

**INQUIRY INTO MODERN SLAVERY ACT 2018 AND
ASSOCIATED MATTERS**

Organisation: International Justice Mission Australia

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20 September 2019

NSW Legislative Council's Standing Committee on Social Issues
Parliament House
Macquarie Street
SYDNEY NSW 2000

By upload: www.parliament.nsw.gov.au

Dear Honourable Members,

Re: Submission of International Justice Mission Australia to the inquiry into the *Modern Slavery Act 2018* (NSW) and associated matters

Thank you for the opportunity to provide a submission to this inquiry. International Justice Mission Australia (IJM) is proud to have been involved in the development of the *Modern Slavery Act 2018* (NSW) (the Act), and wishes to encourage the Committee and the NSW Government more generally to see this legislation as an opportunity to be world leaders in ending slavery, rather than as legislation designed to place checks on enterprise in New South Wales.

All around the world, slaves are taken by oppressors who believe that making money matters more than a person's life. Driven by greed and overlooked by their local legal system, these oppressors steal human beings and intimidate them until they feel too small to fight back. We believe that these slave owners shouldn't be allowed to prosper.¹

IJM is the largest global anti-slavery organisation in the world, comprising advocates, donors, investigators, social workers, lawyers and government leaders who are executing a proven plan that will stop the modern slave trade in its tracks.

We rescue slaves by disrupting the slave trade and business models that rely on slavery. Disrupting the model involves prosecuting slave owners and dramatically increasing the legal, financial and opportunity costs slave owners must pay to sustain a slave-labour model. The Australian Modern Slavery legislation, including both the Commonwealth and the NSW Acts are part of this disruption. As you go about this Inquiry, we ask that you consider that perspective and this legislation in that global context.

¹ <https://www.ijm.org/documents/studies/IJM-Justice-Review.pdf>

Attached is our submission on the Act, the associated *Modern Slavery Bill 2019* (the amendment Bill), and the consultation draft of the *Modern Slavery Regulation 2019* (NSW) (the Regulation).

As the Premier of NSW noted, “[i]t is not every day that members of this place or the other place put forward something that will have a positive impact for literally thousands of people.”² We agree and make the following recommendations:

1. The NSW Government and the Committee recognise that legislation will have a positive impact on the lives of thousands of exploited people, compared to the contextually and comparatively small reporting requirements placed on business (ToR 1(b))
2. The NSW Government and the Committee recognise the potential opportunity that this legislation provides in being a world leader in combatting global slavery. Any arguments regarding inconsistencies between State and Federal Acts are mere distractions and can be overcome: for example, the Amendment Bill deals with such issues succinctly (ToR 1(f))
3. The NSW government takes steps to 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.
4. The Anti-Slavery Commissioner be mandated to perform three yearly reviews of the legislation to ensure that it is fit for purpose and is providing a legislative framework suitable for prosecuting those people and businesses exploiting human rights (ToR 1(h))

Also included is an Appendix that sets our position on the importance of the Act capturing the crimes involved in the online sexual exploitation of children.

Please feel free to contact me if you have any questions or require further information.

Yours sincerely,

CAROLY HOUMES

Chief Executive Officer
International Justice Mission Australia

² Premier Gladys Berejiklian, in her second reading speech for the Act, 6 June 2018, <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-102537>

INTERNATIONAL JUSTICE MISSION'S SUBMISSION ON THE MODERN SLAVERY ACT 2018 (NSW) AND ASSOCIATED MATTERS

Recommendation 1: Recognise this legislation can positively impact the lives of thousands of exploited people

How does IJM see modern slavery?

Throughout the developing world, fear of violence is part of everyday life for the poor. In developing and middle-income countries, poor people often name violence as their greatest fear or main problem.

