

**Submission  
No 11**

## **INQUIRY INTO HUMAN TRAFFICKING**

**Organisation:** International Justice Mission Australia

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The Hon Paul Green MLC  
Chair, Legislative Council Select Committee on Human Trafficking  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

By upload: [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au)

Dear Honourable Members,

**Re: Submission of International Justice Mission Australia to the NSW Legislative Council Inquiry into Human Trafficking**

International Justice Mission Australia welcomes the opportunity to provide a submission to the NSW Legislative Council inquiry into human trafficking.

International Justice Mission ('IJM') protects the poor from violence in the developing world. We partner with local authorities and organisations to rescue victims, bring criminals to justice, restore survivors and strengthen justice systems. IJM combats slavery, sex trafficking, online sexual exploitation of children, sexual violence, police abuse of power, property grabbing and citizenship rights abuse.

IJM Australia joins this mission globally and works locally to grow the movement of Australians seeking justice for the oppressed. In recent years, we have partnered with the IJM Philippines Field Office to address the growing crime of cybersex trafficking – a form of trafficking that is transnational, and involves offenders in NSW who commission the abuse of children in developing countries on a pay-per-view basis. We are also proud to be the Australian arm of the world's largest anti-slavery organisation.

We submit that:

- The Committee should ensure that they consider modern day forms of human trafficking and slavery, including cybersex trafficking and forced labour in supply chains.
- Cybersex trafficking is a rapidly growing crime that is being fuelled in part by an expanding market in NSW.
- Forced labour in global supply chains is a pervasive and complex problem that involves NSW businesses.

- Not enough is currently being done to address these crimes in the Australian intergovernmental response to human trafficking.

Accompanying these submissions, we have recommended that the NSW government:

1. Recognise the seriousness and urgency of the need to address cybersex trafficking and forced labour in supply chains as growing forms of trafficking that involve people and businesses in NSW and inquire further into these matters and options for reform.
2. Provide resources to maintain and enhance cooperation among law enforcement and prosecution agencies.
3. Provide resources to ensure the NSW Police Force has adequate resources to improve their investigation of cybersex trafficking cases, particularly through the use of covert personas.
4. Give consideration to legal avenues by which to prosecute cybersex trafficking offences as a sexual servitude or slavery offence, or as aiding or procuring such offences.
5. Consider whether there is a gap in the current scheme of State and Commonwealth legislation with respect to the crime of cybersex trafficking and review the current coverage of offence provisions accordingly.
6. Consider updating the criminal offence provisions regarding child abuse material, and especially consider adopting the evidentiary provisions regarding proof of age in the *Commonwealth Criminal Code*.
7. Work to ensure that cybersex trafficking is directly addressed by the existing strategies within the *National Action Plan to Combat Human Trafficking and Slavery 2015–19*.
8. Ensure NSW government departmental information and communications technology ('ICT') use policies address the workplace risk factors for offending with child exploitation material ('CEM') and incorporate clear guidelines on: the handling of CEM discovered on workplace computers; what material is not acceptable; and under what circumstances internet use will be filtered and monitored.
9. Make available to businesses a best practice template ICT use policy that incorporates the recommended guidelines regarding CEM.
10. Work to ensure that proactive steps are being taken, modelled off successful transparency legislation overseas, to eradicate forced labour from supply chains of Australian companies.

11. Require that all its procurement officers must ensure that no business providing goods or services to the NSW government is tainted by human trafficking, slavery or slavery-like practices anywhere in the supply chain.
12. Identify and incentivise positive steps taken by businesses and organisations within NSW in relation to ethical supply chains.
13. Support and advocate for measures in both intergovernmental and industry-based responses to forced labour in supply chains that prioritise investment in local law enforcement.

Please do not hesitate to contact us should you require further information.

Yours faithfully,

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## 1. OVERVIEW: CYBERSEX TRAFFICKING AND GLOBAL SUPPLY CHAINS

### 1.1. Adequately Responding to Modern Day Slavery

The present inquiry refers to ‘human trafficking’ as ‘including slavery, slavery like practices such as servitude, forced labour, and people trafficking’.<sup>1</sup>

As the *National Action Plan to Combat Human Trafficking and Slavery 2015–19* noted, the various forms of exploitation commonly termed ‘human trafficking, slavery and slavery-like practices’ share the features of ‘the manipulation of complex relationships between the offender and the victim, and that they result in the serious undermining of the victim’s personal freedom and ability to make choices for themselves’.<sup>2</sup>

We submit that there are two forms of trafficking that fit squarely within this broader view of trafficking and slavery and ought therefore to be addressed by the Committee: cybersex trafficking, and forced labour in supply chains.

Cybersex trafficking is a growing transnational crime that requires international cooperation to be addressed effectively. This form of trafficking involves two crimes: on the demand side, the commission of the abuse of children by perpetrators in Australia; and on the supply side, the facilitation of that abuse typically in developing countries such as the Philippines. These submissions are addressing offending involving the live viewing of abuse on a pay-per-view basis as opposed to the viewing of recorded child exploitation material.

Forced labour in supply chains is a growing issue that, through the drastic changes to the global economic order brought about by globalisation, is increasingly influenced by individuals and businesses based in NSW.<sup>3</sup>

These crimes present different challenges to more long-established forms of human trafficking. It is our submission that any inquiry seeking to address human trafficking must therefore examine the extent to which existing laws and policies are an appropriate and adequate response to these forms of modern day slavery.

Despite the growth of the crime and of the market for it in Australia, cybersex trafficking has not been directly addressed by the anti-trafficking strategies adopted by Australian governments in recent years.<sup>4</sup> Similarly, although global supply chains profoundly affect the

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<sup>1</sup> Term of Reference (a)(i).

<sup>2</sup> Australian Government, [National Action Plan to Combat Human Trafficking and Slavery 2015–19](#) (2014) 4.

<sup>3</sup> Richard M Locke, ‘We Live in a World of Global Supply Chains’ in Dorothee Baumann-Pauly and Justine Nolan (eds), *Business and Human Rights: From Principles to Practice* (Routledge, 2016) 299, 299.

<sup>4</sup> This subset of trafficking is not mentioned in the *National Action Plan to Combat Human Trafficking and Slavery 2015–19*.

lives of ordinary Australians, only very preliminary steps have been taken in addressing the hidden exploitation that they facilitate.<sup>5</sup>

We submit that an important step that must be taken is identifying these two crimes as subsets of trafficking with which NSW is directly involved, and as areas where further inquiry and reform is both necessary and urgent.

**[1] The Committee should recognise the seriousness and urgency of the need to address cybersex trafficking and forced labour in supply chains as growing forms of trafficking that involve people and businesses in NSW. The Committee should recommend that the NSW government inquire further into these matters and options for reform.**

## 1.2. Outline of Submissions

Our submission will proceed by addressing the following terms of reference:

- In relation to cybersex trafficking:
  - The nature of the crime and its growing prevalence in NSW, Australia and around the world (term of reference (b));
  - The existing and recommended responses of law enforcement (term of reference (a));
  - The existing and recommended responses to cybersex trafficking in criminal legislation and intergovernmental initiatives (term of reference (c)); and
  - Recommended measures to combat cybersex trafficking in government and industry technology use policies (term of reference (d)).
- In relation to forced labour exploitation in supply chains:
  - The growth of this form of exploitation and how it is affected by businesses in NSW (term of reference (b));
  - The existing and recommended responses to supply chain exploitation in transparency legislation and intergovernmental initiatives (term of reference (c)); and
  - Recommended measures to promote ethical supply chains in businesses in NSW (term of reference (d)).

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<sup>5</sup> Only one action item, item 63, in the *National Action Plan to Combat Human Trafficking and Slavery 2015–19* is directed at exploitation in supply chains, and this consists only of research, rather than targeted strategies to expose and address the problem.

## 2. CYBERSEX TRAFFICKING

### 2.1. Term of Reference (b) – Prevalence and Growth

#### 2.1.1. *The Nature of the Crime*

IJM defines cybersex trafficking, also called the online sexual exploitation of children ('OSEC'), as the production, for the purpose of online publication, of visual or audio depictions, including photos, videos, and live streaming, of the sexual abuse or exploitation of a minor for a third party who is not in the physical presence of the victim. This crime is distinct from the mere viewing of child exploitation material, as it involves the commissioning of child abuse by offenders which is watched live on a pay-per-view basis.

