



National Centre for Action
on Child Sexual Abuse

Submission to the Statutory review of sentencing for Commonwealth child sex offences (the review)

Contact: Dr Leanne Beagley
Chief Executive Officer
Leanne.Beagley@nationalcentre.org.au

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Ms Sarah Chidgey
Deputy Secretary National Security and Criminal Justice Group
Attorney-General's Department
childabusepolicy@ag.gov.au

Dear Sarah,

The National Centre for Action on Child Sexual Abuse (the **National Centre**) welcomes the opportunity to provide a written submission to the *Statutory review of sentencing for Commonwealth child sex offences* (the **review**).

About the National Centre for Action on Child Sexual Abuse

The National Centre is an independent not-for-profit organisation established with funding from the Department of Social Services to increase community understanding of child sexual abuse, promote effective ways for protecting children, guide best practice responses, and reduce the harm resulting from child sexual abuse. The establishment of the National Centre was a key recommendation of the 2017 Royal Commission into Institutional Responses to Child Sexual Abuse (Rec. 9.9).

The National Centre's is focused on delivering on its 5-year strategic plan *Here for Change*. This plan, developed in consultation with victims and survivors, identifies seven critical challenges that must be addressed to prevent and better respond to child sexual abuse in Australia:

1. Child sexual abuse and its effects across the lifespan of victims and survivors are not well understood or identified in the community.
2. People with lived and living experiences of child sexual abuse are often not believed and responded to with compassion.
3. Children, young people and adults with experiences of child sexual abuse (or their parents or carers) are often not identified, protected or well supported when they raise concerns or disclose.
4. Children and young people who have displayed harmful sexual behaviour require adults to better understand and meet their needs.
5. Victims and survivors of child sexual abuse are often unable to access the support and resources that meet their changing needs at different times in their lives.
6. Knowledge about complex and intergenerational trauma and dissociation does not generally inform responses to individuals with lived and living experiences of child sexual abuse.
7. Child sexual abuse will not be stopped unless there is a comprehensive framework for addressing the power dynamics and factors which enable it.

Our submission is informed by the National Centre's continuing work on addressing these challenges.

Our Submission

Child sexual abuse is highly prevalent in Australia with 1 in 3 females and 1 in 5 males reporting being sexually abused as children.¹ Addressing child sexual abuse is primarily the responsibility of states and territories, however the *Criminal Code Act 1995* (Cth) (**Criminal Code**) criminalises child sexual abuse, grooming, and dealings with child abuse material by Australian citizens and residents while overseas, the possession of child-like sex dolls, and using a carriage or postal service within Australia to deal with child abuse material.

The Criminal Code sets out the elements and sentencing options for child sexual abuse related offences such as engaging in sexual intercourse or sexual activity with a child, grooming or procuring a child, possession of child-like sex dolls and possessing, controlling, producing, supplying or obtaining child abuse material outside Australia or through a carriage or postal service (**Commonwealth offences**).

In practice, these Commonwealth offences relate to only a small proportion of child sexual offending in Australia. For instance, there were 524 finalised federal defendants with principal offences of non-assaultive sexual crimes such as possessing or distributing child abuse material or grooming in 2021-22.² It is well established however, that all forms of child sexual abuse and exploitation are under-reported and remain largely hidden for a variety of reasons such as shame, stigma, threats, and being beyond the control or comprehension of the victim. In relation to online child sexual abuse material, a recent survey of Australian men found that 2.5% had—as adults—knowingly and deliberately viewed child abuse material (depicting individuals below the age of 18).³ Conservatively, this equates to at least 235,299 men,⁴ a figure that well exceeds the numbers currently prosecuted or sentenced for such non-assaultive Commonwealth offences.

