

STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

**INQUIRY INTO CHILDREN AND YOUNG PEOPLE ON THE SEX OFFENDERS
REGISTER—IS MANDATORY REGISTRATION APPROPRIATE?**



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
TUESDAY, 27 AUGUST 2019**

SESSION ONE

Members

Hon Matthew Swinbourn (Chairman)

Hon Colin Holt (Deputy Chairman)

Hon Tim Clifford

Hon Samantha Rowe

Hon Dr Steve Thomas

Hearing commenced at 10.01 am**Dr RUSSELL PRATT****Director, Prime Forensic Psychology, examined:**

The CHAIRMAN: Thank you, Dr Pratt, for joining us today. On behalf of the committee, I welcome you to the hearing. Today's hearing will be broadcast. Before we go live, I remind you—in your case you do not have to worry about this because we cannot see what documents you have—to make sure that any private documents you have do not come before your camera. Please begin the broadcast.

As we are videoconferencing today, I would like to advise you that present with me at this end are reporting and committee staff, and the members of the committee whom I previously introduced you to. Can you please advise if it is just you there or if anybody else is present with you?

Dr PRATT: It is just me here.

The CHAIRMAN: Before we begin, can you please state your full name and the capacity in which you appear before the committee?

Dr PRATT: My name is Russell Pratt. I am a forensic psychologist. I am the director of Prime Forensic Psychology. I believe that I am appearing as a witness based on my understanding and experience and expertise in terms of not only young people who sexually harm—in the past we would have referred to them as juvenile sex offenders in this state—but also my understanding of the issues of placing them on the sex offender register in this state, and the changes that have occurred in Victoria over the last 10 to 15 years.

The CHAIRMAN: You will have signed a document titled "Information for Witnesses". Have you read and understood that document?

Dr PRATT: I have.

The CHAIRMAN: These proceedings are being recorded by Hansard and broadcast on the internet. Please note that this broadcast will also be available for viewing online after this hearing. Please advise the committee if you object to the broadcast being made available in this way.

A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record. Please be aware of your microphone, and I think you are already well hooked up, but be conscious as well of additional sounds that may affect the broadcast.

I remind you that your transcript will be made public. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in private session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

You have already given us an indication of your understanding of why you are here today, Dr Pratt, and that corresponds with our reason for asking to speak to you. As you might be aware, the purpose of this inquiry is to look at the appropriateness of mandatory registration as a sex offender for children and young people who commit sexual offences. We understand that you have been the co-

author of the case practice model, “Adolescents with sexually abusive behaviours and their families”, prepared for the Victorian department of human services. Could you, for our benefit, please outline your qualifications and background, as well as the purpose of that document?

Dr PRATT: I have a professional doctorate in psychology, and I have specialist registration as a forensic psychologist and also as a counselling psychologist. For approximately the last 22 or 23 years, I have worked mainly in the field of sexual abuse and treating victims and survivors of sexual abuse. In particular, I am also working with perpetrators of sexual abuse and sexual assault, both children, adolescents and adults. However, my main field of expertise and area of interest has been working with young people who engage in sexually abusive and sexually harmful behaviour.

Between 1999 and 2010, I worked in one of the large hospital networks in Victoria, Monash Health, which at the time was Southern Health Care Network, and I worked in the South Eastern Centre Against Sexual Assault, which was one of the specialist CASAs—the centres against sexual assault—that are geographically located throughout Victoria. When I left there, I was the manager and senior clinician of the Aware program, which was a specific program working with young people who sexually harmed others. It was one of the largest, if not the largest, program of its type in Victoria at the time that I left Monash Health.

From Monash Health, in 2010, I joined the Department of Health and Human Services as the statewide principal practitioner in Victorian child protection, which is one of two specialist executive level roles that specifically was formulated to work with the Department of Health and Human Services, child protection and youth justice workforce in terms of decision-making around complex cases. So my role was to manage cases in half the state; my colleague had the other half. I had the south of the state and the east of the state, and then I moved to have the east of the state and the north of the state. I left that position in 2017. For the last two years, approximately, I have been the director of Prime Forensic Psychology, which is a specialist psychological practice, forensic psych practice, that mainly, again, deals with those who sexually harm; also complex young people, young people in residential care, and specifically around trauma and attachment issues for young people, and those, again, who sexually harm.

The CHAIRMAN: In terms of the “Adolescents with sexually abusive behaviours and their families” document, which we understand you were involved in preparing, can you give us an understanding of the purpose of that document?

Dr PRATT: Sure; apologies about that. That document was written in 2010. It is more of a booklet than a document, and it forms one of a series of what were called at the time specialist practice resources that were specifically for child protection staff. As the name for that one implies, it was a practice resource to assist child protection practitioners to not only understand the theoretical basis and the background issues regarding, in this case, adolescents and also children from the age of 10 through to the age of 18—even though the legislation at the time covered 10 to under 15—background issues, theoretical issues, and also the best practice requirements for engaging with young people and their families around sexually abusive behaviour.

At the time there was a companion volume that was around children with problem sexual behaviours that was written by Jari Evertsz and Robyn Miller. Robyn is the co-author on the document for adolescents. There were approximately seven or eight other practice resources that fitted in with what we had in Victoria at the time as the practice model which was the best-interest case practice model. I believe that the document is still being referred to and still being used actively across the department. It has not been updated at this stage.