A typical example of this crime is where an offender in Australia pays a trafficker in the Philippines to view, via webcam footage transmitted over the internet, a child engaging in sex acts with other children, adults, animals, themselves or posing in sexually explicit photos or videos.<sup>6</sup>

Generally paedophiles will pay US\$20–\$150 for a 'sex show' broadcast online.<sup>7</sup> The cost of such a show will increase with the level of abusiveness requested. These live shows are being broadcast through Skype or other video chat applications on a pay-per-view basis.<sup>8</sup>

More than half the victims of cybersex trafficking that IJM has rescued have been aged 12 years old or younger, which is significantly lower than the average age of victims of bar- and street-based commercial sex trafficking.<sup>9</sup> In over half of IJM's casework, the traffickers have been a family member or close family friend of the victim,<sup>10</sup> however, other cases involve larger scale criminal networks.<sup>11</sup>

Cybersex trafficking is a global crime, the growth of which has been predominantly driven by the increasing accessibility of internet services in developing countries like the Philippines, and the increasing demand for child exploitation material ('CEM') abroad.

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<sup>6</sup> In *DPP (Cth) v Watson* [2016] VSCA 73, 'the respondent was also charged ... for a number of live webcam transmissions of Skype, which involved the victim touching herself and masturbating, at the request of the respondent' and Beach JA noted that '[t]his example is representative of much of the offending involving individual victims': at [26].

<sup>7</sup> IJM, '[Cybersex Trafficking](#)' (IJM Casework Series, 2016). AUSTRAC has used frequent transfers of A\$10–\$100 to South East Asian countries to identify Australian predators commissioning online exploitation on a pay-per-view basis: AUSTRAC, '[Online Transactions Led to Convictions for Child Sex Offences](#)' (4 September 2015).

<sup>8</sup> See, eg, the case of Kyle Dawson who used Skype: Rae Wilson, '[Kiwi Jailed Over "Degrading" Acts](#)', *The New Zealand Herald* (online), 28 July 2016.

<sup>9</sup> IJM, '[Cybersex Trafficking](#)' (IJM Casework Series, 2016).

<sup>10</sup> '[IJM's First Conviction in a Live-Streaming Cybersex Trafficking Case](#)', *IJM Newsroom* (online), 10 August 2016.

<sup>11</sup> For illustrative case studies, see [Australian Cyber Predators Using Live Streaming Technology to Abuse Children Overseas](#) (Reported by Michael Atkin, ABC 7.30, 2016); [Stalking Cyber Predators](#) (101 East, Al Jazeera, 2014); see especially at 0:07:50 ff.

### 2.1.2. Global Trends

In the five years from 2009 to 2014, the percentage of the Filipino population with internet access grew from under 10% to nearly 40%,<sup>12</sup> such that today there are around 40 million users.<sup>13</sup> Further, the decreasing set-up cost of internet services has made cybersex trafficking an increasingly appealing source of income for those in poorer communities, where the daily wage is commonly as little as US\$7 per day.<sup>14</sup> Internet credit can be purchased easily and inexpensively as pre-paid cards,<sup>15</sup> and internet cafes offer private rooms for as little as US\$1 per hour.<sup>16</sup>

In 2011, US Attorney General Eric Holder Jr described ‘an historic rise in the distribution of child pornography, in the number of images being shared online, and in the level of violence associated with child exploitation and sexual abuse crimes’ and stated that ‘the only place we’ve seen a decrease is in the age of victims’.<sup>17</sup> The UN and FBI estimate that as many as 750,000 paedophiles are online simultaneously at any given point in time.<sup>18</sup>

The annual number of tips to the National Center for Missing and Exploited Children rose from 4560 in 1998 to 76,584 in 2006.<sup>19</sup> In 2015, that number was 4.4 million.<sup>20</sup>

### 2.1.3. Trends in Australia and NSW

There are several indicators that Australia and in particular NSW are contributing to the global growth of cybersex trafficking:<sup>21</sup>

- The Australian Federal Police (‘AFP’) have for the past three years identified the increase in the demand for and proliferation of OSEC and CEM as a significant challenge faced by law enforcement;<sup>22</sup>

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<sup>12</sup> World Bank, ‘[Internet Users \(per 100 People\), Philippines](#)’, (World Development Indicators, 2015).

<sup>13</sup> World Bank, ‘[Population, Total, Philippines](#)’, (World Development Indicators, 2015).

<sup>14</sup> Lindsay Murdoch, ‘[Philippine Children Exploited in Billion-Dollar Webcam Paedophilia Industry](#)’, *The Sydney Morning Herald* (online), 8 July 2014; see also Bureau of Democracy, Human Rights, and Labor (US), ‘[Philippines](#)’ (2010 Country Reports on Human Rights Practices, 8 April 2011).

<sup>15</sup> Liza S Garcia and Florence Y Manikan, ‘[Gender Violence on the Internet: The Philippine Experience](#)’ (Foundation for Media Alternatives and Association for Progressive Communications, December 2014) 18.

<sup>16</sup> Kristen Schweizer and Clarissa Batino, ‘[The “Queen of Cyberporn” and Her Town’s Industry of Abuse](#)’, *Bloomberg* (online), 22 December 2014.

<sup>17</sup> Eric Holder Jr, Attorney General (US) ‘[Project Safe Childhood](#)’ (Speech delivered at the National Strategy Conference on Combating Child Exploitation, San Jose, 19 May 2011).

<sup>18</sup> Najat M’jid Maalla, [Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography](#), 12<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/12/23 (13 July 2009) 9 [34].

<sup>19</sup> [Evidence](#) to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 25 May 2010 (Australian Institute of Criminology).

<sup>20</sup> National Center for Missing and Exploited Children, [Key Facts](#) (2016).

<sup>21</sup> As has been noted, some of these trends may simply reflect improved investigative techniques to actually uncover these crimes: see, eg, Australian Institute of Criminology, [Submission No 56](#) to Joint Select Committee on Cyber-Safety, *Inquiry into Cyber Safety*, 2010, 5.

- The Commonwealth Director of Public Prosecutions (‘CDPP’) has reported a similar increase in cybersex trafficking cases over the past three years,<sup>23</sup> as well as increased referral of victims of OSEC to Witness Assistance Services;<sup>24</sup>
- Table 1 below shows the number of charges made by the CDPP under the Commonwealth offences associated with OSEC, namely ss 474.26 and 474.27 of the *Criminal Code* (Cth), from 2008–09 to 2013–14;<sup>25</sup>
- The Commonwealth Attorney-General’s Department has noted how ‘the Internet is creating ever greater demands for new material of ever greater levels of depravity and corruption’;<sup>26</sup>
- There has been an increase in the number of convictions under ss 474.26 and 474.27 coming before courts in NSW and Victoria. Data from NSW and Victoria from 2010 to October 2016 indicates that there have been at least 279 convictions for offences under s 474.26. Data from Victoria alone indicates there were 124 convictions under s 474.27 from 2010 to 2015.<sup>27</sup> By contrast from October 2008 to November 2013, there were only 150 cases involving s 474.26 or s 474.27 in NSW Higher Courts;<sup>28</sup> and
- In February 2015, the AFP reported receiving 5617 referrals of online child sexual exploitation in the 12 months prior, an increase of 54% from the period before.<sup>29</sup> The figure for the whole of 2015 was 11,000.<sup>30</sup>

Table 1: CDPP Prosecutions from 2008–09 to 2013–14

	2008–09	2009–10	2010–11	2011–12	2012–13	2013–14
<b>474.26</b>	20	25	25	48	49	44
<b>474.27</b>	20	20	34	49	24	39

<sup>22</sup> ‘The increase in crimes involving the sexual exploitation of children on the internet is a significant law enforcement challenge shared by all countries’: AFP, ‘[Annual Report 2013–14](#)’ (1 October 2014) 64; the online facilitation of child exploitation is ‘an increasing problem for law enforcement’ and the AFP has received a ‘high volume and velocity of child exploitation referrals and material’: AFP, ‘[Annual Report 2014–15](#)’ (16 October 2015) 56; ‘[s]adly, societal appetite for child sexual exploitation material is increasing’: AFP, ‘[Annual Report 2015–16](#)’ (10 October 2016) 47.

<sup>23</sup> ‘Child exploitation is a burgeoning area of practice for the CDPP’: CDPP, ‘[Annual Report 2013/14](#)’ (30 September 2014) 52; ‘[t]he number of referrals and victims of crime in this practice area is increasing, as is the technical complexity of the work’: CDPP, ‘[Annual Report 2014–15](#)’ (30 September 2015) 65; CDPP, ‘[Annual Report 2015–16](#)’ (28 September 2016) 49.

<sup>24</sup> The majority of referrals to the CDPP’s Witness Assistance Service were the victims of OSEC and their families, including 222 in 2015–16: CDPP, ‘[Annual Report 2014–15](#)’ (30 September 2015) 27; CDPP, ‘[Annual Report 2015–16](#)’ (28 September 2016) 52.