Though overall detection and conviction for offending is low, there is mounting evidence of the increasing prevalence of Commonwealth child sex offences,⁵ indicating the importance of deterrence and punishment of these crimes. The Explanatory Memorandum accompanying the amendment Bill identified the intent of the amendments subject of this review were 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”⁶ in relation to Commonwealth child sex offences. The most recent data available (2021-22 FY) on federal sentencing trends shows that there has been an uptick in custodial vs non-custodial sentencing for the relevant offence types since the amendments were introduced.⁷ This suggests that the amendments have, at least in part, fulfilled their intent of more adequately punishing offenders. We do note however some suspended sentences remain. Despite these sentencing trends, data is lacking on how these amendments may be operating to deter or rehabilitate offenders. Further, there is a critical lack of victim and survivor focused data which limits our ability to identify unintended consequences of the amendments.

¹ Prevalence of child sexual abuse across all Australians - The Australian Child Maltreatment Study (ACMS)

² Federal Defendants, Australia, 2021-22 financial year | Australian Bureau of Statistics (abs.gov.au)

³ Salter, M., Woodlock, D., Whitten, Ty., Tyler, M., Naldrett, G., Breckenridge, J., Nolan, J., & Peleg, N. (2023). *Identifying and understanding child sexual offending behaviour and attitudes among Australian men*. UNSW. Identifying and understanding child sexual offending behaviour and attitudes among Australian men.pdf (unsw.edu.au)

⁴ Based on the most recent Census data capturing Australian men aged 20 and over: Population: Census, 2021 | Australian Bureau of Statistics (abs.gov.au)

⁵ Tech companies must do more and do better if we are to stem the tide of online child sexual exploitation and abuse | eSafety Commissioner

⁶ 717035.pdf;fileType=application/pdf (aph.gov.au)

⁷ Federal Defendants, Australia, 2021-22 financial year | Australian Bureau of Statistics (abs.gov.au)

All action to address child sexual abuse by organisations such as our own and Government agencies would benefit from more detailed data on the defendants, pleas, and sentencing outcomes for each Commonwealth child sex offence (e.g., type of sexual activity, grooming, child sex dolls etc). This information would allow us to target our activities towards areas of highest need and identify emerging trends and future issues that will impact victims and survivors. This data will also allow better assessment of the effectiveness of these (and future) legislative amendments. As it stands, analyses suggest that Commonwealth child abuse material offences have high rates of substantiation and conviction,⁸ potentially due to compelling documentary and technical evidence establishing the offence at the required standard of proof. High rates of substantiation and conviction may not extend to other types of child abuse where, for example, a child's account is more heavily relied upon.

The Amendments

The National Centre continues to support the following amendments:

- *Criminalisation of child sex dolls.*
 - The Australian Institute of Criminology explored this issue in a 2019 discussion paper.⁹ The paper identified that although the use of child sex dolls is under-researched and little is known about the links between use of these dolls and other child sex offences¹⁰, the use of these dolls is of concern and presents risks. The National Centre shares these concerns and considers that a prudent approach to criminalisation is sensible, at least until a more substantial evidence base about this population of users is generated. However we raise the issue below about the inconsistencies in the age of 'child' related to this offence.
- *Remove the requirements (a) to seek leave before a recorded interview of a vulnerable witness can be admitted as evidence in chief and (b) for vulnerable witnesses to be available to give evidence at committal proceedings.*
 - The National Centre supports these amendments as they promote a trauma-informed approach to the prosecution of child sexual abuse and demonstrably seek to lessen the harrowing process of testifying in person. We note they are also aligned to previous justice recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse (the **Royal Commission**) in 2017.¹¹ We would like to see these kinds of provisions extended to include the types of recommendations outlined in the next section.
- *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.*
 - In our view, this amendment is consistent with the evolving evidence base on grooming and the various forms in which it occurs, including through emerging technologies and platforms. For example, a recent survey found that over 12% of Australians who had used dating apps in the previous five years were contacted by other app users and asked to facilitate the sexual exploitation of

⁸ Lyneham, S., (2021). *Attrition of human trafficking and slavery cases through the Australian criminal justice system* (Trends & issues in crime and criminal justice No. 640). Australian Institute of Criminology. <https://doi.org/10.52922/ti78443>

⁹ Brown, R., & Shelling, J. (2019) *Exploring the implications of child sex dolls* (Trends & issues in crime and criminal justice No. 570). Australian Institute of Criminology. <https://doi.org/10.52922/ti09937>

¹⁰ Such as sexual activity, grooming, and possessing or distributing child abuse material.

