

**Supplementary
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Human Trafficking and Slavery in NSW

Supplementary Submission to Parliament of New South Wales Legislative Council, Select Committee on Human Trafficking In New South Wales



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EXECUTIVE SUMMARY

Anti-Slavery Australia makes this supplementary submission to the NSW Parliament Legislative Council, Select Committee on Human Trafficking. This supplementary submission draws upon the research and findings of Anti-Slavery Australia's report, *Behind the Screen: Online Child Exploitation in Australia* released on 25 May 2017. This supplementary submission provides a summary of the findings and recommendations of that report, with a focus on the New South Wales context. The full report and summary is attached to this submission. We will address the following terms of reference:

(a) The role and effectiveness of New South Wales law enforcement agencies in responding to human trafficking including:

(i) How New South Wales law enforcement agencies respond to human trafficking, including slavery, slavery like practices such as servitude, forced labour, and people trafficking, and

(b) The prevalence of human trafficking in New South Wales,

(c) The effectiveness of relevant legislation and policies,

In addressing the above concerns, Anti-Slavery Australia makes the following supplementary recommendations. Anti-Slavery Australia recommends that the New South Wales Government:

- (1) Promote a consistent national government response to initiatives addressing online exploitation of children, by working with the Council of Australian Governments to establish a peak national body comprising representatives of government departments, law enforcement agencies and key stakeholders at State, Territory and Commonwealth levels. This body would draw on the expertise of existing bodies and provide official channels for the exchange of information.**
- (2) Consult with the Council of Australian Governments to revise the language of all State, Territory and Commonwealth legislation to Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse'. This will include a review of relevant New South Wales child protection legislation.**
- (3) Identify any gaps in legislative and sentencing policy frameworks, and conduct an assessment of sentencing outcomes for online child exploitation offences in New South Wales.**
- (4) Consider conducting further research to examine the systems used to classify online child exploitation materials in New South Wales.**
- (5) Introduce offences within New South Wales of:**
 - a. Administering or encouraging the use of an online child exploitation material website;**
 - b. Encouraging the use of an online child exploitation material website; and**

- c. **Providing information to a person that is likely to assist them in avoiding capture or prosecution for committing one of these offences.**

(6) Prioritise further research regarding:

- a. **The relationship between human trafficking and online child exploitation; and**
- b. **Victim and offender behaviours, in order to prevent future online child exploitation.**

(7) Develop a primary education programme to prevent online child exploitation to be delivered in schools to build upon the implementation of respectful relationship education within the National Curriculum.

Terminology

Different terms are used to describe online child exploitation offences and materials in legislation throughout Australia. These terms include “online child exploitation”, “online child abuse” and “child pornography”.¹ The term “online child exploitation” and “online child exploitation materials” will be used here as it is sufficiently broad, and accurately reflects the seriousness of the crime and the harm that children suffer as a result.²

¹ ‘Behind the Screen: Online Child Exploitation in Australia’ (Anti-Slavery Australia, 2017)

<<http://www.antislavery.org.au/images/behind%20the%20screen%20-%20report.pdf>> xii.

² Susanna Greijer and Jaap Doek, ‘Terminology Guidelines For the Protection of Children from Sexual Exploitation and Sexual Abuse’ (Guidelines, Terminology and Semantics Interagency Working Group on Sexual Exploitation of Children, 28 January 2016) (hereinafter Luxembourg Guidelines) 38-40.

ONLINE CHILD EXPLOITATION AND TRAFFICKING IN NSW

1. Overview

New technologies have facilitated the operation of global online child exploitation networks and increased opportunities for offenders to commit crimes of online child exploitation.³ This has also resulted in the increased commercial exploitation of children and young people, an area of concern which has expanded at both global and national levels.⁴ In a modern-day online environment, offenders are equipped with technology that enables them to easily access children in real time, anonymously and remotely from locations all over the world.⁵

Modern technology and ease of access to the internet has resulted in the proliferation of child exploitation materials now available online. Offenders access to tens of thousands of images of child exploitation and abuse, with commentators suggesting that such high demand will result in the further growth of the online child exploitation industry.⁶

Anti-Slavery Australia's report, *Behind the Screen: Online Child Exploitation in Australia* identifies a pressing need for further research into this area due to the alarming scope of online child exploitation. As of 1 January 2017, more than 10,000 victims of child exploitation have been identified through INTERPOL's International Child Sexual Exploitation image database (ICSE) since its inception, and subsequently removed from harm.⁷ On average, seven victims are identified on this database each day.⁸ The United States National Centre for Missing and Exploited Children (NCMEC) has reported processing over 150 million images and videos through its Child Recognition and Identification System.⁹ The Australian Federal Police (AFP) received 11,000 online child exploitation referrals in 2015.¹⁰ ICSE reports indicate that as of 1 June 2016, there were 194 identified Australia-based child victims and 102 identified

