

*Standing Committee on Environment and Public Affairs — Fifty-second Report —  
“Punitive Not Protective: When the Mandatory Registration of Young People Is Not Based on Risk” — Motion*

Resumed from 11 November on the following motion moved by Hon Alison Xamon —

That the report be noted.

**Hon MATTHEW SWINBOURN:** It gives me pleasure to speak on this report, as I was the Chair of the Standing Committee on Environment and Public Affairs that did the inquiry and tabled this report, titled “Punitive Not Protective: When the Mandatory Registration of Young People Is Not Based on Risk”. I have been looking forward to this opportunity to speak about it during the consideration of committee reports because I think the work that we did in this report was quite important. It is one of those issues that without the committee system of the Legislative Council might not have ever been ventilated and given an opportunity for this kind of work to be done. I think I also broke with tradition when I included a chair’s foreword in the report, which is not the usual practice of the Legislative Council, but in this instance I felt as the chair, and I was supported by my fellow committee members, that it was important to give that kind of summary at the beginning of the report, which, of course, reflects my views about many of the matters that were investigated.

Before I plough into the detail of the report, I would like to give acknowledgement and thanks to the assistance that we received during the course of our inquiry from our very capable and dedicated committee staff, Mr Alex Hickman, Ms Amanda Gillingham, Mrs Maddison Evans and Ms Kristina Crichton. They were very ably assisted during the course of this inquiry. I would also like to acknowledge my fellow committee members, deputy chair of the committee, Hon Colin Holt, and Hon Samantha Rowe, Hon Tim Clifford and Hon Dr Steve Thomas. It pleased me that we reached a consensus position on this report and that it reflects the views of each member of the committee. That is always a good outcome when we are dealing with these sorts of issues.

This report arose out of a petition that we received, petition 70, which I believe had only one signature. Members have tabled petitions here with many signatures on them, but it is not the requirement of the environment and public affairs committee to conduct more detailed inquiries into petitions just because they have many signatures on them. In many cases, the issues that are put forward when there are 15 000 signatures are extremely well ventilated already, and so it is quite useful and important that the committee can make its own decision on which matters it examines in more detail through a proper, formalised process regardless of the number of signatures involved. Other Parliaments have a threshold requirement for signatures, but I do not think that that should ever be adopted in our chamber. Petition 70 had very few signatures—as I recall, only one—but the subject matter of the petition was such that it compelled the committee to take further action to inquire into it. From my point of view, I think that had something to do with the fact that it was unlikely that this issue would otherwise have ever been looked into, which is, essentially, the inclusion of young people on the sex offenders register.

Typically, young people are disenfranchised from the political and legislative process anyway by their youth, and people who are put on the sex offender register when they are young are most definitely—even more so—disenfranchised from that process, but there are some people in the community who stand up for them and advocate for them. I think Hon Martin Pritchard might have been the tabling member in this instance. It is not our job to always give voice to those with the most popular issues; we sometimes have to look into the dark corners of this issue.

The mischief of the petition was how the sex offender register, since it was created in 2004, has included a very broad range of offenders. The most serious kind of offenders are on the register, including not only those who absolutely should be monitored, but also people who make mistakes when they are very young.

When the register was created, it was described as not being a form of punishment and that, in fact, it should be an administrative action not a punitive action. It is not part of sentencing when someone is found guilty of an offence. The penalties for sexual offences are community service, jail time or any number of other punitive practices, but inclusion on the register is not part of the punishment. The register exists to protect the community from recidivist sexual offenders, particularly those who commit offences against children. But, of course, in its development, or its design, it caught children who had committed sexual offences against other children. Again, they could be relatively innocent in a non-legal sense or they could be very heinous. What the committee did not look at is whether penalties or offences in this area are appropriate; the committee looked at whether it should be mandatory for people to be put on the sex offender register following a finding of guilt or an admission of guilt through the process and whether it is appropriate for the President of the Children’s Court in particular to have discretion about whether a person goes on the register.