<sup>25</sup> The respective annual reports can be downloaded here: CDPP, [Publications and Policies: Annual Reports](#) (12 September 2016).

<sup>26</sup> Attorney-General’s Department (Cth), ‘[Proposed Reforms to Commonwealth Child Sex-Related Offences](#)’ (Consultation Paper, 2009) 44.

<sup>27</sup> Sentencing statistics from [Judicial Information and Research System](#) (NSW) and [Sentencing Advisory Council](#) (Vic).

<sup>28</sup> New South Wales Sentencing Council, [Standard Non-parole Periods: Sexual Offences against Children](#) (2013) 24.

<sup>29</sup> Cameron Stewart and Paul Maley, ‘[Aussie Predators at Heart of Online Surge in Abuse of Children](#)’, *The Australian* (online), 28 February 2015.

<sup>30</sup> Michael Atkin, ‘[Australian Cyber Sex Trafficking “Most Dark and Evil Crime We Are Seeing”](#)’, *ABC News* (online), 7 September 2016.

#### 2.1.4. *Cross-over between OSEC and Hands-on Offenders*

The growth of cybersex trafficking also poses a threat to children in NSW. In 2014, Dr Jeremy Prichard and Dr Caroline Spiranovic reviewed the available research on the risk that viewers of CEM would go on to commit hands-on offences against children. The evidence indicates that ‘there is an association between hands-on sexual offences and CEM’.<sup>31</sup> There is also a consensus that viewing CEM may lead to hands-on offending for some people by reinforcing their paedophilic tendencies.<sup>32</sup>

The prevalence of online networks associated with cybersex trafficking<sup>33</sup> is an additional factor that increases the likelihood of hands-on offending taking place within NSW. A recent study by the Australian Institute of Criminology found ‘a significant relationship between involvement in a CEM network and contact offending’.<sup>34</sup>

Furthermore, while there is evidence to suggest that there is an identifiable subset of CEM viewers that do not commit hands-on offending,<sup>35</sup> there is also evidence that users who are directly contacting victims and using pay-per-view services are more likely to be ‘dual offenders’ – that is, also commit hands-on offending.<sup>36</sup> This second set of users are also those that are involved with cybersex trafficking.

Therefore, by taking action to address the demand side of cybersex trafficking in NSW and disrupt online CEM networks, the government will also be protecting the people of NSW from persons who may be at risk of committing hands-on offences against children.

## 2.2. Term of Reference (a) – Law Enforcement Responses

### 2.2.1. *Interagency Cooperation*

In response to the growth of OSEC, the AFP established the Joint Anti Child Exploitation Team to facilitate coordination and information sharing between the child protection teams at each of the federal, state and territory police agencies, and a formal agreement is in place with the NSW Police Force.<sup>37</sup> In August 2016, this arrangement led to a joint investigation

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<sup>31</sup> Jeremy Prichard and Caroline Spiranovic, ‘[Child Exploitation Material in the Context of Institutional Child Sexual Abuse](#)’ (Report, Royal Commission into Institutional Responses to Child Sexual Abuse, September 2014) 21. The review also noted that current evidence had not yet identified a direct causal link between the two deviant behaviours.

<sup>32</sup> Ibid 20–21.

<sup>33</sup> See discussion at section 2.2.1 below.

<sup>34</sup> Tony Krone and Russell G Smith, ‘[Trajectories in Online Child Sexual Exploitation Offending in Australia](#)’ (Trends and Issues in Criminal Justice No 524, Australian Institute of Criminology, January 2017) 10.

<sup>35</sup> Jeremy Prichard and Caroline Spiranovic, ‘[Child Exploitation Material in the Context of Institutional Child Sexual Abuse](#)’ (Report, Royal Commission into Institutional Responses to Child Sexual Abuse, September 2014) 17.

<sup>36</sup> Ibid 19; see also Antonia Quadara et al, ‘[Conceptualising the Prevention of Child Sexual Abuse](#)’ (Research Report No 33, Australian Institute of Family Studies, June 2015) 50.

<sup>37</sup> AFP, ‘[Annual Report 2014–15](#)’ (16 October 2015) 56–7.

and arrest between the AFP and the NSW Police Force regarding OSEC offences by a member of the Australian Defence Force.<sup>38</sup>

The NSW Police Force also entered a formal agreement with the Australian Communications and Media Authority ('ACMA') to improve the investigation of CEM through the referral of such material reported to or identified by the ACMA.<sup>39</sup> Cases that fall under the targeted commonwealth offence provisions are referred to the CDPP for prosecution.<sup>40</sup> Such interagency cooperation is essential in order to bring down the networks that facilitate the cybersex trafficking of women and children.<sup>41</sup>

In IJM's experience working on cybersex trafficking cases in the Philippines, cooperation between agencies working in different fields including investigation, prosecution and victim support and in different jurisdictions has been critical to ensuring operations are as effective as possible. This is particularly because of the interconnected nature of cybersex trafficking networks.

For example, in September 2013, Philippine National Police ('PNP') received a tip from US Homeland Security Investigations after a transaction was detected by agents in Portland, Maine, for cybersex trafficking occurring in Cebu, The Philippines.<sup>42</sup> IJM then assisted the PNP in conducting a sting operation, which in turn produced leads for investigators in the US from the hard drives seized.<sup>43</sup> IJM lawyers then worked with local prosecutors and Cebu's Inter-Agency Council Against Trafficking to secure a conviction in July 2016.<sup>44</sup>

Close cooperation between agencies was an integral part of the success of this operation and ensuring evidence obtained in each case was properly passed on to assist further inquiries.

## **[2] The NSW government should provide resources to maintain and enhance cooperation among law enforcement and prosecution agencies.**

### *2.2.2. Increased Resources*

Cybersex trafficking is made particularly difficult to investigate due to the highly technical setting of the crime. ACT Police Chief Justine Saunders has acknowledged that the

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<sup>38</sup> AFP, '[45-year-old Townsville Man Charged with Online Procuring Offence](#)' (Media Release, 26 August 2016).

<sup>39</sup> Australian Communications and Media Authority, '[ACMA Hotline and NSW Police Join Forces to Combat Child Abuse Material](#)' (Media Release, 81/2013, 25 October 2013).

<sup>40</sup> Gareth Griffith and Lenny Roth, '[Protecting Children from Online Sexual Predators](#)' (Briefing Paper No 10/07, Parliamentary Library, NSW, 2007) [6.5].

<sup>41</sup> IJM Australia, '[It Takes a Network to Break a Network](#)' (7 October 2016); NetClean, '[Eleven Unbelievable Truths: The NetClean report 2015](#)' (2015) 44.

<sup>42</sup> Immigration and Customs Enforcement (US), '[ICE Works with Philippine Law Enforcement to Capture Cybersex Operators and Rescue Child Victims](#)' (News Release, 8 September 2013); '[IJM's First Conviction in a Live-Streaming Cybersex Trafficking Case](#)', *IJM Newsroom* (online), 10 August 2016.

<sup>43</sup> *Ibid.*

<sup>44</sup> '[IJM's First Conviction in a Live-Streaming Cybersex Trafficking Case](#)', *IJM Newsroom* (online), 10 August 2016.

investigation, particularly of live-streaming cases, is ‘very, very difficult’ and becoming more so, and Former IJM Field Office Director of IJM Cebu, Sam Inocencio, has highlighted the need for increased resources to be directed towards the investigation of the crime.<sup>45</sup>

In IJM’s work partnering with local law enforcement in developing countries, we have seen firsthand how targeted, sustained investment in law enforcement has a dramatic effect on the prevalence of specific crime types. In Cebu, the Philippines, after four years of collaborative casework with local authorities against the trafficking of minors in the commercial sex trade, external researchers found a 79% drop in the prevalence of minors available for exploitation.<sup>46</sup> A foundational strategy in deterring crime through increased arrests and convictions for trafficking of minors was the investment in training, expert support, and facilities for a specialist police unit established to address the crime.<sup>47</sup>

Targeted investment to address cybersex trafficking would involve capacity building in the use of covert personas. During IJM’s casework against bar- and street-based sex trafficking in the Philippines, the use of covert investigations to identify and verify perpetrators has emerged as an effective investigative technique.<sup>48</sup> IJM and the Philippine National Police have applied this technique with success to cybersex trafficking investigations, such as the arrest of a woman who had been supplying cybersex shows for Australian man Kyle Dawson.<sup>49</sup>

Likewise in NSW, the joint operation between the AFP and NSW Police Force discussed at section 2.2.1 above was initiated by the NSW Joint Anti Child Exploitation Team (‘JACET’) communicating with the offender, posing as a 14-year-old girl.<sup>50</sup> Similar covert operations involving cooperation between state and federal police forces have resulted in the rescue of hundreds of children and multiple arrests,<sup>51</sup> and just one covert operation can potentially dismantle an entire network.<sup>52</sup>

The successful identification and arrest of cybersex traffickers requires further enhancement of state and federal capabilities with respect to covert investigation techniques. As stated in an oft-cited judgment of the Supreme Court of Canada: ‘If the struggle against crime is to be won, the ingenuity of criminals must be matched by that of the police; as crimes become more sophisticated so too must be the methods employed to detect their commission’.<sup>53</sup>

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<sup>45</sup> [Australian Cyber Predators Using Live Streaming Technology to Abuse Children Overseas](#) (Reported by Michael Atkin, ABC 7.30, 2016).

