

Submission Re: Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019

IEUA-QNT welcomes the opportunity to provide feedback regarding the Consultation Draft of the Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019.

IEUA-QNT represents ~17,000 teachers, support staff and ancillary staff in non-government education institutions in Queensland and the Northern Territory and consistently engages in industrial and education debate at both state and national levels through its Education and Industrial Committees and through its national counterpart, the Independent Education Union of Australia, which receives input from teachers in all States and Territories.

Our union understands that, in implementing the recommendations of the Royal Commission, the ultimate goal should not merely be to create offences for which perpetrators, and those who would protect them from the legal ramifications of their actions, can be prosecuted, but to protect children from becoming victims of offences in the first instance.

In relation to the Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019, we believe that the majority of proposed changes increase accountability of those in positions of power and empower victims of child sexual offences to pursue charges against perpetrators. In this, the Bill succeeds in achieving its core goals.

We are however, concerned that some of the amendments are currently phrased in a manner that may deter, but will not prevent, repetition of previous failures to protect children.

Our chief concern with the proposed amendments to create the new offences of failure to report and failure to protect is that the stipulation that the offence "is being or has been" committed against a child is inadequate. In this context, it is not sufficient to wait until abuse has occurred to report that abuse. Although we understand that it is unlawful to punish someone on mere suspicion of propensity to commit the offence, it is, in our opinion, essential that any modifications to the legislation should, where possible, provide an avenue for reporting of circumstances that could lead to the harm of a child, not merely reporting of offences after the fact.

We note that the Fact Sheet *Institutional child sexual abuse offences: failure to report and failure to protect* indicates that the Royal Commission considered the creation of a criminal offence of failure to protect a child necessary as it is not sufficient to wait until abuse occurs before the police are informed. As drafted however, the Bill does not encourage reporting prior to abuse.

In rewriting the clauses, we would suggest it might be useful to examine legislation governing mandatory reporting (the Child Protection Act 1999). In this documentation, certain professionals, referred to as 'mandatory reporters' are required to act (report) if they form a "reasonable suspicion that a child has suffered, is suffering, or is at an unacceptable risk of suffering significant harm". Were the Criminal Code to deploy similar language, this would shift the emphasis from retrospective reporting to more proactive prevention of abuse.

In relation to the work of our members, we understand that mandatory reporting requirements create an opportunity to raise concerns prior to an offence, but this is insufficient to protect children from becoming victims of child sexual offences in an institutional context. The new offences of failure to report and failure to protect are necessary to increase the standard of accountability of those in positions of power, but not sufficient to protect children from becoming victims of abuse.

In addition to our concerns regarding phrasing of the new offences, we note that, as currently worded, section 229C stipulates that the offence is limited to children who are: a) “under the care, supervision or control of an institution or relevant carer”; b) “under 16 years” and c) that “the person has the power or responsibility to reduce or remove the risk”.

It is conceivable that child sexual offences could be carried out by individuals who are associated with a particular institution in a less formal context and we would, therefore, again argue that modelling clauses on mandatory reporting legislation would provide individuals with an impetus to act prior to the committing of a child sexual offence.

Concluding Comments

In a general sense, our union believes that the majority of proposed changes achieve the core goals of increasing accountability of those in positions of power and empowering victims to pursue charges against child sexual offenders. We do however, recommend that wording of the legislation should be modified as above, to create an emphasis on prevention of abuse, rather than focussing on ways of dealing with offences after they have occurred.

With these changes, we believe the Bill would more effectively achieve the ultimate goal of protecting children from becoming victims of child sexual offences.

We thank Department of Justice and Attorney-General for the opportunity to engage in consultation and would welcome the opportunity to participate in further discussion.



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19th September 2019