

The Senate

Legal and Constitutional Affairs
Legislation Committee

Crimes Legislation Amendment (Sexual
Crimes Against Children and Community
Protection Measures) Bill 2019 [Provisions]

November 2019

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Secretariat

Sophie Dunstone, Committee Secretary

Margie Morrison, A/g Principal Research Officer

Brooke Gay, Administrative Officer

Jo-Anne Holmes, Administrative Officer

Suite S1.61
Parliament House
CANBERRA ACT 2600

Telephone: (02) 6277 3560
Fax: (02) 6277 5794
Email: legcon.sen@aph.gov.au

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Recommendation

Recommendation 1

2.105 The committee recommends that the Senate pass the bill.

Chapter 1

Introduction

- 1.1 On 12 September 2019, the Senate referred the provisions of the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019 (the bill) to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 7 November 2019.¹
- 1.2 The Senate referred the bill to the committee following a recommendation of the Selection of Bills Committee.² The report of the Selection of Bills Committee presented multiple reasons for referral, including ensuring the bill is appropriately drafted, stakeholders have the opportunity to provide advice on the bill, and to allow the consideration of issues relating to mandatory sentencing.³

Previous bill and committee inquiry

- 1.3 Another bill, called the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017, was introduced into the House of Representatives on 13 September 2017 by the then Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, the Hon Michael Keenan MP.⁴ The 2017 bill lapsed at prorogation of the 45th Parliament on 11 April 2019.
- 1.4 On 14 September 2017 the Senate referred the provisions of the 2017 bill to the committee for inquiry and report by 16 October 2017.⁵ The committee received eight submissions and did not conduct any public hearings. The committee presented its report on 16 October 2017 with three recommendations, including that the bill be passed.⁶ Labor senators and the Australian Greens presented additional comments to the report.

¹ *Journals of the Senate*, No. 15, 12 September 2019, pp. 462–465.

² Selection of Bills Committee, *Report No. 5 of 2019*, 12 September 2019, [p. 3].

³ Selection of Bills Committee, *Report No. 5 of 2019*, 12 September 2019, Appendix 2.

⁴ The Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, *House of Representatives Hansard*, 13 September 2017, p. 6.

⁵ *Journals of the Senate*, No. 63, 14 September 2017, p. 2007.

⁶ Senate Legal and Constitutional Affairs Legislation Committee, *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 [Provisions]*, October 2017.

Conduct of this inquiry

- 1.5 Details of the inquiry were advertised on the committee's webpage. The committee called for submissions to be received by 30 September 2019 and also wrote to a range of organisations inviting them to submit. The committee received 22 submissions which are listed at Appendix 1.
- 1.6 The committee held one public hearing on 29 October 2019 in Canberra. The witnesses who appeared at the hearing are listed at Appendix 2. Responses to questions taken on notice at the hearing are listed at Appendix 1.

Acknowledgements

- 1.7 The committee thanks all submitters and witnesses for their participation in the inquiry.

Structure of the report

- 1.8 This report consists of two chapters:
- This chapter provides an overview of the administrative details relating to the inquiry and background to the bill.
 - Chapter 2 examines the key issues raised in evidence and provides the committee's view and recommendation.

Background and purpose of the bill

- 1.9 The bill was introduced into the House of Representatives on 11 September 2019 by the Attorney General, the Hon Christian Porter MP.⁷ In his second reading speech, the minister stated that the bill:

...is an example of the government's commitment to protect children in Australia and overseas from the dangers of sexual exploitation and abuse and to improve justice outcomes for survivors of child sex offences.⁸

- 1.10 The minister emphasised that:

...current sentencing practices for Commonwealth sex offences are out of step with community expectations, they do not reflect the severity of harm inflicted by these predators, and they fail to protect our children and communities from further offending.⁹

- 1.11 The Attorney-General's Department and the Department of Home Affairs informed the committee that the bill would:

...target inadequacies in the existing legal framework at key points in the criminal justice process, from bail and sentencing to post-release supervision. [The bill would] also provide the tools to combat emerging

⁷ *Votes and Proceedings*, No. 14, 11 September 2019, p. 227.

⁸ The Hon Christian Porter MP, *House of Representatives Hansard*, 11 September 2019, p. 2444.

⁹ The Hon Christian Porter MP, *House of Representatives Hansard*, 11 September 2019, p. 2444.

forms of child sexual abuse, which is becoming increasingly prevalent due to technological developments.¹⁰

1.12 The Attorney-General's Department and the Department of Home Affairs explained that the key measures proposed in the bill will:

- increase protections for vulnerable witnesses in relation to giving evidence;
- create a number of new offences;
- emphasise the importance of access to rehabilitation and treatment when sentencing child sex offenders;
- overhaul the sentencing factors for all federal offenders;
- ensure that all sex offenders, upon release from custody, are adequately supervised and subject to appropriate rehabilitative conditions;
- introduce presumptive measures;
- introduce mandatory minimum sentences for the most serious child sex offences and for recidivist offenders; and
- increase maximum penalties across the spectrum of child sex offences.¹¹

1.13 The committee was also advised that the bill would complement the broader package of reforms introduced by the government in the 45th Parliament including measures in the *Passports Legislation Amendment (Overseas Travel By Child Sex Offenders) Act 2017* and the *Criminal Code Amendment (Protecting Minors Online) Act 2017*. This bill would also complement the *Combatting Child Sexual Exploitation Legislation Amendment Act 2019*, which received Royal Assent on 20 September 2019. Moreover, the bill is consistent with recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission).¹²

Overview of the bill

1.14 The bill would amend the *Crimes Act 1914* (Crimes Act) and the *Criminal Code Act 1995* (Criminal Code). The bill contains 14 schedules and the explanatory memorandum provides an overview of the amendments that would be made by the bill, including provisions to:

- insert community safety as a factor that can be taken into account to revoke the parole of a federal offender without notice (schedule 1);
- remove the requirement to seek leave before a recorded interview of a vulnerable witness can be admitted as evidence in chief (schedule 2);
- prevent children and other vulnerable witnesses from being cross-examined at committal proceedings (schedule 3);
- insert notes in the Criminal Code to provide additional clarity regarding the scope of conduct captured by child sex offences (schedule 4);

¹⁰ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 2.

¹¹ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 2.

¹² Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 3.

- insert new aggravated offences for child sexual abuse that involves subjecting the child to cruel, inhuman or degrading treatment, or which causes the death of the child (schedule 4);
- insert new offences to criminalise the 'grooming' of third parties, including through the use of a carriage service, with the intention of making it easier to procure a child for sexual activity in Australia or overseas (schedule 4);
- insert a new offence to criminalise the provision of an electronic service to facilitate dealings with child abuse material online (schedule 4);
- insert additional aggravating sentencing factors that apply when a court is sentencing for certain child sex offences, including considering the age and maturity of the victim and the number of people involved in the commission of the offence (schedule 9);
- increase the maximum penalties for certain Commonwealth child sex offences (schedule 5);
- introduce a mandatory minimum sentencing scheme to apply to the Commonwealth child sex offences that attract the highest maximum penalties, and all other Commonwealth child sex offences if the offender is a repeat child sex offender (schedule 6);
- insert a presumption against bail for Commonwealth child sex offences that attract the highest maximum penalties, and all other Commonwealth child sex offences if the offender is a repeat child sex offender (schedule 7);
- make it an aggravating factor in sentencing if a federal offender used their standing in the community to assist in the commission of an offence (schedule 8);
- ensure that when sentencing a Commonwealth child sex offender, the court must have regard to the objective of rehabilitating the person, including by considering whether to impose any conditions about rehabilitation and treatment and considering if the length of sentence is sufficient for the person to undertake a rehabilitation program while in custody (schedule 8);
- insert a presumption in favour of cumulative sentences for Commonwealth child sex offences (schedule 10);
- insert a presumption in favour of Commonwealth child sex offenders serving an actual term of imprisonment (schedule 11);
- require that if a court is releasing a Commonwealth child sex offender on a recognizance release order, the offender must be supervised in the community, and undertake such treatment and rehabilitation programs as their probation officer directs (schedule 11);
- add residential treatment orders as an additional sentencing alternative to allow intellectually disabled offenders to receive access to specialised treatment options (schedule 12);
- reduce the amount of 'clean street time' that can be credited by a court as time served against the outstanding sentence following commission of an offence by a person on parole and license (schedule 13); and

- require a period of time to be served in custody if a federal offender's parole order is revoked (schedule 13).¹³

Financial impact

1.15 The explanatory memorandum states that the financial impact of the bill would be 'largely limited to the costs associated with housing federal prisoners on remand and sentence'. Furthermore:

The Commonwealth does not own or operate any prisons and federal prisoners are currently housed in state and territory prisons. Convicted federal offenders comprise approximately 3 percent of Australia's total prison population while convicted federal sex offenders comprise approximately 0.4 percent of that population. As such, the overall financial impact on states and territories will be negligible. There will be some increase in costs borne by state and Commonwealth agencies for investigating and prosecuting new offences, and these costs will be absorbed.¹⁴

Policy rationale

- 1.16 The policy rationale for the bill was explained in detail by the Attorney-General's Department and the Department of Home Affairs. It was stated that law enforcement agencies are seeing an increase in the number of investigations for Commonwealth child sexual crimes both internationally and domestically. New technologies are facilitating the online sexual abuse of children more frequently, including live-streaming the sexual abuse of children using web cameras or mobile phones. Of concern is that offenders are also using more technologically sophisticated networks to distribute child abuse material, including through use of the dark web, encryption and online 'cloud' storage.¹⁵
- 1.17 It was argued that 'Australia's laws should reflect the changing landscape of offending and appropriately reflect the impact that online sexual abuse has on child victims'. It was noted that '[p]enalties should adequately reflect the severity of the offences'.¹⁶
- 1.18 The Attorney-General's Department and the Department of Home Affairs reported statistics on current Commonwealth sex offences derived from the Commonwealth Sentencing Database. From 1 February 2014 to 31 January 2019:

¹³ Explanatory memorandum to the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019 (explanatory memorandum), pp. 2–3.

¹⁴ Explanatory memorandum, p. 3.

¹⁵ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 3.

¹⁶ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 3.

- 40 per cent of sentences for Commonwealth child sex offences did not result in a custodial period;
 - 60 per cent of charges relating to child sex offences resulted in a custodial sentence; and
 - of those offenders who received a custodial sentence during this period, the most frequent term of imprisonment was 18 months, with the most frequent custodial period recorded as six months.¹⁷
- 1.19 For the offence of grooming a child using a carriage service contrary to subsection 474.27(1) of the Criminal Code, from 1 February 2014 to 31 January 2019:
- 80 convictions were handed down;
 - 44 were sentences of imprisonment;
 - the highest head sentence was 3.5 years' imprisonment;
 - the lowest head sentence was two months' imprisonment;
 - the most frequent head sentence of imprisonment was 18 months;
 - one offender was released on a non-conviction order;
 - 12 offenders were sentenced to community service; and
 - 23 offenders were released on a recognizance release order without spending any time in prison.¹⁸
- 1.20 For the offence of using a carriage service for sexual activity with a person under 16 years of age, contrary to section 474.25A(1) of the Criminal Code, from 1 February 2014 to 31 January 2019:
- eight convictions were handed down;
 - seven were sentences of imprisonment;
 - the highest head sentence was eight years;
 - the lowest head sentence was 14 months;
 - the most common head sentence was two years; and
 - one offender was released to community service without spending any time in prison.
- 1.21 The Attorney-General's Department and the Department of Home Affairs asserted that 'inadequate sentences do not sufficiently recognise the harm suffered by victims of child sex abuse'. Importantly:
- ...the Bill addresses the myth that child sexual abuse material offences are a 'victimless' crime by criminalising emerging uses of technology to facilitate dealings in child abuse material and ensuring that the sentences for these offences reflect the gravity of the offending conduct. Behaviour such as accessing and transmitting child abuse material encourages the market demand for, and commercialisation of, this material and leads to further physical and sexual abuse of children. In addition to the harm

¹⁷ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 4.

