**Submission input**

**Special Rapporteur thematic report for 76th session of the General Assembly:**

***‘Gender dimension of the sale and sexual exploitation of children and the importance of integrating a human rights-based and non-binary approach to combating and eradicating the sale and sexual exploitation of children’***

**Question 1:**

What forms of existing societal norms, practices/behaviours (cultural, social, traditional or other) may explicitly or implicitly involve and/or manifest sale and sexual exploitation of children?

***Intersection between forced marriage practices and the sale and sexual exploitation of children***

Forced marriage is a modern slavery practice that fundamentally deprives its victims of their human rights and freedoms. Forced marriage occurs when a person enters into a marriage without freely and fully consenting, because: they have been coerced, threatened or deceived; they are incapable of understanding the nature and effect of a marriage; or the person was under the age of 16 when married.

Since 2013, forced marriage has been criminalised in Australia under Division 270 of the *Criminal Code Act 1995 (Cth*) (the Criminal Code). Since the introduction of the criminal offences, forced marriage reports to the Australian Federal Police (AFP) have grown and represent almost half the reports for human trafficking, slavery and slavery-like crimes.

Victims of forced marriage can be subject to physical, sexual, psychological and financial abuse, forced and frequent pregnancies, domestic servitude, restricted autonomy and freedom of movement, early and unwanted sexualisation and pregnancy, and loss of access to education and employment.

***Environmental factors***

In recent years, environmental factors have made it easier for offenders to engage online with the facilitators of abuse to view and participate in the sexual exploitation of children.
The internet has removed the need for offenders to travel for this purpose.
The Australian Transaction Reports and Analysis Centre (AUSTRAC), the Australian Government agency responsible for detecting, deterring and disrupting criminal abuse of the financial system, identified the following environmental factors that play a role in the sexual exploitation of children:

• Access to the internet - increased internet access and device ownership throughout the world has led to more children being susceptible to sexual exploitation and abuse;

• Poverty or financial position - poverty has been identified as a motivating driver of live-distance child abuse and the sexual abuse of children overseas, with the majority of children subjected to exploitation and abuse for financial gain;

• Reliable money remittance services and financial institution - access to reliable money remittance services in most countries allows offenders to send payments to facilitators offshore to view and participate in the sexual exploitation and abuse of children;

• Limited knowledge of harm and legality - not being able to recognise the exploitation and abuse of children as harmful (for example, because there is no physical contact between the victim and the online offender), or an offence creates an environment where offending is not reported to authorities and offenders can abuse children with impunity; and

• Language - common language between offenders and facilitators enables communication via email, video and instant messaging, before, during and after offending takes place. Offenders can remotely instruct and control the actions of the children and abusers, with minimal language barriers or risk of miscommunication. There is a prevalence of offending in countries where English is a second language.

**Question 2:**

How is gender and gender identity incorporated in existing legislative and policy frameworks on the eradication and prevention of the sale and sexual exploitation of children?

1. Please provide information on relevant legislation or policy on the implementation of integrating gender dimension in the prevention and eradication of sale and sexual exploitation of children, online and offline.
2. What are the existing gaps and challenges in incorporating the gender dimension in legislation, policies and practices?

***Combating Human Trafficking and Slavery***

Australia is primarily a destination country for women and girls subjected to sex trafficking, and for women and men subjected to forced labour. A small number of children, primarily teenage Australian and foreign girls, are subjected to sex trafficking within Australia.
Some women from Asia and, to a lesser extent, Eastern Europe and Africa migrate to Australia to work legally or illegally in a number of sectors, including the commercial sex industry. After their arrival, some of these women are coerced, threatened or deceived to enter or remain in sex work in both legal and illegal brothels, as well as massage shops and private apartments.

Australia has a comprehensive legal framework under the Criminal Code, which criminalises all forms of human trafficking, slavery and slavery-like practices and fulfils Australia’s obligations under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime*. Australian human trafficking legislation and policy frameworks do not distinguish gender and/or gender identity.