<sup>46</sup> IJM, [‘Project Lantern Results Summary’](#) (2010) 13.

<sup>47</sup> Ibid 3–4.

<sup>48</sup> See Visayan Forum Foundation, [‘Lessons Learned from the Successful Prosecution of Human Trafficking Cases in the Philippines’](#) (2016) 16–17.

<sup>49</sup> Michael Atkin, [‘Australian Cyber Sex Trafficking “Most Dark and Evil Crime We Are Seeing”’](#), *ABC News* (online), 7 September 2016.

<sup>50</sup> AFP, [‘45-year-old Townsville Man Charged with Online Procuring Offence’](#) (Media Release, 26 August 2016).

<sup>51</sup> See [Inside the Police Sting that Netted One of the World’s Largest Paedophile Rings](#) (Reported by Mark Willacy and Mark Solomons, ABC 7.30, 2015).

<sup>52</sup> Madonna King, [‘Stalking the Stalkers: The Heroes of Task Force Argos’](#), *The Sydney Morning Herald* (online), 28 November 2015.

<sup>53</sup> [R v Mack](#) [1988] 2 SCR 903, [16] (The Court); see also [Ridgeway v The Queen](#) [1995] HCA 66, [23], [25] (Mason CJ, Dawson and Deane JJ), which stated: ‘The effective investigation by the

**[3] The NSW government should provide resources to ensure the NSW Police Force has adequate resources to improve their investigation of cybersex trafficking cases, particularly through the use of covert personas.**

### 2.3. Term of Reference (c) – Criminal Legislation and Intergovernmental Initiatives

*Table 2: Key Offence Provisions Related to OSEC \* 54*

Act	Provision	Description	Maximum Sentence
<b>Criminal Code (Cth)</b>	s 270.5	Causing a person to enter into or remain in servitude	15 years imprisonment
	s 272.14	Procuring child to engage in sexual activity outside Australia	15 years imprisonment
	s 474.25A(1)	Engaging in sexual activity with child using a carriage service	15 years imprisonment
	s 474.26(1)	Using a carriage service to procure persons under 16 years of age	15 years imprisonment
	s 474.26(2)	Using a carriage service to procure person under 16 years of age (to engage in sexual activity with another person)	15 years imprisonment
	s 474.26(3)	Using a carriage service to procure persons under 16 years of age (to engage in sexual activity with another person in the presence of i) the sender; or ii) another person)	15 years imprisonment
	s 474.27(1)	Using a carriage service to ‘groom’ persons under 16 years of age	12 years imprisonment
	s 474.27(2)	Using a carriage service to ‘groom’ persons under 16 years of age (to engage in sexual activity with another person)	12 years imprisonment
	s 474.27(3)	Using a carriage service to ‘groom’ persons under 16 years of age (to engage in sexual activity with another person in the presence of i) the sender; or ii) another person)	15 years imprisonment
	s 474.27A	Using a carriage service to transmit indecent communication to person under 16 years of age	7 years imprisonment
<b>Crimes Act 1900 (NSW)</b>	s 80D	Causing sexual servitude	15 years imprisonment
	s 91G(1)	Children (under 14 years old) not to be used for the production of child abuse material	14 years imprisonment
	s 91G(2)	Children (aged 14–15 years) not to be used for the production of child abuse material	10 years imprisonment
	s 91H(2)	Production, dissemination or possession of child abuse material	10 years imprisonment

#### 2.3.1. ‘Human Trafficking, Slavery and Slavery-like Practices’ Includes Cybersex Trafficking

The present inquiry’s collective consideration of ‘human trafficking, slavery and slavery-like practices’ is consistent with the broad approach to trafficking taken by previous government inquiries including the *Inquiry into the Exploitation of People through Trafficking, in All Its*

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police of some types of criminal activity may necessarily involve subterfuge, deceit and the intentional creation of opportunities for the commission by a suspect of a criminal offence’.

<sup>54</sup> For a comprehensive list of non-contact and child abuse material offences in the Commonwealth, State and Territory jurisdictions, see Hayley Boxall and Georgina Fuller, ‘[Brief Review of Contemporary Sexual Offence and Sexual Abuse Legislation in Australia: 2015 Update](#)’ (Special Report, Australian Institute of Criminology, 2016) Table 6, Table 7.

*Forms in NSW*,<sup>55</sup> and the Commonwealth Government's *National Action Plan to Combat Human Trafficking and Slavery 2015–19*.<sup>56</sup> Offences to cover these various forms of exploitation have been enacted in response to international recognition that modern day slavery is constantly adapting and requires the law and law enforcement to similarly adapt.<sup>57</sup>

Cybersex trafficking involves forcing persons, often children, to perform sexual acts at the request of perpetrators overseas, for the profit of the provider. Under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* this falls within the definition of 'trafficking'.<sup>58</sup> The pay-per-view user recruits children,<sup>59</sup> with or without a third party, to be sexually exploited.<sup>60</sup> As the victim is a child, this is deemed to be trafficking whether or not any means of coercion are employed.<sup>61</sup>

Cybersex trafficking would also fall within the definitions of sexual servitude and possibly slavery under the *Criminal Code* (Cth),<sup>62</sup> and the *Crimes Act 1900* (NSW).<sup>63</sup> The victims in cybersex trafficking cases are forced to perform the sexual acts to which they are incapable of consenting and are 'not free to cease providing sexual services',<sup>64</sup> usually due to the threat of some detrimental action by someone abusing a position of authority.<sup>65</sup>

We submit that Australian perpetrators who commission cybersex trafficking are liable under these provisions, either as a principal offender, under joint criminal enterprise<sup>66</sup> or accessorial liability at common law,<sup>67</sup> or under extensions of criminal responsibility in the *Criminal Code* (Cth).<sup>68</sup> If this is not the case, there is once again a 'need to modernise Australian law and ensure that penalty provisions are effective'.<sup>69</sup> In any case, there is a need to ensure that the infrastructure surrounding these offences is functioning such that the law is being effectively enforced.<sup>70</sup>

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55 Community Relations Commission for a Multicultural NSW, [Inquiry into the Exploitation of People through Trafficking, in All Its Forms in NSW](#) (2013); see especially at 2, 17–18.

56 Australian Government, [National Action Plan to Combat Human Trafficking and Slavery 2015–19](#) (2014); see especially at 4.

57 See, eg, Jennifer Norberry and Krysti Guest, [Criminal Code Amendment \(Slavery and Sexual Servitude\) Bill 1999](#), No 167 of 1998–99, 4 May 1999; [Explanatory Note](#), Crimes Amendment (Sexual Servitude) Bill 2001 (NSW) sch 1.

58 [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children](#), opened for signature 12 December 2000, 2237 UNTS 319 (entered into force 25 December 2003).

59 Ibid art 3(a)

60 Ibid.

61 Ibid art 3(c).

62 [Criminal Code](#) (Cth) div 270.

63 [Crimes Act 1900](#) (NSW) div 10A.

64 [Criminal Code](#) (Cth) s 270.4(1)(a); [Crimes Act 1900](#) (NSW) s 80B(1)(a).

65 [Criminal Code](#) (Cth) s 270.1A (definition of 'threat'); [Crimes Act 1900](#) (NSW) s 80B(2) (definition of 'threat').

66 See generally [McEwan v The Queen](#) [2013] VSCA 329, [32] (Dixon AJA).

67 See [R v Al Qassim](#) [2009] VSCA 192.

68 [Criminal Code](#) (Cth) div 11.

69 Jennifer Norberry and Krysti Guest, [Criminal Code Amendment \(Slavery and Sexual Servitude\) Bill 1999](#), No 167 of 1998–99, 4 May 1999.