³Deborah Muir, 'Violence Against Children in Cyberspace: A Contribution to the United Nations Study on Violence Against Children' (Report, EPACT International, September 2005) <http://www.ecpat.org/wp-content/uploads/2016/04/Cyberspace_ENG_0.pdf>, 30; Gareth Griffith and Lenny Roth, 'Protecting Children from Online Sexual Predators' (Report, New South Wales, September 2007) <<https://www.parliament.nsw.gov.au/researchpapers/Documents/protecting-children-from-online-sexual-predators/Dealing%20with%20Online%20PredatorsFINALandINDEX.pdf>> 1.

⁴ Mark Capaldi, 'Unfinished Business Ending Child Prostitution, Child Pornography and Child Trafficking for Sexual Purposes' (Report, EPACT International, December 2014) <http://www.ecpat.org/wp-content/uploads/2016/04/UNFINISHED%20BusinessReport_2015.pdf>, 3; Muir, above n 3, 9.

⁵ Eliana Riggio and Mark Erik Hecht, Power, Impunity and Anonymity: Understanding the Forces Driving the Demand for Sexual Exploitation of Children (Report, EPACT International, March 2016) <<http://www.ecpat.org/wp-content/uploads/2016/05/PowerImpunityandAnonymity.pdf>>, 47.

⁶ 'Behind the Screen: Online Child Exploitation in Australia' (Anti-Slavery Australia, 2017) <<http://www.antislavery.org.au/images/behind%20the%20screen%20-%20report.pdf>> v.

⁷ *Online child abuse* Q&As, (Undated) INTERPOL <<https://www.interpol.int/Crime-areas/Crimes-against-children/Online-child-abuse-Q-As>>.

⁸ INTERPOL, *Rescuing online child sexual abuse victims spotlighted at INTERPOL meeting*, (Media Release, 18 November 2015) <<https://www.interpol.int/News-and-media/News/2015/N2015-196>>.

⁹ 'Emerging Global Threats Related to the Sexual Exploitation of Children Online' (Briefing Paper, ECPAT, Undated) <http://www.ecpat.org/wp-content/uploads/2016/05/Briefing-Paper_Emerging-global-threats-related-to-the-sexual-exploitation-of-children-online.pdf>.

¹⁰ Interview conducted with a Senior officer with the Australian Federal Police (AFP) (Telephone interview, 14 September 2016).

Australian offenders.¹¹ Furthermore, it is probable that this number under-represents the number of child exploitation material offenders due to the clandestine nature of the crime, and the ready availability of technology which enables offenders to avoid detection.¹²

The report identifies trends in the prosecution and sentencing of offenders in New South Wales under provisions of the *Crimes Act 1900* (NSW). Data analysed in *Behind the Screen* reveals that there has been a significant increase in the number of successfully prosecuted charges for online child exploitation material offences between 2007 and 2015 in New South Wales. In 2007 there were 190 finalised charges, rising to 496 in 2015, representing an increase of 161 per cent.¹³ However we found that there have been a relatively steady number of offenders convicted in New South Wales under this legislation in the same period. This may reflect the increasing technological capacity and storage availability, which facilitates increasing production, dissemination and access to child exploitation material.¹⁴ *Behind the Screen* also revealed that the average length of imprisonment for those convicted in the 2015-2016 financial year was 11.5 months, a small fraction of the maximum penalty of 10 years imprisonment under section 91H of the *Crimes Act 1900*.

2. Legislative framework

2.1.1. *Inconsistent language*

There is no uniform language used to describe online child exploitation in Australian Commonwealth, State and Territory legislation.¹⁵ For example, the *Criminal Code Act 1995* (Cth) provisions under Division D refer to 'possessing, controlling, and producing, supplying or obtaining child pornography' and 'child abuse material' as separate offences. The New South Wales legislation refers to 'child abuse material',¹⁶ while the Northern Territory legislation has provisions relating to 'child abuse materials' and 'indecent articles'.¹⁷ Victoria's legislative provisions on these offences have only recently been amended to refer to 'child abuse material'.¹⁸

In June 2016, the Interagency Working Group, coordinated by End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes ('ECPAT'), released the "Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse", also known as the "Luxembourg

¹¹ Data provided to the report writers from one Interviewee. Data was provided in the form of a table from the INTERPOL operated International Child Sexual Exploitation database.