Division 270 of the Criminal Code criminalises slavery, which is defined as the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. Australia’s slavery offences have universal jurisdiction, which means that they apply whether or not the conduct occurred in Australia, and whether or not the victim or the offender are Australian citizens or residents.

Division 270 also criminalises slavery-like practices, including servitude, forced labour, deceptive recruiting for labour or services, forced marriage, and debt bondage. None of the offences in Division 270 require the victim to be moved across or within Australia’s borders. The offences can apply to the exploitation of a person’s labour or services in any industry, or to exploitation within intimate relationships, for example in cases of domestic servitude. Slavery-like offences in Division 270 have extended geographic jurisdiction, which means that they apply where the conduct occurred in Australia, or where the conduct occurred outside Australia but the offender was an Australian citizen, resident or corporation.

Division 271 of the Criminal Code contains offences for trafficking in persons, including specific provisions for trafficking people into, out of, and within Australia, and provisions for domestic trafficking, organ trafficking and trafficking in children. Division 271 also includes a separate offence for harbouring a victim.

In 2019, the Australian Government progressed amendments to Australia’s forced marriage offences through the *Combatting Child Sexual Exploitation Legislation Amendment Act 2019*. The amendments expand the definition of forced marriage to explicitly capture marriages involving children under the age of 16 years.

From a broader anti-human trafficking perspective, in February 2019, the Australian Institute of Criminology released a [report](https://aic.gov.au/publications/sb/sb16) estimating the prevalence of human trafficking and slavery victimisation in Australia. The report estimates there were between 1,300 and 1,900 victims of human trafficking, slavery and slavery-like practices (including forced labour and servitude) between 2015-16 and 2016-17. It also estimates that for every victim detected by authorities, four victims go undetected.

In 2019, 213 new reports of human trafficking, slavery and slavery-like practices were made to the Australian Federal Police, compared to 179 referrals in 2018 and 166 referrals in 2017.

The Australian Government’s policy to combat human trafficking and slavery is overseen by the Interdepartmental Committee (IDC) on Human Trafficking and Slavery. The IDC is chaired by the Australian Border Force (ABF) and is responsible for monitoring the implementation of the *National Action Plan to Combat Modern Slavery 2020-25*, reporting to the Australian Government on its effectiveness, and ensuring that emerging issues are addressed on a whole‑of‑government basis.

***Trafficking in children***

Australia’s trafficking in children offences do not require the use of coercion, threat or deception. Penalties for trafficking in children are up to 25 years’ imprisonment (section 271.4 of the Criminal Code). Penalties for the offences in Divisions 270 and 271 range from four years’ imprisonment for debt bondage, to 25 years’ imprisonment for slavery and trafficking in children.

***Combatting child abuse and sexual exploitation of children***

In addition to the criminalisation of human trafficking and slavery, Australia’s Commonwealth Criminal Code comprehensively criminalises child sexual abuse and dealings with child abuse material that are committed via a carriage or postal service, or committed by Australians while overseas. Some of these offences carry penalties of up to life imprisonment, which conveys the seriousness of the offence and the degree of harm faced by the victims. Other sexual offences, including contact abuse, are criminalised at the state and territory level in line with Australia’s Constitution. Australian child sexual abuse legislation and policy frameworks do not distinguish gender and/or gender identity.

In 2017, Australia strengthened its response to the sexual exploitation of children by introducing measures that prevent Australian child sex offenders from travelling overseas to sexually abuse children. Under Division 271A of the Criminal Code, it is an offence for an offender who appears on a child protection register, and who has reporting obligations, to depart, or attempt to depart, Australia without permission from the relevant competent authority.