¹⁸ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 4.

suffered in the production of that material, the child is re-victimised each time the material is viewed and shared online.¹⁹

Consideration by other parliamentary committees

Senate Scrutiny of Bills Committee

1.22 The Scrutiny of Bills Committee raised scrutiny concerns when considering both the 2017 and 2019 bills with particular reference to: procedural fairness and broad discretionary power; reversal of the legal burden of proof; mandatory minimum sentences; and the right to liberty.²⁰

Parliamentary Joint Committee on Human Rights

1.23 The Parliamentary Joint Committee on Human Rights (the human rights committee) raised human rights concerns when considering the 2017 bill and reiterated those concerns when reporting on the 2019 bill. The human rights committee reported its assessment of the bill with particular reference to the right to a fair trial, right to presumption of innocence and right to liberty.²¹

Note on references

1.24 In this report, references to *Committee Hansard* are to proof transcripts. Page numbers may vary between proof and official transcripts.

Focus of this report

1.25 Much of the evidence received for the current inquiry highlighted similar issues to those raised in the previous inquiry. While the focus of this report is on the issues raised in the current inquiry, the committee was also able to consider submissions provided to its previous inquiry. Key issues raised in evidence are discussed in the next chapter.

¹⁹ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 4.

²⁰ Scrutiny of Bills Committee, *Scrutiny Digest 13/17*, 15 November 2017, pp. 67–88; *Scrutiny Digest 6/19*, 18 September 2019, pp. 1–5.

²¹ Parliamentary Joint Committee on Human Rights, *Report 11 of 2017*, 17 October 2017, pp. 2–15; *Report 13 of 2017*, 5 December 2017, pp. 37–61.

Chapter 2

Key issues

2.1 As detailed in chapter 1, the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019 (the bill) would amend the *Crimes Act 1914* (Crimes Act) and the *Criminal Code Act 1995* (Criminal Code). This chapter provides an overview of the evidence received on the bill and then considers key issues raised by inquiry participants with reference to:

- Schedule 1–Revocation of parole order or licence to protect safety;
- Schedule 2–Use of video recordings and Schedule 3–Cross-examination of vulnerable persons at committal proceedings;
- Schedule 4–Strengthening child sex offences;
- Schedule 5–Increased penalties;
- Schedule 6–Minimum sentences;
- Presumptive measures contained in schedules 7, 10 and 11;
- Schedule 8–Matters to which a court had regard when passing sentence etc.;
- Schedule 12–Additional sentencing alternatives;
- Schedule 13–Revocation of parole order or licence; and
- other matters raised with the committee.

2.2 The chapter concludes with the committee's view and recommendation.

General support for the bill

2.3 Several submitters supported the bill's intention to strengthen Australia's framework for protecting the community from child sex offenders. Some submissions noted general support for the bill,¹ and other submissions highlighted particular provisions or measures in the bill. The Carly Ryan Foundation welcomed the bill 'as a way to get action and more adequate and just sentencing'.² Bravehearts was supportive of the government's stated commitment to 'strengthening the protection of the rights of children, their wellbeing and safety, and Australia's undertakings as signatories to a range of conventions and protocols'.³

¹ Catholic Women's League Australia, *Submission 8*, p. 6; Ms Liana Allan, *Submission 16*, [p. 1].

² Ms Sonya Ryan, Founder and Chief Executive Officer, Carly Ryan Foundation, *Committee Hansard*, 29 October 2019, p. 1.

³ Bravehearts, *Submission 12*, p. 1.

- 2.4 The Royal Australian & New Zealand College of Psychiatrists (RANZCP) observed that many of the bill's provisions reflect current community expectations.⁴
- 2.5 Other submissions supported some sections of the bill but expressed concern about others. For example, Shine Lawyers submitted their support for some sections of the bill:
- Shine Lawyers supports the measures in the bill allowing victims...of child sexual abuse a less traumatic way to interact with the criminal justice system in schedules 2 and 3. We support the strengthening of child sexual offences outlined in schedule 4 and in general terms, agree that tougher penalties ought to be imposed on perpetrators of child sexual abuse offences in line with community expectations.⁵
- 2.6 The Law Council of Australia (Law Council) supported the policy intent of the bill but raised concerns about several measures outlined in it. Justice Action did not support measures proposed in the bill.⁶

Schedule 1–Revocation of parole order or licence to protect safety

- 2.7 Currently, before a parole order or license is revoked, a person must be notified of the specific conditions they are alleged to have breached, unless certain conditions apply, and given 14 days to respond to allegations.⁷ The Attorney-General's Department and the Department of Home Affairs indicated that this 'time lag...is problematic if it is believed the person poses a danger to the community'. It also 'gives the person an opportunity to commit further offences or even to abscond'.⁸
- 2.8 Item 1 of Schedule 1 would amend the existing requirements to:
- ...provide that a federal offender's parole or licence may be revoked without notice if doing so is necessary to ensure the safety and protection of the community or of another person. This provides an option to revoke a person's parole or licence in circumstances that require a response before the current 14 day timeframe, but would not otherwise meet the current threshold of urgency (which implies a need for immediate action).
- 2.9 The explanatory memorandum states that including community safety as a consideration would ensure that if the Attorney-General or their delegate 'becomes aware that a person who has been released into the community on parole or licence poses a threat to the safety of the community or to another

⁴ Royal Australian & New Zealand College of Psychiatrists, *Submission 2*, [p. 2].

⁵ Shine Lawyers, *Submission 11*, [p. 2].

⁶ Justice Action, *Submission 21*, pp. 2–3.

⁷ Explanatory memorandum to the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019 (explanatory memorandum), p. 16.

⁸ Attorney-General's Department and Department of Home Affairs, *Submission 15*, pp. 5–6.

person, that person can be taken into custody immediately'. The bill would provide that parole orders and licenses would be subject to this amendment even if they have been made or granted before the bill commences.⁹

2.10 The RANZCP supported the insertion of community safety as a factor relevant to the revocation of parole.¹⁰ The Sexual Assault Support Service was also supportive of the provision but noted 'it does not seem particularly necessary given that parole can already be revoked without 14 days notice in situations of urgency'.¹¹

2.11 Legal Aid NSW opposed this provision on the basis that 'existing exceptions to the notice requirement already provide sufficient power to revoke without notice, when necessary to ensure the safety and protection of the community or another person'.¹²

2.12 The Law Council described this amendment as 'objectionable on procedural fairness grounds' and recommended its removal. Alternatively:

...an independent parole authority should have the ability to revoke the parole or licence without giving notice to the person in the interests of ensuring the safety and protection of the community or of another person subject to the ability for the person to contest the revocation.¹³

2.13 The government did not accept that an independent parole board is required. The Attorney-General's Department and the Department of Home Affairs submitted that 'appropriate procedural fairness protections are incorporated into the proposed amendments in Schedule 1':

If an offender's parole were revoked under proposed Schedule 1 of the Bill, the offender would be provided with an opportunity to make a written submission to the Attorney-General as to why their parole order or licence should not be revoked in accordance with the existing provisions of the *Crimes Act 1914* (Cth) (Crimes Act). If the Attorney-General is satisfied of those reasons the offender would be immediately released from custody. The proposed mechanism reflects an appropriate balance between the right of the offender to procedural fairness and the need to protect the community from the dangers of child sexual abuse.¹⁴

⁹ Explanatory memorandum, p. 16.

¹⁰ Royal Australian & New Zealand College of Psychiatrists, *Submission 2*, [p. 2].

¹¹ Sexual Assault Support Service, *Submission 5*, p. 2.

¹² Legal Aid NSW, *Submission 17*, p. 4.

¹³ Law Council of Australia, *Submission 14*, pp. 24–25.

¹⁴ Attorney-General's Department and the Department of Home Affairs, *Submission 15*, p. 6.

Schedule 2–Use of video recordings and Schedule 3–Cross-examination of vulnerable persons at committal proceedings

- 2.14 Schedules 2 and 3 would make amendments to protect vulnerable witnesses, such as children, giving evidence in particular criminal proceedings. This includes proceedings relating to Commonwealth sex offences, as well as human trafficking and slavery offences.¹⁵
- 2.15 Schedule 2 would remove the existing requirement for the court to grant leave before admitting a video recording of an interview of a vulnerable person as evidence in chief. The recorded interview would still need to be conducted by a constable or a specified person. The explanatory memorandum notes that removing the requirement to seek leave brings the Commonwealth's vulnerable witness protections into line with the approach taken by states and territories. These provisions would apply to proceedings begun on or after the commencement of the bill.¹⁶
- 2.16 Schedule 3, which deals with cross-examination of vulnerable persons at committal proceedings, would amend the Crimes Act to remove the requirement for vulnerable witnesses to be available to give evidence at committal proceedings. The explanatory memorandum explains that this would spare vulnerable witnesses from the risk of re-traumatisation, and streamline criminal justice proceedings by ensuring cross-examination is reserved for trials, rather than committal hearings.¹⁷
- 2.17 A number of submissions highlighted their support for the provisions in schedules 2 and 3.¹⁸
- 2.18 With respect to schedule 2, the Law Council noted that removing the requirement for leave to be sought for vulnerable witnesses to give pre-recorded evidence was 'consistent with international best practice and promotes the Government's victim-centred approach to combatting human trafficking and slavery'.¹⁹ However, the Law Council also raised some concerns about the effect of the changed arrangements and observed that:

[I]t may be useful for relevant participants in the criminal justice system to receive education about legislation authorising the use of pre-recorded evidence, and training in relation to interviewing vulnerable witnesses and pre-recording evidence.²⁰

¹⁵ Explanatory memorandum, pp. 17–18.

¹⁶ Explanatory memorandum, p. 17.

¹⁷ Explanatory memorandum, p. 19.

¹⁸ See, for example, Sexual Assault Support Service, *Submission 5*, p. 2; Bravehearts, *Submission 12*, p. 2; Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 9*, pp. 3–4.

¹⁹ Law Council of Australia, *Submission 14*, pp. 27–28.

²⁰ Law Council of Australia, *Submission 14*, p. 28.

- 2.19 The amendments in schedule 2 which would 'remove procedural barriers to the use of video recordings, therefore making it easier for recordings to be admitted and relied upon in child sexual abuse proceedings' were welcomed by knowmore. However, knowmore advocated for the inclusion of additional special measures to ensure full implementation of recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission). In particular, knowmore urged the government to introduce further amendments to include adult victims and survivors of child sexual abuse within the definition of 'vulnerable adult complainant', therefore ensuring that this and other existing special measures are available to them.²¹
- 2.20 While supporting the proposed amendment in schedule 2, Legal Aid NSW did not support the amendment in schedule 3 because of its broad nature. It was suggested that, if the amendment proceeds, it should only apply to child witnesses and vulnerable adult complainants which will 'ensure it is predominately targeted towards the sexual offences listed in s15Y of the Crimes Act'.²²
- 2.21 While Shine Lawyers agreed 'with the aim of schedule 3 insofar as it purports to reduce the likelihood of retraumatizing vulnerable persons by subjecting them to cross-examination at committal proceedings', it submitted that:
- ...a rebuttable presumption against cross examination at a committal hearing would be more flexible than banning cross examination. This would allow judicial discretion to permit or prevent cross examination of a vulnerable witness in committal proceedings where proper to do so rather than imposing a blanket ban.²³
- 2.22 The Law Council did not support a complete ban on cross-examination of vulnerable witnesses at committal proceedings arguing that 'such proceedings can be an effective way of streamlining the trial process which may result in benefits for victims'. The Law Council recommended:
- The proposed ban on cross-examination of vulnerable witnesses should be removed from the Bill and replaced by an approach which prevents cross-examination of vulnerable witnesses unless 'exceptional circumstances' can be demonstrated and for a defined set of offences only.²⁴
- 2.23 The Attorney-General's Department and the Department of Home Affairs explained the bill does not propose a complete ban on vulnerable witnesses at committal hearings:
- Rather, by prohibiting cross-examination at committal proceedings or proceedings of a similar kind, vulnerable witnesses will be spared an

²¹ Knowmore, *Submission 7*, p. 6.

²² Legal Aid NSW, *Submission 17*, p. 5.

²³ Shine Lawyers, *Submission 11*, [p. 3].