Much of that violence is experienced by vulnerable people who are exploited in trafficked or forced labour settings. They are victims of modern day slavery, where their labour is coerced, underpaid or unpaid, conditions are abusive and unsafe, and they are not free to leave the workplace. The International Labour Organisation and Walk Free Foundation released a joint estimate of global slavery at 40.3 million people, of whom 24.9 million are victims of forced labour slavery.³

Successfully reforming broken justice systems means securing major shifts in the knowledge, attitudes, behaviour and capacity of criminal justice system actors and institutions. And the global scope of the problem of modern slavery means that good Australian legislation will make a positive effect on thousands of people's lives whilst also contributing to ending the global problem of modern slavery.

Recommendation 2: Recognise this legislation provides the NSW Government with the opportunity to be a world leader in combatting slavery

The nature of Modern Slavery

Slavery has been abolished in every country around the world for over 35 years.⁴ Under international law, slavery is defined as the situation where one person exercises power over another person as if they owned them.⁵ However, the obvious evil and exploitation that slavery entails is masked by its perpetrators.

³ Global Estimates of Modern Slavery, Alliance 8.7. International Labour Organisation and Walk Free Foundation 2017, http://www.alliance87.org/wp-content/uploads/2018/07/global_estimates_of_modern_slavery-forced_labour_and_forced_marriage.pdf

⁴ John D Sutter, 'Slavery's Last Stronghold', 16 March 2012, <http://edition.cnn.com/interactive/2012/03/world/mauritania.slaverys.last.stronghold/index.html>

⁵ UN Slavery Convention, opened for signature 25 September 1926, 60 LNTS 253 (entered into force 9 March 1927) art 1. See <https://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx>

The eradication of slavery requires businesses working in the developed and developing world to be vigilant in identifying and dismantling the strategies employed by slave owners.

The role of business in ending slavery

Globally IJM partners with corporations to both raise awareness of the problems of modern slavery and to fuel the work we do with local authorities to rescue victims, restore survivors, to strengthen criminal justice systems and to bring an end to impunity for perpetrators of crimes of modern slavery. We believe a stronger justice system in those places will not only help protect the poor from violence, it will also provide a more stable environment in which all legitimate businesses can operate.

We support the view that any Modern Slavery Act requiring a mandatory assessment of risk and reporting for transparency in supply chains is good for both business and exploited people globally. It creates a 'level playing field' situation for business so that those who are not abusing human rights for profit are not disadvantaged over those who drive prices down through the exploitative use of slave labour. We believe it is important that the Government not only enacts Modern Slavery legislation, but that it complies with the reporting requirements as well as provides NSW business with guidance and education through the role of the Anti-Slavery Commissioner.

Recommendation 3: The NSW government takes steps to ensure that no business providing goods or services to the NSW government is tainted by human trafficking, slavery or slavery-like practices

Identifying and Supporting Existing Measures

Whilst 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 state, government due to the global nature of supply chains, we believe that the NSW Government has an important role to play in implementing the National Action Plan to Combat Human Trafficking and Slavery⁶ and through its own procurement operations.

We believe that the NSW Government, in the absence of cohesive international modern slavery laws or strong action on the part of national governments, should take steps to support businesses and organisations within NSW that are engaging in ethical supply chain practices. Studies have shown that one of the most effective means of regulating supply chains is to incentivise positive internal business regulation in a flexible and responsive way.⁷⁸ For example, in the US, policies at the *state* (rather than federal) level such as 'lenient penalties in

⁶ <https://www.homeaffairs.gov.au/criminal-justice/files/trafficking-national-action-plan-combat-human-trafficking-slavery-2015-19.pdf>

⁷ 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, 305.

