THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

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Introduction

In 1996, Australia attended the World Congress Against Commercial Sexual Exploitation of Children and became a signatory to a non-binding document known as the Declaration and Agenda for Action. The Agenda for Action highlights Australia’s existing international commitments and identifies priorities for action regarding the commercial sexual exploitation of children. In particular, the Agenda calls for action with respect to:

- coordination and cooperation at the local, national, regional and international level of measures to combat the commercial sexual exploitation of children;
- the prevention of commercial sexual exploitation of children;
- the protection of children from commercial sexual exploitation;
- the recovery and reintegration of child victims of commercial sexual exploitation; and
- child participation in the development and implementation of programs concerning them.

The Australian Institute of Criminology was commissioned in early 1998 to produce a report to facilitate such action on the issue of commercial sexual exploitation of children. This report was to provide an overview of the current situation regarding the commercial sexual exploitation of children in Australia. The research is based on an extensive review of literature, a stocktake of legislation and in-depth interviews conducted during June and July 1998, with representatives of law enforcement, community welfare, and non-government organisations in each capital city of Australia.

In presenting these findings, the AIC acknowledges that the majority of sexual abuse experienced by Australian children occurs within families and institutions and is non-commercial in nature. The commercial sexual exploitation of children in Australia has three basic manifestations however:

- child prostitution, including the exchange of sex for favours such as food, clothing, accommodation, or drugs;
- the production and distribution of child pornography; and
- the abduction and trafficking of children for purposes of sexual gratification.

Definitions

Child prostitution is the act of engaging or offering the services of a child to perform sexual acts for money, or other consideration, with that person or any other person (WCCSEC 1996). The activity may constitute what is known as “opportunistic prostitution”, “sex for favours” or “survival sex”. This is where young people engage in sexual activities for gain, which may include accommodation, food, clothing, safety, drugs or transport (Tschirren et al 1996). The phrase “survival sex” is also used to refer to youth who are perceived or who perceive themselves as having no alternatives or options other than to exchange sex for their basic needs.

Child prostitution in Australia is opportunistic and individualistic in nature. It appears from the research conducted by the AIC that children, both male and female, participate in street solicitation in all Australian capital cities. This may occur literally on the street, or in other public places such as parks, lavatories and railway stations. The research found that it was relatively rare for children to work in parlours, escort agencies or in any organised manner. This behaviour was also the most common of the three manifestations of commercial sexual exploitation.
Many of these transactions occur in an ad hoc manner as the opportunity presents itself. In some instances, the young person might simply want the affection and attention of another person. Other children are involved in on-going sexual relationships with persons who are in a position to furnish the child with material resources, typically adults who are considerably older than the child. As a result of the complex nature of these relationships, it is not always possible to distinguish between an explicit exchange relationship of a quasi-commercial nature and a consensual sexual relationship, particularly where the child has reached the age of consent.

The trafficking of children as defined at the World Congress and as used within this review is the “profitable business of transporting children for commercial sexual purposes. It can be across borders or within countries, across State lines, from city to city, or from rural to urban centre” (WCCSEC 1996).

The abduction and trafficking in children appears extremely rare in Australia. A number of respondents referred to sensational allegations which have been made at various times but which remain unsubstantiated. The researchers questioned relevant participants about the practice of sponsoring children to visit Australia from overseas, ostensibly for purposes of education or holiday but with the ulterior motive of sexual exploitation. The research team was advised that this practice is rare.

Child pornography as defined by the World Congress as “any visual or audio material which uses children in a sexual context. It consists of the visual depiction of children intended for the sexual gratification of the user, and involves the production, distribution and/or use of such material” (WCCSEC 1996). Child pornography is a global phenomenon. The question of what constitutes child pornography is complex. Standards are necessarily subjective and contingent upon differing moral, cultural, sexual, social and religious beliefs in the global community. These differing standards do not translate readily into legislation (WCCSEC 1996). There are numerous difficulties with defining child pornography and these are exacerbated in the legal context in Australia, due to the existence of a federal system of government.

Child pornography should be distinguished from child erotica, which depicts children in less than sexually explicit circumstances, such as the depictions of children which occur from time to time in commercial advertising. While child erotica might be used by some sex offenders for the purposes of self-gratification, it is not within the meaning of child pornography for the purposes of classification.