Presently, mandatorily putting people on the register results in all people being put on regardless of their continuing risk to the community. The purpose of the register, of course, is to protect the community against recidivist sexual offenders. As I say, it is quite appropriate that that exists for that class of people who pose an identifiable risk to the community. The committee found that there is no justification to include on the register people who have committed

offences but who pose no continuing risk to the community. In fact, we face the prospect of mandatorily including all people who commit such offences, regardless of their age. Criminal culpability in this state starts at 10 years of age, so children as young as 10 years can be put on the sex offender register. They will have the necessary report requirements and will be subject to police follow-up. The risk is that so many people will be put on the register—there are close to 4 000 people on the register now—that the police will not have the time and resources to monitor as thoroughly as they should, or that they can, those people who genuinely need to be on the register, who genuinely need reporting requirements and who genuinely need to be looked at by the police on a continual basis because of the continuing risk that they pose to our community and our children. That is the risk of having a register with no discretion. I think most of us would be alarmed to think that the police are so overwhelmed because of the sheer number of people on the register that they cannot perform the job of protecting the community by looking at the people who need to be on the register.

The key recommendation of the committee is the introduction of discretion into the justice system so that the President of the Children's Court, when dealing with an offence that comes within the ambit of the register, will have discretion to decide whether that child or young person should be put on the register. One vexed issue the committee dealt with in the inquiry was what is a young person, because we are not strictly speaking about a child who is legally a person under the age of 18 years. There is no universal definition of "young person" and there is a recognition amongst particularly psychologists, psychiatrists and other developmental people that not everybody matures at the same age and that 18 is an arbitrary point in time that does not give enough credence to the overall circumstances that exist in a particular case of offending.

The committee came to the conclusion that a young person should be a person—I am going to get it wrong—who is 20 years of age or below. The committee came to that conclusion for a range of reasons. It recognised that groups of people of different ages mix in our education and training institutions. We must remember that 18-year-olds are now part of our secondary education system and they have contact with people within their own year group who are not legally adults. If they are born in the second half of the school year, they are legally adults only after June when they turn 18 years of age, and so some students in the year 11 and 12 cohort are 18 or 19 months younger than the others. Those people interact as peers, but the law does not deal with them in that fashion. That is one factor. The committee wanted to understand how sexual behaviour also develops.

**The CHAIR:** The question is that the report be noted. Hon Matthew Swinbourn.

**Hon MATTHEW SWINBOURN:** Thank you. The committee wanted to look at how people—children—develop and how to follow that developmental path and those sorts of things. I want to be clear that in this process the committee was not interested in people who engage in heinous acts of sexual violence and crimes against children. It was concerned about a 16-year-old and a 15-year-old who might be engaged not in legal consensual relations, but willing sexual relations, which is quite possible, and then a complaint is made and the law says that that is a sexual offence—it does not matter whether it was willing—and that person gets caught up in the system. I think the report covered that.

The committee sought the advice of experts in the field. It spoke to an expert from Victoria, Dr Russell Pratt, the director of Prime Forensic Psychology. He was involved in changes to the law in Victoria, which focuses more on a therapeutic approach to sexual offending in young people than a punitive one. He talked about the success that Victoria has had in that and how it has moved away from the mandatory registration of children to a system that is designed around getting young people back on track and back into pro-social behaviours rather than antisocial behaviours.

The committee came across one perverse outcome of the register. When people offend and do the wrong thing, they get dealt with by the criminal justice system. The hope of the system is that we rehabilitate them and put them back on a proper path. That should be the goal of the justice system. There is no great controversy in that. Unfortunately, by including those people in a system of mandatory registration and reporting for up to seven and a half years as a child, we essentially are asking them to drag around a concrete block, in a metaphorical sense, for the rest of their lives. They are tarred with the brush of being a sex offender and a paedophile, but often that is not the nature of their crime at all. That can then create the opposite of the point of the juvenile justice system, which is to try to get people back into pro-social activity not antisocial activity. When people are put on the register, they cannot engage in peer-to-peer activities and often have restrictions placed on them in relation to relatives and other things, when there might be no identifiable risk of their reoffending. That is quite alarming. We are putting the onus onto a young person to report regularly to the sex offender management squad office. The committee also heard evidence that the reporting requirements of many of these people are suspended almost immediately following conviction. The system identifies them as not being a significant risk so as to monitor them, but we put them on the register anyway.

The committee received 30 written submissions from a range of different groups and people. Some submissions were received privately and were very helpful to the committee. As members can imagine, some people did not want to identify themselves publicly through the committee process. The committee was happy to take that evidence

on that basis. The committee made 47 findings and 23 recommendations. The government's response has been to accept those recommendations in full or in principle, which I greatly appreciate. I hope that in the new parliamentary term, we will get some reforms.

