



Public Consultation Paper
International Justice Mission, Philippines
Australian Border Force: National Plan to Combat Modern Slavery
2020-24

INTRODUCTION

International Justice Mission (IJM) works to strengthen public justice systems in developing countries to protect the poor from violence. We are the largest international anti-slavery organization in the world. In the Philippines, IJM works specifically to combat the Online Sexual Exploitation of Children (OSEC): a transnational crime that involves offenders, including many in Australia, who commission and direct the sexual abuse and exploitation of children in developing countries on a pay-per-view basis using live-streaming technology. This crime is also known as ‘cybersex trafficking’, as it is a form of human trafficking driven by online sex offenders who are the customers commissioning and paying for the facilitation of sexual slavery against children.

Amongst our law enforcement partners in the Philippines combatting this crime at the ground level, Australia is notoriously known as within “the top-three countries” where citizens are directing and consuming pay-per-view, live-stream sexual abuse material.¹ Last year, a large Australian bank came under fire as a result of an AUSTRAC investigation that alleged more than 3,000 payments totaling almost \$500,000 were paid through their services for the purpose of people accessing online child abuse.² From this, it is clear that Australia must play a role to combat the global crimes involving online sexual exploitation of children, a form of modern-day slavery.

¹ Quoted by former Chief of the Women and Children Protection Center – Visayas Field Unit, Colonel Romeo Perigo, *The West Australian*, *Our police must keep up fight against child abuse in Asia*, 25 July 2019, <https://www.pressreader.com/australia/the-west-australian/20190725/281904479773120>. The case concerned a joint effort between the WCPC-VFU and Australian Federal Police against a perpetrator who would sell videos of him personally abusing children to customers, including Australians.

² The Guardian, *Legal Breaches allowed Westpac customers to pay for child sexual abuse undetected Austrac alleges*, <https://www.theguardian.com/australia-news/2019/nov/21/legal-breaches-allowed-westpac-customers-to-pay-for-child-sex-undetected-austrac-alleges>.

I. Do the 12 goals capture key areas of focus for Australia over the next five years? Should there be additional goals to address other areas of focus, emerging issues or trends? If so, what should they be?

Whilst the Consultation Paper admits that modern slavery refers to a range of serious exploitative practices that all have different elements, IJM recommends the Australian Government must explicitly include Online Sexual Exploitation of Children in its strategy.

Strengthening Child Sexual Offences Legislation

Australian Federal and State law have come a long-ways in effectively covering Child Pornography and other online sexual abuse offenses: namely, the *Criminal Code Act 1995 (Cth)* ('*Criminal Code*'). However, it is not clear at present whether the legislation covers the situation where an offender directs and or views child abuse material which is live-streamed over the internet in real time and records this live-stream for later viewing or sharing. There is evidence that perpetrators who commission and view real time child abuse via live-stream pay-per-view services record these 'sessions'. This occurred in the 2016 case of Kyle Dawson in Queensland,³ and that of Victorian Patrick Goggins in 2014.⁴ ECPAT International notes that recorded live-streaming may be 'substantially adding to the volume of child sexual abuse materials (CSAMs) available on the web as a whole'.⁵

The offences as currently worded require that 'the person used a carriage service to obtain or access the material' (subsection 1(c)). Under the *Criminal Code*, 'material' includes 'material in any form, or combination of forms, capable of constituting a communication'.⁶ Conceivably, an accused could argue that the 'material' in their possession (the recording of the child abuse material) is in a different form to and is therefore distinct from the 'material' which was accessed via the internet (a live-stream, that is, a continuous stream of data which is not downloaded).⁷

³ Rae Wilson, 'Kiwi Jailed Over "Degrading" Acts', The New Zealand Herald (online), 28 July 2016; Australian Cyber Predators Using Live Streaming Technology to Abuse Children Overseas (Reported by Michael Atkin, ABC 7.30, 2016).

⁴ *R v Goggins* [2014] VCC 1086 (7 July 2014); Peta Carlyon, 'Melbourne Man Jailed for Using Internet to Sexually Abuse Children Living in Poverty in Philippines', ABC News (online), 7 July 2014; Lindsay Murdoch, 'Philippine Children Exploited in Billion-Dollar Webcam Paedophilia Industry', The Sydney Morning Herald (online), 8 July 2014.

⁵ Andrea Varrella, 'Live Streaming of Child Sexual Abuse: Background, Legislative Frameworks and the Experience of the Philippines' (2017) 12 ECPAT Journal 47, 49.

⁶ Criminal Code (Cth) s 473.1 (definition of 'material').

⁷ University of Missouri System, File Sharing vs. Online Streaming: What's the Diff? (23 August 2017) Make it Safe.