70 See section 2.2.2 above.

### 2.3.2. Utilising Sexual Servitude Offences in Prosecutions

As discussed in section 2.3.1 above, when NSW offenders engage in cybersex trafficking, their conduct falls within current offence provisions under NSW and Commonwealth law relating to sexual servitude.

Typical pay-per-view offending involves a perpetrator requesting and paying for abuse to be carried out on a child that is not free to leave or refuse the abuse.<sup>71</sup> Thus, in a literal sense, the perpetrator is ‘causing’ the child to remain in sexual servitude; the child would not be forced to provide those services but for the commissioning.<sup>72</sup> This is far more direct than just creating a market for the sexual servitude (as in the case of child exploitation material offences discussed at section 2.3.3 below).

Alternatively, perpetrators could be prosecuted under the principles of joint criminal enterprise or ‘joint commission’. The perpetrator forms an agreement with a hands-on offender in the Philippines to abuse a child in circumstances of sexual servitude, and the child is held in sexual servitude in accordance with that agreement.<sup>73</sup> They could otherwise be seen as procuring or aiding in the commission of the offence, as even mere presence, let alone payment, with the intent to assist or encourage offending incurs liability at common law.<sup>74</sup>

However, in recent cases of cybersex trafficking, the offender has not been charged in this manner, with the Crown relying on procurement offences. For example, in the case of *DPP v Hickey*, the offender specifically requested on multiple occasions and was provided with live abuse of children under the age of nine.<sup>75</sup> The offender was only charged with (and convicted of) an offence of procuring a child to engage in sexual activity outside Australia, despite the availability of sexual servitude offences under state and Commonwealth law.<sup>76</sup>

Such decisions may be due to difficulties in prosecuting trafficking in persons offences,<sup>77</sup> or issues particular to the individual case. Nevertheless, consideration should be given to whether the current offence provisions and prosecution strategies are an appropriate use of the criminal law to address cybersex trafficking.<sup>78</sup>

**[4] The NSW government should give consideration to legal avenues by which to prosecute cybersex trafficking offences as a sexual servitude or slavery offence, or as aiding or procuring such offences.**

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<sup>71</sup> See above n 6 and accompanying text.

<sup>72</sup> Regarding causation see, eg, *R v CLD* [2015] NSWCCA 114, [38]–[43] (The Court).

<sup>73</sup> See *McEwan v The Queen* [2013] VSCA 329, [32] (Dixon AJA); *Criminal Code* (Cth) s 11.2A.

<sup>74</sup> *R v Al Qassim* [2009] VSCA 192, (Dodds-Streeton JA); see also *Criminal Code* (Cth) s 11.2.

<sup>75</sup> *DPP v Hickey* [2013] VCC 1319.

<sup>76</sup> *Crimes Act 1958* (Vic) s 60AB; *Criminal Code* (Cth) s 270.5.

<sup>77</sup> See Fiona David, ‘[Prosecuting Trafficking in Persons: Known Issues, Emerging Responses](#)’ (Trends and Issues in Criminal Justice No 358, Australian Institute of Criminology, June 2008).

<sup>78</sup> See Jeremy Horder, *Ashworth’s Principles of Criminal Law* (Oxford University Press, 8<sup>th</sup> ed, 2016) 210 ff.

### 2.3.3. Recognising the Seriousness of the Commissioning of Cybersex Trafficking in NSW

As has been demonstrated above, the growth of cybersex trafficking in recent years is attributable to both the increased supply of live-streamed abuse of children, as well as the increased demand for such material. Therefore, it is crucial to recognise that offenders residing in NSW are directly contributing to the expansion of this form of trafficking and exploitation.

The criminal justice system has recognised the need to target those creating a market for exploitation with respect to the related but distinct crime of recorded CEM.<sup>79</sup> This is based on two rationales that are equally applicable to cybersex trafficking:

- in *practice*, to reduce the abuse of children in the production of the material, the market for such material must be reduced; and
- in *principle*, ‘those who make up that market cannot escape responsibility for such exploitation’.<sup>80</sup>

In alignment with the first of these, Commonwealth sentences for the possession of such material were intended to deter those on the demand side and thereby reduce the market for and commission of the crime,<sup>81</sup> recognising that: ‘People will not be inclined to exploit children to make child pornography if there is no market for it’.<sup>82</sup> Similarly, the Commonwealth offences concerning child abuse material target the use of the internet in the transmission of the material because of ‘the consequent boost to that market [for child abuse material] of which internet access is such an important element’.<sup>83</sup>

In alignment with the second rationale, the sentences for NSW criminal offences of possessing CEM were raised to reflect the seriousness of these offences. Then Attorney-General (NSW), John Hatzistergos, stated:

This penalty reflects the seriousness of this crime. Any person who knowingly possesses images of a child being sexually abused is perpetuating such abuse and also providing a continuing market for such material. The Government is of the view that the criminality involved in that behaviour is the same as if the offender had produced the material themselves.<sup>84</sup>

<sup>79</sup> Note, while this material is often described as ‘child pornography’, this term suggests that the abuse of children in this way is somehow a legitimate subset of adult pornography, which it is not. Describing the content as ‘child exploitation material’ or ‘child abuse material’ more accurately describes the crime that is occurring. See Australian Federal Police, ‘[Northern Territory Man Arrested on Child Exploitation Charges](#)’ (Media Release, 15 January 2016); Jeremy Prichard and Caroline Spiranovic, ‘[Child Exploitation Material in the Context of Institutional Child Sexual Abuse](#)’ (Report, Royal Commission into Institutional Responses to Child Sexual Abuse, September 2014) 8.

<sup>80</sup> *Director of Public Prosecutions (Cth) v D’Alessandro* [2010] VSCA 60, [21] (Harper JA) (citations omitted).

<sup>81</sup> Judicial Commission of NSW, ‘[Sentencing Offenders Convicted of Child Pornography and Child Abuse Material Offences](#)’ (Monograph 34, September 2010) 4.

<sup>82</sup> *R v Cook; Ex parte Attorney-General (Qld)* [2004] QCA 469, [21] (McMurdo P).

<sup>83</sup> *R v Gordon* [2009] QCA 209, [37] (Keane JA).

<sup>84</sup> New South Wales, *Parliamentary Debates*, Legislative Council, 26 November 2008, 11 706 (John Hatzistergos).

These principles were developed and applied in relation to offences relating to recorded CEM material, rather than the live online exploitation of children in cybersex trafficking cases. However, they are equally applicable in relation to cybersex trafficking cases.

In light of these principles, there is no reason for distinguishing, in terms of the seriousness of the crime and the NSW government's capacity to respond to it, between human trafficking that is located physically within NSW, and cybersex trafficking where the physical exploitation takes place overseas but has been commissioned by perpetrators within NSW.

#### 2.3.4. Updating Offences

Cybersex trafficking involves the actual abuse of children, and should be treated seriously even though the viewer may not be a hands-on offender. It may be necessary to consider whether a more targeted offence provision is required.

Some steps have been taken to ensure that criminal offences remain applicable to modern day crimes such as cybersex trafficking. Section 474.25A of the *Criminal Code* (Cth) which prohibits engaging in sexual activity with a child via a carriage service was introduced '[t]o ensure that Internet-related child sexual exploitation is comprehensively covered in light of rapidly changing technologies and the anonymity that the Internet provides'.<sup>85</sup> However, cybersex trafficking is another, new form of trafficking, and the relationship between the procurer, the victim and the supplier, is not fully captured by the existing Commonwealth and State legislation.

For example, under the *Crimes Act 1900* (NSW) s 66C(5), the presence of another person is a circumstance of aggravation that effectively increases the sentences for the offences of sexual intercourse with persons between 10 and 14 and between 14 and 16. The explanation of this circumstance of aggravation is that it can work to 'embolden or reassure the offender in committing the crime'.<sup>86</sup> The Commonwealth offences involving sexual activity with or procurement of a child via the internet and the State offences concerning child abuse material do not have similar aggravating circumstances, despite the fact that third parties are often present and produce the same effect.<sup>87</sup>

Furthermore, the median sentences for the Commonwealth cybersex offences have been significantly lower than for the equivalent NSW hands-on offences. Of 12 convictions for engaging in sexual activity with a child via a carriage service<sup>88</sup> in Victorian courts from 2010–15, none received a term of imprisonment. The median term of imprisonment for 2011–16 in NSW courts was 2.25 years (n = 4).<sup>89</sup>

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<sup>85</sup> [Explanatory Memorandum](#), Crimes Legislation Amendment (Sexual Offences Against Children) Bill 2010 (Cth) 7; *DPP (Cth) v Watson* [2016] VSCA 73, [26] (Beach JA).