Further amendments were progressed in 2019 and 2020. The *Combatting Child Sexual Exploitation Legislation Amendment Act 2019* came into force on 21 September 2019.
The Act includes a suite of child protection measures to target child abuse that occurs both overseas and in Australia, and addresses difficulties Australian Government agencies are facing in investigating and prosecuting child sexual abuse-related trends. Reforms in the Act include:

* the expansion of the definition of forced marriage to explicitly include all marriages involving children under the age of 16;
* strengthened offences for persistent child sexual abuse overseas, by lowering the minimum number of occasions of abuse the prosecution must prove from three to two;
* the removal of the defence to overseas child sex offences based on the existence of a valid and genuine marriage between the defendant and a child under 16;
* the explicit criminalisation of certain dealings with child-like sex dolls, including possession;
* a new offence for possessing child abuse material sourced using a carriage service; and
* terminology changes to replace references to the out-dated term ‘child pornography’ material with ‘child abuse material’.

The *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2020* came into force on 22 June 2020. This Act targets all stages of the criminal justice process with a view to ensuring that Commonwealth laws combat the evolving use of the internet in child sexual abuse offending and sentencing is commensurate with the seriousness of these crimes and the harm to victims. Reforms in the Act include:

* new aggravated offences for child sexual abuse that involves subjecting the child to cruel, inhuman or degrading treatment, or which causes the death of a child;
* 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;
* a new offence for the provision of an electronic service to facilitate dealings with child abuse material online;
* clarification that existing offences for engaging in sexual activity with a child via carriage service captures activity that can be seen and heard in ‘real time’ e.g. through a livestreaming service;
* increase in the maximum penalties for certain Commonwealth child sexual abuse offences; and
* introduction of mandatory minimum sentences for the most serious Commonwealth child sexual abuse offences and repeat offenders.

**Question 6:**

Please indicate any specific measures aimed at reducing vulnerability of children to sale and sexual exploitation in a gender-and disability-responsive, as well as age-and child-sensitive manner.

***National Principles for Child Safe Organisations***

The Australian Government developed the National Principles (National Principles) in response to early findings of the *Royal Commission into Institutional Responses to Child Sexual Abuse* (Royal Commission) to make organisations safer for children and young people, and reduce the vulnerability of children to abuse. The National Principles are ten high level principles that provide a national approach to cultivating organisational cultures that foster child safety and wellbeing across all sectors in Australia. The National Principles intend to promote consistency and a shared understanding across jurisdictions of the core elements of child safe organisations. In February 2019, the First Ministers of the Commonwealth and the state and territory governments confirmed their commitment to the National Principles. Each state and territory government is responsible for implementing the National Principles within their own jurisdiction, and may give effect to these core elements in different ways. The Australian Government is working closely with state and territory governments, as well as the private sector to support the implementation of the National Principles in all sectors engaging with children.

***Commonwealth Child Safe Framework***

The Commonwealth Child Safe Framework (the framework) is a whole-of-government policy that sets minimum standards for Australian Government entities to create and maintain behaviours and practices that are safe for children. It requires Australian Government entities to undertake a risk assessment, establish a training and compliance regime, adopt and implement the National Principles, and publish an annual statement of compliance with the Framework. The Framework also encourages Australian Government entities to apply child safety requirements to third parties funded by the Government.

***National Strategy to Prevent Child Sexual Abuse***

The Australian Government is leading development of Australia’s first National Strategy to Prevent Child Sexual Abuse (National Strategy), which is scheduled for release in September 2021. The National Strategy will provide a
ten-year strategic framework for Australia’s response to preventing and responding to child sexual abuse in all settings, including institutions, families and online. It will focus on enhancing education and awareness, increasing support services for victims and survivors, building the national response to children with harmful sexual behaviours, offender prevention and intervention, and improving the evidence base on the prevalence, nature, causes and impacts of all forms of child sexual abuse in Australia. The National Strategy will involve a range of sectors, including education, health, communications and e‑safety, law enforcement and justice.

The National Strategy is being developed in close consultation with a range of stakeholders and their advocates, including victim-survivors, children and young people, Aboriginal and Torres Strait Islanders, culturally and linguistically diverse communities, people with disability, and regional and remote communities. The design and implementation of initiatives in the National Strategy will appropriately consider the needs of all Australians including people who identify as LGBTQIA+. Initiatives will acknowledge that children and young people who identify as LGBTQIA+ experience high rates of harassment, social exclusion and sexual violence, and will be tailored accordingly.

