
From: Melinda Tankard Reist
Sent: Wednesday, 4 December 2019 12:49 PM
To: Committee Social Issues
Subject: Post hearing response

Categories: Modern Slavery, QON

Attn: Sharon Ohnesorge, Principal Council Officer

Dear committee members,

Thank you again for the opportunity to appear before the Standing Committee on Social Issues hearing on November 4.

Thank you also for providing me with the transcript of my evidence. I trust you received the small edits forwarded by email November 28.

Regarding answers to questions taken on notice, I advise committee members that it was not possible for me to obtain the expert legal opinion relating to constitutional law and specifically the question of whether the NSW Act “impairs or detracts from the operation of the Criminal Code” (as requested on p.65 of the transcript) with limited resources and limited time allocated. I do re-state however that the Commonwealth legislation does not adequately deal with this type of offending using digital platforms. In addition, and as mentioned previously, given that the states of Victoria and Queensland have passed legislation relating to this type of offending and that their laws remain in place, it appears possible that Commonwealth law regarding carriage service providers and state laws regarding digital platforms can co-exist. I also note that the NSW Act requires that the administrator intends, or is aware, that the digital platform is being used by another person to deal with child abuse material for the administrator to be guilty of an offence under 2.91HAA. Importantly, the Act also proposes the additional defence of having taken reasonable steps to prevent other persons from being able to use the digital platform to access child abuse material: s.91HA(1A).

I hope members were able to seek advice from those states on how their provisions dealing with the on-line sexual exploitation of children and the production and distribution of child sexual abuse material remain intact and operational, even with the Commonwealth Act. As stated in our submission (p.2) “There is no explanation given in the Explanatory Memorandum as to the rationale for this provision.” [to repeal s.91HAA]. I re-iterate IJM’s statement on p 9 of its submission: “The NSW Government should recognize that the online exploitation of children (OSEC) is a form of modern slavery and strong legislation can deter demand.”

As I said in my opening statement, Collective Shout is concerned about any potential watering down of provisions dealing with the transnational cyber trafficking of children for sexual exploitation through digital platforms to live stream acts of child sexual abuse performed on demand. I cited my ABC piece ‘Why Are Australian Telcos and ISPs Enabling a Child Sexual Abuse Pandemic’, July 2017 (<https://www.abc.net.au/religion/why-are-australian-telcos-and-isps-enabling-a-child-sexual-abuse/10095644>) in which I described ‘pay-per-view’ torture of infants for sexual gratification. The recent exposure of Westpac Bank for failing to investigate indications that child sexual abuse predators were making payments for such abhorrent practices through Westpac accounts – thereby giving paedophiles the financial capacity to commit crimes - highlights the importance of not rolling back laws that stop digital platforms from hosting live streamed child abuse. I note that while Westpac is in the process of being penalized under the provisions of anti-money laundering laws, Australian Telcos and ISP’s - which provide the channels for abuse to be transmitted in the first place - have not suffered any disciplinary action. (The recent announcement that ISPs will soon have to comply with requests from the Australian Communications and Media Authority (ACMA) to block illegal

offshore gambling websites under a new federal government scheme, demonstrates that preventative action by ISPs is certainly possible (<https://www.itnews.com.au/news/acma-to-force-isps-to-block-illegal-offshore-gambling-sites-533760>).

That ISPs should continue to enjoy such a privileged position and special treatment in the context of State and Federal Government initiatives and global security agreements (for example the demand by the Five Eyes intelligence alliance made up of Australia, Canada, New Zealand, the UK and the US to the technology industry – Google, Facebook, Twitter, Roblox, Snap and Microsoft – to act to combat live-streaming of child sex abuse (<https://www.theaustralian.com.au/nation/politics/five-eyes-nations-target-tech-titans-on-child-sex-abuse/news-story/7c71cb56b518b9868a5dd9bed1e13160>) to protect children from sexual exploitation is without justification.

Thank you again for the opportunity to contribute to your inquiry. We await the final report.

Sincerely,

Melinda Tankard Reist