²⁴ Law Council of Australia, *Submission 14*, p. 29.

additional risk of re-traumatisation. Under the current legislation, vulnerable witnesses may be required to be cross-examined multiple times and often in distressing, combative environments. This may give rise to the risk that a vulnerable witness who has been cross-examined at committal will be unwilling to testify in the trial at all, due to the trauma associated with the cross-examination at committal. Further, the prospect of being cross-examined at both committal and trial may mean that some vulnerable witnesses do not proceed with their complaints. Such an outcome would be contrary to the interests of the administration of justice and, it is submitted, unfair to victims.²⁵

Schedule 4—Strengthening child sex offences

- 2.24 Schedule 4 of the bill would introduce new offences in response to emerging trends in child sexual abuse including offences relating to the grooming of third parties through a carriage service or postal service or when an element of the offence occurs overseas, and offences for a person to provide an electronic service such as creating or administering a website or dark web service. This schedule also includes amendments to current offences in the Criminal Code.²⁶
- 2.25 These provisions were generally supported by submitters and witnesses.²⁷ The Synod of Victoria and Tasmania, Uniting Church in Australia supported the new offences and also encouraged a greater focus on deterrence and prevention:

The Synod supports Schedule 4 to introduce new aggravated offences that relate to child sexual abuse. While the Synod supports the increased penalties for these serious acts of harm against children, the Synod believes that greater impact in terms of deterrence is achieved through increasing the risk of detection and this is where more impact can be achieved. The risk of getting caught and the public shame that follows, with loss of relationships and employment in addition to any length of time in prison, is far more likely to deter many offenders than a threat of a longer prison term if the would-be offender believes their chance of getting caught is small.²⁸

New aggravated offences (item 3)

- 2.26 Regarding the introduction of new aggravated offences into the Criminal Code, the Law Council stated that, while it did not oppose the amendment, 'most of these factors can already be taken into account as aggravating factors in sentencing in a federal context'.²⁹

²⁵ Attorney-General's Department and the Department of Home Affairs, *Submission 15*, p. 7.

²⁶ Attorney-General's Department and the Department of Home Affairs, *Submission 15*, pp. 8–10.

²⁷ Bravehearts, *Submission 12*, pp. 2–4; Carly Ryan Foundation, *Submission 3*, pp. 2–4; Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 9*, p. 4.

²⁸ Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 9*, p. 4.

²⁹ Law Council of Australia, *Submission 14*, p. 8.

Criminalising the grooming of third parties (item 6)

- 2.27 Item 6 would insert a new offence into the Criminal Code to criminalise grooming where a person engages in conduct in relation to another person with the intention of making it easier to procure a child under 16 years of age, to engage in sexual activity overseas.³⁰
- 2.28 Legal Aid NSW opposed this provision and argued it is unclear why the provision is necessary, and 'why "conduct in relation to a child", captured in the existing section 272.15 grooming offence, would not encompass engaging a third party'. Legal Aid NSW suggested that, should the amendment proceed, the maximum penalty should be 12 years' imprisonment or less, in line with section 272.15 of the Crimes Act and other NSW legislation.³¹

Criminalising using postal or similar services to groom another person (item 9)

- 2.29 Legal Aid NSW also expressed concern about item 9, which inserts three new offences into the Criminal Code relating to the use of a postal service for grooming, with particular reference to the maximum penalties that would apply to the offences. Legal Aid NSW submitted similar concerns in relation to item 30 of the bill.³²
- 2.30 The Attorney-General's Department and the Department of Home Affairs explained that the measures are consistent with Recommendation 26 of the Final Report of the Royal Commission, that:
- [E]ach state and territory government (other than Victoria) should introduce legislation to extend its broad grooming offence to the grooming of persons other than the child.³³
- 2.31 The departments submitted that:
- An offence targeting the grooming of third parties will enable police to investigate online and travelling child sex offenders before contact or communication with a child has occurred, thereby better protecting children from harm.³⁴

Schedule 5—Increased penalties

- 2.32 Schedule 5 of the bill would introduce measures to increase the maximum penalties for certain offences in the Criminal Code relating to the sexual abuse of children outside Australia and for offences committed through the use of online and postal services.

³⁰ Explanatory memorandum, p. 26.

³¹ Legal Aid NSW, *Submission 17*, p. 6.

³² Legal Aid NSW, *Submission 17*, p. 6.

³³ Attorney-General's Department and the Department of Home Affairs, *Submission 15*, p. 8.

³⁴ Attorney-General's Department and the Department of Home Affairs, *Submission 15*, p. 8.

2.33 The Attorney-General's Department and the Department of Home Affairs provided an overview of the increased penalties:

For example, the maximum penalties for the grooming offences at subsections 474.27(1) and 474.27(2) have been increased from 12 years to 15 years' imprisonment and the new third-party grooming offences at proposed sections 272.15A, 471.25A and 474.27AA will similarly attract a maximum penalty of 15 years' imprisonment. The penalties for the offences of sexual activity (other than sexual intercourse) at sections 272.9 and 474.25A will attract an increased maximum penalty of 20 years' imprisonment. The offence of engaging in sexual intercourse with a child outside Australia at section 272.8 attracts an increased maximum penalty of 25 years' imprisonment, while the offences of persistent child sexual abuse outside Australia at section 272.11 will now attract a penalty of 30 years' imprisonment. At the most serious end of the offending spectrum, the new aggravated elements at subsection 272.10(1), applying to the offences of sexual intercourse or other sexual activity with a child outside Australia, will impose an increased maximum sentence of life imprisonment.³⁵

2.34 Some evidence highlighted support for the increased penalties.³⁶ Knowmore described the increases for maximum sentences as a:

...clear way of parliament communicating to the judiciary its intention and reflecting community expectations, and it's a recognised way of flagging a change in approach to a particular form of criminal conduct when parliament increases the maximum sentence. Obviously courts should have regard to maximum sentences when they are imposing sentences and should take note of the fact that parliament has flagged that change.³⁷

2.35 Legal Aid NSW opposed the increased penalties for a range of child sex offences outlined in schedule 5 of the bill.³⁸

2.36 While the Law Council supported 'a penalty system that reflects the seriousness of the conduct concerned', it considered that further information was required to demonstrate the increased maximum sentences 'has been done in a principled manner' and so recommended:

There should be a review of the proposed increase in maximum penalties, and if justified, the Explanatory Memorandum should more clearly state the ground on which the increases in maximum penalties have been selected.³⁹

³⁵ Attorney-General's Department and the Department of Home Affairs, *Submission 15*, p. 12.

³⁶ See, for example, Ms Sonya Ryan, Carly Ryan Foundation, *Committee Hansard*, 29 October 2019, p. 6.

³⁷ Mr Warren Strange, Executive Officer, knowmore, *Committee Hansard*, 29 October 2019, p. 11.

³⁸ Legal Aid NSW, *Submission 17*, p. 7.

³⁹ Law Council of Australia, *Submission 14*, p. 15.

2.37 Since the committee considered the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017, the penalties for certain offences in the bill have been increased. The Attorney-General's Department and the Department of Home Affairs explained that the increased penalties 'ensure that the proposed maximum penalty for these offences reflects the relative seriousness of the relevant conduct'. It was noted that the increased penalties in schedule 5 are:

...tailored to the culpability of the criminal activity that constitutes each offence, and reflect a carefully calibrated response to the range of serious dangers posed by child sex offenders to the community.⁴⁰

Schedule 6–Minimum sentences

2.38 Schedule 6 would amend the Crimes Act to introduce mandatory minimum sentences for child sex offences including offences relating to the use of a carriage or postal service, offences relating to the sexual abuse of children overseas and for child sex offenders previously convicted of a separate child sex offence (including state and territory offences).⁴¹

2.39 The Attorney-General's Department and the Department of Home Affairs explained that for all offences that attract a mandatory minimum sentence, the sentence has been calculated in the bill at 25 per cent of the maximum penalty for the offence. Furthermore:

This means that the head sentence (defined as the overall period of imprisonment, not just the period of time spent in custody) must be equal to or more than the prescribed mandatory minimum sentence. Where a person is charged with more than one offence, the highest applicable mandatory minimum sentence will apply as the absolute minimum head sentence.⁴²

2.40 Some submitters supported these amendments.⁴³ Bravehearts submitted its support:

Bravehearts wholeheartedly supports the use of minimum standard non-parole periods in relation to sexual offences against children. Although it is argued by some in the legal sector that standard non-parole periods are an infringement on the independence and discretion of the judiciary, we believe that the prescription of standard non-parole periods allows for certainty and consistency in sentencing, promotes the proportionality principle and, as such, is consistent with one of the basic premises of our justice system – that the punishment must fit the crime.⁴⁴

⁴⁰ Attorney-General's Department and the Department of Home Affairs, *Submission 15*, pp. 12–13.

⁴¹ Attorney-General's Department and the Department of Home Affairs, *Submission 15*, p. 13.

⁴² Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 13.

⁴³ See, for example, Mr Robert Testaz, *Submission 18*, p. 1.

⁴⁴ Bravehearts, *Submission 12*, p. 5.

2.41 The Carly Ryan Foundation explained that while it initially submitted its support for mandatory minimum sentences, in light of the opposition to these provisions and following further consultation with stakeholders, it recommended that mandatory minimum sentences be removed from the bill to ensure its timely passage through parliament:

Following recent meetings with both sides of government, it is very clear that mandatory minimum sentencing amendments in the bill are going to stand in the way of reforms which all sides of politics can agree to and which will have positive sentencing outcomes. I therefore respectfully suggest that mandatory minimums be removed from the bill. I suggest this not just because it will allow the legislation to progress but also because of further feedback from international experts on paedophiles, who agree that these amendments will not achieve adequate sentencing outcomes. I further suggest that maximum penalties be further increased as a compromise following the removal of mandatory minimums.⁴⁵

2.42 Several submitters and witnesses opposed mandatory minimum sentencing.⁴⁶ Concerns were raised that there is insufficient evidence to suggest that mandatory minimum sentencing is effective.⁴⁷ The Australian Lawyers Alliance noted that the government 'has not provided any evidence as to the number of cases in which sentences on appeal are found to be inadequate, or on whether this number has significantly increased'.⁴⁸

2.43 Professor Luke McNamara and Ms Drew Hawkes referred to the 'strong body of research and scholarly literature which opposes the use of mandatory sentencing' with particular reference to a paper written by the Victorian Sentencing Advisory Council that found that 'mandatory sentencing is unlikely to achieve its aim of deterring crime'.⁴⁹

2.44 Knowmore questioned whether the effectiveness of mandatory minimum sentencing has been established and referred to concerns raised by the Royal Commission and other stakeholders such as the Australian Law Reform Commission. Knowmore recommended that if mandatory minimum sentences are adopted, 'there needs to be some effective evaluation of the impacts...' which could assist to gain an understanding of whether the stated aim of increasing actual custodial times is being achieved.⁵⁰

⁴⁵ Ms Sonya Ryan, Carly Ryan Foundation, *Committee Hansard*, 29 October 2019, p. 1.

⁴⁶ See, for example, Australian Lawyers Alliance, *Submission 1*, p. 5; Legal Aid Western Australia, *Submission 4*, p. 2, Legal Aid NSW, *Submission 17*, p. 7; Sexual Assault Support Service, *Submission 5*, p. 3; Shine Lawyers, *Submission 11*, [p. 4].

⁴⁷ See, for example, Sexual Assault Support Service, *Submission 5*, p. 3; Mr Julian Murphy, *Submission 10*, p. 9.

⁴⁸ Australian Lawyers Alliance, *Submission 1*, p. 5.

⁴⁹ Professor Luke McNamara and Ms Drew Hawkes, *Submission 6*, p. 2.

⁵⁰ knowmore, *Submission 7*, p. 10.

2.45 The Synod of Victoria and Tasmania, Uniting Church in Australia submitted:

The Government has not provided any evidence as to why the courts are imposing the sanctions they are currently imposing. The impression created is that the Government has assumed the courts are not performing their function adequately and must be compelled to impose longer prison sentences and send more offenders to prison. Instead there may be good reasons for the courts currently imposing the sanctions they are, but without a proper analysis it is not possible to assess that the current sanctions are inadequate in relation to cases of child sexual abuse in general and that the solution is to seek to compel the courts to hand down longer periods of imprisonment and impose periods of imprisonment.⁵¹

2.46 Another concern raised in evidence was that mandatory sentencing removes judicial discretion from the sentencing process⁵² and 'shows a manifest want of trust and faith in the competence of the judiciary'.⁵³ It was argued that sentencing should ultimately be a discretionary matter for judges⁵⁴ as they are best placed to consider all of the factors when determining sentencing. For example, Legal Aid WA submitted:

Mandatory sentencing deprives judges of the power to reduce a sentence below the minimum sentence on account of the offence being a less serious example of the type of offence, mitigating factors that may be applicable such as cooperation with the authorities, pleas of guilty and on account of factors pertaining to an offender that may justify a lower sentence due to diminished responsibility due to youth, mental illness or cognitive impairment.⁵⁵

2.47 The Law Council was concerned that, under mandatory minimum sentencing, judges become 'rubber stamps rather than exercising judicial discretion' and this risks undermining the community's confidence in the judicial process.⁵⁶

2.48 The Synod of Victoria and Tasmania, Uniting Church in Australia argued that '[r]emoving judicial discretion can send a signal to the community that the legislative arm of government lacks faith in the ability of the judicial arm of government to carry out its function appropriately'.⁵⁷

2.49 Shine Lawyers submitted that public confidence in the judicial system may be undermined as a result of some of the measures in the bill:

⁵¹ Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 9*, p. 10.