Another thing that came out of this process was almost a uniformity of view among those who deal with the sex offender register that discretion should be reintroduced. The committee heard evidence from the President of the Children's Court of Western Australia, the Chief Magistrate, the District Court of Western Australia, the Director of Public Prosecutions and the Western Australia Police Force. They all agreed that discretion should be reintroduced. That was a change from the position that had existed previously. In 2011, when the Law Reform Commission of Western Australia undertook its report and recommended that discretion be reintroduced, the position of the police was equivocal. In this instance, WA police agrees that discretion should be available to enable the legal process to identify children or young people who should properly be included on the register and those who should be excluded. I did not think we would get that kind of response from those agencies and courts—it is not a very usual response—so it was pleasing to have that relatively uniform point of view. When the committee made its initial inquiries about the petition, we had submissions from a number of ministers that indicated that the reintroduction of discretion would probably be a better outcome in these circumstances. It is important that the people on the sex offender register are those who pose an actual risk to our community and not those who pose no discernible risk.

This was a pleasing inquiry to be part of. Apart from maybe the elder abuse inquiry that I did with Hon Nick Goiran, this was a most enjoyable committee process, because we were able to deal with an issue of substance and make recommendations that hopefully will be useful. Unfortunately, there was not much coverage of this report in the mass media—no doubt it was not controversial enough for that sort of thing. The important work that the Legislative Council and its members do through these cross-party committees and the great effort that they put in is often not recognised. I have had forensic psychologists who work in the child protection field take an interest in the report. People in the community have also taken an interest in this report. Recently, a constituent came to see me. He is a foster carer of a boy who was put on the register as a 14-year-old for willing, but not consensual, relations with a sibling. The boy is now aged 17. He said that because the boy is on the sex offender register, they cannot take the boy overseas on a trip to Bali or anything like that, he cannot be involved in sport, and there are restrictions on his schooling and a range of other things, yet there is no discernible risk that he will reoffend. We need to consider how we are setting up these young people for the rest of their lives when we include them in this sort of area. I come back to the opening line in my Chair's foreword —

There would be few of us who have not made a mistake as a child that when we would look back on them as an adult wonder ... *what was I thinking?*

Most of the mistakes that we made as a child would have been minor and innocent, and some might have been a bit more serious. All of us, perhaps with the exception of Hon Aaron Stonehouse and Hon Kyle McGinn, have grown up through our childhood without social media and smart phones and the sorts of things that happen now. The behaviour of this generation of children might be innocent, but it can now be recorded and included. I have a 12-year-old, a 15-year-old and a 17-year-old. They live in a world in which they can easily be caught up in the system, and through their youth, naivety and ignorance may end up on the sex offender register. A member of not my direct family, but my extended family, was involved in exchanging pictures, or sexting as it is called. The male and the female were aged only 12 or 13 when they did that. They were not related—they were from different parties—but the police were involved. The police told the parents of both children that if they decided to prosecute, both children would be prosecuted and end up on the sex offender register. Although this behaviour was not acceptable, it was innocent in nature. As parents and guardians of children, we want to make sure that they are not caught up in behaviours that are relatively innocent but are not accepted by the community. The committee was at pains to make the point that we were not looking at the offences themselves, but the consequences of them.

This was a good inquiry in which to be involved. We tried to be as thorough as we could be. We are pleased that the government has accepted the recommendations. I look forward in the new Parliament to the opportunity to potentially, fingers crossed if I am re-elected —

**The CHAIR:** Do you wish to conclude?

**Hon MATTHEW SWINBOURN:** I might have a few more concluding remarks, very quickly.

**The CHAIR:** Hon Matthew Swinbourn.

**Hon MATTHEW SWINBOURN:** I want to finish on this point about being re-elected, Chair. If I am re-elected, I look forward to dealing with legislation that will reform this area and that will, hopefully, have a smooth transition through both houses of Parliament. Thank you, Chair.

**Hon ALISON XAMON:** I have already spoken on this report and pointed out that it is an excellent report. I believe that it will stand the test of time. I have indicated that regardless of whether I am in or out of this place, I will be using this report as a resource in my advocacy. I am pleased that the chair of the committee had the opportunity to speak comprehensively on this report. It is one of the better reports that has been tabled in the term of this government.

Having said that, I move that consideration of this report be postponed to the next day's sitting—actually, that it be noted.

**The CHAIR:** Members, of course I will accept any motion that members wish to put forward, but it is unlikely that we will be meeting again. I do not know whether you wish to conclude and note the report.

**Hon ALISON XAMON:** Thank you, Mr Chair. I would like to move that the report be noted.

**The CHAIR:** Members, it has actually already been moved that the report be noted, so, if there is that agreement, I will put the question that the report be noted.

**Question put and passed.**