



**A BRIEF REVIEW OF CONTEMPORARY
QUEENSLAND LEGISLATION VIEWED WITHIN THE
CONTEXT OF CHILD SEXUAL EXPLOITATION**

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INTRODUCTION

The following review provides a brief summary of contemporary legislative tools in Queensland when viewed within the context of child sexual exploitation (CSE). In doing so it is intended that this report will also seek to identify potential areas in which additional legislative tools might be developed or adopted to further support the disruption of CSE within the state of Queensland. To support this process the review briefly examined contemporary disruption tools in use elsewhere – Victoria and the United Kingdom. The decision to only use Victoria as a state comparison was based on preliminary research highlighting that it is currently the only Commonwealth state, so far, to formally adopt a definition for CSE and implement a formal social policy framework aimed at addressing the problem (Townson, 2019).

CHILD SEXUAL EXPLOITATION DEFINED

For the purpose of this review child sexual exploitation was defined as:

...the abuse of a child where some form of remuneration is involved or whereby the perpetrators benefit in some manner – monetarily, socially, politically, etc. Exploitation constitutes a form of coercion and violence, detrimental to the child's physical and mental health, development, and education.

(United Nations, 2001)

Further to the definition above, and in accordance with UN guidelines and principles, this review is undertaken on the principle understanding that any person under the age of 18 is considered to be a child.

The UK Government identifies the main factor distinguishing CSE from other forms of child sexual abuse as being that of an 'exchange' between the perpetrator and the victim. They define CSE in the following way:

If someone takes advantage of an imbalance of power to get a child/young person to engage in sexual activity, it is child sexual exploitation if:

1. *The child/young person receives, or believes they will receive, something they need or want (tangible or intangible gain or the avoidance of harm) in exchange for the sexual activity.*

AND/OR

2. *The perpetrator/facilitator gains financial advantage or enhanced status from the abuse.*

(UK Dept for Education, 2017)

The UK Government guidance further states that for professionals working in this domain, '*It is critical to remember the unequal power dynamic*' within which the exchange takes place '*and to remember that the receipt of something by a child/young person does not make them any less of a victim*'. These are important factors to consider when set against the backdrop of what can appear as challenging adolescent behaviour. It is important for professionals to recognise how their own values or prejudices may influence their response to victims who are being sexually exploited. Kwaya-James (2012) points out that professionals should seek '*to ensure that the focus is more, or at least equally, on the abusers and coercers and not the pathology of the individual child or their particular circumstances*'.



QUEENSLAND

Queensland Criminal Code Act 1899

Queensland currently deals with sexual offences towards children under the Criminal Code Act 1899 (Qld). The Act addresses a range of applicable offences specifically related to the abuse of children. The following is a list of offences - in no particular order - that may apply to the context of CSE, along with a summary as defined by the Act.

Carnal Knowledge with or of Children under 16 – S215

Sections 1 and 6 of the Criminal Code (Qld) define Carnal Knowledge as vaginal or anal intercourse that is complete on penetration to any extent. The exception is when penetration occurs for proper medical, hygienic or law-enforcement purposes. The Act defines the offence of Carnal Knowledge with or of Children under 16 as:

1. Any person who has or attempts to have unlawful carnal knowledge with or of a child under the age of 16 years is guilty of an indictable offence.
2. If the child is of or above the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment for 14 years.
3. If the child is under the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment for life or, in the case of an attempt to have unlawful carnal knowledge, to imprisonment for 14 years.
4. If the child is not the lineal descendant of the offender but the offender is the child's guardian or, for the time being, has the child under the offender's care, the offender is guilty of a crime, and is liable to imprisonment for life or, in the case of an attempt to have unlawful carnal knowledge, to imprisonment for 14 years.
- 4a. If the child is a person with an impairment of the mind, the offender is guilty of a crime, and is liable to imprisonment for life.
- 4b. The Penalties and Sentences Act 1992, section 161Q also states a circumstance of aggravation for an offence against this section.
- 4c. An indictment charging an offence against this section with the circumstance of aggravation stated in the Penalties and Sentences Act 1992, section 161Q may not be presented without the consent of a Crown Law Officer.
5. If the offence is alleged to have been committed in respect of a child of or above the age of 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above the age of 16 years.
- 5a. If the offence is alleged to have been committed with the circumstance of aggravation mentioned in subsection (4A), it is a defence to the circumstance of aggravation to prove that the accused person believed on reasonable grounds that the child was not a person with an impairment of the mind.

Procuring a Young Person etc for Carnal Knowledge – S217

The Act defines the term 'procure' as to *knowingly entice or recruit for the purpose of sexual exploitation*. It is an offence under the Act for a person to *procure a person who is not an adult or is a person with an impairment of the mind to engage in carnal knowledge (either in Queensland or elsewhere)*.

Child Stealing – S363

It is an offence under the Act for a person to *deprive any parent, guardian, or other person who has lawful care or charge, of a child under the age of 16 years, of possession of such child, or with intent to steal any article upon or about the person of any such child*. This includes *If a person:*

- a. Forcibly or fraudulently takes or entices away, or detains, the child; or
- b. Receives or harbours the child, knowing it to have been so taken or enticed away or detained.

This subsection is important to note when considering the grooming processes that are frequently employed by perpetrators to *forcibly or fraudulently take or entice* young people into sexually exploitative situations. Research demonstrates that in almost all models of CSE it is common for perpetrators to coerce and manipulate children away from their protective environments. It is also common for victims to be harboured by multiple perpetrators for the purpose of trafficking (Shepherd & Lewis, 2017). Additionally, there is evidence of case studies across multiple models of CSE where victims have been detained against their will (Bedford, 2015).