⁵² See, for example, Professor Luke McNamara and Ms Drew Hawkes, *Submission 6*, p. 2.

⁵³ Australian Lawyers Alliance, *Submission 1*, p. 5.

⁵⁴ See, for example, Australian Lawyers Alliance, *Submission 1*, p. 5.

⁵⁵ Legal Aid WA, *Submission 4*, p. 2.

⁵⁶ Mr Arthur Moses SC, President, Law Council of Australia, *Committee Hansard*, 29 October 2019, p. 19.

⁵⁷ Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 9*, p. 10.

I think that it's in relation to where the legislation tries to remove judges' discretion. In terms of the imposition of mandatory minimum sentencing, it comes with it an inference that judges aren't getting it right, that they can't be trusted to get it right, whereas we would submit that judges are in the best position to make the best decision, based on all of the individual circumstances in the case. In that way, some of these provisions can undermine the confidence in the judiciary.⁵⁸

2.50 The Law Council warned that there would be unintended consequences of mandatory minimum sentences and provided a number of scenarios which, should they occur under the bill as proposed, could result in young offenders (and others) being sentenced inappropriately.⁵⁹ Knowmore also highlighted that mandatory sentencing often has a disproportionate impact on marginal groups.⁶⁰

2.51 Dr Zirnsak, Senior Social Justice Advocate, Synod of Victoria and Tasmania, Uniting Church in Australia was concerned that the introduction of mandatory minimum sentences could make it more challenging for victims to come forward:

The circumstances in which it may deter a person from forward would be where an offender would have otherwise pleaded guilty and now wishes to contest the case. The victim would be subject to cross-examination and, further, there might be more aggressive cross-examination where the offender's lawyer is seeking to put extra effort in to avoid the mandatory sentencing. They may be circumstances which may deter a victim from pursuing such a case.⁶¹

2.52 Other approaches were suggested by submitters. The Sexual Assault Support Service suggested that consideration be given to presumptive non-parole periods for certain child sex offences.⁶² Legal Aid NSW submitted that the NSW standard non-parole period system 'provides guidance to the court when it is determining the appropriate sentence without limiting the court's discretion' which 'is a preferable model to any form of mandatory sentencing'.⁶³

2.53 Legal Aid WA recommended that, should mandatory sentencing remain in the bill, there should be 'exceptions as to when mandatory sentencing will apply

⁵⁸ Mrs Lisa Flynn, Head of Specialist Personal Injury, Shine Lawyers, *Committee Hansard*, 29 October 2019, p. 18.

⁵⁹ Mr Moses, Law Council of Australia, *Committee Hansard*, 29 October 2019, p. 20; Law Council of Australia, *Submission 14*, pp. 9–15.

⁶⁰ Mr Strange, knowmore, *Committee Hansard*, 29 October 2019, p. 11.

⁶¹ Dr Mark Zirnsak, Synod of Victoria and Tasmania, Uniting Church in Australia, *Committee Hansard*, 29 October 2019, p. 12.

⁶² Sexual Assault Support Service, *Submission 5*, p. 3.

⁶³ Legal Aid NSW, *Submission 17*, pp. 7–8.

where an offender is a young offender (aged between 18 and 23) or a mentally impaired offender (due to mental illness or cognitive impairment)'.⁶⁴

- 2.54 The Law Council recommended that the provisions be removed from the bill, but if they should remain in the bill, it should be amended to allow the court full discretion 'in cases of individuals with significant cognitive impairment or mental illness'.⁶⁵ When asked how the operation of sections 20BS and 20BY of the Crimes Act may operate in circumstances where the Law Council argued certain individuals need to be treated differently at the time of imposition of a mandatory minimum sentence, the Law Council responded:

The Law Council considers that sections 20BS and 20BY are precluded from having any application to people convicted of offences listed in proposed sections 16AAA and 16AAB of the Bill...

The Law Council considers that unless people with cognitive impairment and mental illness are specifically included in the list of 'exclusions' in proposed section 16AAC (which at present is limited to a person who was under 18 years of age at the time the offence was committed) then neither sections 20BS or 20BY will operate where a person is convicted of an offence listed in proposed sections 16AAA or 16AAB.

The exclusion of the operation of these diversionary provisions for people suffering from significant mental conditions serves to highlight the injustice that can be caused by the proposed mandatory sentencing provisions contained in Schedule 6 of the Bill.⁶⁶

- 2.55 On another matter, Mr Julian Murphy argued that mandatory sentencing provisions such as those contained in the bill 'can operate in certain cases to violate international law's protection of fundamental human rights...' with particular reference to the right to a fair trial, the right to be free from cruel, inhuman or degrading treatment and the right not to be arbitrarily detained.⁶⁷
- 2.56 The Attorney-General's Department and the Department of Home Affairs emphasised that the bill proposes a 'nuanced and considered model of minimum sentences' which reflects:

...the Government's concern that these penalties should be proportionate and adaptable to the level of culpability inherent in each case. The minimum sentences proposed in this Bill are deliberately designed to preserve key elements of judicial discretion, in order to assist in facilitating the imposition of penalties that appropriately reflect the seriousness of the relevant offending. The proposed minimum penalties are flexible in that judges will be able to:

- set a sentence higher than the mandatory minimum sentence

⁶⁴ Legal Aid Western Australia, *Submission 4*, p. 3.

⁶⁵ Law Council of Australia, *Submission 14*, p. 15.

⁶⁶ Law Council of Australia, *Submission 14.1*, pp. 3–4.

⁶⁷ Mr Julian Murphy, *Submission 10*, pp. 6–8.

- retain discretion in relation to setting the minimum custodial period
- reduce a sentence by up to 25 per cent of the duration of the sentence to reflect either an offender's early guilty plea or an offender's cooperation with law enforcement or, where both of these factors are present, a discount of up to 50 per cent off the duration of the sentence.⁶⁸

2.57 The departments acknowledged that the minimum penalties 'will to an extent limit judicial discretion' but stated that 'these limits are appropriate'. Furthermore:

The significant judicial discretion maintained by this proposed sentencing regime demonstrates deference to the independence of the judiciary. For instance, the Bill does not impose mandatory minimum non-parole periods, but leaves the setting of non-parole periods to the discretion of judges. The minimum sentences in Schedule 6 of the Bill reflect the Government's commitment to ensuring that sentences imposed under the proposed regime are commensurate with the culpability of the relevant conduct. The proposed minimum sentences are not a 'one size fits all' model of sentencing, but are a nuanced and justified response to the current trend in which all too often child sex offenders receive inadequate sentences.⁶⁹

2.58 It was also noted that the minimum sentences in schedule 6 'will serve to promote opportunities for the offender to participate in meaningful rehabilitation programs either during their incarceration or following release from prison'. Furthermore:

States and territories have advised that a sentence of two years or more is required in order to provide sufficient time for an offender to participate in a robust rehabilitation program. These measures will ensure judges retain broad capacity to tailor sentences that foster rehabilitation. The totality of measures in the Bill, including the new minimum sentences and the sentencing factors related to rehabilitation to which a court must have regard, is designed to ensure that child sex offenders should no longer be released back into the community without rehabilitation—thereby promoting the best outcomes for community safety.⁷⁰

Presumptive measures

2.59 The bill would introduce a number of presumptive measures: presumption against bail (schedule 7), presumption in favour of cumulative sentences (schedule 10) and presumption in favour of actual terms of imprisonment (schedule 11).

⁶⁸ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 14.

⁶⁹ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 15.

⁷⁰ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 15.

Schedule 7—Presumption against bail

- 2.60 The bill would introduce a presumption against bail into the Crimes Act for certain child sex offenders, which is designed to protect the community from the potential risks posed by individuals accused of child sex offences while they await trial and sentencing. The presumption would apply in two instances: where a person is charged with a 'first strike' offence (under proposed section 16AAA of the Crimes Act, in Schedule 6), and where a person is a repeat offender and subject to the 'second or subsequent' mandatory minimum penalties (under proposed section 16AAB of the Crimes Act, in Schedule 6).⁷¹
- 2.61 The RANZCP supported the presumption against bail for more serious offences and repeat offenders, as did the Carly Ryan Foundation.⁷² Bravehearts posited that for child sex offences, the presumption should be against bail unless exceptional circumstances exist. It was emphasised that the presumption against bail is warranted in light of the gravity of these types of offences and the impacts on victims underscores the inherent risks in releasing offenders on bail'.⁷³
- 2.62 Other evidence to the inquiry did not support the presumption against bail as it was viewed as 'a serious erosion of the presumption of innocence'.⁷⁴ Legal Aid Western Australia considered that existing laws are sufficient 'to ensure that judicial officers appropriately consider whether a person accused of a crime should be permitted to be on bail in the community on conditions'.⁷⁵
- 2.63 The Law Council argued that this presumption 'runs counter to the long held presumption in Australian law in favour of bail' and is inconsistent with the presumption of innocence. It was further noted that this presumption may be in conflict with Australia's obligations under the International Covenant on Civil and Political Rights (ICCPR). The Law Council recommended that the presumption be removed from the bill.⁷⁶
- 2.64 Similarly, Shine Lawyers submitted that the presumption against bail would appear to limit rights under the ICCPR and expressed the view that:

...the presumption against bail is an unjustifiable departure from the presumption of bail and it may result in loss of liberty in circumstances it is

⁷¹ Attorney-General's Department and Department of Home Affairs, *Submission 15*, pp. 17–18.

⁷² Royal Australian & New Zealand College of Psychiatrists, *Submission 2*, [p. 2]; Ms Ryan, Carly Ryan Foundation, *Committee Hansard*, 29 October 2019, p. 6.

⁷³ Bravehearts, *Submission 12*, p. 7.

⁷⁴ Legal Aid Western Australia, *Submission 4*, p. 3; see also, Legal Aid NSW, *Submission 17*, p. 8.

⁷⁵ Legal Aid Western Australia, *Submission 4*, p. 3.

⁷⁶ Law Council of Australia, *Submission 14*, p. 17.

not reasonably necessary or proportionate given the specific circumstances of the individual matter.⁷⁷

2.65 The Attorney-General's Department and the Department of Home Affairs argued that the presumption against bail 'is reasonable and proportionate as it applies only to the most serious child sex offences or where an offender would be facing a mandatory minimum penalty because they have been convicted of previous child sex offence'. Furthermore, the presumption is rebuttable and allows for judicial discretion in determining whether the risk to the community of a person being released on bail can be mitigated through appropriate bail conditions. In addition:

The Bill sets out a non-exhaustive range of factors that the court may consider in determining bail for child sex offences. These factors include, for example whether the bail authority considers that the person would be likely to commit further offences, intimidate witnesses or destroy evidence.⁷⁸

Schedule 10—Cumulative sentences

2.66 The bill would introduce a presumption in favour of cumulative sentencing which would require that, when sentencing an offender for a Commonwealth child sex offence, a court must not make an order that has the effect that a term of imprisonment for that offence would be served partly cumulatively, or concurrently, with an uncompleted term of imprisonment. The presumption in favour of cumulative sentences would operate where a person is being sentenced for multiple Commonwealth child sex offences or Commonwealth child sex offences in addition to a state or territory registrable child sex offence.⁷⁹

2.67 Submissions, including those from Bravehearts and the Carly Ryan Foundation, supported the presumption in favour of cumulative sentences.⁸⁰

2.68 Legal Aid WA did not support the proposed amendment to section 19(5) of the Crimes Act relating to concurrent or partly cumulative sentences not being imposed for Commonwealth child sex offences, because it considered this amendment is not consistent with well-established totality principles.⁸¹ Legal Aid NSW also opposed the presumption that sentences be cumulative.⁸²

⁷⁷ Shine Lawyers, *Submission 11*, [p. 4].

