 11.1(1) of the Criminal Code), incitement (see subsection 11.4(1)) and conspiracy (see subsection 11.5(1)), which all involve the individual being subject to the same maximum penalty as the substantive offence. The reference to the offence of incitement is incorrect.

The offence of incitement does not attract the same penalty as the commission of the substantive offence. The answer should have instead referred to the offence of complicity and common purpose (see subsection 11.2) which does attract the same penalty as the commission of the offence itself.

Please find attached the Department's amended answer to question eight (**Attachment A**).

The action officer for this matter is Jessica Robinson who can be contacted on (02) 6250 6230.

Yours sincerely

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Criminal Law Branch

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Attachment A

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

ATTORNEY GENERAL'S DEPARTMENT REVISED RESPONSE TO QUESTION ON NOTICE

1. Why is it appropriate for penalties of the same length to apply to the preparatory offences under proposed section 272.17 as are provided for the offences under proposed sections 272.7-272.10 and 272.15?

The same maximum prison term has been provided for the section 272.17 offence as for the sections 272.7-10 and 272.15 offences by reference to the following considerations.

- This is in line with other extension of criminal responsibility offences such as attempt (see subsection 11.1(1) of the Criminal Code), complicity and common purpose (see subsection 11.2) and conspiracy (see subsection 11.5(1)), which all involve the individual being subject to the same maximum penalty as the substantive offence. For example, in relation to attempt, subsection 11.1(1) states that 'a person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed'.
- This approach is consistent with other like offences under the existing child sex tourism regime, of benefiting from or encouraging an offence against a child sex tourism offence provision. For example, under the existing encouraging offence (proposed section 272.16 of the Bill), a person commits an offence if they engage in conduct with the intention of encouraging the commission of a child sex tourism offence, and are subject to the same penalty as for the substantive offence which they are encouraging.
- The Bill is based on the premise that any kind of involvement in child sex tourism merits the prospect of a significant prison term.