The Australian Government is committed to working in partnership with all stakeholders throughout the life of the National Strategy to ensure efforts under the National Strategy are responsive to emerging issues and the needs of priority stakeholder groups.

***Establishment of the Australian Centre to Counter Child Exploitation (ACCCE)***

In 2018, the Government invested $68.6 million (over 2018-2022) to establish the Australian Federal Police (AFP)-led Australian Centre to Counter Child Exploitation (ACCCE) to drive a world-leading, collaborative national response to counter child sexual exploitation and abuse.

The ACCCE was launched in September 2018 and has operated out of its purpose-built facility since October 2020, which was formally opened by the then Minister for Home Affairs. The ACCCE in itself does not perform a traditional investigative function in that it does not directly prosecute offenders or undertake briefs of evidence, but rather supports the investigative role and remit of the AFP and state and territory police.

The ACCCE works closely with States and Territories through Joint Anti Child Exploitation Teams (JACETs), as well as with international law enforcement counterparts, industry,
non-government organisations and research bodies to strengthen the domestic and global response to these crimes. The AFP-led ACCCE brings together capabilities from across the public and private sectors, as well as civil society, to drive a collaborative national response to counter the exploitation of children in Australia.

The ACCCE has a primary focus on prevention and disruption. In no other crime type is it more important to prevent the crime from taking place. The ACCCE works to free children from abuse and exploitation through its four pillars; prepare, prevent, protect and pursue.

Ongoing and sustained operational activity has resulted in increasing referrals of matters to overseas jurisdictions for investigation, as well as real-time support of tactical actions.

These efforts have subsequently led to a number of children removed from harm within these jurisdictions. Increased victim identification efforts have progressed referrals of child abuse and exploitation matters to international law enforcement agencies for further investigation, and seen the arrest of offenders overseas.

***National Action Plan to Combat Modern Slavery 2020-25***

In December 2020, the Australian Government launched the [*National Action Plan to Combat Modern Slavery 2020-25*](https://www.homeaffairs.gov.au/criminal-justice/files/nap-combat-modern-slavery-2020-25.pdf) (National Action Plan). The National Action Plan provides the whole of government strategic framework for Australia’s efforts to combat modern slavery over the next five years. In Australia, modern slavery includes human trafficking, slavery and slavery-like practices such as forced labour and forced marriage. Child sexual abuse and exploitation can intersect with modern slavery crimes. This includes where a child is physically moved across or within borders for the purpose of exploiting them. Modern slavery is also used to describe the worst forms of child labour, including the commercial sexual exploitation of children and the exploitation of children for illegal activities such as drug trafficking.

Implementation of the National Action Plan is supported by the Government’s commitment of AUD$10.6 million over five years. This includes AUD$4.4 million in new grant funding for civil society, industry and academia to deliver projects that combat modern slavery in Australia and undertake research to support evidence-based policy.

Under the National Action Plan, the Government has committed to five National Strategic Priorities:

(1) Prevent;

(2) Disrupt, Investigate and Prosecute;

(3) Support and Protect;

(4) Partner; and

(5) Research.

Under these priorities, the Australian Government will implement a range of initiatives that promote a holistic response to the full cycle of modern slavery crimes, including:

* Developing a model for enhanced civil protection and remedies for individuals in, or at risk of, forced marriage.
* Implementing the *Protocol for the treatment of children suspected as victims of human trafficking, slavery or slavery-like practices*.
* Undertaking a targeted review of support and legislative protections, defences and remedies available to modern slavery victims and survivors, particularly women and children, taking into account existing reviews and inquiries.

**Question 7:**

What measures and safeguards can be put in place to identify the protection needs of vulnerable children in order to prevent, prohibit and protect them from all forms of sale and sexual exploitation, including examples of child-friendly, independent, timely and effective reporting and complaints mechanisms made available without discrimination in child-friendly spaces at community, national and regional level?