The CHAIRMAN: Can you give us an understanding of the developmental differences between a child, a young person and an adult?

Dr PRATT: Do you want me to start right back at infancy, or where do you want me to start in terms of that definition?

The CHAIRMAN: You might be best placed to give us an idea about where it is best to start. Obviously, we are dealing with young people from the ages of their criminal culpability or potential culpability, which in Western Australia is from the age of 10. Obviously what happens before that is important, and also victims in this circumstances are often under the age of 10 as well and can be very young, of course. Perhaps you can give us a broad understanding of the field if you can, as best you can, in the circumstances, but just for our benefit to get an understanding how that is different over time and ages.

Dr PRATT: Of course. I am sorry to keep clarifying, but do you want me to talk about this in regard to sexually abusive behaviours or just general development?

The CHAIRMAN: Just general development to begin with, because I think that is where all children start before the sexual behaviours come into it, and then, obviously, maybe on to the sexual behaviours.

Dr PRATT: Effectively from when children are first born up through the ages of three, five, seven, 10, 12, and then generally around the age of puberty through to 18, it is well recognised at this stage that young people are markedly different from adults; although, from about the age of 13 to 18 it is recognised that children start to develop an adult-like personality. Again, I am speaking very broadly here, because this could be three or four hours of discussion on its own. But it is also recognised at this stage in the psychological field as well as the biological field that, effectively, particularly young children go through a number of what we would call developmental stages, and these stages are written about by numerous theorists. For example, we could talk about Freud, Erikson, or Piaget. Each of these theorists talk about children developing psychosocially and having to achieve different milestones as they grow up through infancy through to adulthood. As an example of this, all the theorists would talk about the first two years of development for a young child or infant. Particularly important in terms of what is thought about of developing positive attachments, or developing an attachment framework, in those first two years of childhood, the child develops the framework for how they view the world. Again, speaking broadly, the young child in those first two years of their life, get to understand or form a view of the world where the world is a safe and predictable place where their needs will be met versus a world that is unpredictable, unsafe and a place where they need to meet all their own needs.

Dr PRATT: Now, generally, we are talking about those, and they are really on a continuum, and those are the two polar opposites on that continuum. Of course, most children do not sit at one or the other, and children who have a suboptimal early attachment experience very rarely have such a cut and dried experience. Some children, for instance, a child who has a particularly attentive parent, generally the mother, who is able to meet their needs and meet them consistently, will assist that child to form the opinion that the world is a safe and predictable place and their needs will be met. At the other end—and it very rarely happens—is a parent who is so non-attentive and so violent and aggressive that the child who cries to get the parent's attention eventually stops crying because they realise that no-one is coming, and they start to self-soothe. Their view of the world becomes that the world is unsafe, it is somewhat unpredictable and no-one is going to meet my needs. We often see parents, for instance, who have drug and alcohol issues and who are at times very attentive parents; when the child cries, they check the child for whether the child is wet, whether the child is hungry or whether the child is tired, and they take the appropriate action. When that parent may be affected by drugs or alcohol, they are unavailable, and, of course, the child then has to meet its own needs by soothing itself. That child in particular struggles to predict what is going

to happen and so forms the view that the world is particularly unpredictable—it is very hard to actually understand what is going to happen in any particular moment—and so the child becomes quite wary of the world. That is sort of how we view those early attachments, and attachment theory posits that the early attachment experience one has is going to predict their attachment experiences through their life span as well.

I am not going to go through every period of development, but I will use the next one between two and four as another particular example. Toilet-training occurs during this period, and we get the idea of autonomy versus shame. A child who goes to kindergarten and is still not toilet-trained is not able to roam free and really is trapped by the notion that they have to have someone else assist them to change and with their toileting, whereas a child who is toilet-trained, of course, can look after themselves, do their toileting and then head out to play again. There is a sense that if you do not achieve that developmental milestone, then, effectively, that is going to cause you problems. They may seem like somewhat insignificant issues at the time, but for a child who is three or four, this is the big-ticket item.

This occurs all the way through the life span. For instance, at my age—I am 57—in a few years, my developmental milestone is to look back on my life and form an opinion on whether I have lived a meaningful life, whether my family relationships are strong and meaningful, and whether I achieved what I wanted to achieve in my working life as well. This will lead me to formulate the idea of my life as meaningful or it has been a wasted life where I have wasted opportunities.

Is that enough to give a sense of development all through the life span or do you want me to fill in some of the middle ages as well?

The CHAIRMAN: What we are interested in is children who perform or engage in activities that are criminalised in a sexual sense, how the criminal law interacts with that and then mandatory sentencing. We are interested in those developmental years from the 10 to 18 period. Obviously, the law is very rigid in terms of how it sets times around that. We might get an understanding from you about whether or not that is appropriate or whether or not the individual circumstances of children need to be taken into account and their own development. I mean, you have given us an indication at the earliest ages that children are getting different experiences—whether they have the attachments that happen or meet their developmental needs—and that impacts, obviously, in later life. We are really interested in that particular understanding about how children are different to adults.