⁷⁸ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 18.

⁷⁹ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 20.

⁸⁰ Bravehearts, *Submission 12*, p. 8, Ms Sonya Ryan, Carly Ryan Foundation, *Committee Hansard*, 29 October 2019, p. 6.

⁸¹ Legal Aid Western Australia, *Submission 4*, p. 4.

⁸² Legal Aid NSW, *Submission 17*, p. 9.

2.69 The Law Council was concerned that this 'may restrict judicial discretion to some extent', and that the presumption was 'somewhat paradoxical and its purpose unclear'. Moreover, the Law Council considered it could:

...lead to unjust and unfair outcomes. This is particularly so given that there is significant overlap in the both state/territory and Commonwealth charges being laid in child sexual abuse cases where offences will often have different maximum penalties. The presumption is likely to lead to significant legal challenges and delays in the courts.⁸³

2.70 The Attorney-General's Department and the Department of Home Affairs explained that the objective of the presumption in favour of cumulative sentences is 'to act as a yardstick against which to examine a proposed sentence of an offender for multiple child sex offences, to ensure that the effective sentence represents an appropriate response to the objective seriousness of the sexual abuse of children'.

2.71 The departments reiterated that courts:

...will retain discretion to consider the outcome for all of the offences in totality and, if appropriately satisfied, order the sentence in a different manner, provided that the sentence overall is still of an appropriate severity. In these circumstances, the new measures will require the court to provide reasons for deviating from the presumption in favour of cumulative sentencing.⁸⁴

Schedule 11—Conditional release of offenders after conviction

2.72 The bill would introduce a requirement that a child sex offender serve an actual term of imprisonment unless there are exceptional circumstances that justify the offender being released immediately on a recognizance release order. The explanatory memorandum states that the amendment is 'intended to ensure that all offenders convicted of Commonwealth child sex offences serve a period of imprisonment that is not suspended'.⁸⁵ The explanatory memorandum explains that 'exceptional circumstances' is deliberately not defined as doing so would 'impose practical constraints'; given 'the variable circumstances which may militate against or support a sentence of imprisonment'.⁸⁶

2.73 Legal Aid NSW expressed concern that item 1 of schedule 11 'unduly limits judicial discretion'. It was suggested that, should the amendment proceed, it should not apply to offenders who were under 18 at the time of the offence'.⁸⁷

⁸³ Law Council of Australia, *Submission 14*, p. 19.

⁸⁴ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 20.

⁸⁵ Explanatory memorandum, p. 62.

⁸⁶ Explanatory memorandum, p. 62.

⁸⁷ Legal Aid NSW, *Submission 17*, p. 9.

The Synod of Victoria and Tasmania, Uniting Church in Australia stated that provisions that require periods of imprisonment 'need to be approached with extreme caution'.⁸⁸

2.74 The Law Council argued that this 'is likely to place additional strain on the criminal justice system particularly given that the "exceptional circumstances" threshold is a very high bar and may result in inordinate pressure on the remand population'.⁸⁹ It was recommended that this provision be removed as:

...maintaining unfettered judicial discretion as to how a term of imprisonment should best be served is of paramount importance in these types of cases. It is suggested that sentencing judges are well equipped and in the best position to determine whether releasing an offender forthwith is appropriate in the particular circumstances of an individual case.⁹⁰

2.75 The Attorney-General's Department and the Department of Home Affairs advised:

The introduction of a presumption in favour of an actual term of imprisonment as set out in the Bill still provides the courts with enough discretion in setting the pre-release period under a recognizance release order to enable individual circumstances to be taken into account while ensuring that child sex offenders receive sentences that reflect the serious nature of their crimes.⁹¹

Schedule 8—Matters to which a court had regard when passing sentence etc.

2.76 Section 16A of the Crimes Act currently provides sentencing factors that the court must consider when determining a sentence that is of a severity appropriate in all circumstances of the offence. Schedule 8 would introduce two new sentencing factors that would apply to all federal offences: the timing and overall benefit of a guilty plea; and a person's standing in the community as an aggravating factor. The bill would also introduce one factor that would relate solely to child sex offenders, the objective of rehabilitation.⁹²

Good community standing

2.77 The bill provides that if a person has used their good community standing in the commission of the offence then this would be regarded as an aggravating factor in sentencing. The Law Council observed that the suggested amendment 'does not expressly state that it is confined to sexual offences or situations where children might be abused' and recommended that proposed

⁸⁸ Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 9*, p. 10.

⁸⁹ Law Council of Australia, *Submission 14*, p. 19.

⁹⁰ Law Council of Australia, *Submission 14*, p. 21.

⁹¹ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 21.

⁹² Attorney-General's Department and Department of Home Affairs, *Submission 15*, pp. 18–19.

paragraph 162(2)(ma) should be limited to child sex offences to accord with the stated intent of the bill.⁹³

2.78 Shine Lawyers also submitted concerns with this provision on the grounds that it was inconsistent with the recommendations of the Royal Commission:

The Royal Commission considered it unnecessary to follow the approach proposed in Schedule 8 such that if a person used their standing in the community to aid the commission of the offence, that fact becomes an aggravating factor. We see no reason to diverge with the Royal Commission's views in this respect. Aggravating factors already appropriately allow for consideration of the vulnerability of the victim and the breach of trust by a person with authority, supervision or control over the child when committing the offence.⁹⁴

Rehabilitation

2.79 In addition to the general sentencing factors, the bill would introduce a requirement for courts to have regard to the objective of rehabilitation when determining the sentence to be passed or order to be made. Courts would need to consider whether it is appropriate to make orders that include conditions relating to rehabilitation or treatment options, as well as consider whether the sentence or custodial period provides sufficient time for the offender to undertake rehabilitation, noting that programs are available both in custody and in the community.⁹⁵

2.80 Some submissions supported the consideration of rehabilitation when sentencing.⁹⁶ The Sexual Assault Support Service supported the provisions and suggested that Commonwealth child sex offenders on remand also be provided the opportunity to voluntarily participate in rehabilitation programs while in custody.⁹⁷

2.81 The RANZCP emphasised the importance of the Commonwealth government ensuring that 'courts are equipped to consider rehabilitation and conditions relating to treatment in an informed way' and stated that tailored and culturally appropriate programs may assist in reducing the risk of recidivism. Moreover:

The RANZCP is pleased to see that the Bill distinguishes the sentencing and rehabilitation options for intellectually disabled offenders from offenders more broadly, acknowledging that options may need to be

⁹³ Law Council of Australia, *Submission 14*, p. 23.

⁹⁴ Shine Lawyers, *Submission 11*, [p. 5].

⁹⁵ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 19.

⁹⁶ Bravehearts, *Submission 12*, p. 8.

⁹⁷ Sexual Assault Support Service, *Submission 5*, p. 4.

modified to be effective for that population. Appropriate resources must be allocated to these programs to ensure that they operate effectively.⁹⁸

2.82 Other submissions did not support this provision. Legal Aid NSW argued there is a 'real risk' that this provision 'could lead to significantly extended sentences (particularly the non-parole period) due to a lack of available places in rehabilitation programs'.⁹⁹ Legal Aid WA outlined a number of objections including:

- the sentencing judge has no power over the administration of a sentence which is a responsibility of the corrective services department in each state;
- rehabilitation programs are often run on a periodic basis in certain prisons and may have significant waiting lists;
- offenders should not have their sentence increased to undertake a rehabilitative program which may not be available for some time;
- sentences should be based on a range of factors specifically related to the offence, not the availability of or time required to undertake rehabilitative programs; and
- the availability of rehabilitative programs is an issue of the funding allocated to these programs and to pursue the objective of increased participation in rehabilitative programs, additional funding would need to be allocated to this area.¹⁰⁰

2.83 Professor McNamara and Ms Hawkes posited that this provision appears to indicate that in some circumstances a longer custodial sentence may be necessary to fulfil the rehabilitation requirement. In the submitters' view, this perspective on rehabilitation:

...appears to be blurred with other more punitive sentencing considerations – where longer sentences reflect the need for retribution and incapacitation. A related practical consideration is that, at the time of sentencing, it may be difficult for a judge to predict the period of time which will elapse before an offender will have the chance to complete a custodial program. Worse still, inadequacies in resourcing, long waiting lists or simply the non availability of programs may result in disproportionate sentences for offenders if 'rehabilitation' is able to influence sentencing in this way.¹⁰¹

2.84 The Law Council suggested the provision be removed from the bill as 'it is not clear how a court will practically be able to comply with the new requirement unless it conducts inquiries into rehabilitation options for a particular offender'. It was further noted that this provision 'does not appear to take into

⁹⁸ Royal Australian & New Zealand College of Psychiatrists, *Submission 2*, [p. 2].

⁹⁹ Legal Aid NSW, *Submission 17*, p. 8.

¹⁰⁰ Legal Aid Western Australia, *Submission 4*, pp. 3–4.

¹⁰¹ Professor Luke McNamara and Ms Drew Hawkes, *Submission 6*, pp. 4–5.

account the reality that there may be no access to such programs or that the offender may not in fact be eligible for programs'.¹⁰²

- 2.85 The Attorney-General's Department and the Department of Home Affairs emphasised that rehabilitation 'is a critical aspect of offenders' successful reintegration into the community and lessens the risk of further offending'. Furthermore:

As federal offenders are held in state and territory prisons, the availability of rehabilitation programs is a matter for the states and territories. Accordingly, it is the responsibility of states and territories to ensure that there is sufficient access to those programs.

The Explanatory Memorandum provides that in taking these matters into consideration the court is only required to have regard to what they consider appropriate, taking into account such matters as are relevant and known to the court. There is no requirement for the courts to conduct independent enquiries into rehabilitation options for a particular offender, though defence counsel are likely to consider such options in the preparation of their brief and offer these options to the court for the court's consideration.¹⁰³

Schedule 12—Additional sentencing alternatives

- 2.86 Schedule 12 would amend the Crimes Act to include 'residential treatment orders' as a sentencing alternative for courts. This measure in the bill is intended to capture the residential treatment order available under section 82AA of the *Sentencing Act 1991* (Vic), as well as any similar orders that may exist or be enacted in other states and territories.¹⁰⁴
- 2.87 Bravehearts fully supported amendments ensuring that those offenders who are deemed to suffer from a mental illness or intellectual impairment are able to be appropriately sentenced under a residential treatment order.¹⁰⁵
- 2.88 The Law Council supported this inclusion, especially as residential treatments are available in other jurisdictions. However, the Law Council advised that it was unclear whether there are adequate safeguards in the bill to ensure that the Commonwealth residential order scheme would comply with Australia's international human rights obligations. In light of this, it was recommended that the measure should be implemented:

...subject to additional funding being provided and an assessment by the Parliamentary Joint Committee on Human Rights that such a scheme

¹⁰² Law Council of Australia, *Submission 14*, p. 24.

¹⁰³ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 20.

¹⁰⁴ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 22.

¹⁰⁵ Bravehearts, *Submission 12*, p. 9.

would be consistent with Australia's international human rights obligations.¹⁰⁶

Schedule 13—Revocation of parole order or licence

- 2.89 Currently, offenders who have been released into the community on parole or licence and reoffend have their parole order or licence revoked automatically at the time they are sentenced for a new offence. In such cases, the person is liable to serve that part of the sentence that was outstanding at the time of their release, but are given credit for 'clean street time'. Clean street time includes the time between reoffending and sentencing for the new offence (often a period of many years). Schedule 13 would introduce a federal 'clean street time' policy which links revocation of a parole order or licence to the date on which any new offence is committed.¹⁰⁷
- 2.90 Bravehearts submitted its broad support for the amendments under schedule 13 and acknowledged the intention behind the reduction of time served on revocation based on 'clean street time'. However, Bravehearts stated its view that 'once a breach or subsequent offence has occurred, the person should be required to serve the full part of their sentence that was outstanding upon being granted parole', unless it is a minor breach and sound reasons are provided.¹⁰⁸
- 2.91 Legal Aid NSW raised some concerns with schedule 13, describing items 1 and 2 as 'confusing' and failing to 'provide clarity to an already complex area of law'. Legal Aid NSW also questioned the appropriateness of measures in item 5 as well as opposing items 6 and 7 as those provisions 'represent a considerable restriction upon the sentencing options available to the court where parole has been revoked'.¹⁰⁹
- 2.92 The Law Council noted this amendment and submitted that 'given that a court appears to retain discretion to deduct clean street time', its preliminary view is this provision 'does not appear to raise significant concern'.¹¹⁰

Others matters raised

Resource implications

- 2.93 Some submitters and witnesses drew attention to the resource implications of the bill and noted that some of the measures may result in a need for increased

¹⁰⁶ Law Council of Australia, *Submission 14*, p. 30.