¹¹ [Final Report - Recommendations \(childabuseroyalcommission.gov.au\)](https://www.childabuseroyalcommission.gov.au)

children.¹² This amendment is also consistent with the Royal Commission recommendations.¹³

- *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.*
 - We support this amendment as it is consistent with the growing evidence base about the nature of grooming and the commission of this offence, particularly perpetrators who rely on their reputation and thus power to evade detection or punishment for lengthy periods.¹⁴ This amendment is also consistent with the Royal Commission's recommendations.¹⁵ As discussed below, the National Centre advocates for removing use of character evidence entirely for child sexual abuse offences (see iv).

Despite this support, the National Centre has concerns in relation to the impacts of the current legislation on victims and survivors.

Unintended adverse impacts on victim/survivors

The introduction of mandatory minimum sentencing may have unintended and harmful impacts on victims and survivors. Before the amendments, alleged perpetrators could enter an early guilty plea to receive penalty discounts and more lenient outcomes, including non-custodial sentences as deemed appropriate. This is advantageous from the perspective of some victim and survivors as they are saved the distress and trauma of a trial. Now with mandatory minimum sentencing, a defendant's early guilty plea no longer provides penalty discounts which has the perverse consequence in some cases of the accused proceeding to trial to challenge the evidence to avoid the risk of lengthier custodial sentences. We are concerned by this likelihood and the impact it will have on the mental health and wellbeing of those victims and survivors who would prefer to avoid trial, and in particular children and young people.

Recommendation: Provide court-funded advocates and supports for victims and survivors through the criminal justice system, particularly the trial process.

Lack of judicial discretion in sentencing

The National Centre supports strong and proportionate sentencing penalties for child sex offences, and we also support and respect discretion in judicial decision-making, particularly as no two child sex offence cases are the same. However, we have concerns that these amendments widen the reach of severe punishment which potentially has impacts for (1) young offenders (under 18 years) who have not fully matured and developed, (2) young adults in otherwise age-appropriate, lawful, and consensual relationships, and (3) marginalised population groups. We note that the Criminal Code makes effort to protect alleged perpetrators under 18 years by legislating the need for consent to commence proceedings against juveniles for certain offences and by stipulating that other offences only apply if the alleged perpetrator was over 18 at the time of offending and therefore an adult. The need for consent to commence proceedings could be broadened in their application.

¹² Coen, T., Boxall, H., Napier, S., & Brown, R. (2022). *The sexual exploitation of Australian children on dating apps and websites* (Trends & issues in crime and criminal justice No. 658). Australian Institute of Criminology. <https://doi.org/10.52922/ti78757>

¹³ Final Report - Recommendations (childabuseroyalcommission.gov.au)

¹⁴ See, for example, Nicol, S.J., Ogilvie, J., Kebbell, M.R., Harris, D.A., & Phelan, A. (2022). Dodging justice: Characteristics of men with multiple victims who evade detection for long periods. *Journal of Sexual Aggression*. <https://doi.org/10.1080/13552600.2022.2159555>

¹⁵ Final Report - Recommendations (childabuseroyalcommission.gov.au)

Recommendation: Consider legislative changes to prevent perpetuating harms due to lack of judicial sentencing discretion.