Dr PRATT: Okay, sorry. So, from the age of 10, there are two real developmental stages between 10 and 18, which I assume are sort of the main areas you are interested in. One from about 10 to 13, or we could say 10 to the beginning of puberty, when young people go through puberty, and then from post-puberty through to 18. We know that puberty, on average, occurs at around about the ages of between 12 to 14, so it is quite arbitrary in some ways. When people talk about 10 to 13 and 13 to 18, they really are referring to 10 to puberty and then puberty to 18.

Those 10 to 13-year-olds, they start to develop some of the traits of adults or adult-like behaviour, so they no longer believe, for instance, in what is known as magical thinking. They no longer assign random events to them having some power to change or alter those events. So, for example, a younger child who finds \$10 in the gutter may believe that they actually had something to do with finding that—that they are inherently lucky and that they basically will find more money than the person next to them. By the age of 10, that thinking has disappeared, and a child is able to understand their ability to impact on the world in general and the world's ability to impact on them as well. They start to understand responsibility for criminal behaviour, or behaviour that is not particularly desired. They understand the difference generally between right and wrong, and can

understand quite complex situations in terms of what is right and wrong, what is a lie and what is not a lie. They are beginning to become interested in romantic relationships, sexual development and also sexual relationships, and some of them will be engaging in what we would see as sexual activity for the purpose of sexual arousal, particularly more towards the age of 11, 12 and 13 rather than at 10 or 11. When you look at a child who is 10 or 11 versus one who is 12 or 13, you can see that they are very, very different. We are looking at still quite small children versus almost adolescents, if that makes sense.

[10.20 am]

Young women generally tend to be more mature than young men, and often young children—11, 12 or 13—do appear to be more mature than young men of that age, and often the girls develop physically faster than the boys. So again, if you look at a grade 6 school photo, you will see that the girls tower over the boys in a lot of instances. By about year 8 or 9, that phenomenon has been reversed, and all the boys start to develop and become bigger and stronger than the young women as well. Definitely the idea of understanding the idea of criminal behaviour, somewhere between the ages of 10 and 12, is reasonably well developed. Also, their ability to understand privacy, the boundaries of sexual roles and norms, and what is appropriate and what is not is also reasonably well developed by that time.

In terms of then moving to the 13 to 18-year-olds, what we generally see during that period is really a replication of virtually adult sexual behaviour, particularly by the time we get to about 15 and on. Some of the Australian research that has been around—particularly research that is undertaken by La Trobe University, which has run a very broad based health study that includes sexual health over about the last 20 years every five years—indicates that by the age of 15, about 30 per cent of a sample of Australian young people, or Victorian young people, will be engaging in sexual activity, including sexual intercourse. By the time that sample gets to the age of 17, about 50 per cent of the sample will be engaging in sexual activity, including sexual intercourse as well. Again, by that age, their ability to understand criminal versus non-criminal, right versus wrong, lies versus truth is generally well developed and broadly across the whole population, unless, of course, we have intellectual capacity issues. Would you like me to go on?

The CHAIRMAN: I think you have covered most of what we wanted to deal with on that particular area. Any sexual behaviour with a child under 16 years of age, or 18 if the offender is in a position of care or authority, is potentially subject to mandatory registration as a sex offender in Western Australia. Given the range of behaviour that the criminal justice system and mandatory registration may capture, the committee is interested in learning the differences between behaviour associated with the normal sexual development of young people and harmful or abusive sexual behaviours. Given that, how do you determine whether sexual behaviour is age appropriate?

Dr PRATT: Am I able to hold up a book that I referred to?

The CHAIRMAN: Absolutely.

Dr PRATT: I do not know whether you can see this.

The CHAIRMAN: Yes.

Dr PRATT: This is a fairly comprehensive book. It is 42 pages long.

The CHAIRMAN: Can you read the title?

Dr PRATT: It is “Age Appropriate Sexual Behaviours in Children and Young People: Information for carers, professionals and the general public”. It is published by Monash Health, in particular the South Eastern Centre Against Sexual Assault. It is a number of years old now; I believe they have just

reprinted it. But this guide and many others like it work on what is referred to as a traffic light system. I am not sure that you can see those covers that I am holding up?

The CHAIRMAN: Yes, we can.

Dr PRATT: It is a system that has been around for many years, going back to the 70s. It is a traffic light behaviour system that tells us that green light behaviour is for any particular developmental age or stage, and will be referred to as immediately recognisable as appropriate behaviours for that age. Red light behaviours are going to be virtually and immediately recognised as problematic or potentially criminal behaviours for that age and stage. And yellow light behaviours are people who will be unsure and will likely require more contextual information to understand whether they are appropriate or inappropriate behaviours. As I say, this system has been around for a long time and the actual behaviours within it have really not changed very much since Toni Cavanagh Johnson and her colleagues started writing about this in the 1970s. The only thing that has really changed over time, of course, is the impact of technology and the ability that technology gives young people to form or undertake behaviours and engagements with other young people that we would not have dreamed off in the pre-digital era.

So thinking about that idea of what the differences are between criminogenic or inappropriate behaviours developmentally, and appropriate and non-criminogenic behaviours, we have two, even though they are well related, different sets of rules there. I will give you an example. I want to be clear here that I am not commenting on the appropriateness of the age of consent. It is what it is at 16, as it is in Victoria, as I believe it is in every jurisdiction in Australia, but in some ways it is an arbitrary age of consent. There is no reason from a developmental sense that it could not be 15 or 17. I think most people would agree it should be post-pubescent, but in some ways it does not rely on anything developmental that would be particularly different, particularly if we raised it to 17, and most likely if it was lowered to 15. Not that I am advocating those; I am just putting it forward as an example.