¹⁰⁷ Attorney-General's Department and Department of Home Affairs, *Submission 15*, p. 22.

¹⁰⁸ Bravehearts, *Submission 12*, p. 9.

¹⁰⁹ Legal Aid NSW, *Submission 17*, pp. 9–10.

¹¹⁰ Law Council of Australia, *Submission 14*, p. 30.

funding.¹¹¹ Professor McNamara and Ms Hawkes noted 'with concern' the reference in the explanatory memorandum that the financial impact of the bill would be negligible and argued that a 'genuine commitment to effective rehabilitation carries with it a responsibility to adequately resource perpetrator programs – including custodial and community-based programs'.¹¹²

- 2.94 The Law Council noted that the financial impact statement included in the explanatory memorandum stated that the bill's effects would be minimal, and largely due to increased costs associated with housing federal prisoners on remand and sentence. It commented that this does not:

...address allocation of funding to the courts or legal assistance services. The criminal justice system is already over-stretched and it is critical that additional resourcing be provided if the measures in the Bill proceed.¹¹³

- 2.95 On notice, the Attorney-General's Department provided information about the discussions that have occurred with the states and territories in relation to resourcing:

Proposed measures...were discussed at the meetings of the National Working Group on measures concerning child sex offenders in July and October 2017. The Working Group comprised senior police and justice officials from each of the States and Territories and the Commonwealth. The text of the 2017 Bill and Explanatory Memorandum were circulated to members of the Working Group after the October 2017 meeting. Further, the Law, Crime and Community Safety Council, the Council of Australian Governments and the Ministerial Council for Police and Emergency Management discussed measures relating to child sex offenders at meetings held variously in 2016, 2017 and 2019.

Throughout this consultation, the State and Territory Governments have not requested funding or resources in relation to the proposed legislation.¹¹⁴

Training for the judiciary

- 2.96 The expertise and training needs of the judiciary were also discussed by inquiry participants.

- 2.97 Knowmore drew attention to the recommendations made by the Royal Commission around training of the judiciary:

I think it's critically important, in looking at the efficiency and the effectiveness of sentencing, to ensure that the judiciary has the expertise,

¹¹¹ See, for example, Mr Young, knowmore, *Committee Hansard*, 29 October 2019, p. 10; Ms Ryan, Carly Ryan Foundation, *Committee Hansard*, 29 October 2019, p. 2; Dr Zirnsak, Synod of Victoria and Tasmania, Uniting Church in Australia, *Committee Hansard*, 29 October 2019, p. 10.

¹¹² Professor Luke McNamara and Ms Drew Hawkes, *Submission 6*, p. 5.

¹¹³ Law Council of Australia, *Submission 14*, p. 16.

¹¹⁴ Attorney-General's Department, answers to questions on notice (received 1 November 2019).

the training and the experience to be able to sentencing effectively. The royal commission made some recommendations around proper training—ongoing and comprehensive training—for the judiciary and other justice professionals to ensure they understand child sexual abuse and that they are aware of current social science research around the effects and impacts of that abuse and how that might operate in the context of the criminal justice system.¹¹⁵

- 2.98 The Carly Ryan Foundation explained that it has been considering designing a program for judicial colleges to explain the impacts of child sex offences which may be particularly relevant given the changing nature of some of the offences:

The digital age has changed everything. I don't know if that's being reflected accurately in the sentencing as well. They are potentially comparing it to cases that happened before the internet, and I don't think those cases would completely capture the impact it has on victims and the potential for re-victimisation, especially if that abuse material has been distributed online and re-shared again and again.¹¹⁶

Other initiatives

- 2.99 Jesuit Social Services argued that consideration be given to the broader context of the bill in relation to underlying factors that contribute to child sexual abuse and to implementation of other initiatives that research has shown protect children from sexual abuse:

For example, we recommend implementation of a *Stop it Now!* Style program in Australia to provide an anonymous, safe and confidential service for people worried about their sexual thoughts and behaviours in relation to children and young people, the Worried About Sex and Porn Project (to intervene earlier for children displaying harmful sexual thoughts and behaviours) and Circles of Support and Accountability (COSA), a restorative justice program that has been shown to reduce the risk of sex offenders reoffending by helping people re-integrate into society after release from prison.¹¹⁷

Committee view

- 2.100 The committee welcomes the measures in the bill which seek to target inadequacies in a number of areas of the criminal justice system in relation to child sex offenders. The committee considers it entirely appropriate for the government to continue to establish a strong framework to respond to the changing landscape of child sex offences, with particular reference to the impact that online sexual abuse has on victims. The proposed amendments strengthen the response to child sex offences in line with community expectations.

¹¹⁵ Mr Strange, knowmore, *Committee Hansard*, 29 October 2019, p. 9.

¹¹⁶ Ms Hayley Pearse, Executive Manager, Carly Ryan Foundation, *Committee Hansard*, 29 October 2019, p. 5.

¹¹⁷ Jesuit Social Services, *Submission 13*, pp. 2–8.

- 2.101 The committee notes the broad support for the objectives and intent of the bill, as well as the support for particular measures outlined by submitters and witnesses. However, the committee acknowledges the evidence received which highlighted concerns about particular measures in the bill. In particular, several inquiry participants opposed the introduction of mandatory minimum sentencing, citing several reasons for that view.
- 2.102 The committee recognises that the model of mandatory minimum sentences proposed in the bill provides flexibility for judges to be able to set a sentence higher than the mandatory minimum sentence, retain discretion in relation to setting the minimum custodial period, and reduce the duration of a sentence to reflect an offender's early guilty plea or cooperation with law enforcement.
- 2.103 The committee acknowledges that other concerns were raised during the inquiry, including in relation to the presumptive measures in the bill and the requirements for courts to have regard to rehabilitation when sentencing. The committee is of the view that the measures in the bill are appropriate and necessary to ensure child sex offenders receive sentences that are in line with community expectations and adequately reflect the severity of the crimes committed. The bill also protects children and communities from the risk of further reoffending.
- 2.104 Moreover, the committee notes the bill complements the package of reforms already introduced by the Government and would significantly strengthen Australia's child protection framework.

Recommendation 1

- 2.105 The committee recommends that the Senate pass the bill.**

Senator Amanda Stoker
Chair

Dissenting report by Labor Senators

Introduction

- 1.1 Society rightly abhors the sexual abuse of children, and Labor will always support strong and effective laws to protect children from abuse and to punish their abusers.
- 1.2 During the committee's inquiry, experts and child protection advocates expressed concern that offenders are commonly receiving sentences that are not in line with 'increasing societal understanding of the seriousness of these offences and the enduring impact that child sexual abuse can have on the life of survivors'.¹
- 1.3 The very substantial increases to maximum penalties proposed in this bill, and several of the other proposed sentencing reforms,² represent an appropriate response by the Parliament to those concerns. Among other things, those measures will result in significantly higher sentences for individuals who are convicted of Commonwealth child sex offences – and are unlikely to have any adverse unintended consequences.
- 1.4 By contrast, the proposed introduction of mandatory sentencing in Schedule 6 of the bill is an inappropriate response to the concerns about inadequate sentences. Based on the evidence considered by this Committee and the overwhelming opinion of experts, the introduction of mandatory sentencing is likely to create significant new problems – both for children who are victims of sexual abuse as well as for the effective and just operation of the courts.
- 1.5 Labor Senators oppose the introduction of mandatory minimum sentences because:
 - mandatory sentencing has perverse unintended consequences, such as making it more difficult to prosecute criminals and making it less likely that juries or judges will convict guilty people;
 - mandatory sentencing is ineffective in reducing crime or criminality; and
 - mandatory sentencing is wrong in principle as it conflicts with the role of the judiciary as an independent arm of government.
- 1.6 Labor Senators cannot support measures that are likely to make this otherwise strong and effective piece of legislation less effective and therefore weaker. **We recommend that Schedule 6 of the bill be deleted.**
- 1.7 In addition, Labor Senators recommend that:

¹ Knowmore Legal Service, *Submission 7*, p. 9. See, also Shine Lawyers, *Submission 11*, [p. 3]; Sexual Assault Support Service, *Submission 5*, p. 3.

² These reforms are referred to below and discussed at length in the committee's report.

- Consistent with a proposal put forward by the Carly Ryan Foundation in its evidence to the Committee, the bill should be amended to include a comprehensive statutory review of Commonwealth sentencing practices for child sex offences. The findings of that review should be reported to the Parliament within three years of the bill coming into effect.
- The Government should commence an urgent inquiry into the adequacy of the resourcing that:
 - is currently available to authorities across Australia for the detection and apprehension of those who commit crimes against children, especially online; and
 - is currently available to authorities, including courts, to implement the measures introduced by this bill,and report to the Parliament within 6 months.

Schedule 6 and mandatory minimum sentences

- 1.8 At the outset, it is necessary to address paragraph 1.13 of the committee's report which asserts that 'the bill is consistent with recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse'. While reasonable minds may differ about whether that is true of some aspects of the bill, it is very clearly not the case in relation to the proposed introduction of mandatory sentencing.
- 1.9 After hearing from more than 16,000 people, receiving over 1,000 written accounts of abuse, reviewing allegations of sexual abuse in more than 4,000 institutions and holding 57 public hearings and 35 policy roundtables, the Royal Commission did not recommend the introduction of mandatory sentencing for child sex offences. This is discussed further below.

The unintended consequences of mandatory sentencing

- 1.10 Labor Senators are particularly concerned about the perverse unintended consequences of mandatory minimum sentences, including the following.
- (1) Accused persons are less likely to plead guilty or cooperate with authorities if faced with a mandatory minimum sentence. As well as resulting in costly and unnecessary trials and the possibility of acquittal, this forces survivors of child sexual abuse to endure the trauma of having to give evidence in court against offenders who would otherwise have pleaded guilty. This, in turn, could result in fewer survivors of child sexual abuse coming forward at all.
- The Commonwealth's own Attorney-General's Department has previously gone so far as to argue that mandatory minimums should be avoided as they 'create an incentive for a defendant to fight charges,

even where there is little merit in doing so'.³ That view has also been backed by the New South Wales Director of Public Prosecutions in a submission to one of this committee's previous inquiries.⁴

As the Uniting Church, Synod of Victoria and Tasmania told this committee '[i]f the perverse outcome of mandatory sentencing is that fewer victims are willing to come forward because the process is going to be made even more onerous for them and more traumatic, then you actually get a reverse outcome to the one you were intending'.⁵

Even the current Government acknowledges that accused persons are less likely to plead guilty or cooperate with authorities if faced with a mandatory minimum sentence. For that reason, the bill would allow a judge to reduce a mandatory minimum sentence by up to 25 per cent to reflect either an offender's early guilty plea or an offender's cooperation with law enforcement.

However, this clumsy and highly unusual approach does not remove the 'incentive' for a defendant to fight charges even where there is little merit in doing so. All it means is that, in some circumstances, an accused person will be faced with the spectre of a 5.25 year mandatory minimum sentence instead of a 7 year mandatory minimum sentence (for example).

- (2) Juries and judges will be less likely to convict guilty people, and prosecutors may be less likely to charge people, if they do not believe the mandatory minimum sentence is justified in particular cases. This concern has been cited by the Commonwealth's own Attorney-General Department⁶ and is also cited in the Law Council of Australia's Policy Discussion Paper on Mandatory Sentencing, which reports that:

'Further, as the Queensland Law Society has observed, mandatory sentencing may encourage judges, prosecutors and juries to circumvent mandatory sentencing when they consider the result unjust. In some circumstances when offender is faced with a mandatory penalty, juries have refused to convict. The Queensland Law Society has also noted that prosecutors have deliberately

³ Attorney-General's Department, *Commonwealth Guide to Framing Offences*, 2011, p.38.