<sup>86</sup> *R v Button* [2002] NSWCCA 159, [124]–[126] (Kirby J).

<sup>87</sup> See case studies at above n 9.

<sup>88</sup> *Criminal Code* (Cth) s 474.25A(1).

<sup>89</sup> Sentencing statistics from [Judicial Information and Research System](#) (NSW) and [Sentencing Advisory Council](#) (Vic).

By contrast, for convictions for sexual intercourse<sup>90</sup> with a child under the *Crimes Act 1900* (NSW), the figures were 8 years (for victims aged less than 10 years; n = 59),<sup>91</sup> 3 years (for victims aged from 10 to 14 years; n = 71),<sup>92</sup> and 3 years (for victims aged from 14 to 16 years; n = 61).<sup>93</sup>

Therefore, although the Commonwealth legislature has expressed its intention ‘to ensure that engaging in sexual activity with a child online is criminalised in a comparable way to equivalent activity engaged in in “real life”’,<sup>94</sup> it appears that in practice there remains a tendency to see these acts as a ‘victimless crime’, such that the ‘paramount public interest objective in promoting the protection of children’ is not being met.<sup>95</sup>

**[5] The NSW government should consider whether there is a gap in the current scheme of State and Commonwealth legislation with respect to the crime of cybersex trafficking and review the current coverage of offence provisions accordingly.**

### 2.3.5. Tailoring NSW Criminal Offences

Division 15A of the *Crimes Act 1900* (NSW) concerns ‘child abuse material’. ‘Material’ is defined to include ‘data’, which includes ‘information in any form’,<sup>96</sup> and ‘any other thing of any kind’,<sup>97</sup> so it is possible that the offences under this division already cover the case where live-streaming is used to view child abuse material.

However, the offences under the *Criminal Code* (Cth) ss 474.20–474.29 are more specifically directed at conduct commonly involved in cybersex trafficking cases, as they target the use of the internet in the transmission of the material, as well as offences of ‘grooming’ and ‘procuring’ children.<sup>98</sup> For this reason, there may not be a need to reform the state offences.<sup>99</sup>

Nevertheless, the Commonwealth offences do have an express evidentiary provision that is lacking in the NSW legislation which makes it easier for the prosecution to prove that the offender believed the victim to be a certain age.<sup>100</sup> Such a provision would be especially useful in cybersex trafficking cases as there is typically interaction between the provider of the material and the viewer.<sup>101</sup> This indicates that the existing provisions regarding child

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<sup>90</sup> Sexual intercourse is relatively broadly defined under the [Crimes Act 1900](#) (NSW) s 61H(1).

<sup>91</sup> [Crimes Act 1900](#) (NSW) s 66A.

<sup>92</sup> [Crimes Act 1900](#) (NSW) s 66C(1).

<sup>93</sup> [Crimes Act 1900](#) (NSW) s 66C(3).

<sup>94</sup> [Explanatory Memorandum](#), Crimes Legislation Amendment (Sexual Offences Against Children) Bill 2010 (Cth) 86; [Adamson v The Queen](#) [2015] VSCA 194, [25] (Weinberg JA).

<sup>95</sup> [R v De Leeuw](#) [2015] NSWCCA 183, [72] (Johnson J).

<sup>96</sup> [Crimes Act 1900](#) (NSW) s 91FA (definition of ‘data’).

<sup>97</sup> *Ibid* s 91FA (definition of ‘material’).

<sup>98</sup> [R v Gordon](#) [2009] QCA 209, [37] (Keane JA).

<sup>99</sup> Gareth Griffith and Lenny Roth, ‘[Protecting Children from Online Sexual Predators](#)’ (Briefing Paper No 10/07, Parliamentary Library, NSW, 2007) 1.

<sup>100</sup> See [Criminal Code](#) (Cth) s 474.28.

<sup>101</sup> See case studies at above n 9.

abuse material may need to be updated, and the NSW Sentencing Council has previously made this recommendation.<sup>102</sup>

**[6] The NSW government should consider updating the criminal offence provisions regarding child abuse material, and especially consider adopting the evidentiary provisions regarding proof of age in the *Commonwealth Criminal Code*.**

### 2.3.6. *The Role of NSW in Australia's National Action Plan*

The *National Action Plan to Combat Human Trafficking and Slavery 2015–19* was introduced in December 2014 to further 'the strategic aims of Australia's whole-of-community response to human trafficking and slavery over the coming five years'.<sup>103</sup> One of the seven 'key areas for focus' of the plan is 'strengthening the connectedness of the Australian Government response with the States and Territories'.<sup>104</sup>

In particular, the key responsibilities of State and Territory governments include 'child protection' and 'enforcement of State and Territory legislation on sexual servitude'.<sup>105</sup> This is reflective of the fact that the strategy clearly acknowledges that modern day human trafficking and slavery encompass a broad range of situations where persons are deprived of their freedom and exploited.<sup>106</sup>

### 2.3.7. *National Action Plan and Cybersex Trafficking*

However, despite the broad approach of the National Action Plan and the identification of newly recognised forms of slavery such as forced marriage and serious labour exploitation,<sup>107</sup> the Plan makes no mention of cybersex trafficking and the online exploitation of children.

Several existing areas of the Plan would be particularly applicable to cybersex trafficking:

- Information campaigns under action item 14 would be effective at preventing the normalising of CEM,<sup>108</sup> as well as making the public aware of the problem. This is important given that in 2015, 83% of police surveyed by NetClean said that 'the public, and in many cases even decision-makers, are unaware of the extent of the problem [of CEM]'.<sup>109</sup>

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<sup>102</sup> NSW Sentencing Council, [Penalties Relating to Sexual Assault Offences in New South Wales](#) (2008) vol 1 [4.54]–[4.56].

<sup>103</sup> Australian Government, [National Action Plan to Combat Human Trafficking and Slavery 2015–19](#) (2014) III.

<sup>104</sup> Ibid 20.

<sup>105</sup> Ibid 21.

<sup>106</sup> See section 1 above.

<sup>107</sup> Australian Government, [National Action Plan to Combat Human Trafficking and Slavery 2015–19](#) (2014) 20.

<sup>108</sup> Jeremy Prichard and Caroline Spiranovic, '[Child Exploitation Material in the Context of Institutional Child Sexual Abuse](#)' (Report, Royal Commission into Institutional Responses to Child Sexual Abuse, September 2014) 29.

<sup>109</sup> NetClean, '[Eleven Unbelievable Truths: The NetClean report 2015](#)' (2015) 31.

- Research and intelligence collection concerning cybersex trafficking falls well within the ambit of action item 17: 'Monitor new and emerging technologies and platforms to identify opportunities for these to be exploited by offenders'.
- Reducing opportunities for offenders under action item 18 should be pursued in relation to cybersex trafficking, for example, by implementing the best practice ICT use guidelines as recommended in section 2.4.1 below.
- The specialist training provided to Australian officials posted overseas under action item 21 should also include the identification of online sexual exploitation of children.
- Action items 25–29 concerning improved investigation and prosecution should be directed in part towards prosecution of child abuse material offences.
- In promoting cooperation in the region under action items 13, 33–35, cybersex trafficking should be placed on the agenda, including by introducing it as a priority for the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime. Cybersex trafficking is a truly transnational crime that requires transnational cooperation to address.
- The cooperation of federal, state and territory legal accountability networks under action items 38–39 should include reviewing the relevant offence provisions and prosecution strategies with respect to cybersex trafficking.
- The provision of victim support through compensation, remedial, protective, intervention and ongoing care, especially for minors, under action items 40–45, 48–61 should be expanded to the overseas victims of OSEC that were exploited by Australians. This is especially relevant as OSEC victims are often much younger than those of more traditional forms of cybersex trafficking and often have complex trauma experiences.<sup>110</sup>

While some of these measures will need to be actioned by the federal government, the NSW government can play a role in putting cybersex trafficking on the agenda of the implementation of the National Action Plan.

**[7] The NSW government, in its participation in the implementation of the *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, should ensure that cybersex trafficking is directly addressed by the existing strategies.**

#### **2.4. Term of Reference (d) – Industry Best Practice**

##### *2.4.1. Implement Best Practice Guidelines for Use of Information and Communications Technology ('ICT') Resources in the Public Sector*

In 2015, a NetClean survey of 368 police officers working on cases involving child abuse material from 28 different countries found that '58% of police say that they have worked on cases involving child sexual abuse material on work computers within the public sector during the past year'.<sup>111</sup>

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<sup>110</sup> See above nn 9–11.