When I referred to the research from La Trobe University, their sexual health study, their findings that a large percentage of 15-year-olds—a third of that sample—are engaging in sexual intercourse, really tells us that that behaviour for 15-year-olds is in the normative area of sexual behaviour, even though it sits below the actual age of consent. So for criminal justice systems it becomes a difficult issue in some ways because we are trying to delineate a criminal behaviour where a lot of that population are doing it, if that makes sense.

The CHAIRMAN: Yes.

Hon COLIN HOLT: Dr Pratt, can I paraphrase a little bit: you are basically saying that, potentially, a 15-year-old sees sexual behaviour as quite normal. I think you said earlier that when they are about 15, 16 or 17 they know the difference between right and wrong.

Dr PRATT: Yes.

Hon COLIN HOLT: But, of course, in what sort of sense is that? Obviously, if they see sexual relationships as quite normal, they actually may not know the law that is wrapped around that normal sexual behaviour. So when you say that what is right and wrong, in whose eyes is that—the law's eyes or their own eyes? How does it fit together?

Dr PRATT: My sense is that most young people are aware of the age of consent because, of course, by the time they get to 15 they have engaged, generally if they are in the school system, in sex education, and in most jurisdictions sex education covers the legal aspects of sexual activity as well. That is just a sort of commentary to put in there. It is fairly normative in terms of child development that or post-pubescent children, or young people, are biologically primed to form romantic

attachments, and engage in romantic and at times sexual relationships with the people that they desire. So when I talk about that being normal or normative, biologically, that is what we would see as normative behaviour and normal behaviour. Children who engage in sexual activity with others who are under the age of consent, a number of them—a good percentage I would posit—are aware that they are breaking the law. But they would probably—again this is a broad generalisation—but, again, they would see it as a behaviour that is desirable and would weigh up their romantic relationship, their sexual relationship with how it fits in with the law. Most jurisdictions, or a number of jurisdictions, recognise the issue of young people under the age of consent engaging in what would otherwise be consensual sexual activity with their peers through the plus or minus two-year situation. I am not sure whether you are aware of that, or whether you want me to talk about that.

The CHAIRMAN: You could talk about that; that would be good.

Dr PRATT: I will talk about Victoria. In Victoria, there is a recognition that plus or minus two years—with 12 being the age that is the minimum age to engage in sexual activity without child protection being interested in that; it used to be 10. But between the ages of 12 and 16, if there is less than two years between those young people, there is this uncomfortable situation where the law may not be as interested in that situation as they would be if a young person was aged over 16 engaging in the young person under the age of 16. That is when it is referred to as the plus or minus two-year rule. So, for example, a 16-year-old engaging in what would be consensual sexual activity with a 13-year-old may be recognised as being developmentally appropriate and may not be pursued by the law as vigorously as if it was over two years.

[10.30 am]

The CHAIRMAN: So when is behaviour by children or young people considered as sexually abusive behaviour? When does it reach that threshold?

Dr PRATT: Any time that there is more than two years' difference if a child is under the age of 16. For example, a 15-year-old with a 12-year-old or younger; any time that two children are under the age of 12, we would be very interested in that. It would be difficult sometimes to sort out the perpetrator and victim of these behaviours, but certainly any time that the older child and a younger child under the age of 12 engaged in sexual behaviours it would be seen either as problem sexual behaviours if they were both under 10, or sexually abusive behaviours if neither of the children was over 10. So, yes, anything more than two years, and, of course, any time that a young person under 18 engages in sexual behaviour with a child under the age of 16—that would be seen as criminal behaviour. Of course, even if you have two 15-year-olds, there has to be consent. If there is no consent, of course, it is a criminal activity. Consent has to be understood, so you have to understand what you are consenting to. If there is an intellectual disability for one of the young people, that is going to impact on consent. I am just trying to think of other situations, but it is reasonably sort of clear-cut where there is coercion or force and when the age is too great to allow consent to take place.

The CHAIRMAN: In your view, should children and young people who engage in and are prosecuted for age-appropriate sexual behaviour be recognised as sex offenders?

Dr PRATT: It is a broad question. I guess the broad answer is most likely not in terms of that terminology and based on the broad behaviours that we see. There are always going to be individual situations that are so problematic that we would see them as sexually abusive or sexually harmful. We have tried to steer away from the language of “sexual offending” for young people, so the semantics are seen to be important, but I think the spirit of the question is whether they are offenders. Under the law, yes, but it then becomes difficult to treat. What are we treating if it is an arbitrary law situation? That is when it becomes difficult.

The CHAIRMAN: We have mandatory registration here in Western Australia, and that is what we are concerned about—the appropriateness of mandatory registration where children who might be caught up in age-appropriate sexual activity but which is criminalised then end up on a mandatory register for a significant period of their life; they are on the register forever and they have the reporting requirements for a number of years.