Abduction of Child Under 16 – S363a

The Act makes it an offence for a person to take an *unmarried child under the age of 16 years out of the protection* of their parents or lawful caregiver against their will. Paragraphs 2 and 3 highlight that:

- It is immaterial that the offender believed the child to be of or above the age of 16 years; and
- It is immaterial that the child was taken with the consent of or at the suggestion of the child.

Indecent Treatment of a Child Under 16 – S210

This section of the *Criminal Code (Qld)* states that an offence is committed by:

Any person who –

- a. Unlawfully and indecently deals with a child under the age of 16 years; or
- b. Unlawfully procures a child under the age of 16 years to commit an indecent act; or
- c. Unlawfully permits himself or herself to be indecently dealt with by a child under the age of 16 years; or
- d. Wilfully and unlawfully exposes a child under the age of 16 years to an indecent act by the offender or any other person; or
- e. Without legitimate reason, wilfully exposes a child under the age of 16 years to any indecent object or any indecent film, videotape, audiotape, picture, photograph or printed or written matter; or
- f. Without legitimate reason, takes any indecent photograph or records, by means of any device, any indecent visual image of a child under the age of 16 years.

It is critical to note the importance of this section when viewed through the lens of CSE. It is not unusual for perpetrators to desensitise victims by exposing them to indecent material for the purpose of normalising the abuse that the victim then goes on to suffer (Shepherd & Lewis, 2017).

Owner etc. Permitting Abuse of Children on Premises – S213

This section makes it an offence for:

Any person who, being the owner or occupier of any premises, or having, or acting or assisting in, the management or control of any premises, induces or knowingly permits any child under the age of 16 years to be in or upon the premises for the purpose of any person, whether a particular person or not, doing an act in relation to the child (a proscribed act) defined to constitute an offence in section 210 or 215 is guilty of an indictable offence.

Research, both in Australia and overseas, shows that within some models of CSE, perpetrators use hotels and motels as locations for sexually exploiting children (Bedford, 2015). There are well documented cases here in Australia of hotels being used as bases for sexually exploiting victims as young as 12 (ABC News, 2018).

Using the Internet to Procure a Child under 16 to Engage in a Sexual Act – S218A

Paragraph 1 of S218A makes it an offence for an adult to use *electronic communication with intent to procure a person under the age of 16 years, or a person the adult believes is under the age of 16 years, to engage in a sexual act, either in Queensland or elsewhere.*

Paragraph 2 increases the penalty for this offence if the adult either meets or attempts to meet the child. This offence also includes the use of email, SMS messages and audio or video communication.

Grooming Children under 16 – S218B

The Act makes it an offence for an adult to engage in *any conduct in relation to a person under the age of 16 years, or a person the adult believes is under the age of 16 years, with intent to:*

- a. Facilitate the procurement of the person to engage in a sexual act, either in Queensland or elsewhere; or
- b. Expose, without legitimate reason, the person to any indecent matter, either in Queensland or elsewhere.

In the absence of tangible evidence and when considered within the context of grooming methods used by perpetrators of CSE, this can be a difficult offence to prove. It is especially challenging when the young person is a willing victim who believes they are in a genuine, loving relationship. In such circumstances it is not unusual for victims to refuse to cooperate with investigations and, in some cases, even attempt to sabotage attempts by professionals to prevent the grooming process from continuing (Bedford, 2015).

Taking a Child for an Immoral Purpose – S219

This section of the Act makes it an offence when an individual:

...takes or entices away, or detains a child under the age of 16 years and is not the husband or wife of that person for the purpose of any person, whether a particular person or not, doing an act in relation to the child (a proscribed act) defined to constitute an offence in section 210 or 215.

As highlighted in other relevant sections of this review, it is critical for professionals to view this legislation within the context of the grooming methods employed by perpetrators of CSE and the associated challenges that this may present.

CHILD EXPLOITATION MATERIAL

The following listed sections of the *Criminal Code (Qld)* make it an offence for a person to involve a child in, and make child exploitation material (CEM), distribute it or possess it.

- Involving a Child in Making Child Exploitation Material – S228A
- Making Child Exploitation Material – S228B
- Distributing Child Exploitation Material – S228C
- Possessing Child Exploitation Material – S228D, DA, DB, DC

The Act defines Child Exploitation Material as:

...material that, in a way likely to cause offence to a reasonable adult, describes or depicts a person, or representation of a person, who is, or apparently is, a child under 16 years –

- a. In a sexual context, including for example, engaging in sexual activity; or
- b. In an offensive or demeaning context; or
- c. Being subjected to abuse, cruelty or torture.

It is important to note that the term Child Exploitation Material (CEM), sits within the broader context of Child Sexual Exploitation, as defined by the United Nations (2001); however, with the exceptions of the states of Victoria and New South Wales, much of the language and discourse relating to CSE in Australia focuses overwhelmingly on CEM and online exploitation. A simple review of the Commonwealth Director of Public Prosecutions website highlights this fact (Commonwealth Director of Public Prosecutions, 2019). It is crucial for professionals working in the child protection space to understand how CEM is positioned within the wider context of CSE, thus ensuring that it does not distract from other types of CSE taking place in the community.

Maintaining a Sexual Relationship with a Child – S229B (1)

This section makes it an offence for an adult to maintain a sexual relationship with a child under the age of 16 and defines an 'unlawful sexual relationship' as a *relationship that involves more than 1 unlawful sexual act over any period*.

The Act defines an 'unlawful sexual act' as *an act that constitutes, or would constitute (if it were sufficiently particularised), an offence of a sexual nature*.

Incest – S222

This section of the Act defines incest as:

Any person who has carnal knowledge with or of the person's offspring or other lineal descendant, or sibling, parent, grandparent, uncle, aunt, nephew or niece.