⁴ NSW DPP, Submission to the Senate Legal and Constitutional Affairs Legislation Committee, Inquiry into the Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014, 1 August 2014, p. 1.

⁵ Dr Mark Zirnsak, Uniting Church Synod of Victoria and Tasmania, *Committee Hansard*, 29 October 2019, p.11.

⁶ Attorney-General's Department, *Commonwealth Guide to Framing Offences*, 2011, p. 38.

charged people with lesser offences that the conduct would warrant to avoid the imposition of a mandatory sentence'.⁷

Labor Senators note that there is a large body of research echoing those concerns.⁸

- (3) In some cases, mandatory minimum sentences may result in unjust and disproportionate sentences where the punishment does not fit the crime. The Law Council provided numerous examples where the mandatory sentences in this bill would be applied unjustly and in a manner that would not be consistent with community standards and expectations.⁹ For example, the bill would introduce a mandatory minimum penalty of 5 years imprisonment for the offence of using a carriage service, such as a mobile phone, to cause a child to engage in sexual activity with another person (section 474.25A(2) of the Criminal Code). This would mean that an 18 year-old who texted her 15 year-old friend to encourage him to send an indecent image to his 18 year-old girlfriend would be subject to a mandatory minimum sentence of 5 years. The arbitrariness of this penalty is underscored by the fact that, if the text message had been sent the day after the 15 year-old friend's 16th birthday, no crime would have been committed at all. In the absence of a mandatory minimum penalty, a judge could impose a more appropriate sentence in those circumstances which would be more consistent with community standards and expectations. The examples cited by the Law Council are set out in full in **Appendix A**.

The lack of support for mandatory minimum sentences from submitters

1.11 The Committee received many submissions from experts expressing grave concerns about – and outright opposition to – the proposed introduction of mandatory minimum sentences. Without being exhaustive, those submitters included:

- (1) **knowmore Legal Service**, which was established in 2013 to assist people to engage with the Royal Commission into Institutional Responses to Child Sexual Abuse. Today, it continues to do important work as a free and independent community legal centre which specialises in providing

⁷ Law Council of Australia, *Policy Discussion Paper on Mandatory Sentencing*, May 2014, para 59 <https://www.lawcouncil.asn.au/docs/ff85f3e2-ae36-e711-93fb-005056be13b5/1405-Discussion-Paper-Mandatory-Sentencing-Discussion-Paper.pdf>.

⁸ See, eg, A Hoel and K Gelb, *Sentencing matters: mandatory sentencing*, Sentencing Advisory Council, August 2008, p. 17, https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Mandatory_Sentencing_Research_Paper.pdf

⁹ Law Council of Australia, *Submission 14*, para 30.

advice, representation and advocacy for victims and survivors of child abuse. knowmore told this Committee that it opposed the introduction of mandatory sentencing and expressed particular concern about 'the lack of evidence supporting the effectiveness of mandatory sentencing policy in achieving the Bill's stated aims';¹⁰

- (2) **The Uniting Church Synod of Victoria and Tasmania**, which told this committee that the evidence supported the propositions that, in some circumstances, mandatory minimum sentences may make it more difficult to secure convictions, may force victims into trauma in having to give evidence in court against offenders who would otherwise have pleaded guilty, and would not necessarily make the community and children safer;¹¹
- (3) **Shine Lawyers**, which represented clients giving evidence before the Royal Commission into Institutional Responses to Child Sexual Abuse and continues to represent survivors seeking redress in every institutional redress scheme in Australia;¹²
- (4) **Jesuit Social Services**, which noted that 'research in Australia and other jurisdictions has consistently found that mandatory sentences do not work to deter offending, and do nothing to address the complex issues faced by many people who may offend';¹³
- (5) **The Sexual Assault Support Service**, which provides a free and confidential service for people of all ages who have been impacted by sexual violence (including children);¹⁴ and
- (6) **The Law Council of Australia**, which cited numerous legal arguments and a substantial body of evidence in opposing the proposed introduction of mandatory minimum sentences.¹⁵

1.12 The Carly Ryan Foundation initially expressed support for the introduction of mandatory minimum sentencing in its submission to the committee's inquiry. However, in oral evidence to the committee, the Foundation revised its submission and suggested:

...that mandatory minimums be removed from the bill. I suggest this not just because it will allow the legislation to progress but also because of

¹⁰ knowmore Legal Service, *Submission 7*, p. 10.

¹¹ Dr Mark Zirnsak, Uniting Church Synod of Victoria and Tasmania, *Committee Hansard*, 29 October 2019, p. 11.

¹² Shine Lawyers, *Submission 11*, [p. 3].

¹³ Jesuit Social Services, *Submission 13*, p. 1.

¹⁴ Sexual Assault Support Service, *Submission 5*, p. 3.

¹⁵ The Law Council of Australia, *Submission 14*, pp. 9–15.

further feedback from international experts on paedophiles, who agree that these amendments will not achieve adequate sentencing outcomes.¹⁶

- 1.13 Over the course of the committee's inquiry, it was noted that the Commonwealth's own experts have previously declined to support – or have outright opposed – the introduction of mandatory sentencing, including for child sex offences. For example:
- (1) **The Royal Commission into Institutional Responses to Child Sexual Abuse** *did not* recommend the introduction of mandatory sentencing. Moreover, according to research prepared for and published by the Royal Commission, the evidence overwhelmingly shows that mandatory sentences are not effective as deterrents and do not reduce crime rates.¹⁷
 - (2) **The Australian Law Reform Commission** strongly opposed all forms of mandatory sentencing when it conducted what the Attorney-General's Department described as 'the last comprehensive review of Commonwealth sentencing practices, including sentencing for child sex offences', in 2006.¹⁸ The Commission re-iterated its opposition to mandatory sentencing in a report published in late 2017.¹⁹
- 1.14 As noted above, the Commonwealth's own Attorney-General's Department has previously said that mandatory minimum sentences should be avoided as they 'create an incentive for a defendant to fight charges, even where there is little merit in doing so'.²⁰
- 1.15 Of the 19 non-government submitters to this committee's inquiry, the committee's report cites only three who supported the Government's position – and even that appears to overstate the level of support.²¹
- 1.16 Contrary to the assertion in the committee's report at paragraph 2.40 that Bravehearts 'submitted its support' for the Government's proposal for

¹⁶ Sonya Ryan, Carly Ryan Foundation, *Committee Hansard*, 29 October 2019, p. 1.

¹⁷ A Freiberg, H Donnelly and K Gelb, *Sentencing for Child Sexual Abuse in Institutional Contexts*, Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, July 2015, p. 189 <<https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Research%20Report%20-%20Sentencing%20for%20Child%20Sexual%20Abuse%20in%20Institutional%20Context%20-%20Government%20responses.pdf>>.

¹⁸ Australian Law Reform Commission, Report 103 – *Same Crime, Same Time: Sentencing of Federal Offenders*, April 2006, paras. 21.63–21.65 <https://www.alrc.gov.au/wp-content/uploads/2019/08/ALRC103.pdf>.

¹⁹ Australian Law Reform Commission, Report 133 – *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, December 2017, paras. 8.1–8.2 https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf.

²⁰ Attorney-General's Department, *Commonwealth Guide to Framing Offences*, 2011, p. 38.

²¹ See paras 2.38–2.55.

mandatory sentencing, that organisation expressed support for 'the use of minimum standard non-parole periods in relation to sexual offences against children'.²² That is *not* what the Government is proposing to introduce in Schedule 6. As the joint submission from the Attorney-General's Department and the Department of Home Affairs is at pains to point out, Schedule 6 would introduce mandatory minimum *head sentences* for certain offences and not mandatory minimum non-parole periods. Judges would 'retain discretion in relation to setting the minimum custodial period'.²³

The Government's position in support of mandatory sentencing

1.17 The Government has produced no evidence to support the introduction of mandatory minimum sentences. Schedule 6 of the bill is not based on the outcome of any review or detailed analysis of sentencing practices.

1.18 When Labor Senators asked the Attorney-General's Department for evidence to support the Government's position on mandatory sentencing, the Department instead pointed to high level statistics in relation to current sentencing practices:

Senator KIM CARR: Evidence is what I'm looking for—evidence to sustain the claim. The evidence we've heard from all the submitters, even those that support this bill, is that there is no evidence [to support mandatory sentencing]. I would have thought you'd be able to rebuke that, that you would have put that in your submissions. I would have thought you would have shouted that from the rooftops. There has been no review undertaken and no evidence presented to the committee. This is your chance to tell me why.

Ms Wells: **The evidence is very much in the data we've set out. The most common head sentence for child sex offenders who are convicted and sentenced to a custodial term is just 18 months, and the most common non-parole period or time served in custody is just six months.**²⁴

1.19 There are a number of problems with the so-called "evidence" cited by the Department:

- The reference to '[t]he most common head sentence for child sex offenders' being '18 months' is unrelated to the proposed introduction of mandatory minimum sentences. Proposed section 16AAA of Schedule 6 would introduce mandatory sentencing *for some* but not all Commonwealth child sex offences. Nobody who was convicted of an offence listed in section 16AAA during 2018/19 received a head sentence of 18 months and, according to the evidence of the Commonwealth Director of Public

²² Bravehearts, *Submission 12*, p. 5.

²³ Attorney-General's Department and the Department of Home Affairs, *Submission 15*, p. 14.

²⁴ Ms Erin Wells, Attorney-General's Department, *Committee Hansard*, 29 October 2019, p. 33 (emphasis added).

Prosecutions, only two of those individuals received a head sentence of less than 20 months during 2018/19.²⁵

- The reference to 'the most common non-parole period or time served in custody' being 'just six months' is also irrelevant to the proposed introduction of mandatory minimum sentences. This is because Schedule 6 would introduce mandatory minimum *head sentences* for certain offences and not mandatory minimum non-parole periods. As the Attorney-General's Department and the Department of Home Affairs noted in their joint-submission to this Committee, judges would 'retain discretion in relation to setting the minimum custodial period'.²⁶
- In any event, the various sentencing statistics cited by the Government and by the Department are, at best, evidence of a problem with current sentencing practices in relation to Commonwealth child sex offences. They do not justify or support the introduction of mandatory minimum sentences as an appropriate solution to that problem.

1.20 Most concerning, the Attorney-General's Department was unable to point to a single report or independent expert to rebut any of the concerns expressed by Labor Senators and experts about the adverse unintended consequences of mandatory sentencing.

A way forward

1.21 The bill would introduce a range of sentencing reforms other than mandatory minimum sentencing which Labor Senators do support. Those include:

- significant increases to maximum penalties for Commonwealth child sex offences (including, in some cases, increases of more than 30%) (Schedule 5);
- new provisions that require courts to consider a range of additional factors, including aggravating factors, at the time of sentencing (Schedules 8 and 9);
- a new presumption in favour of cumulative sentences for Commonwealth child sex offences (Schedule 10);
- a new presumption in favour of Commonwealth child sex offenders serving an actual term of imprisonment (Schedule 11); and
- new provisions in relation to the remission and reduction of sentences in circumstances where parole is revoked (Schedule 13).

1.22 Labor Senators believe that these measures will result in significantly higher sentences and are unlikely to have any adverse unintended consequences. However, whether those measures are, in fact, effective will not be known until some time after they are implemented.

²⁵ Attorney-General's Department, answers to questions on notice (received 1 November 2019).

²⁶ Attorney-General's Department and the Department of Home Affairs, *Submission 15*, p. 14.

- 1.23 According to the Attorney-General's Department, there has been no comprehensive review of Commonwealth sentencing practices, including in relation to child sex offences, since 2006. That is unacceptable.
- 1.24 Following a suggestion made by the Carly Ryan Foundation, every non-Government witness who gave evidence at the public hearing of the Committee supported the removal of mandatory minimum sentences from the bill and the inclusion of a comprehensive statutory review of sentencing practices in two- or three-years' time. Among other things, that review could look at the efficacy of the other sentencing reforms introduced by this bill and make recommendations for further sentencing reforms if any are needed.
- 1.25 Labor Senators endorse that approach as a sensible way forward.