⁸ Ibid 309–11.

exchange for transparency and self-disclosure of problems' have been effective in enhancing compliance with environmental regulations.⁹

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,¹⁰ and the introduction of ethical clothing purchases for council uniforms.¹¹

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'.¹² 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.¹³

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.¹⁴

Unique features of the Act

The NSW Modern Slavery Act 2018 has a number of positive features which improve upon the *Modern Slavery Act 2015* (UK) model, and which are also preferable to the model proposed by the Commonwealth *Modern Slavery Act 2018*. Key components of the NSW Act include:

- a. **A central registry:** The public central registry for the Modern Slavery Statements (Statements) will be administered by the NSW government, which will make it easier for public and civil society to identify businesses that are working to address modern slavery in their supply chains. Access to these Statements on the registry will also enable consumers to make more informed choices regarding goods and services available in NSW. Modern Slavery Statement compliance should also be a requirement for all businesses entering contractual arrangements with the NSW Government (when the company meets the threshold for reporting).
- b. **Penalties:** Companies that fail to report are liable to a \$1.1 million fine. As we submitted to the federal inquiry in 2018, penalties have been a feature of successful transparency legislation overseas and in Australia. (Penalties are not included in the Commonwealth Act).

⁹ Ibid 311.

¹⁰ Inner West Council, [Home Eco Challenge](#) (1 August 2016).

¹¹ Corporate and Transport Committee, Willoughby City Council, [Minutes](#) (6 July 2009) 37–8.

¹² Attorney-General's Department (Cth), [Human Trafficking Guidelines and Factsheets](#) (24 October 2012).

¹³ Ibid.

¹⁴ 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.



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- c. **Threshold:** Companies with annual revenue over \$50 million will be required to report, which is consistent with the UK legislation. (The Commonwealth Act sets the threshold at \$100 million, which means far fewer companies have to comply).
- d. **Public sector:** The Act includes separate provisions requiring government bodies to take reasonable steps to ensure supply chains do not have modern slavery, and to report on the steps taken.

For the above reasons, we think that it is in the interests of thousands of exploited people worldwide for Australia to have both Commonwealth Modern Slavery legislation and NSW Modern Slavery legislation. These separate but complimentary pieces of legislation do not unduly burden businesses – we are referring to businesses in NSW with annual revenue of \$50million – and as such they are not small enterprises with limited means. These are businesses that make purchasing decisions that can impact the lives of the vulnerable people that may be somewhere in their supply chains.

Recommendation 4: Mandate the Modern Slavery Commissioner to perform three yearly reviews of the Act and associated legislation

Importance of the NSW Anti-Slavery Commissioner

The NSW Anti-Slavery Commissioner's (Commissioner) role is to work with government, corporate and civil society bodies to combat modern slavery, provide support to victims, raise awareness, and improve law and policy concerning modern slavery. This role is modelled on the position created by the *Modern Slavery Act 2015* (UK), with Divisions 1-3 of the NSW Act outlining the functions and responsibilities of the NSW Commissioner. The *Modern Slavery Regulation 2019* (the Regulation) provides guidance on the preparation and publication of modern slavery statements by commercial organisations in implementing the Act, and the Commissioner provides a point of contact for those businesses looking for additional guidance.

IJM believes the Commissioner's role is important as it helps to ensure that NSW legislation remains fit for purpose, through improving coordination between criminal justice agencies and prosecution services. We recommend that the Commissioner also be mandated to conduct a review into the legislation, including the Act and the Regulations, every three years, ideally in conjunction with the review of the *Modern Slavery Act 2018* (Commonwealth). In this way, both the New South Wales and Federal Governments will be able to track the significant impact that the legislation can have on modern slavery, whilst also highlighting any areas requiring further attention.

APPENDIX: IJM'S POSITION REGARDING THE ONLINE SEXUAL EXPLOITATION OF CHILDREN

Suggested changes to the NSW Act as outlined in the Amendment Bill: Child Abuse sections

In the Philippines, IJM seeks to address the growing crime of the online sexual exploitation of children (OSEC) – a form of slavery that is transnational, and involves offenders in NSW who commission the abuse of children in developing countries on a pay-per-view basis. As a result of our case work involving these crimes, a large portion of our earlier submissions to the Human Trafficking Inquiry¹⁵ focus on the amendments that the Act makes to the *Crimes Act 1900* (NSW), specifically those provisions relating to the production and distribution of child abuse material. We discuss this in more detail below, but it is our recommendation that the Committee and the NSW Government recognise the importance of these provisions in prosecuting these crimes against children.