Anyone guilty of this activity commits a crime.

Obtaining Prostitution from Person who is not an Adult – S229FA

This section of the Act states that:

A person (a client) who obtains prostitution from a person who is not an adult and who the client knows, or ought reasonably to know, is not an adult, commits a crime.

There is an increased penalty if the child is under 16 years of age.

Procuring engagement in prostitution – 229G

This section of the Act makes it an offence for a person to 'procure' another person to engage in prostitution, either in Queensland or elsewhere. This includes when a person *procures another person:*

1. To leave Queensland for the purpose of engaging in prostitution elsewhere; or
2. To come to Queensland for the purpose of engaging in prostitution; or
3. To leave the other person's usual place of residence in Queensland for the purpose of engaging in prostitution, either in Queensland or elsewhere."

The Act explicitly cites a significantly increased penalty if the person 'procured' is not an adult. The Act defines the term 'procure' as *to knowingly entice or recruit for the purpose of sexual exploitation*. Sections 229H and 229HBC address the participation of other people in the provision of prostitution where the person being sexually exploited is not an adult and the carrying on of a business to provide unlawful prostitution where the person being sexually exploited is not an adult. Section 229K deals with offences related to persons who have a business interest in a premises used for prostitution.

There is evidence of case studies where CSE victims as young as 12 have been procured for the purpose of engaging in prostitution in Queensland and other locations in Australia (ABC, 2018).

Permitting Young Person etc. to be at a place used for Prostitution – S229L

This section makes it an offence for a person to cause or allow a person who is not an adult to be in a place used for prostitution *by 2 or more prostitutes*.

Research highlights that in some models of CSE 'massage parlours' or 'licensed brothels' are used as a legitimate business for the purpose of concealing CSE and trafficking activities (Shepherd & Lewis, 2017).

Conspiracy to Defile – S221

This section of the Act makes it an offence for individuals to conspire to:

...induce any person, by any false pretence or other fraudulent means, to permit any person to have unlawful carnal knowledge with or of him or her.

The grooming processes used by perpetrators of CSE frequently involve multiple abusers and operate on the basis of the actions highlighted in this section.

A NOTE ON CONSENT

The law in relation to sexual offences against children under the age of 16 treats the victim as being incapable of giving consent. There is a possible defence in a court of law if the victim is over the age of 12 and the accused is able to prove on reasonable grounds an honestly held belief that the child was over the age of 16. It is worth pointing out; however, that when consent is viewed within the context of CSE the UN explicitly states the following:

...the term 'sexual exploitation' refers to all children up to the age of 18; issues of locally-defined 'age of consent' are not relevant to the child's right to protection. (United Nations, 2001)

It is also important to note that the range of grooming processes combined with power and control methods employed by perpetrators of CSE, render the young person incapable of identifying the fact that they are being exploited and therefore unable to give informed consent (Welsh Government, 2013). These factors are particularly important when considering child victims aged 16 and 17 in Queensland because their cases are most likely to be dealt with as though they are adults under sub-sections 352 - Sexual Assault, 349 - Rape, and 218 - Procuring Sexual Acts by Coercion, of the *Queensland Criminal Code 1899*.

Even when it can appear as though the young person is initiating the 'relationship' and they are old enough to consent to sexual activity, consent is provided on the basis of freedom of choice and capacity. Professionals need to consider whether lack of choice, substance use or potential power and control dynamics exerted by a perpetrator, are impacting on that young person's ability to consent.



Sexual Assaults – S352

This section of the Act states that a crime is committed by *Any person who* –

- a. Unlawfully and indecently assaults another person; or
- b. Procures another person, without the person's consent -
 1. To commit an act of gross indecency; or
 2. To witness an act of gross indecency by the person or any other person.

As mentioned elsewhere in this review, in cases of CSE it can be a challenge for law enforcement professionals to obtain a disclosure due to the nature of the grooming processes, and power and control dynamics experienced by the victim.

Rape – S349

Rape is generally defined as any type of penetration of the vagina, anus or mouth. This offence is treated as gender neutral, meaning that anyone, male or female, can commit rape or be a victim of it. According to the Act a person rapes another person if:

- a. The person has carnal knowledge with or of the other person without the other person's consent; or
- b. The person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent; or
- c. The person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.

Attempted Rape – S350

Under the Act, attempted rape is a crime and carries a potential sentence of 14 years in prison.

Procuring Sexual Acts by Coercion – S218

This section of the Act makes it an offence for a person to threaten or manipulate a person to engage in a sexual act. The section states that a crime is committed by *A person who* –

- a. By threats or intimidation of any kind, procures a person to engage in a sexual act, either in Queensland or elsewhere; or
- b. By a false pretence, procures a person to engage in a sexual act, either in Queensland or elsewhere; or
- c. Administers to a person, or causes a person to take, a drug or other thing with intent to stupefy or overpower the person to enable a sexual act to be engaged in with the person.

The offending activities outlined above are a common theme across all models of CSE (Bedford, 2015). Case studies in Australia and the UK have seen victims threatened and intimidated, made to engage in sexual acts under false pretences and forced into drug dependency, and in some cases forced to take drugs intravenously for the purpose of compliance with the demands of perpetrators (Townson, 2019). Research demonstrates cases where young people have been told that if they refuse to comply, their younger siblings would be targeted (Bedford, 2015). Beckett et al (2017) draw attention to the need for professionals to be aware that, from the victim's perspective, there may be no choice. They highlight that it is:

... important to note that the prevention of something negative can also fulfil the requirement for exchange; for example, a child who engages in sexual activity to stop someone carrying out a threat to harm his/her family.