Dr PRATT: Yes. I am well aware of that. I have written on this before and spoken about it quite extensively in America, Europe and Australia. My view is that it is not helpful to put the majority of young people who may be engaging in developmentally appropriate sexual behaviour post-pubescence onto a register that requires reporting for a period of time. Our Victorian therapeutic treatment orders legislation in some ways recognises that. It moves the behaviours somewhat out of the criminogenic or the criminal justice system and places it into the child protection framework and also the child developmental framework for treatment. I would have to say that no, I do not see it as a particularly helpful to put these young people on the register. I did read all of the submissions as well that were on the web. I read everything that you had on it regarding this committee and, certainly, that seems to be a reasonably—I think most or virtually all of them were in agreement as well, from my reading.

The CHAIRMAN: Yes, there has been a strong theme on this. We are obviously conscious of the fact that the Victorian laws have recently changed to make some changes to the way they deal with these things.

Dr PRATT: Yes.

The CHAIRMAN: That is why we are interested in speaking to people like you who are in the system and asking what your focus is on when you are dealing with children who are caught and prosecuted, but then what is the appropriate response as a society—do we deal with them as sexual offenders or do we try to help them with a therapeutic approach?

Dr PRATT: Yes. Can I just refer to a document that I sent you. I am not sure that you have got it; I will hold it up in a moment. It is by Michael F. Caldwell and it is “Quantifying the Decline in Juvenile Sexual Recidivism Rates”. It was published in *Psychology, Public Policy and Law* in 2016. I have it in front of me.

The CHAIRMAN: I cannot read that from here, but thank you. If you have sent it to us, we will have it.

Dr PRATT: I did send you a PDF, so you should have it somewhere. I did not expect you to read it. It is quite a long document. But this is a seminal article and piece of meta-analysis in terms of what I do and my colleagues do, because Caldwell, who is a well-respected researcher in America and has been for a number of years, did a meta-analysis that basically looked at the recidivism rates going way back to the 1930s—1938 in fact—through to 2014, with a follow-up of around about five years in terms of looking at recidivism. He had 33 000-plus young people in that meta-analysis. What he actually found was that the recidivism rates for these young people—in other words, when young people are found to have engaged in sexually abusive behaviour and, back then, in sex offending behaviour, that the recidivism rate—in other words, those who go on to do it again—between 2000 and 2015 was found to be less than three per cent of that sample. So one of the things that I am very aware of is that we are putting people on a sex offender register, or potentially putting young people on a sex offender register, for the purpose of protecting society and, in actual fact, less than three in 100 of them are going to recidivate. Even if we made the case that some of them do it and get away with it, let us triple it—let us make it 10 per cent—90 out of every 100 of these young people are never going to do this again. So from a financial basis, from a resource basis, it does not make a lot of sense. It is also, of course, where these young people are very different from adult sex

offenders, who do not recidivate at a particularly high rate, but certainly recidivate into double figures.

The CHAIRMAN: Is there any evidence that the existence of a register stops people from reoffending?

Dr PRATT: For young people?

The CHAIRMAN: Yes.

Dr PRATT: Not for young people. Look, I have to be careful here because the research is a mixed, to say the least. The majority of—well, the research indicates that the register or re-registers are not particularly helpful for young people, and, in particular, because so few of them recidivate, it is very difficult to understand how we would stop those last three from recidivating. Also, the majority of young people are at low risk of recidivating, rather than being at high risk. If we were going to talk about a register for young people, I think it would be a very selective register and we would have to delineate those young people who were at high risk of recidivating or who had engaged or committed—perpetrated—a sexual offence that was so heinous that the public outcry was such that a register may be logical, or placed him on a register; you can see that we would end up with very, very few young people on that register.

The CHAIRMAN: Is there anything, from your profession particularly that points to reliability, or predictability, of recidivist behaviour? When someone comes before the court for a first time, is there stuff about their personality, the nature of their offending, their psychological make-up, those sorts of things, that would indicate that these people are more likely to commit further crimes, that you could predict, that a court could predict, and therefore put them on the register with that protective mechanism?

[10.40 am]

Dr PRATT: Whilst there are no causal background factors—in other words, if you have this, this is definitely going to happen—there are a number of factors that are worthwhile commenting on. Certainly, the background factors that we see the most—Phil Rich who is a well-recognised practitioner and also writer in the field of sexually abusive behaviours and juvenile sex offenders in America, found 136 background factors that were relevant to the treatment and management of young people who were juvenile sex offenders. That is far too many factors to actually be meaningful. But the top four, which continue to come up as those top four factors, were being a witness to or being exposed to family violence, so a victim of family violence or watching their parents engage in family violence, or your father against your mother; long-term low-level neglect, which we also call cumulative harm in Victoria in the child protection framework; being a witness to inappropriate sexual behaviour, which has really now been overtaken by viewing pornography on your digital devices. The last one, of course, was replicating or re-enacting your own sexual abuse, your own experience of sexual abuse, which about 30 to 40 per cent of young people who engage in this behaviour, sexually abusive behaviour, seem to be replicating their own abuse, but it is heavily skewed to the younger children in those figures. So we could screen for those. We have a number of risk-assessment tools, which are not perfect but they certainly do a reasonable job. We also know that young people who are inflicted with autism spectrum disorder, ADHD and intellectual disability are highly over-represented in our figures. That is most likely because of the issue of impulsivity and the inability to self-manage that comes with some of those behaviours. So you can see we start to build up a complex future that it would be very difficult to make arbitrary rules around those things, because, for instance, there are a significant number—more intellectually disabled young people who do not engage in these activities, or behaviours, versus those who do. But they are over-represented in our figures.