<sup>111</sup> NetClean, '[Eleven Unbelievable Truths: The NetClean report 2015](#)' (2015) 27.

Early identification and discouragement of such users of CEM will simultaneously help reduce the commissioning of cybersex trafficking. IJM's casework in the Philippines indicates that online perpetrators tend to be opportunistic, rather than preferential predators,<sup>112</sup> and use of CEM and engagement with 'online paedophilic subcultures' helps to foster and reinforce the belief that sexual interactions between children and adults are acceptable.<sup>113</sup>

Prichard and Spiranovic have identified several ways in which the implementation of workplace policies with respect to the use of ICT resources is important in addressing the proliferation of child abuse material:

- Institutions who discover child abuse material on employee's devices may not know how to handle it because:
  - The State and Commonwealth offences require that the material be 'offensive' before it is deemed child abuse material, and certain images, such as parents sharing photos of their children, may be borderline;<sup>114</sup>
  - Institutions may be concerned about the damage to their reputation if one of their employees is convicted of possession of such material;<sup>115</sup> or
  - Managers may delete the material not realising it should be used as evidence.<sup>116</sup>
- Workplace filters can block inappropriate websites and make CEM more difficult to access and distribute. Workplaces have greater flexibility than governments and service providers in the filtering they implement, and this will reduce the 'easy opportunities' to access such material and thus reduce the situational factors that encourage this criminal behaviour.<sup>117</sup>
- Increasing the perception of risk of discovery for offenders can reduce their propensity to seek out child abuse material in the workplace. This can be accomplished by:
  - Monitoring staff internet use (possibly by automated means);
  - Identity verification for computer use, reducing the sense of anonymity; and
  - Behavioural strategies such as positioning monitors where they are observable by others.<sup>118</sup>
- Setting out clearly what ICT usage is and is not acceptable through codes of conduct will prevent potential offenders from justifying or normalising their behaviour or perceiving it as permissible.<sup>119</sup>

The THORN 'Sound Practices Guide to Fight Child Sexual Exploitation Online' recommends that workplaces have procedures in place for communicating with the national body responsible for handling tips of CEM,<sup>120</sup> that is, the Children's eSafety Commissioner.

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<sup>112</sup> See IJM, [Sex Trafficking](#) (21 October 2016).

<sup>113</sup> Jeremy Prichard and Caroline Spiranovic, '[Child Exploitation Material in the Context of Institutional Child Sexual Abuse](#)' (Report, Royal Commission into Institutional Responses to Child Sexual Abuse, September 2014) 14–15.

<sup>114</sup> Ibid 25.

<sup>115</sup> Ibid 23–25.

<sup>116</sup> Ibid 24.

<sup>117</sup> Ibid 14, 26–7.

<sup>118</sup> Ibid 27–8.

<sup>119</sup> Ibid 28–9.

<sup>120</sup> THORN, '[Sound Practices Guide to Fight Child Sexual Exploitation Online](#)' (August 2014).

**[8] The NSW government should ensure its departmental ICT use policies address the workplace risk factors for offending with CEM and incorporate clear guidelines on: the handling of CEM discovered on workplace computers; what material is not acceptable; and under what circumstances internet use will be filtered and monitored.**

#### *2.4.2. Promoting Best Practice in Use of ICT Resources the Private Sector*

The 2015 NetClean survey also found that ‘76% of police say that they have worked on cases involving child sexual abuse material on work computers within the private sector during the previous year’.<sup>121</sup> The effective promulgation of best practice workplace policies will be effective at reducing the prevalence of this behaviour.<sup>122</sup>

The Victorian government’s Department of Business and Innovation developed an ICT use policy template to be used by businesses in the State.<sup>123</sup> The NSW government could similarly create a best practice policy template based on the revised internal policy recommended above.

**[9] The NSW government should make available to businesses a best practice template ICT use policy that incorporates the recommended guidelines regarding CEM.**

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<sup>121</sup> NetClean, [‘Eleven Unbelievable Truths: The NetClean report 2015’](#) (2015) 27.

<sup>122</sup> Jeremy Prichard and Caroline Spiranovic, [‘Child Exploitation Material in the Context of Institutional Child Sexual Abuse’](#) (Report, Royal Commission into Institutional Responses to Child Sexual Abuse, September 2014) 28.

<sup>123</sup> Department of Business and Innovation (Vic), [‘Information Technology Policy and Procedure Manual Template’](#) (2011).

### 3. FORCED LABOUR IN SUPPLY CHAINS

#### 3.1. Term of Reference (b) – Prevalence and Growth

##### 3.1.1. Overview of Forced Labour in Supply Chains

When Australia's offence provisions criminalising slavery were modernised in 1999,<sup>124</sup> the offences of entering 'into any commercial transaction involving a slave' or simply exercising 'control or direction' over such a transaction or 'conducting a business involving forced labour' were introduced.<sup>125</sup> This was a first step in recognising that the responsibility for slavery should extend beyond the physical coercion of another human to those who profit or benefit, even indirectly, from this coercion.

As noted in relation to cybersex trafficking at section 2.3.3 above, those responsible for creating the market for exploitation should also be held responsible for that exploitation. In the case of slavery-like practices in supply chains, however, the ultimate market for this exploitation is created or at least fuelled by everyday consumers in NSW.

In supply chains for 'apparel, electronics, footwear, food, toys', and other industries, the poor regulation in many developing countries allows for people to be exploited through 'child labour, hazardous working conditions, excessive working hours and poor wages'.<sup>126</sup> It may be difficult to distinguish in many cases between forced labour and poor working conditions or rights. For example, in the Malaysian electronics industry, one third of 438 foreign workers surveyed by Verité were in situations of forced labour,<sup>127</sup> however, 90 per cent of all workers surveyed had their passports retained, which significantly restricted their freedom of movement.<sup>128</sup> Similarly, in Guatemala, of 372 workers in the coffee sector, nearly two-thirds were completely dependent on their employer for accommodation, and therefore 'even if eviction were not explicitly threatened', their freedom of movement was restricted.<sup>129</sup>

##### 3.1.2. Scale

The International Labour Organisation estimates that there are 21 million people in forced labour worldwide, in an industry that generates US\$150 million in illegal profits per year.<sup>130</sup> The complicated network that global supply chains form mean that even if, for example, a

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<sup>124</sup> Jennifer Norberry and Krysti Guest, [Criminal Code Amendment \(Slavery and Sexual Servitude\) Bill 1999](#), No 167 of 1998–99, 4 May 1999.

<sup>125</sup> [Criminal Code](#) (Cth) ss 270.3(1)(c)–(d), (2), 270.6A(2).

<sup>126</sup> Richard M Locke, 'We Live in a World of Global Supply Chains' in Dorothee Baumann-Pauly and Justine Nolan (eds), *Business and Human Rights: From Principles to Practice* (Routledge, 2016) 299, 299.

<sup>127</sup> Verité, '[Strengthening Protections against Trafficking in Persons in Federal and Corporate Supply Chains](#)' (January 2015) 15.

<sup>128</sup> *Ibid* 53.

<sup>129</sup> *Ibid* 31.

<sup>130</sup> International Labour Organisation, [Profits and Poverty: The Economics of Forced Labour](#) (2014) 13

NSW company does not use forced labour directly, it is highly possible that a second- or third-tier supplies does, and this is borne out by internal industry reports.<sup>131</sup>

In 2013, ABC reported that some of Australia's leading retailers, including Rivers, Coles, Target and Kmart were sourcing clothes from factories that threatened workers with abuse.<sup>132</sup> Nevertheless, garment manufacturing for Australian companies in Bangladesh had increased 1500% in the five years since 2008.<sup>133</sup>

Although not all of the global forced labour exploitation is linked to global supply chains, and ones that reach Australia, a significant amount is. Concerning the examples in section 3.1.1 above, Malaysia was one of the top eight exporters of electronic goods in 2013,<sup>134</sup> and Guatemala was the fifth largest supplier of coffee to the US in 2013.<sup>135</sup>

### 3.2. Term of Reference (c) – National Action Plan and Procurement Policies

#### 3.2.1. National Action Plan and Forced Labour in Supply Chains

At present, only one of the action items, item 63, of the National Action Plan addresses forced labour in supply chains, despite the fact that supply chains are listed as a 'key focus area'.<sup>136</sup> Further, this action item involves only 'understanding the problem and developing the response'.<sup>137</sup> However, there are already existing strategies that have been implemented overseas that could be replicated to improve the accountability of multinational corporations operating in Australia for the conditions of the workers supplying their raw materials.