(Beckett, Holmes & Walker, 2017)

Abuse of Persons with an Impairment of Mind – S216

The Act states that it is an offence for a person to have or attempt to have *unlawful carnal knowledge* with a person who has an *impairment of the mind*. Paragraph 2 of S216 states that a person commits an offence if they:

- a. Unlawfully and indecently deals with a person with an impairment of the mind; or
- b. Unlawfully procures a person with an impairment of the mind to commit an indecent act; or
- c. Unlawfully permits himself or herself to be indecently dealt with by a person with an impairment of the mind; or
- d. Wilfully and unlawfully exposes a person with an impairment of the mind to an indecent act by the offender or any other person; or
- e. Without legitimate reason, wilfully exposes a person with an impairment of the mind to any indecent object or any indecent film, videotape, audiotape, picture, photograph or printed or written matter; or
- f. Without legitimate reason, takes any indecent photograph or records, by means of any device, any indecent visual image of a person with an impairment of the mind.



CHILD PROTECTION ACT 1999

The Queensland Child Protection Act 1999 is intended to provide protection to all children in the state of Queensland. The main principle of the Act is that *the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount*; recognising that every child has the right to be protected from harm (S5).

When considering the Act within the context of CSE, there are several key sections that provide potential actions to support the disruption of CSE. The following is an outline of the relevant sections with brief contextualised summaries.

Chief Executive's Functions – S7

This early section in the Act is critical in that it sets the principal tone that should underpin the approach taken to protect children and young people in Queensland. S7 encompasses a comprehensive range of obligations that the Queensland Government has to provide protective services for children, including preventative education and research for the purpose of improving existing responses to child abuse. This section also makes a clear commitment to provide resources to government and non-government agencies, and families for the purpose of protecting children and young people. Almost all of the elements have significant relevance when viewed through the lens of CSE.

Substantiation of Alleged Harm – S14

This section of the Act places a responsibility on the government to take action if there is a reasonable suspicion that a child is in need of protection. The Act states that the *chief executive must immediately*:

- a. Have an authorised officer investigate the allegation, assess whether the alleged harm or risk of harm can be substantiated and, if it can, assess the child's protective needs; or
- b. Take other action the chief executive considers appropriate.

This section also highlights the obligation the chief executive has to immediately provide information to police when the alleged harm to a child involves a criminal offence – this obligation applies regardless of whether the chief executive *suspects the child is in need of protection*.

Contact with Child at Immediate Risk of Harm – S16

It is common in cases of CSE for young people to run away from home/care and end up staying with the perpetrators of the abuse they are suffering. The complex power and control dynamics, coupled with heightened vulnerability factors mean that the victim may feel they have no choice, or mistakenly believe they are in a 'loving' relationship with their abuser. Beckett et al (2017) point out that, from a professional perspective, *It is important that continued contact is not misinterpreted as informed choice or an indication of absence of harm*. This means that when professionals have a justified suspicion that a child is involved in CSE, an assertive approach is critical for disrupting the influence exerted over the victim by their abusers (Shepherd & Lewis, 2017). One such approach is the use of entry powers in accessing properties and locations where the suspected abuse is taking place.

Section 16 of the Act grants powers to enter and search a place where a child is believed to be located, and that child has been either harmed or is at risk of harm. The Act states in Paragraph 1 of S16 that *This section applies if –*

- a. An authorised officer or police officer is investigating an allegation of harm, or risk of harm, to a child; and
- b. The officer has been denied contact with the child or cannot reasonably gain entry to the place where the officer reasonably believes the child is; and
- c. The officer reasonably suspects the child—
 1. Is at immediate risk of harm; or
 2. Is likely to leave or be taken from a place and suffer harm if the officer does not take immediate action.

Paragraph 2 says, *The officer may exercise the following powers to –*

- a. Enter the place;
- b. Search the place to find the child;
- c. Remain in the place, and have contact with the child for as long as the officer reasonably considers necessary for investigating the allegation.

The Act states that these powers may be exercised *with the help, and using the force, that is reasonable in the circumstances.*

Child at Immediate Risk may be taken into Custody – S18

This section of the Act grants *an authorised officer or police officer* powers to take a child at risk of harm into protective custody when they believe that failure to do so will result in the child being harmed. In a similar way to S17, this section includes the provision of entry and search powers if the child is believed to be in a specific location or premises. To some, this may seem an extreme measure, but it is worth noting that there is a significant risk of serious harm to victims who are involved in organised crime models of CSE – ‘Gang’, ‘Trafficking’ and ‘Commercial Child Sexual Exploitation’. Recent CSE case studies in Queensland demonstrate missed opportunities to use powers granted under this section when young people have presented to authorities asking for help, resulting in the abuse continuing (Townson, 2019).

Moving Child to Safe Place – S21

This section of the Act grants powers to *an authorised officer or police officer* to be able to move a child under the age of 12 years who is at risk of harm to a safe place. This section does not grant powers for taking the child into care, but is intended as a temporary measure until the child’s parents or family can be located to resume care.

Child Protection Orders – S61

This section of the Act enables the Childrens Court to make a child protection order where there are events *causing the child to be in need of protection*. These orders can include directives for parents or the chief executive to take certain actions related to the child’s protection. One of the orders most pertinent to cases of CSE is sub-paragraph c, which is an order *requiring the chief executive to supervise the child’s protection in relation to any matters outlined in the order*.

Service Delivery Coordination and Information Sharing – Chapter 5A (S159)

This chapter of the Act includes a number of sections that have significant relevance when considered within the context of CSE. Provision is made for the sharing of information between individuals and agencies involved in the protection of children. Historically, professionals operating in the Queensland child protection arena have experienced barriers to information sharing (Dept of Child Safety, Youth & Women, 2018). This fact has seen significant cases of child abuse inadequately investigated due to insufficient or incomplete information being made available, eventually leading to serious harm and in some cases death (Egan, 2016). The recent introduction of the *Child Protection Reform Amendment Act 2017 (Qld)* saw a strengthening of laws to support more comprehensive information sharing that placed an emphasis on prioritising the *safety, well-being and best interests* of children over the *protection of an individual’s privacy*.