¹² 'Classification of child exploitation material for sentencing purposes: Final report' (Queensland Sentencing Advisory Council, May 2017) <http://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0017/531503/cem-final-report-july-2017.pdf> 14.

¹³ Ibid, 16-17.

¹⁴ Ibid, 14.

¹⁵ 'Behind the Screen: Online Child Exploitation in Australia' (Anti-Slavery Australia, 2017) <<http://www.antislavery.org.au/images/behind%20the%20screen%20-%20report.pdf>> 50.

¹⁶ *Crimes Act 1900* (NSW) s 91FB.

¹⁷ *Criminal Code Act 1983* (NT) Sch 1, Div 2, Subdiv 1.

¹⁸ *Crimes Act 1958* (Vic) ss 68 to 70AAAE.

Guidelines”.¹⁹ These guidelines were created to address the lack of consensus, at an international level, on the terminology to be used in reference to the sexual exploitation and sexual abuse of children. We recommend that these terminology guidelines be used in the wording of all relevant State and Territory legislation, to ensure greater conceptual clarity across all Australian jurisdictions.

There is a significant need for uniform terminology in legislation across Australia. This will reflect the increasing awareness that the term “child pornography” is insufficient in conveying the seriousness and gravity of the offences depicted and harm faced by victims. Consistent terminology will also assist with the implementation of national child protection systems such as Working with Children Checks,²⁰ and facilitate the compilation of national data.

3. Sentencing of online child exploitation in New South Wales

3.1. Administrators of online child exploitation networks

There are currently no New South Wales legislative provisions dealing with the administration of online child exploitation material networks, where the administrator is based in Australia. The recent high profile cases of *Graham*²¹ and *McCoole*,²² illustrate how the expansion of online technologies has resulted in the mass possession and distribution of images and videos that comprise online child exploitation material, and also provide examples of how these networks encourage the further abuse and exploitation of children in Australia and overseas.

In the recent New South Wales court case of *Burbridge*, the sentencing judge noted that the distribution of images was not for commercial purposes, and this acted as a mitigating factor in sentencing.²³ However administrators of large dark web networks use images themselves as a form of online currency to expand their online communities, encouraging and facilitating extreme abuse of children.

Australian offenders like Graham and McCoole can administer vast, anonymous networks of child exploitation material offenders from their home computers. Such networks often require that members regularly share child exploitation material. Administrators encourage other members to engage in depraved, violent acts of child sexual abuse, and share information on how to remain anonymous and avoid detection by law enforcement.

¹⁹ Interagency Working Group, ‘Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse’ (ECPAT, June 2016) <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/instructionalmaterial/wcms_490167.pdf>.

²⁰ Consistency in the area was a recommendation of the Royal Commission to Institutional Responses into Child Sexual Abuse, and may reflect potential recommendations to come out of South Australia’s Child Protection Systems Royal Commission. Commonwealth, Royal Commission into Institutional Responses to Child Sexual Abuse, *Working with Children Checks Report* (2015).

²¹ *The Queen v Graham* [2016] VCC 305.

²² *R v Shannon Grant McCoole* (Unreported, District Court of South Australia, Rice DCJ, 7 August 2015) 5-6.

²³ *Burbridge v R* [2016] NSWCCA 128.

3.1.1. Provisions related to the administration of online networks

Several Australian jurisdictions have introduced provisions to deal with individuals found to be administrators of online child exploitation networks.

In Victoria, it is an offence to administer or encourage the use of “child pornography website”,²⁴ and it is also an offence to provide information to a person that is likely to assist them in avoiding capture or prosecution for committing one of these offences.²⁵ The legislation provides examples of this latter offence, including circumstances where:²⁶

- 1 A provides information to B about how to use a website to deal with child pornography anonymously or how to encrypt electronic files containing child pornography.
- 2 A provides information to B about how to delete electronic data that records information about B's identity.

Victoria's Attorney-General, Martin Pakula, described the introduction of these offences as:

... a clear message to anyone considering committing these child pornography offences that the internet is no longer an anonymous domain for their abhorrent crimes.