We request that the NSW Government provides further advice as to how Commonwealth legislation provides adequate provisions for the prosecution of a person sharing child abuse material via a digital platform or network

In regard to the child abuse material sections of the Act, we recognise that the previous *91HAA Administering a digital platform used to deal with child abuse material* is removed by the Amendment Bill. We note that in its submission to this inquiry, the NSW Government has said that this section “is an inconsistency with the equivalent Commonwealth provision, which cannot be remediated by redrafting the provision”, further noting that “the Commonwealth offences will still be available for use by NSW Police in appropriate circumstances”.¹⁶ Whilst we see the perspective, and understand this easily removes any possible conflict between the State and Federal legislation, we would ask for further clarification on this, as it is not immediately clear to us which part of the existing Commonwealth legislation adequately enables prosecution of people administering websites or networks that share child abuse material. This is discussed below.

Growth of Networks and distribution

An emerging feature of cybersex trafficking cases is the complex criminal networks that facilitate the sharing and production of child abuse material. Covert operations involving cooperation between state and federal police forces have resulted in the rescue of hundreds of children and multiple arrests,¹⁷ and just one covert operation can potentially dismantle an entire network.¹⁸

¹⁵ International Justice Mission submission to the NSW Legislative Council Inquiry into Human Trafficking, 18 February 2017

¹⁶ Submission 1, NSW Government Submission, 6 August 2019, Inquiry Into Modern Slavery Act 2018 and associated matters, p19

¹⁷ 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).

¹⁸ Madonna King, [Stalking the Stalkers: The Heroes of Task Force Argos](#), *The Sydney Morning Herald* (online), 28 November 2015.

This trend has become more apparent in just the past year. In 2017, Taskforce Argos of the Queensland Police stated: ‘We are also seeing more images generated from live cams and live-streaming. *There are dedicated sections on forums explaining how to access children online* and there are people who specialise in videoing victims.’¹⁹ Similarly, the Australian Criminal Intelligence Commission noted: ‘Forums and networks on the darknet that facilitate CEM exchange are growing in number as users become more technologically proficient.’²⁰

This is consistent with what IJM has encountered in our investigations alongside the Philippines National Police into cybersex trafficking. Many of the investigations are the result of tips from overseas countries such as the US, UK and Australia where an investigation there has uncovered a network of offenders, some of whom have been in contact with persons in the Philippines making children available for live-streaming sessions.

Digital platforms

In terms of the importance of criminalising the administration of child abuse material platforms and forums, we note Anti-Slavery Australia’s 2017 report, “Behind the Screen”²¹ which outlines that there are no specific provisions in legislation that reflect the prominent role of administrators in the distribution of materials, and in some cases incitement, of child exploitation, or the extent of distribution as aggravating factors. The report references the case of Shannon Grant McCool (unreported) in which the sentencing judge noted that online network administrators distribute child exploitation materials, in some cases, to extremely large national and international networks. In describing the McCool’s network, the judge stated:

A website that functioned for the sole purpose of facilitating the distribution of child pornography material and encouraging discussion about child abuse amongst its significant number of members. ...The spans of control include you in the position of head administrator of ‘Q’ website until your arrest in June 2014. The head administrator was responsible for the administration of the board by enabling others to distribute child exploitation material through it, encouraging the production of child exploitation material and causing child exploitation material to be transmitted to yourself and others ... Generally speaking to move up the membership levels, there was a requirement to post and upload and increase the amount of child exploitation material every 30 days.

Further information on McCool’s case can be found via online media sources.²² But it is worth noting that IJM has seen an increase in the number of networks similar to McCool’s and we are not satisfied that the Commonwealth legislation adequately captures the form and extent of this type of offending.

