

**Submission
No 39**

INQUIRY INTO MODERN SLAVERY ACT 2018 AND ASSOCIATED MATTERS

Organisation: Collective Shout

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**Submission to the
Inquiry into the Modern Slavery Act 2018
and related matters**

Collective Shout (www.collectiveshout.org) is a grassroots movement challenging the objectification of women and sexualisation of girls in the media and popular culture.

We target corporations, advertisers, marketers and media which exploit the bodies of women and girls to sell products and services, and campaign to change their behaviour.

More broadly we also engage in issues relating to other forms of sexploitation, including the interconnected industries of pornography, prostitution and trafficking; and child sexual abuse, including the appalling practice of using a digital platform for the purpose of live streaming acts of child sexual abuse performed on demand.¹

CONSULTATION DRAFT – MODERN SLAVERY AMENDMENT BILL 2019

We wish to raise the following concerns and recommendations regarding the consultation draft:

- 1. Threatening actual bodily harm *only* with an offensive weapon or instrument to be an aggravating circumstance – threatening actual bodily harm by, for example, beating or choking to be excluded.**

Schedule 1 [25] seeks to narrow one of the circumstances of aggravation for the purposes of the offence in section 91G (Children not to be used for production of child abuse material) of the Crimes Act 1900 (which is to be inserted into that Act by Schedule 4 [2] to the Principal Act). Currently this provides that the circumstance of aggravation is that, at the time of, or immediately before or after, the commission of the relevant offence, the alleged offender threatens to inflict actual bodily harm on the alleged victim or any other person who is present or nearby without limiting the means by which such threatened actual bodily harm may be inflicted.

The proposed amendment would narrow this provision by limiting it to threatening the harm “by means of an offensive weapon or instrument”. Why? Children in particular, as well as other persons

¹ For more detailed information on our views regarding strategies to address modern slavery we refer to our submission to the Commonwealth Modern Slavery Bill 2018. Collective Shout (2018). *Submission to Commonwealth Modern Slavery Bill 2018*. Submission No. 57 at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/ModernSlavery/Submissions

so threatened, could well be given actual bodily harm without the use of any weapon or instrument, but by the use of physical force – punching, beating, strangling etc.

Recommendation 1

The proposal to narrow the scope of threatening actual bodily harm as an aggravating circumstance in relation to using children for child abuse material is unjustified and should not be supported.

2. Administering a digital platform used to deal with child abuse material

Schedule 1 [26] in this draft Bill would repeal the uncommenced section 91HAA (Administering a digital platform used to deal with child abuse material) of the *Crimes Act 1900* (which was to be inserted into that Act by Schedule 4 [3] to the *Modern Slavery Act 2018*).

There is no explanation given in the Explanatory memorandum as to the rationale for this provision.

The repeal of this provision would still leave in the *Modern Slavery Act 2018* the rest of Schedule 4 [3] as well as an amended Schedule 4 [4] which would add to the *Crimes Act 1900* the offences of “Encouraging use of a digital platform to deal with child abuse material” and “Providing information about avoiding detection” in relation to the first offence.

Creators and users of child abuse material are notoriously adept at adopting new technologies to facilitate their practices and avoid the attention of law enforcement. The proposed offence of “Administering a digital platform used to deal with child abuse material” would give law enforcement officers an additional tool in seeking to bring these criminals to justice and further protect children from abuse. The offence covered actions of administering a digital platform or assisting in the administration of a digital platform that would not necessarily be caught by the offence being retained of “encouraging another person to use a digital platform”.

The *mens rea* component of the offence is suitably crafted to avoid any risk of innocent administrators of digital platforms being charged. That is, it requires either an intention that the digital platform be used for dealing with child abuse material or an awareness that it was being so used along with, in proposed section 91HA (1A), an appropriate defence of taking all reasonable steps to prevent a digital platform from being used to deal with child abuse material as soon as becoming aware of it being used for that purpose.

Writing on the responsibilities of Telcos in relation to this issue, Collective Shout co-founder Melinda Tankard Reist observed:

There is also a push to hold ISPs to account. Internet Service Providers and Telcos - Telstra, Optus, iiNet and TPG - which provide the infrastructure for live-streaming abuse of children to be possible, need to cooperate with law enforcement authorities. Telcos are profiting from the global crime of child sexual abuse of the kind that happened to the children I've described.

Last week, the ABC's 7:30 revealed that, in the first 5 months of this year, there were 79 cases where telecommunications companies did not provide the online information such as

subscriber records, IP addresses or mobile data required to make an arrest. This equated to a fifth of cases being pursued. That's 79 cases that cannot be investigated and prosecuted because ISPs consider the "privacy" of their (paying) customers to take precedence over the well-being of tortured children.