For example, there is US legislation that 'requires all listed companies to report on the sources of minerals used in their products that originate from the Democratic Republic of Congo',<sup>138</sup> in part to deter companies from using minerals that have been mined, sold or transported using civilian labour at the hands of armed groups.<sup>139</sup>

Similarly, in the UK, the *Modern Slavery Act 2015* (UK) requires that every organisation supplying goods and services with a turnover above a certain threshold must prepare an

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<sup>131</sup> Richard M Locke, 'We Live in a World of Global Supply Chains' in Dorothée Baumann-Pauly and Justine Nolan (eds), *Business and Human Rights: From Principles to Practice* (Routledge, 2016) 299, 303.

<sup>132</sup> Four Corners, '[Australian Retailers Rivers, Coles, Target, Kmart Linked to Bangladesh Factory Worker Abuse](#)' (24 June 2013).

<sup>133</sup> Ibid.

<sup>134</sup> Verité, '[Strengthening Protections against Trafficking in Persons in Federal and Corporate Supply Chains](#)' (January 2015) 50.

<sup>135</sup> Economic Research Service, United States Department of Agriculture, '[US Food Imports](#)' (3 October 2016).

<sup>136</sup> Australian Government, '[National Action Plan to Combat Human Trafficking and Slavery 2015–19](#)' (2014) 20.

<sup>137</sup> Ibid 62.

<sup>138</sup> Justine Nolan, 'Mapping the Movement: The Business and Human Rights Regulatory Framework' in Dorothée Baumann-Pauly and Justine Nolan (eds), *Business and Human Rights: From Principles to Practice* (Routledge, 2016) 32, 37–8.

<sup>139</sup> 15 USC § 78m(p); see Global Witness and Amnesty International, '[Digging for Transparency](#)' (2015) 22.

annual statement stating ‘steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place ... in any of its supply chains’.<sup>140</sup>

Australia can and should adopt such measures, rather than delaying action in favour of research as outlined in the National Action Plan.

**[10] The NSW government, in its participation in the implementation of the *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, should ensure that proactive steps are being taken, modelled off successful transparency legislation overseas, to eradicate forced labour from supply chains of Australian companies.**

### 3.2.2. *Requiring Ethical Procurement Standards for NSW Government Contracts*

At the Commonwealth level, the Attorney-General’s Department has stated that the ethical obligations of Commonwealth procurement officers extend to ‘ensuring that no business providing goods or services to the Australian Government is tainted by human trafficking, slavery or slavery-like practices anywhere in the supply chain’.<sup>141</sup> There is an ‘Information Sheet for Commonwealth Government Procurement Officers’ on human trafficking, making such persons aware that products they could be purchasing on behalf of the Commonwealth could involve forced labour.<sup>142</sup>

No such standards or documents appear to be in existence at the NSW government level. Such procurement guidelines are one of the ‘important regulatory tools’ available to governments in addressing supply chain exploitation.<sup>143</sup>

**[11] The NSW government should require that all its procurement officers must ensure that no business providing goods or services to the NSW government is tainted by human trafficking, slavery or slavery-like practices anywhere in the supply chain.**

## 3.3. Term of Reference (d) – Practical Measures for NSW Businesses

### 3.3.1. *Identifying and Supporting Existing Measures*

Much of the legislative and policy reforms in the arena of supply chain exploitation fall within the domain of the federal, as opposed to the NSW state, government due to the global nature of supply chains. However, aside from advocacy through its role in implementing the National Action Plan and through its own procurement operations, the NSW government can take steps to support businesses and organisations within NSW that are engaging in ethical supply chain practices.

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<sup>140</sup> [Modern Slavery Act 2015](#) (UK) ss 54(2), (4).

<sup>141</sup> Attorney-General’s Department (Cth), [Human Trafficking Guidelines and Factsheets](#) (24 October 2012).

<sup>142</sup> Ibid.

<sup>143</sup> Ryan J Turner, [“Transnational Supply Chain Regulation: Extraterritorial Regulation as Corporate Law’s New Frontier”](#) (2016) 17 *Melbourne Journal of International Law* (online), 21–2.

In fact, Locke argues that in the absence of international law or strong action on the part of national governments,<sup>144</sup> one of the most effective means of regulating supply chains is to incentivise positive internal regulation measures by private actors in a flexible and responsive way.<sup>145</sup> For example, in the US, policies at the *state* (rather than federal) level such as ‘lenient penalties in exchange for transparency and self-disclosure of problems’ have been effective in enhancing compliance with environmental regulations.<sup>146</sup>

In relation to forced labour in supply chains, the NSW government should see where businesses or bodies within the State are taking positive action (such as disclosure of suppliers), and look to reward such behaviour. Some existing examples of positive small-scale initiatives that have already been taken include the promotion of ethical produce by local councils,<sup>147</sup> and the introduction of ethical clothing purchases for council uniforms.<sup>148</sup>

**[12] The NSW government should identify and incentivise positive steps taken by businesses and organisations within NSW in relation to ethical supply chains.**

*3.3.2. Advocating for a Holistic Approach to Supply Chain Labour Exploitation*

Many existing strategies targeted at labour exploitation in supply chains focus on what companies can do at the management and strategic level and what they can do in the absence of the effective enforcement of local labour laws.<sup>149</sup> However, from IJM’s experience addressing forced labour at the source of supply chains, it is clear that ‘slavery won’t be eradicated from electronics, fishing or any other industry unless and until national and local governments protect workers – including migrant workers – by enforcing laws against forced labor and trafficking and sending slave owners and traffickers to jail’.<sup>150</sup>

The problem of labour exploitation in supply chains needs to be addressed by implementing both ‘top-down’ and ‘bottom-up’ strategies.<sup>151</sup> Without strong policy and accountability frameworks designed and enforced by company leadership on the one hand, the desirability of cheap goods and services will allow injustice to go overlooked. On the other hand, unless companies invest in the anti-trafficking infrastructure of the regions in which they work,

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<sup>144</sup> Richard M Locke, ‘We Live in a World of Global Supply Chains’ in Dorothée Baumann-Pauly and Justine Nolan (eds), *Business and Human Rights: From Principles to Practice* (Routledge, 2016) 299, 305.

<sup>145</sup> Ibid 309–11.

<sup>146</sup> Ibid 311.

<sup>147</sup> Inner West Council, [Home Eco Challenge](#) (1 August 2016).

<sup>148</sup> Corporate and Transport Committee, Willoughby City Council, ‘[Minutes](#)’ (6 July 2009) 37–8.

<sup>149</sup> See, eg, AHRC, ACCSR and GCNA, ‘[Human Rights in Supply Chains: Promoting Positive Practice](#)’ (December 2015) 14–16; Fiona David et al, ‘[Starting a Dialogue: Harnessing the Power of Business to Eliminate Modern Day Slavery](#)’ (December 2012) 3.

<sup>150</sup> Gary Haugen, ‘Lessons from Two Decades of Casework: How to Restore Survivors and Communities’ in Margaret S Archer and Marcelo Sánchez Sorondo (eds), [Human Trafficking: Issues Beyond Criminalization](#) (Pontifical Academy of Social Sciences, 2016) 247, 262.

<sup>151</sup> Anti-Slavery International, ‘[Organisational Strategy 2015–20](#)’ (2015) 7.

they will perpetually be just one carelessly-arranged sub-contract away from exploiting slaves in their supply chain.<sup>152</sup>

IJM has seen success in addressing exploitation in supply chains of the commercial sex trade in India by beginning with collaborative casework with local law enforcement at a particular point in the supply chain. The operation was then scaled up and along the supply chain until key individuals causing the exploitation could be identified and prosecuted.<sup>153</sup>

Recognising the effectiveness of this approach, Walmart has provided funding for IJM to investigate the extent of forced labour exploitation in their supply chain for seafood sourced in Thailand.<sup>154</sup> This will allow targeted responses to be developed not only by Walmart and partner NGOs, but also importantly by government stakeholders.<sup>155</sup>

In approaches led by Australian governments and businesses to address forced labour in supply chains, investment in local law enforcement in source countries should be a top priority.

**[13] The NSW government should support and advocate for measures in both intergovernmental and industry-based responses to forced labour in supply chains that prioritise investment in local law enforcement.**

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<sup>152</sup> See Michael Hobbs, [‘The Myth of the Ethical Shopper’](#), *The Huffington Post* (online), 15 July 2015.

<sup>153</sup> USAID, [‘Scaling Up Interventions to Prevent and Respond to Gender-based Violence: An Analytical Report’](#) (30 March 2015) 35–7.

<sup>154</sup> Walmart and Walmart Foundation, [‘Giving Report: Fiscal Year 2015’](#) (2015) 13.

<sup>155</sup> *Ibid.*