Due to its hidden nature and the low levels of disclosure from victims, a critical issue highlighted in many cases of CSE is the need for information sharing and collaboration between professionals and agencies to support timely prevention and intervention (UK Home Office, 2019).

Obstruction of Authorised Officer – S160

This section of the Act makes it an offence for a person to obstruct *an authorised officer or police officer* in exercising any of their powers granted under the Act. The section may have relevance when considering the potential disruption of CSE activities.

Offence to Remove Child from Carer – S162

This section of the Act makes it an offence for a person to remove a child from their carer. Section 162 has specific relevance when viewed within the context of CSE due to the fact that children in out-of-home care will often be targeted by perpetrators specifically because of heightened levels of vulnerability (Sen, 2017). Section 163 relates to the same type of situation, but when the care order relating to a child has been made in another state.

Offence to Refuse Contact with Child in Custody or Guardianship – S166

This section of the Act makes it an offence for a person to refuse a reasonable request from an authorised officer for *permission to enter premises for the purpose of having contact with a child in the premises to ensure the child's protection*, unless there is a reasonable excuse to make such a refusal. This section is applicable to children who are in the custody or guardianship of the chief executive when under an assessment order, temporary custody order or child protection order.

Power of Seizure – S177

This section of the Act states that an *officer may seize a thing at the place if the officer reasonably believes –*

- a. The thing –
 1. May be received in evidence in a proceeding on an application for an order for the child; or
 2. Is evidence of an offence in relation to the child or the child's unlawful removal from custody or guardianship; and
- b. The seizure is necessary to prevent the thing being –
 1. Hidden, lost or destroyed; or
 2. Used to commit, continue or repeat the offence.

Powers granted under this section may prove useful in gathering evidence that proves CSE activities or supports the disruption of such activities.

Power to Photograph – S181

On entering a property where powers of entry have been granted under previously mentioned sections within this Act, an officer is granted further powers under S181 to *photograph or film the place, or anyone or anything in or on the place*. This function is potentially beneficial for the purpose of gathering intelligence and evidence related to CSE activities and suspected perpetrators.



CHILD PROTECTION

(Offender Reporting and Offender Prohibition Order) Act 2004

This piece of legislation places a requirement on specific offenders, who commit serious offences against children, to communicate to police their whereabouts and other relevant personal information, for the purpose of reducing the potential for recidivism. The investigation and prosecution of any future alleged offences is also supported.

Proposed Reforms

In August 2019 Queensland Attorney General and Minister for Justice, Yvette D'Ath, announced a consultation on proposed reforms to child sexual offence laws (Queensland Government, 2019). These reforms are intended to answer recommendations made by the Criminal Justice Report of the Royal Commission into Institutional Child Sexual Abuse and include the following:

- Making it an offence for failing to report child sexual abuse
- Making it an offence for failing to protect against institutional child sexual abuse
- Making it illegal to own or be in possession of child-like dolls with design features for sexual gratification (It is already illegal to import these dolls under the Commonwealth Customs Act 1901)

In addition to the above proposed reforms, in July 2019 the Attorney General announced the state government's intention to undertake a review of Queensland's sexual assault and consent laws, following mounting pressure from various groups, including the Women's Legal Service Queensland to *overhaul sexual violence laws* (Brisbane Times, 2019). A major motivation for the review is the perceived ambiguity relating to guidance on what constitutes 'no' in matters of sexual consent. Cases in recent times have seen juries of rape trials left confused about how they should interpret the law when considering whether or not potential victims provided consent, due to their choice of words (ABC News, 2019). On occasion, these situations have seen Section 24 – Mistake of Fact, of the *Criminal Code (Qld)* being used as a defence against allegations of sexual assault.

Other Potential Disruption Tools (Qld)

Due to the coercive, manipulative and controlling nature employed by perpetrators, it can often be challenging for authorities to gather tangible evidence of CSE, outside of anecdotal accounts provided by community members and professionals. This means that, sometimes, the most effective means of preventing or disrupting CSE is the use of legislation that has a broader range of application. The following are examples of such legislation.

CRIMINAL CODE (QLD)

Consorting – S77

This element is particularly relevant in instances where known offenders are suspected of consorting to recruit young people into CSE activities or associated criminal exploitation activities, such as drug dealing, but where there is a lack of tangible evidence of CSE related offences.

Common Nuisances – 230

Similar to section 77, this section might be useful as a disruption tool for addressing perpetrators at specific addresses where there are suspected CSE activities taking place.

Domestic and Family Violence Act 2012

This Act is intended to protect people who experience or are at risk of domestic violence. Elements of this legislation may be pertinent for the purpose of disrupting perpetrator activities when viewed in the context of CSE and when dealing with victims aged 16 and 17. Young people in this age bracket can be particularly vulnerable to sexual exploitation due to a combination of power and control methods implemented by perpetrators – similar to those found in domestic violence – and inadequate economic or systemic support (Beckett, Holmes & Walker, 2017). Beckett et al (2017), highlight that it is not unusual for victims of this age to be overlooked *due to an assumed capacity to*

consent. As such it can often be the case that this particular group of young people will be viewed by professionals as being in a consenting relationship, even when there is a significant age gap between themselves and their 'partner'. Because the power and control dynamics used in CSE often mirror those used by perpetrators of domestic violence, it is not unusual for victims to resist or disrupt attempts by others to help them.