The CHAIRMAN: I think that is an important point to make about people with cognitive, intellectual disabilities and autism. That does not mean you will become an offender.

Dr PRATT: No, not at all. There is one more thing I should say—I am sorry, I neglected this. Generally there is a group of young people that we could refer to as conduct disorder. It is a psychological diagnosis, and it basically describes young people who really engage in quite criminogenic behaviours, problematic behaviours. They are destructive, they do not follow rules, they are impulsive, and those young people tend to be more difficult to treat for these behaviours than young people who are what we call sex-plus and sex-only. That is not the greatest terminology, but the majority of young people we get who sexually harm actually function quite well. They go to school, they have good, positive relationships with their families, they do not abscond, they do not use drugs and alcohol, and they do not engage in other criminal behaviours. They are our sex-onlies—they are reasonably positive or respond well to treatment. The sex-plus are the young people who are described as conduct disorder. Those young people engage in a number of problematic behaviours, including sexually abusive behaviours, possibly because they find themselves in situations where that is possible. They are more difficult to treat for one logical reason: we struggle to get them in the door and we struggle to keep them in treatment.

The CHAIRMAN: Just changing tack a little bit. The committee understands that children and young people typically offend against other children and young people; however, this does not mean that young offenders are paedophiles. Can you explain to the committee what the difference is between a child or young person offending against another child and a paedophile?

Dr PRATT: I think it is probably best to start with the terminology for a paedophile, which again appears as a diagnostic label in the DSM-5 at this point in time. Effectively, it describes a person who is over the age of 16, whose primary sexual attraction is to children and who has sexually assaulted a child or children over a period of more than six months, so this has been an issue for them for a period of six months. Generally, that is the diagnostic label. Generally, when we talk about paedophiles, we agree that they are adults, or at least over 16, but it is well recognised that they are primarily sexually attracted to children. They are not particularly interested in adult sexual relationships or adult sexual interactions, so they are sexually aroused to children. Some of them are preferential in that they actually have qualities that they see in children—in terms of specific age, specific body type, gender, hair colour, eye colour—versus those who are just interested in children broadly.

There is some research coming out of Canada by James Cantor and his colleagues that suggests that paedophilia is biologically based and effectively something goes wrong between conception and birth that results in people being paedophilic, for use of a better term. There are some associations between left-handedness, low IQ and shorter than average height and paedophilia, which sort of worries a lot of people, but the important message is that the estimates of paedophilia in the community are really about one and a half to three in 1000 males. It is predominantly male as well. Out of those one and a half to three in 1000 potential paedophiles, about half of them will actively sexually assault children at some stage during their lives. So, you can see that it is a specific term, it is a diagnostic term, and it is specific to a very small number of men who are primarily attracted to children.

The majority of young people who sexually harm do so because of the issues of access and opportunity. They may identify—again, to put it into simplistic terms, a 15-year-old boy who for all intents and purposes identifies as heterosexual and being very interested in a relationship with a 15-year-old female at his high school may still sexually assault his six-year-old brother at home because he had the access and the opportunity to do so rather than the desire. This is something

that I have written extensively on—others have as well—and it is based on the doctoral research of Dr Jo Hatch, who is a Melbourne-based psychologist whose doctoral research investigated who—adolescents and particularly adolescent males—were most likely to sexually assault in the community. She found that effectively the most likely people to be sexually assaulted by an adolescent male were their brothers and sisters, followed by their step-brothers and sisters, followed by their cousins, followed by close acquaintances, and then—way, way, way down the line—by strangers. Her conclusion was that it is the access and the opportunity that is everything to these young people. You can see that it has nothing to do with desire and—I will not say in opposition to paedophilia, but not related to paedophilia at all.

The CHAIRMAN: Thank you for that. What can you tell us about children and young people who display harmful or abusive sexual behaviours? I think you have covered this to a large degree, but is there anything additional that you want to add to that sort of cohort of people who do display those sorts of behaviours?

Dr PRATT: There are a couple of things. Over the 20-or-so years I have been doing this work—I do not have the figures for this, so this is a little bit anecdotal—the average age seems to be about 14 years of age that young people come in. Predominantly it is males, so we get about 90 per cent of young men who engage in this behaviour, and predominantly they are engaged in sexually abusive behaviours against their younger siblings. The majority of them are not conduct disordered, so for all intents and purposes, they are engaged in their community, they are well liked by their parents, their friends and other people on the community, and—this may sound surprising—even their victims, their brothers and sisters, value the relationships with them; they just do not like the sexual abuse. Again, I am talking broadly, of course.

We know that when we talk about grooming, we have four types of grooming: we have tricks, treats, fear and force. These young people tend to use tricks and treats, which basically is saying that they entice their younger siblings into these behaviours by saying, “If we do this, we can go and play basketball. If we do this, you can hang out with my friends” or “I will give you \$5 if we do this.” Very few of them are particularly violent towards their young siblings to engage in this behaviour.

