

Our Ref: LH

Please reply to: Brisbane office

15 August 2019

Ms Sophie Dunstone
Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: legcon.sen@aph.gov.au

Dear Ms Dunstone

Submission on the Combatting Child Sexual Exploitation Legislation Amendment Bill 2019

Thank you for your invitation to make a submission to the Legal and Constitutional Affairs Legislation Committee's (the Committee's) inquiry into the Combatting Child Sexual Exploitation Legislation Amendment Bill 2019 (the Bill).

Schedules 1 to 6 of the Bill

We note that the provisions in Schedules 1 to 6 are substantively the same as those contained in a bill of the same name examined by the previous Committee in March 2019 (the previous Bill). With reference to our submission to that Committee about the previous Bill, we reaffirm our support for the proposed amendments. We also draw the Committee's attention to our comments on several specific issues in Part 2 of our submission, especially those regarding:

- consideration of a 10-year end date for the new failure to report offence (pp. 5–7)
- the definition of a responsible person (p. 7)
- additional protections for whistleblowers (p. 7).

Relevant to the last point, we further direct the Committee's attention to Recommendation 7.5 in the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse, which called upon the Australian Government to:

...ensure that legislation provides comprehensive protection for individuals who make reports in good faith about child sexual abuse in institutional contexts. Such individuals should be

protected from civil and criminal liability and from reprisals or other detrimental action as a result of making a complaint or report... [emphasis added].¹

Schedule 7 of the Bill

We note that the meaning of ‘child abuse material’ in section 473.1 of the Criminal Code will be expanded to incorporate material currently referred to in various Commonwealth Acts as ‘child pornography material’. knowmore supports existing references to ‘child pornography material’ being replaced with ‘child abuse material’, to more appropriately convey the gravity of these offences and the harm they cause to children. As noted in the Explanatory Memorandum, ‘child pornography’ is no longer considered an appropriate or accepted term, and it can be particularly offensive to victims and survivors of child sexual abuse. These amendments will also increase consistency between the Commonwealth and the states and territories, where the legislation generally refers either to child abuse material (as in New South Wales, Victoria and the Northern Territory) or child exploitation material (as in the other four states and the ACT).

On this point, child abuse material is generally considered a narrower term than child exploitation material. For example, the *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse* cited in the Explanatory Memorandum refer to child sexual abuse material as a “subset” of child sexual exploitation material. We consider that the proposed definition of child abuse material will, appropriately, capture material that is exploitative of children without specifically depicting or describing an act of abuse — for example, depictions, for a sexual purpose, of a sexual organ of a child, and child-like sex dolls [new paragraphs (d) and (g)]. We therefore recommend that consideration be given to whether the relevant material would be better described in legislation as child exploitation material. We note that the Law Council of Australia and Anti-Slavery Australia made similar recommendations in their submissions to the Committee on the now-lapsed Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017.

Thank you again for the opportunity to provide these comments on the Bill. We have no concerns about this letter and our previous submission being published.

Yours sincerely

WARREN STRANGE
Executive Officer

¹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 7, Improving institutional responding and reporting*, (December 2017). See pp.105-107