COMMONWEALTH LEGISLATION

Commonwealth Criminal Code Act 1995

The *Criminal Code Act 1995 (Cth)* is for use across all state and territory jurisdictions throughout Australia, and provides several pieces of law relevant to CSE. While there is a significant volume of legislation within the Act designed to address offences against children in an overseas capacity – Sections 272 to 273.9, this review will focus on offences that apply within the borders of Australia.

The Criminal Code (Cth) has the potential to address some of the gaps in Queensland legislation when considering victims of CSE who are 16 and 17 years of age. This is because the Act generally defines a child as someone under the age of 18.

Duress – S10.2

This element of the Act is pertinent to the subject of CSE when considering the role a young person may play in 'recruiting' another young person into sexual exploitation. It is important for professionals to have an understanding of the power and control dynamics exerted by adult perpetrators of CSE. Peer to peer recruitment is a model commonly used by adult perpetrators of CSE because it enables them to keep a safe distance from the victims, making it harder for law enforcement agencies to obtain tangible evidence of their involvement (Shepherd & Lewis, 2017). The Act states that:

A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence under duress.

As highlighted elsewhere in this review, it is commonplace for victims to experience threats of violence and intimidation in order for the perpetrators to obtain compliance.

Complicity and Common Purpose – S11.2

This section of the Act states that:

A person who aids, abets, counsels or procures the commission of an offence by another person is taken to have committed that offence and is punishable accordingly.

Research shows that not all facilitators of CSE do so for their own sexual gratification (Sen, 2017). For some perpetrators the main aim might be more financially orientated. For example, financial remuneration for assisting in trafficking or the production of child exploitation material. Sections 11.2A to 11.5 also address offences related to 'incitement' and 'conspiracy' which are similarly relevant to the varying models of CSE used by perpetrators.

Offence of Trafficking in Children – S271.4

This section of the Act creates an offence for any person who is involved in the trafficking of persons under the age of 18 into or out of Australia, including for the purpose of sexual exploitation.

Section 271.1A of the Act defines 'exploitation' as when a person's *conduct causes the victim to enter into any of the following conditions*:

- a. Slavery, or a condition similar to slavery;
- b. Servitude;
- c. Forced labour;

- d. Forced marriage;
- e. Debt bondage.

Offence of Domestic Trafficking in Children – S271.7

This section of the Act states that *A person commits an offence of domestic trafficking in children if:*

- a. The first-mentioned person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and
- b. The other person is under the age of 18; and
- c. In organising or facilitating that transportation, the first-mentioned person:
 - 1. intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place; or
 - 2. is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place.

Case studies in Queensland have seen victims trafficked significant distances interstate and as far north as the east coast of central Queensland (Townson, 2019).

Harbouring a Victim – S271.7F and S271.G

These two sections of the Act address offences related to the harbouring of a victim. The Act states that *A person (the offender) commits an offence of harbouring a victim if:*

- a. The offender harbours, receives or conceals another person (***the victim***); and
- b. The harbouring, receipt or concealing of the victim:
 - 1. assists a third person in connection with any offence committed by the third person (the ***third person offence***); or
 - 2. furthers a third person's purpose in relation to any offence committed by the third person (the ***third person offence***).

The Act increases the seriousness of the offence if the victim is under the age of 18.

The harbouring of victims often occurs in models of CSE associated with organised crime, such as 'Trafficking', 'Gang' and 'Commercial Sexual Exploitation' (Shepherd & Lewis, 2017).

Possession of Child-like Sex Dolls etc – S273A.1

This section of the Act makes it an offence for a person to possess a *doll or other object* that resembles a person under the age of 18 and the doll is intended to be used to *simulate sexual intercourse*.

Criminal Organisations - S390.3 to S390.6

These sections of the Act concern similar offences to those found in S77 of the *Criminal Code (Qld)* that relate to consorting and may be beneficial in the disruption of CSE activities.

Use of Postal Services in relation to CEM – S471.19 to S471.23

These sections of the Act specifically address offences relating to the use of a postal service or similar, for CEM related activities.

Offences relating to use of Postal or similar Service involving Sexual Activity with person Under 16 – S471.24 to S471.29

These sections create offences related to the use of a postal or similar service to 'procure', 'groom' or send indecent material to a person under 16 years of age.

Use of Carriage Service – S474.22 to 474.29

These sections of the Act establish offences in relation to the use of a carriage service (e.g. the internet) for the purpose of:

- Engaging in CEM related activities;
- Engaging in sexual activity with a person under the age of 16;
- Preparing or planning to cause harm to a person under the age of 16;
- Preparing or planning to engage in sexual activity with a person under the age of 16;
- Procuring for sexual activity a person under the age of 16;
- Grooming a person under the age of 16;
- Transmitting indecent communication to a person under the age of 16.

Under S474.25C it is also an offence for the perpetrator to lie about their age as part of their plan to cause harm to the victim.

Sections 4.74.30 to 474.37 deal with offences related to the use of a carriage service (e.g. the internet) for sharing 'abhorrent violent material'. The Act places obligations on internet service providers, content service providers and hosting service providers, requiring them to notify the authorities when they encounter such material. The Act also affords the eSafety Commissioner special powers to hold service providers accountable.

CHILD CRIMINAL EXPLOITATION

Sections 309 to 312.2 contain elements of law relating to drug offences involving children under the age of 18. This includes where children are used in the supply, production, trafficking and selling of illegal drugs.

These sections are relevant within the context of CSE disruption when considered against the backdrop of significant research into the overlap between criminal and sexual exploitation of children. Guidance on disruption tactics for law enforcement professionals produced by the UK Government draws reference to this fact by pointing out that:

There are similarities between different forms of exploitation and the criminal and sexual exploitation of children may overlap. Victims of child exploitation may, at any one time, be subject to both.