Modern manifestations of child pornography are strongly linked to recent developments in information technology. In its traditional form, child pornography includes photographs, magazines, motion pictures, videotapes, and literature. These traditional forms of child pornography are rapidly being replaced by material that is available in digital form. New technology such as the Internet allows visual and audio material to be copied, stored, and transmitted quickly and unobtrusively. If this material is posted in cyberspace, it is potentially available to anyone, anywhere in the world, who has access to a personal computer and a modem. The great appeal of technology such as the Internet is its potential for secrecy. These developments, and the abundance of child pornography available in cyberspace, mean that traditional print and photographic media are likely to be eclipsed by material in digital form, a view shared by many of the participants in the research.
The amount of income currently being generated from the sale or commercial distribution of child pornography is also speculative. The predominant hypothesis is that the commercial production and distribution of child pornography no longer occurs in any measurable quantities (PJC 1995). The majority of material currently available appears to be distributed through an exchange system without any commercial motive (WCCSEC 1996, NCA 1997). It appears that the type of person involved in producing this material tends to be those who gain sexual gratification from viewing it (PJC 1995). These people receive reinforcement for their exploitative behaviour from such material and through its exchange with others.

**Dimensions of the Problem**

The majority of those interviewed agreed that it is not possible to precisely quantify the size and scale of the commercial sexual exploitation of children in Australia. There are several reasons for this difficulty. Definitional ambiguities have made determining what types of behaviour are commercial and/or exploitative extremely problematic. Furthermore, the nature of the activities involved is such that both the exploiters and the exploited go to great lengths to ensure that they do not attract attention to their activities.

Another of the identified problems was a lack of data collection. There were discussions relating to the difficulties of double counting amongst agencies, privacy and confidentiality issues for the children involved, and lack of perceived usefulness, reliability and validity of such data due to the collection and analysis obstacles. In summary, the researchers found that whilst people believed data collection on this issue in general was a worthwhile concept, actual implementation was perceived as being unlikely or unreasonably difficult.

One organisation which has undertaken the difficult task of quantification is ECPAT Australia. ECPAT’s research produced an estimate of 3704 children across Australia engaged in commercial sexual activity over the period of a year. The majority of the instances of commercial sexual exploitation identified were for those aged from 13-17 years of age and 68% were female (ECPAT 1998).

The AIC research using a variety of different figures and sources resulted in an estimate of approximately 400-450 children across Australia believed to be engaged in commercial or quasi-commercial sexual activity during a typical 24 hour period. Whilst this estimate is only for a given 24 hour period it should be noted that the nature of the activity is such that it occurs intermittently and as such the number of children engaged in commercial sexual exploitation could be larger if measured over an extended period of time. The above estimates must however be treated with extreme caution.

Notwithstanding the difficulties in quantification, the study attempted to determine whether any trends in the commercial sexual exploitation of children were discernible over past years. Although many of the participants agreed that there was an increase in youth homelessness over the past two decades, the respondents were less definite about an increase in commercial sexual exploitation. A common opinion expressed was that the problem was more visible today, due to a heightened community and agency awareness of this and related behaviours. It did not, however, appear more prevalent than in years past. Moreover, it was suggested that a certain proportion of incidents which are reported to police today are historical reports based on experiences which occurred some time ago, often years earlier.
The volume of child pornography circulating in Australia is similarly difficult, if not impossible, to quantify. The majority of respondents reported that a significant amount of material is exchanged or bartered, rather than distributed in the course of a formal cash transaction. The advent of digital technology has dramatically enhanced the amount of material available as well as the speed and privacy with which it may be accessed. It is also impossible to estimate the volume available, or the amount actually downloaded by Australians. It does appear abundant however, and is known to be bartered openly over the Internet in Internet Relay Chat rooms. There is little doubt that further exchange occurs on a more discreet basis using the more private Internet technologies involving access control and authentication, anonymity, and encryption.

Quantification of the incidence of trafficking was also difficult. There is little evidence to suggest that children are trafficked to Australia for the purposes of commercial sexual exploitation. The incidence of such practices is, however, notoriously difficult to measure. This difficulty is due principally to the covert nature of the activity and the complex web of transactions that constitute sale and trafficking. These transactions can include bribery and abduction, false identification and documentation, sham marriages and adoptions, illegal immigrations, violence and bonded labour. When trafficked to an unfamiliar area children are by result, completely dependent on the trafficker and, thus, are easier to control and more difficult to detect.