Further, this may influence whether a perpetrator is found guilty of a child pornography charge or of a sexual offence through a carriage service. Child pornography charges carry significantly lower sentences. Moreover, a child pornography charge does not adequately capture the crime inflicted upon the child victims: *live-stream sexual abuse involves customers directing such abuse in real-time*. Australian jurisprudence has argued although an offence causing a child to engage in sexual activity does not include any actual contact by the offender, it still has the same moral culpability as that of an actual contact offense, shown through the similar maximum penalties.⁸ Queensland Police Detective Inspector, Jon Rouse, of Taskforce Argos has stated in relation to an online sexual offender perpetrating OSEC:

“[He] may as well have been in the room with the kids. The fact he was seeing it in the virtual world is irrelevant....what happened to those kids happened because of him.”⁹

However, in this case, the perpetrator was sentenced to **three years imprisonment** for eight counts of directing and paying for live-streamed child sexual abuse over a period of five years. The victim of his abuse was a Filipina who was only 10-years old at the beginning of the abuse.¹⁰ On the other hand, the Philippine trafficker was sentenced to **16 years and two months imprisonment** and ordered to pay a total of 650,000 pesos (approx. \$AUD19,000) as victim compensation.

All this to say, we may not be able to progress effective prosecution and secure strong and fair sentences against those who live-stream abuse because it is not yet adequately reflected in the law.

Strengthening Trafficking Legislation

IJM strongly encourages the Australian Government to amend current trafficking offenses to better suit the crime of OSEC – cybersex trafficking.

⁸ *DPP (Cth) v Beattie* [2017] NSWCCA 301, [25] and [128].

⁹ Sydney Morning Herald, *Children as young as two rescued from Philippine cybersex abuse*, <https://www.smh.com.au/world/children-as-young-as-two-rescued-from-philippine-cybersex-abuse-dens-20170603-gwjmg5.html>.

¹⁰ Senator Kakoschke Moore, *Passports Legislation Amendment (Overseas Travel by Child Sex Offenders) Bill 2017 Second Reading*, 20 June 2017.

Currently in Australia, OSEC cases are typically seen as an extension of child sexual abuse/exploitation material cases, but they are arguably more comparable to trafficking cases. Division 270 of the *Criminal Code* is described to criminalize “slavery-like practices, including...servitude and forced labour”. Further, current law is meant to cover crimes of sexual servitude (Section 270.7). It is the customers in countries like Australia that fuel the demand for the sexual servitude of children. They perpetuate the trafficking of children into this bondage. Yet, in practice, this crime is not framed in this way.

Additionally, changing trafficking legislation to include an internet crime such as OSEC will bring trafficking into the 21st century. The internet has provided ease of access to the sexual abuse of children like never before. Committing OSEC is much easier and more convenient than committing a physical crime. But, as discussed, this should not diminish any culpability. Australian online offenders who are directing the trafficking – causing the sexual servitude of these children – should be seen as traffickers themselves. And thus, should be prosecuted under laws and be appropriately sentenced as to reflect this reality.

Data Privacy

Moreover, live-stream abuse is already difficult to detect and has the potential to become more and more difficult with the advent of encrypted communication and emphasis on data privacy. IJM encourages the Australian Government to consider such issues and how they will impact investigation and prosecution of online sexual offending.

II. The Government is committed to ensuring victims of modern slavery are supported, protected and empowered. Are there ways in which the Government can better reflect the voices of victims and their lived experiences in the 2020-24 Plan and Australia’s response to modern slavery?

In relation to Goal 6, *progressing effective prosecutions to secure convictions against offenders*, IJM encourages initiatives around the frequent use of victim voices in Court proceedings.

Because OSEC cases involve victims that reside overseas, the voices of these victims often go unheard. There is an argument that Courts appear to be more strongly impacted when there are tangible victims or when the victims’ voice has been heard through Victim Impact Statements.

This arguably results in higher sentences. Jurisprudence does seem to appreciate that these are not victimless crimes, however, the inclusion of a victim voice has the capacity to make judges appreciate the full gravity and impacts of these crimes.

Basten JA outlines the importance of the victim's voice in *Beattie*, a case involving Philippine victims and an Australian online perpetrator:

"There is a real risk that the true impact of the offending on the victims, being children overseas (in this case in the Philippines), is underestimated. Of course, it is true that the criminal courts do not usually see graphic depictions of the sexual offending. That too, however, **may result in an inaccurate appreciation of the effect of the offending on the victim**. However, the court usually has a victim impact statement, which provides some reflection of the effect of the offending. That is not so in the present case."¹¹

CONCLUSION

IJM supports the Australian Governments call for public consultation. However, it must ensure that Online Sexual Exploitation of Children – Cybersex Trafficking – is explicitly included in its National Action Plan to Combat Modern Slavery 2020-24. This is to ensure that Australians commissioning this abuse of vulnerable children in the Philippines and other developing nations are appropriately held accountable in proportion to the degree of harm they are causing, and that the online nature of the offense does not weaken or reduce the sentence or punishment.

¹¹ *DPP (Cth) v Beattie* [2017] NSWCCA 301, [6].