(UK Home Office, 2019)

The same guidance issued by the UK Government defines child criminal exploitation in the following way:

Child criminal exploitation occurs where an individual or group takes advantage of an imbalance of power to coerce, control, manipulate or deceive a child or young person under the age of 18 into any criminal activity:

- In exchange for something the victim needs or wants.
- For the financial or other advantage of the perpetrator or facilitator.
- Through violence or the threat of violence.

The victim may have been criminally exploited even if the activity appears consensual. Child criminal exploitation does not always involve physical contact, it can also occur through the use of technology.

(UK Home Office, 2019)



VICTORIA

Victoria is currently the only Commonwealth state to adopt a formal definition of CSE and implement a comprehensive framework aimed at addressing the problem. The state defines CSE in the following way:

Child sexual exploitation involves children being forced or manipulated into sexual activity for something – money, gifts, drugs, alcohol or something less tangible such as affection, status or love.

(Victorian Government, 2017)

Victoria utilises several key pieces of legislation for the prevention, intervention and disruption of CSE. These include:

- Family Violence Prevention Act 2008 (Vic)
- Personal Safety Intervention Order Act 2010 (Vic)

They also make use of a range of offences found in the Children, Youth and Families Act 2005 (Vic) that support the disruption of perpetrator activities which include:

- Offence to Harbour or Conceal a Child – S495
- Offence to Counsel or Induce Child to be Absent Without Lawful Authority – S496
- Offences in relation to Community Service

State guidance highlights the difficulties in relying on criminal prosecutions for perpetrators and instead recognises the need for alternative responses aimed at removing *persons of interest from the child's circle of influence* through the use of disruption methods (Dept of Health and Human Services, 2017). The guidance presents an alternate view on how success is defined in the fight against CSE and suggests that it is not always dependent on the successful prosecution of an offender, but rather might also be the ceasing of sexual exploitation for the young person involved, as a result of *lower order offences* that are non-sexual in nature. Such 'lower order offences' when used in a concerted manner have the potential to cause perpetrators to distance themselves from victims for fear of being caught. 'Lower order offences' used by the authorities when there is a suspicion of CSE activities being perpetrated by a person of interest, and the victim might be unwilling or unable to make a disclosure, can include:

- Traffic offences
- Drug offences

Under the *Children, Youth and Families Act 2005 (Vic)* child protection and police officers have powers to serve a person of interest with a S495 'Harbouring Notice' for *harbouring or concealing a child, or counselling or inducing a child to be absent from placement*. Officers also have additional powers under S497 of the Act to serve the person of interest with a 'Loitering Letter' if they are found to be *entering, lurking or loitering where a child is placed*.

Under the *Family Violence (Protection) Act 2008* child protection agencies also have the additional option to apply for a family violence or personal safety Intervention Order on behalf of the victim, against the person of interest. The guidance highlights that the Act *has a broad definition of family members that can be considered when applying that legislation*.

The departmental guidance also recommends the following disruption activities for police and child protection officers to pursue for the clear purpose of making it known to persons of interest that the authorities are aware of their activities:

- Police visiting persons of interest at their homes to search (via a warrant) for the missing child
- Police reminding persons of interest of the age of consent or other laws
- Actively pursuing known drug trafficking or other illegal activity by the person of interest
- Generally ensuring the person of interest knows they are being watched closely.

The framework guidance issued by the Victoria Department of Health and Human Services places a significant level of importance on a multi-disciplinary framework approach to addressing CSE (Dept of Health and Human Services, 2017). The guidance lists a comprehensive range of agencies who should be working together collaboratively – child safety, police, sexual assault support services, the courts, family services, youth justice, mental health services, health services, therapeutic services and education. Information sharing is cited as a key activity in disrupting the process of CSE. Additional key framework elements are outlined below.

Sexual Exploitation Information Templates (SEIT)

Child protection agencies use SEITs to collate information pertaining to suspected incidents of CSE. Once completed, these templates are sent across to specialist teams within Victoria Police trained in dealing with CSE – Sex Offences Child Investigation Team (SOCIT). SOCIT maintains intelligence on groups and individuals involved in CSE activities. Intelligence or evidence relating to CSE is rated according to the severity of risk – Tier 1 and Tier 2. Tier 1 establishes clear evidence of CSE activity, and may include the identity of persons of interest, as well as dates and locations. Tier 2 will articulate a potential correlation between a child's behaviour and the likelihood that they are being exploited, but further investigation is required. Children identified as being high risk will be actively monitored.

Sexual Exploitation Link Chart

These are used to provide a visual overview of potential CSE networks involving both young people and persons of interest. A link chart can be applied for an individual or group of children and can be created by agencies involved in child protection as further supporting information for law enforcement agencies.

Sexual Exploitation Practice Leader (SEPL)

The state employs designated practitioners, known as Sexual Exploitation Practice Leaders, within the Dept of Health and Human Services. SEPLs provide specialist CSE consultancy and training for other child protection workers within the department and associated agencies.