Child sex tourism is also an important aspect of commercial sexual exploitation of children. Child sex tourism does not appear to be a highly organised industry. Some perpetrators visit other countries as part of organised sex tours but are more commonly part of an informal network, others may be business persons or tourists who become involved on a casual experimental basis.

**Effects/Experience Of Prostitution**

The individual and wider social costs of commercial sexual exploitation are substantial. The neglect of social, economic and health issues for these young people are direct results (Tschirren et al 1996). At a critical stages in their personal development, young people involved in commercial sexual exploitation are not accessing education, legitimate employment or positive and non-exploitative adult role models (Deisher 1982). As a result of this lack of access, they fail to obtain the educational and employment skills necessary to succeed in their future. They become isolated from peers and mainstream communities. Drug abuse, suicide ideation and attempt as well as violence and sexual offending have also been identified as common amongst this population.

One of the most damaging aspects of the commercial sexual exploitation of children is the resulting effects on the development of young people’s sexual standards and sexual identity (CJC 1991). Children who are sexually exploited, similarly to those who suffer from sexual abuse, must wrestle with conflicting feelings of fear, loyalty, guilt, shame and blame (Deisher 1982).
Factors For Vulnerability

It appears that there are a number of risk factors, present at various stages of a child’s development, which may contribute to a child’s vulnerability to commercial sexual exploitation. No single factor can necessarily be identified as contributing to exploitation. It seems, however, that the more of these factors which are present, the greater a child’s subsequent vulnerability.

- **Family Breakdown** - When a family does not or cannot protect its children, vulnerability to exploitation increases (WCCSEC 1996). Many of the participants advised that the vast majority of exploited children encountered by their agencies have economically disadvantaged family backgrounds, experiencing multiple risk factors such as family conflict, substance abuse, lack of parenting skills and mental illness. There is a lack of support, resources and skills within these families to adequately protect their children.

- **Prior Victimisation** - Many of the children at risk of commercial exploitation were identified as previous victims of sexual abuse within the family or at a young age. Indeed, premature sexualization was identified as a significant risk factor for a child’s subsequent commercial exploitation.

- **Youth Homelessness** - This is a primary risk factor for increasing the vulnerability of children to commercial sexual exploitation. One research study indicated that by the second week on the streets, 75% of the youths had become involved in some aspect of exploitative activity including prostitution, pornography, theft and drugs (Forst 1991, p.198).

- **Drug Use** - Some participants believed that children turn to drugs to escape the circumstances in which they find themselves, whilst others believed the children were resorting to commercial or quasi-commercial sexual activity in order to obtain drugs (BYS 1993). The majority of participants agreed that the lifestyle associated with drug use compounds other problems such as unemployment and homelessness.

- **Youth Unemployment** - The lack of opportunity in current employment for unskilled youth who most probably have not completed formal education increases vulnerability to commercial sexual exploitation as it may make the commission of crime and/or prostitution an economic alternative and a means of economic survival.

- **Poverty** is can limit the accessibility of resources and information, and the ability of an individual to make decisions and achieve goals. Research indicates that poverty can affect factors including illiteracy, education levels, marketable skills and employment opportunities. Consequently the effect of poverty can mitigate against real and effective choices (Hodgson 1994).

- **Isolation of Indigenous and Ethnic Communities** - Indigenous children and children from non-english speaking backgrounds were identified as being vulnerable to commercial sexual exploitation due to the isolation of their communities from “mainstream” Australian society. These children were not identified in the study as being over-represented amongst the children at risk but were less visible. It may be that they do not access the same street networks or mainstream services in similar ways to children of anglo-saxon or european descent.
Children who are engaging in or who are at risk of commercial sexual exploitation are not a representative cross-section of Australian youth. Many of these children have backgrounds which can accurately be characterised as disadvantaged. As a result of family circumstances, often entailing abuse, many are lacking support, resources, social and/or vocational skills and it is common for their education to have been interrupted or discontinued.

It should be emphasised again that these are not the only factors which may affect vulnerability and that the presence of the above risk factors, singly or in combination, does not automatically mean a child becomes vulnerable to commercial sexual exploitation. There are many children who experience many of these risk factors and who do not experience exploitation. But there is strong evidence that the greater the number of risk factors present, the greater the likelihood that a child will become vulnerable to exploitation.