Legislative Response to Networks

Two Australian States have enacted legislation which criminalises the administration of computer networks for the purpose of sharing child exploitation material:

¹⁹ NetClean, *The NetClean Report 2017* (2017) Insight 7 (emphasis added).

²⁰ Australian Criminal Intelligence Commission, *Organised Crime in Australia 2017* (2017) 42.

²¹ <http://www.antislavery.org.au/images/behind%20the%20screen%20-%20report.pdf>

²² See for example, <https://www.abc.net.au/news/2018-04-19/paedophile-shannon-mccoole-gets-jail-sentence-reduction/9674978>



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- In Victoria, the *Crimes Amendment (Child Pornography and Other Matters) Act 2015* (Vic) made it an offence to: ‘to administer or encourage the use of [a] “child pornography website”’ and ‘to provide information to a person that is likely to assist them in avoiding capture or prosecution for committing one of these offences’.³⁶
- In Queensland, the *Serious and Organised Crime Legislation Amendment Act 2016* (Qld) introduces similar offences to the Victorian legislation, and also includes an aggravating factor of using ‘a hidden network or an anonymising service’ which further increased the sentence for these offences.³⁷

The NSW Government should recognise that the online exploitation of children (OSEC) is a form of modern slavery and strong legislation can deter demand

OSEC, also known as cybersex 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. The provisions contained in sections Schedule 4 of the Act amend the *Crimes Act 1900* and primarily target the production and potential distribution of child abuse material.

We wish to commend the importance of these sections to the Committee, as they introduce aggravated offences and reduce evidentiary burdens to assist in the prosecution of offenders involved in cybersex trafficking. Cases such as that of Kyle Dawson²³ indicate that Australian offenders are not only commissioning facilitators in the Philippines and elsewhere to livestream abuse of children via webcam, but this abuse is being recorded, and in many cases, shared. Victims are often extremely young and powerless. Under the Act, the severity of these actions is captured by the new aggravated offence as it is in the (virtual) presence of another person, the facilitator, and involves young children.

The Nature of the Crime

IJM defines 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.²⁴

²³ See <https://www.abc.net.au/news/2016-09-07/predators-using-internet-to-direct-live-online-sex-abuse/7819150>

²⁴ 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].

Generally paedophiles will pay US\$20–\$150 for a ‘sex show’ broadcast online.²⁵ 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.²⁶

More than half the victims of OSEC 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.²⁷ In over half of IJM’s casework, the traffickers have been a family member or close family friend of the victim,²⁸ however, other cases involve larger scale criminal networks.²⁹

OSEC 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.

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%,³⁰ such that today there are around 40 million users.³¹ 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.³² Internet credit can be purchased easily and inexpensively as pre-paid cards,³³ and internet cafes offer private rooms for as little as US\$1 per hour.³⁴

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

²⁵ 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).

²⁶ 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.

²⁷ IJM, ‘[Cybersex Trafficking](#)’ (IJM Casework Series, 2016).

²⁸ ‘[IJM’s First Conviction in a Live-Streaming Cybersex Trafficking Case](#)’, *IJM Newsroom* (online), 10 August 2016.

²⁹ 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.

³⁰ World Bank, ‘[Internet Users \(per 100 People\), Philippines](#)’, (World Development Indicators, 2015).

³¹ World Bank, ‘[Population, Total, Philippines](#)’, (World Development Indicators, 2015).

³² 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).

³³ 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.