Inconsistent legislated age of 'child'

The National Centre advocates strongly for adopting a consistent definition of 'child' throughout the *Criminal Code Act 1995* (Cth). The current inconsistencies impact cases captured by this legislation. For sexual activity and grooming, a child victim is deemed to be under 16 years however this is increased to 18 years in cases involving defendants in positions of trust or authority. International evidence shows that older adolescents who are marginalised (e.g., experiencing financial and housing insecurity, substance dependency, trauma backgrounds, disability, diverse sexual identities etc.) may be vulnerable to abuse and exploitation where they may exchange international (or local) sexual activity for much needed commodities. All young people under 18 years require legal protections from sexual exploitation. In contrast, for child abuse material offences and possession of child sex dolls, a child is defined as someone under 18 years. We believe these inconsistencies create confusion about who is considered a 'child' when it comes to child sex offences, and creates potential loopholes enabling offending. The question arises as to why, for example, child abuse material depicting, or a child sex doll representing, a 16- or 17-year-old is a crime but sexual activity with those of the same age is lawful.

We note that the Commonwealth's definition of 'child' as it relates to child abuse material offences is older than state and territory jurisdictions (under 18 vs under 16 years). National harmonisation of definitions relating to children and child sexual abuse are an important area of future law reform but in the interim, we highlight the need for consistency in the Commonwealth legislation.

Recommendation: Legislative reforms to harmonise the age of 'child' in relation to child sex offences throughout the Criminal Code.

Additional Reforms

While we are encouraged by the 2020 amendments, the National Centre also supports a number of other relevant recommendations regarding criminal justice and sentencing practices in relation to child sex offences identified for implementation in State and Territory jurisdictions.¹⁶

Recommendation: Assess the suitability of applying these recommended practices in relation to Commonwealth offences, particularly as they relate to victims and survivors.

i. International Benchmarking

The National Centre highlights Australia's standing in the *Out of the Shadows* 2022 report, which provides a global, comparative assessment of actions addressing child sexual abuse and exploitation.¹⁷ Overall, Australia is well-placed globally however there are critical areas in which Australia lags behind. One area for improvement is legislative reforms to better protect children from sexual abuse and exploitation. Aligning the current Commonwealth legislation against these international standards in the next stage of reforms will enhance Australia's global standing and contribution to a globally coordinated framework that aids the prosecution and prevention of transnational child sex abuse crimes. Specific focus areas identified through the 2022 report include legislative reforms related to the 'prostitution' /sexual trafficking of minors, unambiguous definitions, setting the minimum age of criminal responsibility for a sexual offence to an age of at least 14 years, as recommended by the United Nations Committee on the Rights of the Child, and providing publicly

¹⁶ See for example Final Report - Recommendations (childabuseroyalcommission.gov.au) and [FSA-AIC-Submission-Sexual-Violence-Legislation.pdf \(fullstop.org.au\)](https://fullstop.org.au)

¹⁷ [Out of the Shadows index](#)

available accurate and current data on child sexual abuse and exploitation cases, including arrests, indictments, attrition and convictions.¹⁸

Recommendation: Commonwealth legislation is benchmarked against international standards in the next stage of reforms.

ii. Training of those in the Commonwealth criminal justice sector

The National Centre advocates for a criminal justice system that is more trauma-informed, knowledgeable of the lifelong impacts of child sexual abuse, responsive to the needs of victims and survivors (particularly children), and delivers outcomes that are proportionate to the harms caused. To foster this, we recommend the development and implementation of practice guidelines and training programmes for judicial officers, prosecutors and others in the criminal justice system. Such training is promoted as best practice globally but Australia currently lacks a comprehensive and coordinated approach, lagging behind on this important international benchmark.¹⁹

Recommendation: Implement regular, effective, evidence-based training and education programs for the range of professionals involved in the criminal justice system, and extend this to other areas of law such as Family law and Migration law, given the interactions in child sexual abuse cases.

iii. Maximising the utility of victim impact statements

The National Centre is focused on amplifying the voices of victims and survivors of child sexual abuse. Victim impact statements (VIS) are an important mechanism for victims and survivors to communicate to the court the far-reaching impacts of the abuse and the gravity of harms caused by offending that can be used in determining sentences for Commonwealth Offences. The National Centre has commissioned research specifically examining the use of VIS in the Family Law Court in cases involving child sexual abuse. Although the research is still in progress, emerging insights highlight how important VIS are to ensuring victim/survivor voices are heard throughout the judicial sentencing process.