**Exploiters**

Understanding of the nature and behaviour of people who perpetrate commercial sexual exploitation is crucial to stemming the demand side of the equation. Evidence submitted in the Wood Royal Commission (1997, p.1059) states that “the behaviour of such perpetrators is compulsive, and they are capable of grooming and manipulating children in ways for which the latter are unguarded and unprepared, particularly where the opportunity of a legitimate cover exists for their activities.”

The overwhelming majority of perpetrators of commercial sexual exploitation of children are male. Aside from this, perpetrators defy generalisation. Some have deeply entrenched sexual preferences for children of a particular age and gender. Others seek the experience of power and control which an asymmetric age relationship may entail. Others still are opportunists, who seek commercial sex and who only coincidentally obtain the services of a child.

One distinctive characteristic of perpetrators of commercial sexual exploitation of children that has been documented is a compelling interest in collecting child pornography (Campagna 1988, p.30). Pornographic material however can only be created through the direct sexual exploitation and abuse of children, with the exception of computer-manipulated images. Activity including photographing and filming of children in sexual poses or engaging in sexual acts are also acts of exploitation and abuse (Burgess 1984, p.83).

In the current study there were only a handful of respondents who expressed any views regarding exploiters. Many of the respondents agreed that aside from the fact that the vast majority are male, those exploiting children sexually defy simple description.

**Legislation**

The laws relating to the commercial sexual exploitation of children are incredibly complicated. There are nine Australian jurisdictions, including the Commonwealth. Each jurisdiction has its own unique set of laws that criminalise, either directly or indirectly, the commercial sexual exploitation of children. If the matter is considered from a national perspective, the laws relating to the commercial sexual exploitation of children in Australia are confusing, inconsistent and at times, poorly adapted to modern conditions.
Australia has recently reaffirmed its commitment to the Articles of the CRC dealing with the commercial sexual exploitation of children by signing the Declaration and Agenda for Action. As part of the Agenda for Action, governments are reminded of their commitment to develop or strengthen and implement laws, policies and programs, to:

- protect children and to prohibit the commercial sexual exploitation of children, bearing in mind that the different types of perpetrators and ages and circumstances of the victims require differing legal and programmatic responses;
- establish the criminal responsibility of service providers, customers and intermediaries in child prostitution, child trafficking, child pornography and other unlawful sexual activity protect child victims of commercial sexual exploitation from being penalised as criminals and ensure that they have full access to child-friendly personnel and support services in all sectors, and particularly in the legal, social and health fields;
- criminalise sex tourism (WCCSEC 1996).

As a result of the Crimes (Child Sex Tourism) Amendment Act 1994 (Cth), the Crimes Act contains a new Part IIIA – Child Sex Tourism, which contains offences relating to sexual acts with children under the age of 16 committed overseas. This is the only piece of Australian legislation, C’wealth or State that directly addresses the issue of commercial sexual exploitation of children. In order to be liable to prosecution under the Act, the offender must have been, at the time of the alleged offence, an Australian citizen; or a resident of Australia; a body corporate incorporated under a law of the Commonwealth or a State or Territory; or any other body corporate that carries on its activities principally in Australia (Crimes Act, s50AD). While not all the offences require the presence of a commercial element, many of the offences target those who assist, organise or benefit from what has been described as “child sex tourism”.

Australia has also developed two bilateral instruments of less than treaty status that are of particular relevance to the commercial sexual exploitation of children, that is the Memorandum of Understanding between the Government of Australia and the Government of the Republic of the Philippines for Joint Action to Combat Child Sexual Abuse and Other Serious Crimes (‘MOU with the Philippines’) signed on 11 October 1997 and the Memorandum of Understanding between the Government of Australia and the Government of Fiji for Joint Action to Combat Child Sexual Abuse and Other Serious Crimes (‘MOU with Fiji’), which was expected to be signed before the end of 1998.

These documents formally establish a high level of cooperation, including the sharing of intelligence and other information, between the relevant law enforcement agencies and government departments of Australia and the Philippines and Fiji respectively in efforts to combat child sexual abuse. Whereas the Crimes (Child Sex Tourism) Amendment Act 1994 was a unilateral act to end child sex tourism, the MOU’s are a practical step towards facilitating bilateral cooperation toward the detection and prosecution of persons who commit sex crimes against children in Australia, the Philippines and Fiji.

