



Government of **Western Australia**
Department of **Justice**
Office of the Director General

Our Ref: 05526-2019;
Your Ref: A783600

Hon Matthew Swinbourn MLC
Chair
Standing Committee on Environment and Public Affairs
Legislative Council Committee Office
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Email to: env@parliament.wa.gov.au

Dear Mr Swinbourn

INQUIRY INTO MANDATORY REGISTRATION OF CHILDREN AND YOUNG PEOPLE ON THE SEX OFFENDERS REGISTER

Thank you for your letter dated 17 October 2019 seeking information regarding the sentencing process for adults, particularly whether the Court routinely obtains specialist or other reports when sentencing adult sex offenders.

I draw your attention to section 6 of the *Sentencing Act 1995* which outlines the principles of sentencing, particularly section 6(2) which states:

"The seriousness of an offence must be determined by taking into account –

- (a) the statutory penalty for the offence; and
- (b) the circumstances of the commission of the offence, including the vulnerability of any victim of the offence; and
- (c) any aggravating factors; and
- (d) any mitigating factors."

From a Magistrates Court perspective, generally all sex offences, except indecent assault charges, are dealt with on indictment in the District Court. When sentencing an offender in the Magistrates Court, a magistrate may request a pre-sentence report that could include a psychological report, in appropriate cases. In relation to a charge of breaching reportable conditions, it is less likely that a pre-sentence report (including psychological report) would be ordered but there may be appropriate cases where these reports would be requested.

From a District Court perspective, there are two pathways for adult sex offenders to be sentenced by the District Court:

- 1) After a plea of guilty the offender is committed from the Magistrates Court to the District Court for sentencing. As part of the committal process a magistrate may order a pre-sentence report for the use of the sentencing judge in determining an appropriate sentence. The accused lawyer may make a request for other types of reports such as psychological and/or psychiatric reports. The magistrate and/or judge will consider each request on its merit. Once committed to the District Court the accused will be listed to appear at a Sentence Mention List Hearing where the Registrar will set a date for sentencing depending on the readiness of any reports and/or documentation ordered.
- 2) After a trial before a judge/jury at which the offender is found guilty and convicted of relevant charges. The trial judge is then usually responsible for the sentencing. The judge will decide which reports are required to assist him/her in sentencing and schedule the sentencing hearing.

Over the past five years in the District Court, the majority of all matters with reportable charges have had one or more reports requested. In the main are criminal history reports, however other reports ordered include pre-sentence, psychiatric, psychology and intensive supervision order reports.

Yours sincerely

A handwritten signature in dark ink, appearing to be 'Adam Tomison', with a long horizontal flourish extending to the right.

Dr Adam Tomison
DIRECTOR GENERAL

31 October 2019