

TERMS OF REFERENCE – QUEENSLAND SENTENCING ADVISORY COUNCIL

CLASSIFICATION OF CHILD EXPLOITATION MATERIAL

I, Yvette D’Ath, Attorney-General and Minister for Justice and Minister for Training and Skills, having regard to:

- the observations of the Queensland Organised Crime Commission of Inquiry (the Commission), as outlined in the Commission’s 2015 report, of the alarming demand for increasingly depraved material involving the abuse of children. These observations noted that membership of some highly networked child exploitation material sites requires the production and uploading of new material – on a regular basis – increasing the demand for child victims;
- the concerns expressed to the Commission by law enforcement and prosecution agencies regarding the ‘Oliver scale’, a child exploitation material classification system used by Queensland courts in sentencing offenders. The concerns relate to the enormous amount of time it takes police officers and civilians in the employ of law enforcement agencies, to assign one of six classifications to each of the millions of images found in the possession of offenders – such task depleting resources from victim identification and the priority of rescuing those children from further harm. Further, the time taken by law enforcement to classify the images and video files often means delays in prosecuting offenders;
- the significant extra funding the Queensland Government has provided, and will provide over the next four years, to the Queensland Police Service and the Crime and Corruption Commission to combat organised crime, in particular to enhance investigations into child exploitation; and the significant extra funding to be provided over the next four years to the Office of the Director of Public Prosecutions to ensure it is properly resourced to pursue convictions of serious and organised criminals – and the Government’s expectation that such extra resources will result in an increase in the identification and prosecution of child exploitation material offenders;
- recommendation 4.11 made by the Commission, that the Sentencing Advisory Council, once established, as a matter of priority, review the use of the current ‘Oliver scale’ classification system, other classification options, and the merits of using random sampling, in the sentencing process;
- the definition of *child exploitation material* contained in section 207A of the Criminal Code;
- section 9(7) of the *Penalties and Sentences Act 1992* that requires a court sentencing a *child-images offender* to have regard to, among other things, the nature of any image of a child that the offence involved, including the apparent age of the child and the activity shown;
- the function of the Queensland Sentencing Advisory Council to provide requested advice on matters relating to sentencing; and

- the expectation of the Queensland Government and the community that child exploitation material offenders are sentenced in a way that reflects the nature and seriousness of the offending conduct;

refer to the Queensland Sentencing Advisory Council, pursuant to section 199(1) of the *Penalties and Sentences Act 1992*, a review of the system used to classify child exploitation material for the sentencing process.

In undertaking this reference, the Queensland Sentencing Advisory Council will:

- consider and review the effectiveness and suitability of using the current 'Oliver scale' classification system to classify the severity and type of child exploitation material for use in the sentencing process;
- consider and review alternative classification systems, including but not limited to, the United Kingdom's Sentencing Council's Sexual Offences Definitive Guideline which replaced the 'Oliver scale' in 2014 with a three category scale;
- consider whether child exploitation material images that have already been classified in another jurisdiction should be able to be relied on by the courts when sentencing to reduce double-handling by Queensland Police Service and Crime and Corruption Commission officers;
- assess the merits of using random sampling of seized child exploitation material as provided for under section 289B of the *Criminal Procedure Act 1986* (NSW) and section 70AAAE of the *Crimes Act 1958* (Vic);
- in considering and assessing the above systems, have regard to the issue raised in the Commission's report regarding the competing interests of the need for a sentencing court to have a clear and accepted method of objectively assessing the criminality and severity of the offending behaviour against the diversion of law enforcement resources away from victim identification and the priority of rescuing those children from further harm;
- consider whether any other factors should be added to the sentencing guidelines in section 9(7)(a) of the *Penalties and Sentences Act 1992*, such as the total volume of images, determined 'scale' of the images, and whether any children depicted in the images are known to the offender;
- determine if use of the Australian National Victim Image Library (ANVIL) and Child Exploitation Tracking Software (CETS) or other similar database tools used by itself or in conjunction with Project VIC (which provides a forum for information and data sharing between domestic and international law enforcement agencies investigating offending involving the sexual exploitation of children) would reduce the amount of time child exploitation team members spend on the classification process;
- have regard to relevant research, reports and publications relevant to sentencing practices in child exploitation material offences;
- consult with key stakeholders, including but not limited to the legal profession, the Queensland Police Service, the Crime and Corruption Commission, academics and the judiciary; and
- advise on any other matter considered relevant to this reference.

The Queensland Sentencing Advisory Council is to provide a report on its examination to the Attorney-General and Minister for Justice and Minister for Training and Skills by 31 May 2017.

Dated the 22 day of November 2016

YVETTE D'ATH
Attorney-General and Minister for Justice
Minister for Training and Skills