Again, the other thing we know about this group is that they respond to treatment very, very well; they engage in treatment very well. The conduct-disordered young people, not so much, but still the recidivism rates tell us that those young people who are conduct disordered are far more likely to recidivate in non-sexual criminal behaviours than to engage in these types of sexual behaviours again. Overall, they are a very engaging group to treat, and they do respond to treatment well, and we do have very good treatment paradigms for them in this state and in this country. And, they turn up. They come. The majority of them turn up to treatment, and generally they turn up voluntarily.

[10.50 am]

Hon Dr STEVE THOMAS: Is there a family dynamic that predisposes itself to having children in this sort of case? Is there an availability of pornography in the home or whatever it is? Is there a dynamic that lends itself to this outcome?

Dr PRATT: I spoke briefly about the impact of long-term, low-level neglect and also family violence, so there are those background factors that do appear to be in the backgrounds of these young people statistically quite regularly.

In terms of pornography, going back 10 or 15 years, we might say, yes, there is some research around that sort of indicates that there is a link between the availability of pornography and problems in families. But, again, now that virtually every young person from 10 and up has access to devices such as mobile phones, computers and tablets, the research is indicating that by the age

of 15, virtually every young person has either accessed porn willingly or has stumbled across it, so we are not seeing those correlations in regard to pornography viewing and problematic families as we once did. If that makes sense? But, certainly, the family violence and the neglect—long-term, low-level neglect—is certainly there and, of course, there is a statistical correlation between family violence in a home and adult sexual abuse of children. Right across the life span, there is a correlation between family violence and sexual abuse.

The CHAIRMAN: You did talk about treatment, but I was hoping we could get a little bit more information about what treatment can be provided to young people who display sexually abusive behaviours and that sort of thing. You did say previously that it can be highly successful, so can we get an idea about the specifics of that?

Dr PRATT: Sure, yes. I will just clarify, it generally is highly successful, which is a real positive. Over the last 20 years, there have been well-documented programs, at least throughout the western world. In this country we are heavily influenced by New Zealand, the UK, Canada and America in terms of our treatment programs, and we have had many, many visitors to this country who have assisted us with our treatment. Most of the treatment models—you will see there is a treatment model in the specialist practice resource that you referred to that I wrote earlier with Robyn Miller—really are a trauma centric-type model. In other words, they assume that young people engage in sexually abusive behaviour generally to either manage some background trauma or to manage difficult and problematic internal states, such as anxiety, depression, fear et cetera. In other words, rather than being about sex per se—even though there is a percentage of young people who are sexually curious or are replicating their own sexual abuse—we are thinking that these young people are engaging in this behaviour to actually manage something that is going on internally for them. So, our model of treatment really is either a three or a four-pillar treatment model which focuses on—there is psychoeducation, of course, which must include information about the law, appropriate sexual behaviour and appropriate boundaries. Then in terms of the actual therapy, we are assisting young people to, first of all, identify their background issues. We are teaching them skills to manage problematic internal states and manage high anxiety to work through their trauma. It really is just an exposure-type model where we are assisting young people when they are feeling out of control to use positive behaviours such as breathing, exercise, dance, meditation, guided imagery and CBT-type treatment to manage these behaviours. So, rather than go and sexually assault your little brother because you are feeling out of control, you are going to actually manage yourself in more appropriate ways. This treatment model has been very successful in this country, particularly in Victoria and New South Wales through the New Street programs, in Queensland through Griffith University programs, and South Australia through Alan Jenkins' work. Generally, throughout most of Australia we are seeing very successful results with this type of treatment program.

The CHAIRMAN: Does that include Indigenous populations? For example, in Western Australia, we have large remote Indigenous populations. Is there evidence to support that these programs are equally effective for those groups as well?

Dr PRATT: The programs I have talked about are not as effective with Indigenous populations for a number of reasons. First of all, because these programs are really modelled on the nuclear family model where we expect one or two people to be responsible for the children who are in treatment and, of course, Aboriginal and Torres Strait Islander populations really are collective communities—as you would most likely be more aware than I am, living in Victoria—but are not as effective because we struggle to identify the family members that really must be part of treatment. Also, just because of the transience and, I guess, the lack of resources within many of the Indigenous

population centres, we really struggle to get the Aboriginal families to engage in our treatment services and to stay engaged with them for the period of time that is required.

The CHAIRMAN: Do you think there is any reason to think that with further effort, resources and investigation, we could not extend those successful models to Indigenous people?

Dr PRATT: Yes, and that work is already taking place. Griffith University, for instance, has run a very successful outreach program for a number of years—well researched, well documented through Stephen Smallbone's work and Sue Rayment-McHugh's work. I believe there is a number of Western Australian programs that also provide outreach; I am sorry, I am not overly familiar with them. But, yes, where outreach models are used and where they are tailored to that population, definitely success is occurring. Probably not at the same level at this point as a program based in the Melbourne CBD, for instance, where you have got lots of other resources and lots of other services. The tyranny of distance is what I would call it as well, because we do like to see these young people regularly and treatment generally goes for around about a year on average. So, you can see some of the issues that start to get built in if you live 200 kilometres or further from a treatment centre.

The CHAIRMAN: Yes. Victoria's therapeutic justice response for children and young people includes treatment orders for young people facing criminal charges for sexual offences. The committee would like to understand how that system works. The first question we have is: what is the aim of the therapeutic order provisions?