*This bill will modernise Victorian laws to make the investigation and prosecution of online child pornography offences in this state more effective.*²⁷

In 2016, similar provisions were added to Queensland legislation.²⁸ Where a hidden network or anonymising service is used to commit an offence under these new provisions, the maximum penalty will increase from 14 years to 20 years.²⁹ This increase in penalty was advocated for in response to:

*... the Commission's findings that the conduct involved in making new material to be distributed over the internet, especially when it is known that the market is becoming increasingly depraved and voracious, often involves the use of anonymising tools to conceal a person's identity. This makes the detection of offending behaviour, identification of perpetrators and protection of children at risk, more difficult. The amendments will address legislative gaps and limitations identified by the Commission to deter this conduct and protect the community from this abhorrent offending.*³⁰

The relatively recent introduction of State-based legislation surrounding the administration of online child exploitation networks demonstrates this as an emerging issue in Australia. Following the example of

²⁴ *Crimes Act 1958* (Vic) ss70AAAB and 70AAAC.

²⁵ *Crimes Act 1958* (Vic) s70AAAD(1).

²⁶ *Crimes Act 1958* (Vic) s70AAAD(1).

²⁷ The Hon Martin Pakula MP, *New laws to combat child pornography offences* (Media Release, 4 August 2015)

<http://www.premier.vic.gov.au/new-laws-to-combat-child-pornography-offences/>.

²⁸ *Criminal Code Act 1899* (QLD) ss 228DA, 228DB and 228DC.

²⁹ *Criminal Code Act 1899* (QLD) ss 228DA, 228DB and 228DC.

³⁰ Explanatory Notes, *Serious and Organised Crime Legislation Amendment Bill 2016* (QLD), 44.

Victoria and Queensland, we recommend that New South Wales introduce provisions dealing with individuals who administer online child exploitation networks through the use of carriage services to be introduced.

3.2. Classification of child exploitation materials

Child exploitation material is categorised by reference to two scales, the Australian National Victim Image Library (ANVIL) and the Child Exploitation Tracking System (CETS).³¹ Both scales categorise material according to the following categories: category one: sexually suggestive posing with no sexual activity; category two: non-penetrative sexual activity between children, or solo masturbation by a child; category three: non-penetrative sexual activity between adult(s) and child(ren); category four: penetrative sexual activity between adult(s) and child(ren); category five: sadism, humiliation or bestiality; and category six: animated or virtual depictions of children engaged in activity covered by categories one to five.³²

A recent study conducted by the Queensland Sentencing Advisory Council, titled *Classification of child exploitation material for sentencing purposes*, examined the use of child exploitation material classification systems by Queensland courts in sentencing offenders.³³ The report provides a detailed examination of the Queensland response to online child exploitation, and identifies gaps in the current Queensland criminal justice framework concerning online child exploitation material. The report concludes that a new approach to classification of online child exploitation materials is needed.³⁴ The proposed Q-CEM Package involves three elements which address the role of the classification of material in Queensland's criminal justice system; field triage, a four-category child exploitation classification schema, and a child exploitation material analysis report. The report also provides an estimated time-frame during which these stages should be conducted during an investigation.³⁵

Anti-Slavery Australia recommends that the State government consider conducting further research to examine the systems used to classify online child exploitation materials in New South Wales.

4. The intersection of online child exploitation and human trafficking

The link between human trafficking and online exploitation has become evident in recent years through a number of court cases, and the emergent practice of live-distant child abuse.³⁶ One such case is *DPP (Cth) v McIntosh*, wherein a man trafficked his twin surrogate daughters into Australia for the purposes of sexual exploitation. This matter resulted in multiple convictions, including one of trafficking.

³¹ Cybercrime Convention, Explanatory Report, cited in Clough Jonathan Clough, *Principles of Cybercrime* (Cambridge University Press, 1st ed, 2010) 302-3. In terms of Australian legislation, minor is determined by the relevant legislative provisions.

³² *Martin v R* [2014] NSWCCA 283 per Beazley P at [10].

³³ 'Classification of child exploitation material for sentencing purposes: Final report' (Queensland Sentencing Advisory Council, May 2017) <http://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0017/531503/cem-final-report-july-2017.pdf> 14.

³⁴ *Ibid*, 77.

³⁵ *Ibid*, 77-78.

³⁶ *DPP (Cth) v McIntosh* [2016] VCC 622 ('McIntosh').

Live-distant child abuse is the practice of Australians who carry out offences of online child exploitation in overseas jurisdictions as a significant area of concern. The emergence of 'Live-Distant-Child Abuse' as an insidious and inconspicuous form of exploitation further demonstrates the complex connection between online child exploitation and trafficking. The fast growth of internet access amongst disadvantaged populations in places such as the Philippines means that Australian offenders can easily connect to vulnerable populations.