³⁴ Kristen Schweizer and Clarissa Batino, ‘[The “Queen of Cyberporn” and Her Town’s Industry of Abuse](#)’, *Bloomberg* (online), 22 December 2014.

we've seen a decrease in the age of victims'.³⁵ The UN and FBI estimate that as many as 750,000 paedophiles are online simultaneously at any given point in time.³⁶

The annual number of tips to the National Center for Missing and Exploited Children rose from 4560 in 1998 to 76,584 in 2006.³⁷ In 2015, that number was 4.4 million.³⁸

Trends in Australia and NSW

There are several indicators that Australia and in particular NSW are contributing to the global growth of cybersex trafficking:³⁹

- 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;⁴⁰
- The Commonwealth Director of Public Prosecutions ('CDPP') has reported a similar increase in cybersex trafficking cases over the past three years,⁴¹ as well as increased referral of victims of OSEC to Witness Assistance Services;⁴²
- 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';⁴³
- 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

³⁵ 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).

³⁶ Najat M'jid Maalla, [Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography](#), 12th sess, Agenda Item 3, UN Doc A/HRC/12/23 (13 July 2009) 9 [34].

³⁷ [Evidence](#) to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 25 May 2010 (Australian Institute of Criminology).

³⁸ National Center for Missing and Exploited Children, [Key Facts](#) (2016).

³⁹ 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.

⁴⁰ '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.

⁴¹ '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.

⁴² 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.

⁴³ Attorney-General's Department (Cth), '[Proposed Reforms to Commonwealth Child Sex-Related Offences](#)' (Consultation Paper, 2009) 44.

2010 to 2015.⁴⁴ 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;⁴⁵ 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.⁴⁶ The figure for the whole of 2015 was 11,000.⁴⁷

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’.⁴⁸ There is also a consensus that viewing CEM may lead to hands-on offending for some people by reinforcing their paedophilic tendencies.⁴⁹

The prevalence of online networks associated with cybersex trafficking 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’.⁵⁰

Furthermore, while there is evidence to suggest that there is an identifiable subset of CEM viewers that do not commit hands-on offending,⁵¹ 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.⁵² 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.

⁴⁴ Sentencing statistics from [Judicial Information and Research System](#) (NSW) and [Sentencing Advisory Council](#) (Vic).

⁴⁵ New South Wales Sentencing Council, *Standard Non-parole Periods: Sexual Offences against Children* (2013) 24.

⁴⁶ Cameron Stewart and Paul Maley, ‘Aussie Predators at Heart of Online Surge in Abuse of Children’, *The Australian* (online), 28 February 2015.

⁴⁷ Michael Atkin, ‘Australian Cyber Sex Trafficking “Most Dark and Evil Crime We Are Seeing”’, *ABC News* (online), 7 September 2016.

⁴⁸ 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.

⁴⁹ *Ibid* 20–21.

⁵⁰ 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.

⁵¹ 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.

⁵² *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.

The victim impact of slavery is considerable, and the Act's efforts to provide assistance and support for modern slavery is crucial, particularly in as far as it amends the *Victims Rights and Support Act 2013* (NSW) and enables access to some forms of financial support and counselling for these victims

Abuse to victims

Even in cases where levels of abuse are of a less severe nature, children can still suffer harmful consequences. All 44 children interviewed by Terres des Hommes in a study investigating the impacts of online sexual exploitation on children reported 'reported feeling dirty, ashamed, and embarrassed, both during and after webcam sex performances'.⁵³ The same response has been observed even for children who did no more than pose naked.⁵⁴ These have been seen to lead to:

- 'high levels of psychosocial distress manifested in traumatic sexualization, a sense of betrayal, social stigmatization, and a sense of powerlessness';
- 'low self-esteem and low feelings of self worth';
- 'self-destructive behavior, including alcohol and drug abuse'; and
- sexualised behaviour.⁵⁵

Victims of online sexual exploitation also have complex needs due to the frequent involvement of parents and families in the abuse, the relatively younger age of the children (in comparison to cases of street-based commercial sexual exploitation), and the greater number of boys involved.⁵⁶

Existing Support

The Act modifies the *Victims Rights and Support Act 2013* (NSW) so that victims of a 'modern slavery offence' will have access to compensation under that act, which can include services for counselling and financial assistance needed to recover from the crime.⁵⁷ The legislation appears to intend that such provisions can extend to victims who are 'resident outside Australia'⁵⁸ or otherwise 'overseas'.⁵⁹

Whilst there is Commonwealth legislation that allows courts to make 'reparation orders' to victims of Commonwealth crimes, which include those involving OSEC,⁶⁰ there is no evidence

⁵³ Terres des Hommes, '[Webcam Child Sex Tourism](#)' (4 November 2013) 29.