There is considerable inconsistency between the laws of the various Australian jurisdictions relating to the commercial sexual exploitation of children. In particular, the age of consent to various sexual activities, including commercial sexual activity, differs between most state and federal jurisdictions.
There is legislation in each of the States and Territories that sets the age of consent to sexual activity somewhere between the ages of 16 and 21. The age at which a young person can consent to sexual activity depends on a number of situational factors, such as the type of sexual activity in question, the sex of the parties involved, the existence of any relationship of care and the presence or absence of any commercial element in the transaction. The significance of each of these factors is different in each of the jurisdictions.

Even though some of the current legislation is poorly adapted to deal with the complex reality of commercial sexual exploitation of children, legislation in most States and Territories makes some attempt to prohibit persons under the age of 18 from engaging in commercial sex. However the confusion surrounding the age of consent to commercial sexual activity is also driven by the absence of consistency between jurisdictions in the meaning of terms such as ‘commercial sexual activity’ and ‘prostitution’.

In all Australian jurisdictions it is an offence to possess child pornography. Child pornography is material that depicts someone “who is, or who apparently is under 16”. In some jurisdictions this is determined at trial by the magistrate in others by classification through the Australian Office of Film and Literature Classification. The classification used by the OFLC relevant to child pornography is ‘Refused Classification’ This includes publications, films and computer games that:

(a) describe, depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified; or

(b) describe or depict in a way that is likely to cause offence to a reasonable adult, a minor who is, or who appears to be, under 16 (whether the minor is engaged in sexual activity or not); or

(c) promote, incite or instruct in matters of crime or violence.(see further, Schedule to the Classification Act).

In several jurisdictions, a prosecution for this offence may not proceed until the material in question has been classified by the Office of Film and Literature Classification or the local equivalent. This process involves expenditure by the police, as the OFLC charges for this service, and delay, as the police cannot arrest the alleged offender until the OFLC have ruled that the material in question is Refused Classification. In some jurisdictions, the matter of whether the material depicts someone “who is, or who apparently is under 16” is determined at trial by the magistrate.

In terms of legal processes, there are also considerable difficulties in obtaining evidence in matters involving commercial sexual exploitation of children. There is a need to increase efforts to sensitise the legal process, including the rules of evidence and procedure, to the needs of children and in particular, to the needs of child victims. The laws regarding child sex tourism need to be amended to protect child witnesses from cross-examination about their sexual reputation.

These difficulties are compounded by the combative nature of Australia’s legal system, which is insensitive to the needs of children. It was noted in a joint report of the Human Rights and Equal Opportunity Commission and the Australian Law Reform Commission, that children, and indeed some adult witnesses, often cannot cope with the pressures of multiple interviews, highly leading questions, misleading and intimidating cross-examination and lengthy delays between the incident and trial (HREOC and ALRC 1997, p.38).
Conclusion

Commercial sexual exploitation of children is a problem which the wider community should be mobilised against. It is evident given the multiple social problems and risk factors that are involved that any one government department, non-government organisation or law enforcement sector alone will not have sufficient resources or role within the community to address such a problem (Muntarbhorn 1996, p.14).

A significant number of Australian children are engaging in types of behaviour that can be classified as commercial sexual exploitation, while even higher numbers of children are “at risk” of engagement in such behaviour. The reasons for children becoming involved in commercial sexual exploitation have been identified in this presentation alongside the legislation, programs and policy both nationally and internationally that impact on the commercial sexual exploitation of children.

Many opportunities to prevent and to control commercial sexual exploitation of children have been identified. Whatever their costs, continued support has the potential to achieve significant savings in terms of health, welfare, and the cost of maintaining the criminal justice system. The implementation of policies and laws serve not only to protect children against commercial sexual exploitation but also enhance their health, both mental and physical; monitor and improve their educational performance; and enhance their employability are more effective than those which seek to intervene after a child has become involved in commercial sexual exploitation.

In conclusion, while there is still much to be done in order to respond to the commitments of the Stockholm World Congress, it is not beyond Australia’s capability to achieve international benchmark status for the prevention and control of child exploitation. The achievement of this status will, however, require an investment of resources, time, and personal and political willpower to a greater extent than exists at present.
References

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