This form of exploitation has been described as "Cybersex Trafficking" by organisations such as the International Justice Mission.³⁷ Moreover, in the Philippines, perpetrators who exploit children online under the instruction of Australian based offenders have been charged with crimes under the Philippines trafficking legislation. This type of offending emphasises the impact, and culpability, of Australian perpetrators who view or request access to violent images of child abuse online and who are thereby fuelling an international industry of online child exploitation materials. A New South Wales man recently pleaded guilty to 22 counts of causing a child to engage in sexual intercourse outside of Australia,³⁸ and one count of possessing child abuse material.³⁹ The link between human trafficking and online child exploitation continues to grow and substantial further research is required to understand this developing crime type, in order to successfully prevent this developing crime type and protect vulnerable children from exploitation.

5. Education and prevention of online child exploitation

There is an abundance of government and non-government online safety education initiatives. Several of these online education tools are stated to be evidence-based, such as ThinkUKnow and the eSafe programmes developed by the Alannah and Madeline Foundation. However, from our research it is not clear what the research informed evidentiary basis is for these two programmes. While ThinkUKnow is based on the experiences and investigations of law enforcement officers, there remains a significant gap in academic scholarship in this area. In this way, it would be possible to develop greater clarity and consistency in the delivery of educational programmes to prevent online child exploitation. We recommend that further research be conducted in this area.

The online environment in which young people explore and develop new relationships is constantly changing. Assumptions about the internet and the way young people interact with digital technology must be set aside in favour of more nuanced understanding. Australian initiatives targeting online child exploitation prevention have been criticised as part of a model of "crime prevention" in which perpetrators of abuse or violence are strangely absent".⁴⁰ Online criminal or deviant behaviour does not exist in a

³⁷ International Justice Mission, 'Cybersex Trafficking' (Factsheet, September 2016)

³⁸ Criminal Code Act 1995 (Cth) Div 272.8.

³⁹ *Crimes Act 1900* (NSW) s 91FB; reported in Evidence to Legislative Council Select Committee on human trafficking in New South Wales, Parliament of New South Wales, Sydney, 6 March 2017, 15 (Linda Howlett, Detective Superintendent, Sex Crimes Squad, NSW Police); and Emma Partridge, 'Sydney Skype paedophile is jailed for 10 years for 'evil' crimes', *Daily Telegraph* (online), 14 June 2017 <<http://www.dailytelegraph.com.au/news/nsw/sydney-skype-paedophile-is-jailed-for-10-years-for-evil-crimes/news-story/ea3f5853f3f138be645505bd674f8604>>.

⁴⁰ Kath Albury and Kate Crawford, 'Sexting, consent and young people's ethics:

vacuum, and online activity should be considered an extension of offline behaviours, attitudes and systemic beliefs.

A review of current programmes in Australia highlights a tendency to problematize only the online dimension of these behaviours.⁴¹ There remains a significant gap in online child exploitation educational programmes, as there is no scope for the integration of primary prevention. It should be noted that research has been conducted into primary prevention of child sexual abuse, including the Australian Institute of Family Studies final report on *Conceptualising the Prevention of Child Sexual Abuse*.⁴² Research has also been undertaken by the Institute of Child Protection Studies, based out of the Australian Catholic University and funded by the Royal *Commission into Institutional Responses to Child Sexual Abuse*.

This protective approach to early intervention must be supplemented with primary prevention to address the cultural causes of online child exploitation.⁴³ Protective early intervention can provide protection to some victims.⁴⁴ However, this does not prevent the offence, and can do little to prevent the production and distribution of online child exploitation materials. This area requires high-level academic research to identify gaps and provide direction and clarity in the development of primary prevention programmes.

Anti-Slavery Australia recommends that online child exploitation prevention initiatives are integrated more fully with evidence-based respectful relationships, and child abuse prevention education programmes, and that substantial further research is needed in this area.

Beyond Megan's Story' (2012) 26(3) *Continuum* 463, 465.

⁴¹ Ibid.

⁴² Antonia Quadara, Vicky Nagy, Daryl Higgins and Natalie Siegel, 'Conceptualising the Prevention of Child Sexual Abuse' (Research Report No 33, Australian Institute of Family Studies, June 2015).

⁴³ Our Watch, Australia's National Research Organisation for Women's Safety and VicHealth 'Change the story: A shared framework for the primary prevention of violence against women and their children in Australia', (Our Watch, 2015) 15.

⁴⁴ Kerryann Walsh, Karen Zwi, Susan Woolfenden, Aron Shlonsky, 'School-based education programmes for the prevention of child sexual abuse' (2014) 4 *Cochrane Database of Systematic Reviews* 1.