***Reporting***

Australia encourages transparency of child safety measures put in place by governments and institutions. The Royal Commission recommended that Australian state and territory governments, along with non-government organisations and peak bodies that work with children, report on how they are implementing the recommendations made in the [Royal Commission’s Final Report.](https://www.childabuseroyalcommission.gov.au/final-report) The Royal Commission recommended that relevant government and non-government institutions first report within 12 months of the Final Report (published on 15 December 2017), and continue reporting for a minimum of five years.

The Australian Government has established a reporting process for peak bodies that work with children to reflect on how they are developing child safe practices and culture.

The reporting process ensures that institutions are held accountable to their duty of care of children. It also raises awareness to the public of the measures in place to protect children. In 2020, the Australian Government invited 69 organisations to report, and received 25 reports covering 32 institutions.

Australian, state and territory governments also report annually on progress to implement the Royal Commission’s recommendations.

***National Principles – complaints handling***

The National Principles envisage an organisational culture that supports children and young people to understand what child safety and wellbeing means. They emphasise the need for organisations to have child focused policies. For example, National Principle 2 reflects the need to ensure children and young people are informed of their rights, participate in decisions affecting them and are taken seriously. Children should have the opportunity to contribute and actively participate in building an organisational culture that is safe for them. Additionally, Principle 6 highlights that processes to respond to complaints and concerns should be child focused. To support organisations implement Principle 6, the Australian Government commissioned the NSW Ombudsman to develop the Complaint Handling Guide: Upholding the Rights of Children and Young People. This is freely available and provides organisations with advice on how to put in place a complaint handling system that puts child safety first and promotes the rights of children and young people to have a voice in decisions that affect them. In addition, the Australian Government has partnered with the Commissioner for Children and Young People Western Australia to publish the Speak Up resources. These resources are designed to help children and young people understand their right to speak up when they feel unsafe, unhappy or marginalised. There is also guidance for adults and organisations to help them understand how they should respond and how they can support the children and young people in their lives to use these resources.

**Question 9:**

In what context do external environment factors exacerbate the prevalence and/or magnitude of sale and sexual exploitation of children? Do vulnerabilities of the surrounding environment play a significant role in terms of rural/urban; war/conflict zones, different forms of migration, emergency contexts (e.g. natural & manmade disaster, climate change, COVID-19) and religious context.

***The Royal Commission***

The Royal Commission found that allegations of institutional child sexual abuse occur most commonly in religious institutions. More than 7,000 survivors, or 48.4 per cent of the people that contacted the Royal Commission and over 4,000 survivors or 58.6 per cent of people that attended a private session, told the Royal Commission that they were sexually abused as children in religious institutions. The abuse occurred in religious schools, orphanages and missions, churches and various other settings. The perpetrators of child sexual abuse most frequently held positions of leadership or authority. The status of the perpetrators in religious ministry was the central factor contributing to the prevalence of child sexual abuse. The power and authority exercised by people in religious ministry gave them access to children and created opportunities for abuse. Children and adults within religious communities frequently saw people in religious ministry as figures who could not be challenged and, equally, as individuals in whom they could place their trust.

The Royal Commission revealed that many religious leaders knew of allegations of child sexual abuse yet failed to take effective action. Some ignored allegations and did not respond at all. Some treated alleged perpetrators leniently and failed to address the obvious risks they posed to children. Some concealed abuse and shielded perpetrators from accountability. Institutional reputations and individual perpetrators were prioritised over the needs of victims and their families.

Following the release of the Royal Commission’s Final Report in 2017, the Australian Government has continued to work with institutions identified by the Royal Commission, including religious institutions, to improve child safety capability and accountability. This includes regular engagement through the Child Safe Sectors Leadership Group, requesting public annual reporting from key institutions on their progress in addressing recommendations from the Royal Commission, and regular ongoing engagement with religious institutions to implement the National Principles, affect cultural change and make children safer.

The AFP has implemented *The* *Commonwealth Child Safe Framework*, which helps provide an environment in which children and young people are safe, protected and respected, and where staff have the skills, confidence and knowledge to safeguard children.