Resourcing

Additional burden on state and territory governments

- 1.26 This bill would introduce a range of measures that are likely to create an additional burden on a criminal justice system that is largely administered by state and territory governments.
- 1.27 The Explanatory Memorandum claims that 'the overall financial impact [of the bill] on states and territories will be negligible' and 'these costs will be absorbed'.²⁷
- 1.28 However, that claim does not appear to be based on evidence given that the Commonwealth Government has not consulted with state or territory governments about the potential resourcing implications of the measures contained in this bill.
- 1.29 In response to a question on notice, the Attorney-General's Department noted that 'proposed measures' were 'discussed' at meetings of the 'National Working Group on measures concerning child sex offenders' in July and October 2017. That Working Group comprised senior police and justice officials from each of the states and territories and the Commonwealth.²⁸
- 1.30 However, those meetings were more than 2 years ago and, in any event, the Department provided the Committee with no evidence that the issue of resourcing was raised during those discussions.
- 1.31 During the committee's inquiry, the President of the Law Council, Arthur Moses SC argued that:

...if the Commonwealth is enacting legislation, whether it be in this area or other areas, that will increase the workload of the state courts, it seems that there needs to be an arrangement entered to, whether it be through the

²⁷ Explanatory memorandum, p. 3.

²⁸ Attorney-General's Department, answers to questions on notice (received 1 November 2019).

Attorneys-General reaching an arrangement, or through COAG or through some other arrangement, where the courts can be properly funded.²⁹

1.32 Labor Senators agree.

1.33 We therefore urge the Government to take urgent steps, in consultation with state and territory governments, to ensure that appropriate resourcing is in place to implement the measures proposed in this bill.

1.34 As part of those consultations, it is also important that the Commonwealth, state and territory governments consider the training needs of the judiciary. Labor Senators strongly endorse the comments that were made to this Committee by knowmore Legal Service and the Carly Ryan Foundation about the need to ensure that the judiciary has the appropriate training to be able to sentence effectively. In the context of child sexual abuse, such training should include raising awareness of current social science research in relation to the effects and impacts of child sexual abuse (including online).³⁰

Additional resourcing for the detection and apprehension of those who commit crimes against children

1.35 This bill introduces a range of sensible measures to punish child sex offenders *after those offenders are caught by authorities*. It does not provide any additional resources to assist in the detection and apprehension of those who commit these vile crimes.

1.36 This Parliament can pass the strongest child exploitation laws in the world but, unless our agencies are equipped with the best technology and have an appropriate number of personnel, we will not get very far.

1.37 The New York Times recently reported on the upward trend in the sharing and distribution of child exploitation material online.³¹ According to that report:

- In 1998, there were over 3,000 reports of child sexual abuse imagery on the Internet.
- In 2014, that number surpassed 1 million.
- In 2018, there were 18.4 million worldwide reports of child sexual abuse imagery.

1.38 The reports in 2018 included 45 million photos and videos.

²⁹ Arthur Moses SC, Law Council of Australia, *Committee Hansard*, 29 October 2019, p. 18.

³⁰ See Senate Legal and Constitutional Affairs Legislation Committee, Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019 [Provisions], November 2019, paras. 2.96–2.98.

³¹ Michael H Keller and Gabriel J.X. Dance, “The Internet is Overrun with Images of Child Sexual Abuse. What Went Wrong?”, *New York Times*, 28 September 2019 <https://www.nytimes.com/interactive/2019/09/28/us/child-sex-abuse.html>.

- 1.39 There has been a similar trend in Australia. According to the Attorney-General, there were 9,741 reports of child sexual exploitation received by the Australian Federal Police Child Protection Assessment Centre in the 2017 calendar year. In 2018, that figure was 17,905.
- 1.40 The reporting by the New York Times is a story of the failure of authorities around the world to keep up with the problem of child exploitation on the Internet but it is not principally about a failure of lawmaking. It is at least as much a story about inadequate resourcing and reporting practices.
- 1.41 Given the dramatic increase in reports of child sexual abuse imagery on the Internet over the last year, Labor Senators ask that the Government commence an urgent inquiry into the adequacy the resourcing that is currently available to authorities across Australia for the detection and apprehension of those who commit crimes against children, especially online.

Other concerns expressed by submitters

- 1.42 Labor Senators note that the Law Council of Australia and other submitters have expressed concerns about other aspects of the bill, including the introduction of a presumption against bail for individuals accused of serious Commonwealth child sex offences and a presumption in favour of cumulative sentences.
- 1.43 While Labor Senators support those measures, we urge the Government to closely monitor their operation to ensure they are being applied appropriately.

Recommendations by Labor Senators

- 1.44 Labor Senators recommend that the bill be amended, and that the Government provide appropriate undertakings, to implement the following recommendations:

Recommendation 1

- 1.45 **Schedule 6 should be deleted from the bill.**

Recommendation 2

- 1.46 **The bill should be amended to include a comprehensive statutory review of Commonwealth sentencing practices for child sex offences. The findings of that review should be reported to the Parliament within three years of the bill coming into effect.**

Recommendation 3

- 1.47 **The Government should commence an urgent inquiry into the adequacy of the resourcing that:**

- is currently available to state and territory authorities, including courts, to implement the measures introduced by this bill; and
- is currently available to authorities across Australia for the detection and apprehension of those who commit crimes against children, especially online,

and report to the Parliament within 6 months.

Senator the Hon Kim Carr
Deputy Chair

Appendix A – Examples from the Law Council’s Submission to the Committee

Bill Item	Criminal Code offence	Example of potential conduct caught by the offence	Mandatory minimum penalty
First time offences – section 16AAA			
1	Subsection 272.8(1) – sexual intercourse with child outside Australia	On a scout’s trip to New Zealand, an 18 year old Year 12 student has sex with his 15 year old Year 10 girlfriend.	6 years
3	Subsection 272.9(1) – sexual activity (other than sexual intercourse) with child outside Australia	On a holiday overseas between two families, an 18 year old and 15 year old commence a romantic relationship and they touch each other.	5 years
13	Subsection 474.25A(1) – using a carriage service for sexual activity with person under 16 years of age – engaging in sexual activity with child using a carriage service	An 18 year old and a 15 year old exchange images and sexual stories on Snapchat. An 18 year old and a 15 year old engage in sexual activity using FaceTime.	5 years
14	Subsection 474.25A(2) – using a carriage service for sexual activity with person under 16 – causing child to engage in sexual activity with another person	An 18 year old text messages her 15 year old friend encouraging him to send an indecent image to his 18 year old girlfriend.	5 years
Second or subsequent offences – section 16AAB			
35	Subsection 474.27A – Using a carriage service to transmit indecent communication to person under 16 years of age	An 18 year old boy and a 15 year old girl in a relationship and constantly exchange intimate images. The boy has previously been convicted of a child sexual abuse offence.	5 years

Australian Greens dissenting report

- 1.1 The Australian Greens would like to thank everyone who made a public submission and/or public representation to this inquiry.
- 1.2 The Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019 (the bill), as stated in the Explanatory Memorandum, seeks to:

...better protect the community from the dangers of child sexual abuse by addressing inadequacies in the criminal justice system that result in outcomes that insufficiently punish, deter or rehabilitate offenders. The Bill targets all stages of the criminal justice process, from bail and sentencing through to post-imprisonment options.¹
- 1.3 The Australian Greens note that submissions from legal, religious, and social justice NGOs were broadly supportive of the bill's stated objectives. However, submissions from legal NGOs all raised opposition to mandatory minimum standards, with the Australian Lawyers Alliance (ALA) submission addressing this aspect of the bill exclusively. Opposition to mandatory sentencing was also found in the submissions of the Sexual Assault Support Service (SASS) and Jesuit Social Services.
- 1.4 It is also worth noting that concerns regarding mandatory minimum sentencing in this bill were raised by the Parliamentary Joint Committee on Human Rights, and the Standing Committee for the Scrutiny of Bills.
- 1.5 Although the Australian Greens share some of the other more technical concerns raised by the Law Council of Australia (the Law Council), Knowmore legal service (Knowmore), and Professor Luke McNamara and Ms Drew Hawkes from the University of New South Wales' Centre for Crime, Law and Justice, like the ALA, our primary concern regarding this bill is with its imposition of mandatory minimum sentencing.
- 1.6 The Australian Greens, like the Law Council, have always opposed the use of mandatory sentencing regimes. In its 2014 Policy Discussion Paper on Mandatory Sentencing, the Law Council of Australia argued such regimes:

...impose unacceptable restrictions on judicial discretion and independence, and undermines fundamental rule of law principles. The rule of law underpins Australia's legal system and ensures that everyone, including governments, are subject to the law and that citizens are protected from arbitrary abuses of power. Mandatory sentencing is also

¹ Explanatory memorandum to the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019, p. 2.

inconsistent with Australia's voluntarily assumed international human rights obligations.²

1.7 In its submission to this inquiry, SASS commented:

Whilst we are strongly supportive of reform to strengthen punishments against those who sexually abuse children, we do not feel that there is sufficient evidence to suggest that mandatory minimum sentencing is an effective response.³

1.8 The Australian Greens consider sexual offences committed against children to be extremely serious, and believe serious sex offenders should receive appropriate sentences that are, as submitted by Knowmore:

...in line with increasing societal understanding of the seriousness of [sexual crimes against children] and the enduring impact of such offences on survivors.⁴

1.9 However, alongside the Law Council of Australia and most other legal experts and associations, we support the Sentencing Advisory Council for Tasmania's position that the introduction of mandatory minimum sentences will:

...create unjustified unfairness without achieving its stated aims of deterring offenders and increasing transparency.⁵

Recommendation 1

1.10 The recommendation of the Australian Greens is that the bill be withdrawn and redrafted without mandatory minimum sentencing, and with consideration of the technical concerns raised in various legal submissions to this inquiry.

**Senator Nick McKim
Greens Senator for Tasmania**

² Law Council of Australia, *Policy Discussion Paper on Mandatory Sentencing*, May 2014, p. 20.

³ Sexual Assault Support Service, *Submission 5*, p. 3.

⁴ Knowmore, *Submission 7*, p. 9.

⁵ Sentencing Advisory Council, *Mandatory Sentencing for Serious Sex Offences Against Children: Final Report No. 7*, September 2016, p. vi.

Appendix 1

Submissions

Submissions

- 1 Australian Lawyers Alliance
- 2 The Royal Australian and New Zealand College of Psychiatrists
- 3 The Carly Ryan Foundation
- 4 Legal Aid Western Australia
- 5 Sexual Assault Support Service (SASS)
- 6 Professor Luke McNamara and Ms Drew Hawkes
- 7 Knowmore
- 8 Catholic Women's League Australia
- 9 Synod of Victoria and Tasmania, Uniting Church in Australia
- 10 Mr Julian Murphy
- 11 Shine Lawyers
- 12 Bravehearts
- 13 Jesuit Social Services
- 14 Law Council of Australia
 - 14.1 Supplementary to submission 14
- 15 Attorney-General's Department and Department of Home Affairs
- 16 Ms Liana Allan
- 17 Legal Aid NSW
- 18 Mr Robert Testaz
- 19 Mr Garry Leicester
- 20 *Confidential*
- 21 Justice Action
- 22 *Name Withheld*

Answer to Question on Notice

- 1 Attorney-General's Department, answers to questions on notice taken on 29 October 2019 (received 1 November 2019)

Appendix 2

Public hearing

Tuesday, 29 October 2019

Committee Room 2S1

Parliament House

Canberra

The Carly Ryan Foundation

- Ms Sonya Ryan, Founder and Chief Executive Officer
- Ms Hayley Pearse, Executive Manager

Synod of Victoria and Tasmania, Uniting Church in Australia

- Dr Mark Zirnsak, Senior Social Justice Advocate

Knowmore

- Mr Warren Strange, Executive Officer
- Ms Melanie Morgan, Law Reform and Advocacy Officer

Law Council of Australia

- Mr Arthur Moses SC, President

Shine Lawyers

- Mrs Lisa Flynn, Head of Specialist Personal Injury

Department of Home Affairs

- Mrs Ciara Spencer, Acting First Assistant Secretary National Security and Law Enforcement Policy

Attorney-General's Department

- Ms Erin Wells, Acting Assistant Secretary
- Ms Frances Anggadi, Acting Assistant Secretary

Australian Federal Police

- Assistant Commissioner Debbie Platz, Assistant Commissioner Crime Operations

Office of the Commonwealth Director of Public Prosecutions

- Mr Mark de Crespigny, Deputy Director, Human Exploitation and Border Protection