



# DPP

## Commonwealth Director of Public Prosecutions

### SUBMISSION BY THE COMMONWEALTH DPP

#### AUSTRALIAN SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

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

The Commonwealth DPP makes the following comments on the Crimes Legislation Amendment (Child Sex Tourism Offences and Related Measures) Bill 2007 ("the Bill"):

- Clause 1 of the Bill amends the definition of serious and organised crime in the *Australia Crime Commission Act 2002* (Cth) to include child pornography and child abuse carriage service offences.
- The Bill provides for the forfeiture of child abuse or child pornography material, or an article containing such material, used in the commission of Commonwealth sexual offences against children. The court must make a forfeiture order when a person has been convicted of a relevant offence or the court has ordered that a person be discharged without proceeding to conviction under s19B of the *Crimes Act 1914* (Cth) ("Crimes Act"). The court may also make a forfeiture order if it is satisfied, on the balance of probabilities, that a relevant offence has been committed (clause 2).
- The protections for child witnesses in Commonwealth prosecutions for sexual offences against children are made available specifically in the prosecution of child sex tourism offences and the proposed offences involving the possession of and otherwise dealing in child pornography material or child abuse material outside Australia (proposed Division 273 of the Bill, discussed further below) (clause 3 to clause 7).
- Proposed section 272.4 concerns the extension of criminal responsibility. The application of the concepts of extended criminal responsibility has been excluded from some offences in Division 272, which of themselves deal with concepts of extended criminal responsibility, such as benefiting from, encouraging or preparing to commit a child sex tourism offence.
- The child sex tourism offences contained in Part III, Division 2 of the Crimes Act are repealed (clause 8). Offences based upon this division of the Crimes Act are inserted into proposed Division 272, Subdivision B of the Criminal Code concerning sexual offences against children overseas (clause 9). Proposed sections 272.9 (sexual conduct involving a person under 16) and 272.10 (inducing a person under 16 to be involved in sexual conduct) introduce penalties of 15 years imprisonment. Currently, the penalty for similar offences under Part IIIA of the Crimes Act is 12 years imprisonment (s50BC and s50BD respectively).
- The Bill proposes the introduction of a number of new offences, namely:

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- offences prohibiting a person from engaging in conduct to procure persons under 16 for sexual activity outside of Australia, which is punishable by a maximum of 15 years imprisonment (s272.11);
- offences prohibiting a person from engaging in conduct to groom persons under 16 for sexual activity, which is punishable by a maximum of 12 years imprisonment (s272.12).
- These proposed new offences are founded on the offences in sections 474.26 and 474.27 of the Commonwealth Criminal Code concerning the use of a carriage service to procure or groom a person under 16 for sexual activity. The proposed new offences are not, however, confined to conduct concerning the use of a carriage service. The new grooming offence also does not contain the requirement that the communications include material that is indecent. It is also proposed that this requirement be removed from s474.27 (clause 10 and 11).
- It is a defence to the offences contained in proposed Division 272, Subdivision B, sexual offences against children overseas, if the defendant believed that that the child was 16 or over. The defendant bears the evidential onus (s272.13).
- The defence based on valid and genuine marriage, which is based on the defence currently contained in s50CB of the Crimes Act, applies with one change. The defence of valid and genuine marriage is not available if a third party to the marriage is directly involved in the offence.
- The Bill includes a proposed offence to prohibit the conduct of persons preparing to commit a sexual offence against a child overseas contained in Subdivision B of Division 272. The penalty for doing any act in preparation for, or planning, conduct of a kind that would constitute an offence against:
  - section 272.7, 272.8 or 272.15 is 17 years imprisonment(s272.17(1)); and
  - section 272.9 or 272.10 is 15 years imprisonment (s272.17 (2)).
- Division 273 of the Bill proposes a number of offences that prohibit Australian citizens, residents and body corporates from possessing, controlling, producing, distributing or obtaining child pornography or child abuse material outside of Australia (ss273(5), 273(6)). The penalty for each offence is 10 years imprisonment.
- The definition of child abuse material and child pornography material has the same meaning as provided for in Part 10.6 of the Criminal Code concerning telecommunications services. In other respects, the proposed offences are modelled on the existing offences of possessing and otherwise using child pornography and child abuse material under Division 474 of the Criminal Code.
- A person cannot be convicted of an offence against Division 273 if the person has been convicted or acquitted of that conduct in a country other than Australia (s272.3.)
- It is a defence to an offence contain in Division 273 if a person is engaging in conduct that is of public benefit and does not extend beyond what is of public benefit (s273.7).