***Impact of COVID -19 and other environmental factors to the proliferation of child sexual abuse***

The COVID-19 pandemic has increased the risk of child sexual abuse offending on a global scale. Lockdown measures have created a heightened threat environment for both online offending, such as viewing and sharing child abuse material and grooming for sexual purposes, and contact offending against children, including abuse that is livestreamed online.
In 2020, the US-based National Center for Missing and Exploited Children (NCMEC) recieved more than 21.7 million reports of child sexual abuse, comprising more than 65 million images, videos and other files. In March 2020 alone, at the beginning of the pandemic, NCMEC received more than 2 million reports - a 106 per cent increase from the same period in 2019. The ACCCE receives the majority of its reports via NCMEC.

Emergency situations place stress on regular support and oversight mechanisms that would ordinarily provide safeguards against social, economic and criminal harms. While federal law enforcement has reinforced child protection mechanisms in response to COVID-19, the pandemic has strained the community safeguards typically used to prevent and detect child sexual abuse. Children and young peoples’ presence online has significantly increased during COVID-19, including on social media and content sharing services, exposing them to greater risk of virtual contact from child sex offenders. With parents and carers balancing competing priorities, there is a risk that much of this online activity is unsupervised.[[1]](#footnote-1) Children and young people may also experience less in-person contact with teachers, educators and other community workers, who act as mandatory reporters of sexual abuse or trusted confidants.

Child sex offenders are more likely to offend when their lifestyle has been affected by a significant change, including amongst family members or other adults with access to a child or young person. Emergency situations are also conducive to particular offending methods – for example, in the case of COVID-19, economic insecurity and disruption of other services used to facilitate abuse (such as international travel), may shift offending behaviour to remote online environments, or motivate offenders to engage in livestreamed abuse from home environments.[[2]](#footnote-2)

While global, long-term data regarding how sexual abuse has impacted children during COVID-19 is not yet available, existing research highlights the particular vulnerability of children and young people living with a disability, social hardship/isolation, and familial violence, abuse and exploitation. For example, the Royal Commission recognised that individuals with disability were more likely to:

* be exposed to situations that increased their risk of abuse and violence;
* experience reduced ability to disclose or report abuse; and
* receive inadequate follow-up responses to reports of abuse.

These risk factors intersect with methodology employed by child sex offenders, who will often target individuals online who appear to be socially isolated or emotionally vulnerable. While law enforcement’s capacity to detect and respond to these harms plays a vital role, it is also imperative that individuals at the frontline of a child’s life⎯including parents, carers, health professionals, support workers and educators⎯are actively mitigating exposure to the increased threat environment during emergencies, particularly for children with existing vulnerabilities.

Australian law enforcement and policy agencies are working together, and with international partners, to respond to the heightened threat environment during the COVID-19 pandemic and its ongoing impacts on the scale, availability and demand of online child sexual abuse.
The Australian Department of Home Affairs and Portfolio agencies are also supporting the development and promotion of a range of educational and awareness-raising materials to help both children and their parents and caregivers stay informed and stay safe online during
the COVID-19 pandemic.

1. Australian Strategic Policy Institute (2020) [After COVID-19: Australia and the world rebuild](https://s3-ap-southeast-2.amazonaws.com/ad-aspi/2020-05/After%20Covid-19%20Australia%20and%20the%20world%20rebuild%20%28Volume%201%29_1.pdf?1l8YBWW7I1CYhxOvZatd5fSJbKn1tbrO). [↑](#footnote-ref-1)
2. WePROTECT Global Alliance (2020) [Intelligence Brief: impact of COVID-19 on online child sexual exploitation](https://static1.squarespace.com/static/5630f48de4b00a75476ecf0a/t/5ebc58d038eb072b909874ca/1589401809129/Impact%2Bof%2BCOVID-19%2Bon%2BOnline%2BChild%2BSexual%2BExploitation.pdf). [↑](#footnote-ref-2)