It is no wonder police tasked with building a case against suspected perpetrators - and who have to view material on a daily basis that would destroy most of us - are frustrated. One investigating officer interviewed for Anti-Slavery's report lamented the lack of compliance by Telcos, which appear reluctant to assist with investigations of online child exploitation. The officer gave as an example investigating the abuse of a four-month-old baby and being told "can't help" 4 times. After he called the E Safety Commissioner, the information was provided within 40 minutes.

Asked by reporter Alex McDonald what happens when there is insufficient information, AFP Commander Lesa Gale responded: "It stops. It ceases. It means we can't do anything more. It means, if there is a child that's been exploited, that nothing further can be done." A child won't be rescued and an abuser can keep abusing.²

In an article on the live-streaming of child sex abuse from the Philippines, Prichayada Promchertchoo of CNA describes "the growing number of child cybersex cases, where paedophiles based overseas pay local traffickers to molest children and live-stream the abuse".³

Despite numerous crackdowns, the sophistication and lucrateness of the cybersex industry continues to enable its proliferation in the Philippines. According to the International Justice Mission (IJM), the number of rescue and arrest operations related to the cybersex trade in the Philippines went up from 17 in 2015 to 51 in the first nine months of 2018. At the same time, the age of the victims is going down. Most of them are 12 years old or younger, and one in ten are boys.

"Girls and boys are forced to perform sex acts on themselves or each other, molested by an adult, or are abused in other degrading ways," said Sam Inocencio, the national director of IJM Philippines. His agency has helped the country fight cybersex trafficking since 2016, enabling police to detain nearly 100 suspects and rescue more than 370 victims.

"The youngest victim IJM has rescued is a three-month-old baby," he said.

As the Internet penetrates more parts of the world, sex predators can gain easier access to more children. They no longer have to physically travel to meet a child for sexual exploitation to occur. Advanced cyber technology enables them to recruit local traffickers, select children,

² Melinda Tankard Reist, "Why Are Australian Telcos and ISPs Enabling a Child Sexual Abuse Pandemic?", *ABC Religion and Ethics*, 6 July 2017, <https://www.abc.net.au/religion/why-are-australian-telcos-and-isps-enabling-a-child-sexual-abuse/10095644>

³ Promchertchoo, Prichayada (9 July 2019). Live-streaming of child sex abuse spreads in the Phillipines, CNA. <https://www.channelnewsasia.com/news/asia/philippines-child-sex-abuse-live-streaming-cybersex-exploitation-10769092>

view and direct the long-distance abuse in real time from anywhere in the world, while remaining invisible under the cloak of cyber anonymity.

New South Wales law must ensure that any person who is facilitating such horrific acts as the abuse on demand of babies and other young children, wherever the abuse might be occurring, through a digital platform operating in or accessed from New South Wales, is subject to an offence, whether the person administering or assisting to administer the digital platform does so intending it be used for that purpose or after becoming aware that it is being used for that purpose fails to take all reasonable steps to prevent that use.

Recommendation 2.1

Schedule 1 [26] in this draft Bill be dropped so that uncommenced section 91HAA (Administering a digital platform used to deal with child abuse material) of the Crimes Act 1900 still be inserted into that Act by Schedule 4 [3] to the Modern Slavery Act 2018.

Recommendation 2.2

Schedule 4 of the Modern Slavery Act 2018, which includes this provision, should be immediately proclaimed and not delayed due to unrelated matters raised by other provisions of the Modern Slavery Act 2018.

3. Keeping slaves or requiring a child to perform forced labour only to be a crime if done in NSW

Schedule 1 [31] would amend section 93AB (1) (Slavery, servitude and child forced labour) of the Crimes Act 1900 (which is to be inserted into that Act by Schedule 4 [7] to the Principal Act) to clarify that the prohibited actions must occur in New South Wales.

No justification is given for this proposed geographical limitation on the offence. There is no apparent reason why this offence should not be subject to the provisions of section 10C of the Crimes Act 1900 extending the operation of an offence outside New South Wales if there is a sufficient geographic nexus. For example, a business headquartered in New South Wales employing forced child labour overseas should be liable to the offence.

Recommendation 3

The proposal in Schedule 1 [31] to limit the geographic reach of the offence of keeping slaves or forcing child labour is unjustified and should not be supported.