UNITED KINGDOM

The UK has been at the forefront of the fight against CSE since the mid-1990s when Barnardo's first started to contextualise CSE within the broader issue of child sexual abuse (Townson, 2019). Since then the UK Government has established a framework of responses that includes the prevention, intervention and disruption of both child sexual exploitation and child criminal exploitation activities. In 2017 the UK Home Office produced a comprehensive 'Child Exploitation Disruption Toolkit' for use by individual professionals and agencies concerned with the protection of children (UK Home Office, 2017). This toolkit categorises the different elements of child exploitation and details a catalogue of tactics and legislative tools that can be used to disrupt CSE activities. The categories and associated tools are listed below:

Abduction and Trafficking

- Child Abduction Warning Notices
- Offence of abduction of a child by other persons (under the age of 16)
- Abduction of children in care (where child is under 18)
- Recovery orders
- National Referral Mechanism (NRM)
- Human Trafficking
- Slavery and Trafficking Risk Orders (STRO)
- Slavery and Trafficking Prevention Orders (STOP)

Sexual Offences

- Sexual Risk Orders (SRO)
- Sexual Harm Prevention Orders (SHPO)
- Notification Orders
- Arranging or Facilitating Commission of a Child Sex Offence
- Meeting a Child following Sexual Grooming
- Sexual Communication with a Child
- Paying for Sexual Services of a Child
- Causing or Inciting the Sexual Exploitation of a Child
- Controlling a Child in relation to Sexual Exploitation
- Arranging or Facilitating the Sexual Exploitation of a Child
- Indecent Images of Children (IIOC)
- Possession of Indecent Images of a Child

Victim Care

- Entry for Purpose of Arrest
- Secure Accommodation order (use of accommodation for restricting liberty)
- Care and Supervision Orders
- Orders for Emergency Protection of Children
- Police Powers of Protection – removal and accommodation of children by police in cases of emergency

Behaviour

- Controlling or Coercive Behaviour in an Intimate or Family Relationship
- Forced Marriage Protection Order (FMPO)
- Restraining Orders and Non-molestation Orders
- Domestic Violence Protection Notices and Orders (DVPN/DVPO)
- Civil Injunctions

- Inherent Jurisdiction
- Injunctions to Prevent Gang-related Violence and Drug-dealing Activity
- Criminal Behaviour Orders (CBO)
- Directions excluding a Person from an Area (Police Dispersal Powers)
- Community Protection Notices

Location

- Closure Notice and Orders
- Information about Guests at Hotels believed to be used for Child Sexual Exploitation
- Absolute Grounds for Possession for Anti-social Behaviour
- Reviews of Licensed Premises
- Public Spaces Protection Orders (PSPOs)
- Taxis and Private Hire Cars
- Schools and Exploitation
- Children's Homes and Carers

Other Options

- Drug Dealing Telecommunication Restrictions Order (DDTRO)
- Forfeiture
- Fire Rescue Services Act 2004
- Immigration Enforcement and UK Visa Immigration

Best Practice

- Information Sharing and Multi-Agency Working
- Intelligence and Evidence

The toolkit identifies the relevant legislative tool or procedural actions associated with each listed item and explains when and how it can be used. Accompanying each legislative tool is both a statement on the intended impact of using it and potential scenarios in which it might be beneficial.



CONCLUSION

This review demonstrates that a significant amount of legislation exists to support both the protection of children from CSE and the disruption of perpetrator activities; however, without a clear understanding of the complex nature of CSE and its characteristics, professionals will not necessarily recognise the true extent of their capacity to intervene using the multitude of legislative tools that exist. This highlights the critical role that education and awareness plays in enabling the effective disruption of CSE activities. Research shows us that untrained professionals can find it challenging to identify indicators of CSE, complicated by the fact that some of the indicators, alcohol and drug use, or other challenging behaviour, will often be labelled as 'typical teenager' behaviour (Beckett, Holmes & Walker, 2017). This can be a problem, resulting in young people not receiving timely protection and support when they most need it (Townson, 2019).

A potential further complicating factor noted is that of an overlap between differing sections of the *Criminal Code (Qld)* when trying to determine which element is most appropriate for application. This suggests the possible need for a formal government review for the purpose of streamlining the legislation to make it easier for professionals to identify which parts of the Act might be most appropriate for use in disrupting CSE. Such a review would also provide an opportunity to reform the language used in relation to child sexual abuse and bring it in line with terminology used by the United Nations. A similar review and reform took place in the UK with amendments being made to the *Sexual Offences Act 2003 (UK)*. References to 'child prostitution' and 'child pornography' were removed and replaced with terminology such as 'children/young people abused through prostitution' or 'children/young people exploited through pornography'. This alternative use of language acknowledges a clear differential between adults and children. Sen (2015) highlights that such a move recognises, *the distinction between adult and child worlds and the abusive power relationships underpinning a child/young person's involvement in prostitution or pornography*.

As pointed out earlier in this review, a key factor in prosecuting cases of CSE is the presence of tangible evidence that will stand up in a court of law. This can be a significant problem for law enforcement agencies due to low levels of disclosure and engagement by victims. Consideration of the power and control dynamics present in such cases, along with high levels of coercion and manipulation experienced by victims, must be at the forefront of approaches to addressing the issue. Queensland has, for the most part, robust legislation that can support both the prevention, prosecution and disruption of CSE, but there are elements of the legislation that could be strengthened. One such area is in relation to how children aged 16 and 17 years are protected. Legislation that acknowledges the grooming methods used by perpetrators of CSE, in addition to the fact that a 16 or 17 year old child cannot 'consent' to being sexually exploited, would go a long way towards sending a clear message to offenders.

Perhaps the most significant issue to address is the lack of both a formal definition characterising CSE and a formal framework that pulls legislative tools together for addressing the problem. Until such time as this occurs there will continue to be a lack of consistency in how the law supports and protects victims of CSE, especially those aged 16 and 17 years.

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LEGISLATION

Children, Youth and Families Act 2005 (Vic)

Child Protection Act 1999 (Qld)

Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004 (Qld)

Child Protection Reform Amendment Act 2017 (Qld)

Commonwealth Criminal Code Act 1995

Domestic and Family Violence Protection Act 2012 (Qld)

Family Violence Prevention Act 2008 (Vic)

Personal Safety Intervention Orders Act 2010 (Vic)

Sexual Offences Act 2003 (UK)

Queensland Criminal Code Act 1899 (Qld)