The National Centre considers it vital that victims and survivors are assisted in preparing VIS. They need to understand the purpose of the statements so they can make informed decisions about their participation in this process, and to prepare VIS that are permissible in light of the conviction, be given adequate time to develop their VIS statement (that is trauma-informed), and provided with psychological support throughout the process. Such support and trauma-informed practices must also be afforded to other relevant persons (e.g., non-offending family members) when providing a statement if the court grants leave to do so, in keeping with Part 16A of the *Crimes Act 1914* (Cth). When this approach is coupled with the training recommended above (i) the system will become safer and less harmful for victims and survivors.

Recommendation: Victims and Survivors have access to court-provided support and assistance to understand the purpose of victim impact statements and to prepare them if they choose to do so.

¹⁸ The 2022 *Out of the Shadows index* benchmarks how 60 countries—including Australia—are preventing and responding to the issue of child sexual abuse and exploitation.

¹⁹ *Out of the Shadows index*

iv. Omitting character evidence

Currently the court is permitted to take a defendant's 'character' into account in sentencing.²⁰ The National Centre echoes previous calls to exclude 'good character'—in its entirety—as a mitigating factor in sentencing for child sex offences, even if the outwardly good character was not explicitly used to facilitate the sex offence (which is now accounted for at s.16A(2)(ma)). We consider such an assessment denies justice to victim/survivors, minimises the harm caused to them, and is irrelevant to the sentencing penalty for child sex offences. The Royal Commission and extensive other evidence clearly shows that children are sexually abused by trusted adults and adults with good standing in the community such as teachers, priests, sports coaches, community leaders etc. We understand that prior criminal history is relevant to consider, even though it is an imperfect measure of actual criminal activity, but any inclusion of character references should be precluded, and legislation amended accordingly. If this is not possible then we urge amendments to allow those providing character references to be cross-examined in the sentencing process rather than their references being accepted on face value. The National Centre considers this to be critical for achieving appropriate sentencing outcomes given the nature of how children come to be sexually abused by adults.

Recommendation: Character evidence is omitted or, alternatively, cross-examination of character referees is permissible for child sexual abuse offences.

Summary of Recommendations

1. Provide court-funded advocates and supports for victims and survivors through the criminal justice system, particularly the trial process.
2. Consider legislative changes to prevent perpetuating harms due to lack of judicial sentencing discretion.
3. Legislative reforms to harmonise the age of 'child' in relation to child sex offences throughout the Criminal Code.
4. Assess the suitability of applying these recommended practices in relation to Commonwealth offences, particularly as they relate to victims and survivors.
5. Commonwealth legislation is benchmarked against international standards in the next stage of reforms.
6. Implement regular, effective, evidence-based training and education programs for the range of professionals involved in the criminal justice system, and extend this to other areas of law such as Family law and Migration law, given the interactions in child sexual abuse cases.
7. Victims and survivors have access to court-provided support and assistance to understand the purpose of victim impact statements and to prepare them if they choose to do so.
8. Character evidence is omitted or, alternatively, cross-examination of character referees is permissible for child sexual abuse offences.

²⁰ *Crimes Act 1914* (Cth) s 16A(2)(m)

Further Information

Thank you for inviting the National Centre to provide a submission to the *Statutory review of sentencing for Commonwealth child sex offences*. Please contact me if you wish to discuss our submission in further detail. We also welcome further discussions and the National Centre's ongoing involvement in Commonwealth legislative reforms related to child sexual abuse and exploitation.

Kind regards,

**Dr Leanne Beagley**

Chief Executive Officer

The National Centre for Action on Child Sexual Abuse

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