⁵⁴ [Stalking Cyber Predators](#) (101 East, Al Jazeera, 2014) 0:10:30 ff.

⁵⁵ Terres des Hommes, '[Webcam Child Sex Tourism](#)' (4 November 2013) 29.

⁵⁶ See IJM, '[Cebu, Philippines](#)' (Factsheet, 2016); '[IJM's First Conviction in a Live-Streaming Cybersex Trafficking Case](#)', *IJM Newsroom* (online), 10 August 2016.

⁵⁷ See [Modern Slavery Act 2018](#) (NSW) sch 5.7; [Victims Rights and Support Act 2013](#) (NSW) s 26.

⁵⁸ See [Victims Rights and Support Act 2013](#) (NSW) s 31.

⁵⁹ See Victims Services, Department of Justice (NSW), '[Application: Support for Primary Victims](#)' (July 2013, rev March 2016).

⁶⁰ See [Crimes Act 1914](#) (Cth) s 21B.

of these ever being used to compensate for modern slavery offences⁶¹ (which encompass cybersex trafficking⁶²) or other OSEC offences.⁶³

However, making the recovery of compensation for victims conditional on the prosecution of a criminal offence may be an inefficient way of getting support to victims who are often in urgent need.⁶⁴ This is particularly the case where victims cannot be identified, which is an increasing problem with the use of encryption and other techniques associated with child exploitation material.⁶⁵

IJM's casework indicates that Philippines welfare services require support adjusting to the special needs of victims of OSEC noted above. We are currently working with local agencies to develop best practice tools for aftercare provision in relation to this crime.⁶⁶

NSW Government needs to ensure that appropriate information and communication technology policies are in place across government agencies, and these policies have adequate provisions to deal with child exploitation material.

We are pleased to note that the Act includes provisions that will require the Commissioner to review Government workplace information and communication technology policies to ensure they have adequate provisions to deal with child exploitation material.⁶⁷ We wish to recommend that the NSW Government review existing policies, and in conjunction with the Commissioner (and prior to any annual reports), ensure that the policies regarding information and communication and technology and child abuse material are adequate and deal with the criminality involved.

There is anecdotal evidence that the fear of getting caught has led some OSEC offenders to cease their activities, which supports general deterrence theories being applicable. The good work being done by various governments to ensure OSEC is adequately criminalised and punished will be ineffective without effective awareness campaigns targeted at offenders.

The Government should promote best practice information and communication technologies as a method of raising awareness about the criminality of OSEC and other child exploitation material offences.

⁶¹ Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, [Hidden in Plain Sight: An Inquiry into Establishing a Modern Slavery Act in Australia](#) (2017) [6.110]–[6.115].

⁶² See IJM Australia, [Submission No 31](#) to the Joint Committee on Law Enforcement, Parliament of Australia, *Inquiry into Human Trafficking*, 24 February 2017, [2.3.1].

⁶³ No results found via searches of [AustLII](#) database.

⁶⁴ See Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, [Hidden in Plain Sight: An Inquiry into Establishing a Modern Slavery Act in Australia](#) (2017) [6.110]–[6.115], [6.129].

⁶⁵ NetClean, [The NetClean Report 2016](#) (2016) Insight 10.

⁶⁶ IJM, ['Manila, Philippines'](#) (Fact Sheet, 2016).

⁶⁷ *Modern Slavery Act 2018* (NSW) s 19(3)(b).