4. The child victim of a forced marriage does not commit an offence

Schedule 1 [32] of the consultation draft of the *Modern Slavery Amendment Bill 2019* would substitute section 93AC (4) (Child forced marriage) of the *Crimes Act 1900* (which is to be inserted

into that Act by Schedule 4 [7] to the Principal Act) to clarify that a person does not commit the child forced marriage offence if the person is a victim of the forced marriage.

This correction is, of course, supported. However, general prosecution principles would no doubt operate so as to prevent any possibility of a child victim being charged for this offence. Therefore the proposal to correct a drafting oversight in this section should not be used as an excuse to delay proclamation of the commencement of Schedule 4 of the *Modern Slavery Act 2018*, which includes the offence of child forced marriage into the *Crimes Act 1900*, as stated in our Recommendation 2 above.

Recommendation 4

Schedule 1 [32] of the consultation draft of the Modern Slavery Amendment Bill 2019 which would substitute section 93AC (4) (Child forced marriage) of the Crimes Act 1900 (which is to be inserted into that Act by Schedule 4 [7] to the Principal Act) to clarify that a person does not commit the child forced marriage offence if the person is a victim of the forced marriage should be supported, subject to it not being used as an excuse to delay the immediate commencement of Schedule 4 of the Modern Slavery Act 2018.

5. Forced marriage and the *Crimes (Domestic and Personal Violence) Act 2007*

Schedule 1 [33]–[37] of the consultation draft of the *Modern Slavery Amendment Bill 2019* would make amendments to Schedule 5.3 to the Principal Act (which amends the *Crimes (Domestic and Personal Violence) Act 2007*) for the following purposes:

- (a) to include a reference to the offences of forced marriage under the Commonwealth Criminal Code in the definitions of personal violence offence in that Act and serious offence in section 40 of that Act,
- (b) to include in the definition of intimidation in that Act a reference to any conduct amounting to the coercion or deception of, or a threat to, a child to enter into a forced marriage within the meaning of section 93AC of the *Crimes Act 1900* or any person to enter into a forced marriage within the meaning of section 270.7A of the Commonwealth Criminal Code,
- (c) to make it clear that an apprehended violence order under that Act may prohibit any behaviour of the defendant that might coerce, deceive or threaten the protected person to enter into a forced marriage within the meaning of the relevant provisions of the *Crimes Act 1900* or the Commonwealth Criminal Code,
- (d) to make consequential amendments.

Recommendation 5

The provisions in the consultation draft of the Modern Slavery Amendment Bill 2019 relating to forced marriage and the Crimes (Domestic and Personal Violence) Act 2007 should be supported.

6. Amendment to the Crimes (High Risk Offenders) Act 2006

Schedule 2.1 amends the Crimes (High Risk Offenders) Act 2006 to provide that offences under Division 10A (Sexual servitude) of Part 3 (Offences against the person) of the Crimes Act 1900 are offences of a sexual nature for the purposes of that Act.

Recommendation 6

Schedule 2.1, of the consultation draft of the Modern Slavery Amendment Bill 2019 which would amend the Crimes (High Risk Offenders) Act 2006 to provide that offences under Division 10A (Sexual servitude) of Part 3 (Offences against the person) of the Crimes Act 1900 are offences of a sexual nature for the purposes of that Act, should be supported.

7. Anti-Slavery Commissioner

Collective Shout is particularly supportive of the following functions to be given to the new Anti-Slavery Commissioner under Section 12 of the *Modern Slavery Act 2018*:

- (a) to promote public awareness of modern slavery and its effects on its victims, and*
- (b) to provide advice, education and training on ways to prevent modern slavery taking place and assist the victims of modern slavery, and*
- (c) to encourage reporting of instances of suspected modern slavery to appropriate authorities (including without limitation reporting by sex workers and bodies or organisations representing sex workers), and*
- (d) to establish and maintain a hotline (or utilise a hotline maintained by a government or non-government agency or other body or organisation) for provision of advice and assistance to children and other persons who are, or may be, victims of modern slavery.*

While not accepting that the terminology “sex workers” should be used to describe women being exploited by prostitution, whether formally enslaved or otherwise, these are important, much-needed functions, especially in relation to sex slavery.⁴

Recommendation 7

Noting that Jennifer Burn was appointed in December 2018 as the interim Anti-slavery Commissioner, we urge that all sections of the Modern Anti-Slavery Act 2018 needed to establish the Anti-slavery Commissioner on a permanent basis, and enable the functions set out in Section 12 of that act, to be actioned and fully underway as soon as possible.

⁴ For a more in-depth discussion of terminology and preferred descriptions of women who have exited the sex industry see Norma C and Tankard Reist M (eds.) (2016) *Prostitution Narratives: stories of survival in the sex trade*, Spinifex Press, Melbourne, 2016.