Dr PRATT: Well, the aim of the therapeutic treatment order provisions was really to assist young people to recover from these behaviours and to recognise that developmentally they were very different from adult sex offenders and that they could go on to live meaningful lives without their adult persona being identified as an adult sex offender persona. It really had its basis in child developmental principles, understanding the difference between adult sex offenders and young people who sexually harm. That really was step 1. I have been involved in therapeutic treatment orders from the early working parties forward and I sat on the Therapeutic Treatment Board for seven years, so I am well aware of the development of that system. It was unusual because it took legislation that dealt with kids who were sexually abusive and engaging in criminal acts and placed it into child protection legislation. Again, its purpose was to provide treatment to those young people who did not necessarily have access to treatment through the criminal justice system. When I started this work, which was pre-therapeutic treatment orders times, we would have young people who would only come to treatment when they were ordered through the criminal justice system. So, if a young person was not convicted of these behaviours, it was like it did not happen and they would not access treatment. We are aware of how difficult it is to get a conviction for a sexual offence, particularly if you have a young child as the primary victim, five or six, who then becomes that witness; it is very difficult to get a conviction. Again, you would be aware of that. So, we were getting very few young people into treatment through the criminal justice system. Placing these behaviours into a therapeutic treatment framework allowed us to offer treatment to young people without them actually having to go through a criminal justice response.

[11.00 am]

It is a two-pronged system. We have young people who are placed on formal therapeutic treatment orders, which are formal child protection orders. The vast majority of young people who engage in therapeutic treatment do so voluntarily. They have all the protections of the legislation, but they do not require an actual formal order. As long as they actively attend and engage, then it is all voluntary, but, again, they are protected by that legislation. The treatment is paid for as well, which, again, is a huge thing. Just under \$10 000 per client per year is what it costs to treat these young people under therapeutic treatment orders legislation.

The CHAIRMAN: Has there been any research done on what is saved by putting these young people through these systems?

Dr PRATT: I am not sure there has been a financial analysis of it, but it was recognised in about 2007 when the state government—a Liberal state government—doubled the funded places and put another \$2 million, from memory, into it. Effectively, a government with a stated law and order agenda saw the value in this system and saw the financial savings in it as well. It is very, very cheap treatment, as I think you would agree.

The CHAIRMAN: Who becomes eligible for these orders?

Dr PRATT: For the voluntary treatment and the orders, or just the orders?

The CHAIRMAN: Well, for both I suppose. Yes, it would be interesting to know.

Dr PRATT: Okay [inaudible] —

The CHAIRMAN: Oops. Are you still there? Have we still got him? Hello? We seem to have lost our connection.

Dr PRATT: — so every child [inaudible] —

Hon Dr STEVE THOMAS: It is trying to buffer.

Dr PRATT: Can you still hear me?

The CHAIRMAN: We can hear you now. We basically did not hear any of your answer, because you froze.

Dr PRATT: Okay. I am sorry about that. I do not know what happened, but we will try it again. I said that anyone between the ages of 10 and, now, 17—which really takes us up to the age of 18—in Victoria is eligible for a therapeutic treatment response. And, of course, they have to have engaged in sexually abusive behaviour, and it has to be particular [inaudible] —

The CHAIRMAN: We have another problem. Are you able to hear us? We cannot hear you.

Dr PRATT: — in other words, we have to understand that if something has—can you hear me?

The CHAIRMAN: No, we keep losing you. Shall we perhaps hang up and then remake the connection?

Dr PRATT: Let us try it again. I think what might have happened is that there is something going on with my phone, which—I do apologise, I am actually running this off my Bluetooth.

The CHAIRMAN: Oh, okay.

Dr PRATT: So, apologies, if you can bear with me, I will just keep trying.

The CHAIRMAN: No, we do appreciate your time. Please go on.

Dr PRATT: Okay. I am not sure what you got, but I did say that anyone between the ages of 10 and under 18 can engage in this behaviour voluntarily in Victoria. Basically, we have a geographical system of 13 places across Victoria where they can access treatment, generally centres against sexual assault. We have to have a documented or a defined behaviour; in other words, a young person, we have to know something has happened, and it has to be able to be particularised, if that makes sense. It is not a program if Johnny has been saying rude words. So there has to be a sexual behaviour, and those young people are eligible for 12 months of voluntary treatment at no cost to them. The beauty of the legislation is it talks about their parents and their family as well, so it covers off on their whole family. If a child or their family is unable or unwilling to attend treatment, then an order can be sought through the child protection system and through the Therapeutic Treatment Board making a recommendation for such order. Then that becomes a standard child protection

order, which can be enforced in the same way as any family preservation order, family reunification order, in the same way, and, effectively, then that can be extended by one year in circumstances where more than 12 months' treatment is recommended.

The other thing is if a young person is charged with sexual offences, then effectively the magistrate who is hearing the charges is required to stand down those charges and order the young person for treatment. If that young person is successful with treatment, a report is made back to the court in 12 months' time, and if the treatment is deemed to be successful, then the charges are set aside. That is pretty much what happens.

The CHAIRMAN: That is a great summary, because you have answered about five of my other questions here as well. I suppose a key question is: what is your opinion about the successfulness of this Victorian system in rehabilitating children and young people?

Dr PRATT: I have only positive things to say about it. There was a review done—it has never been released, unfortunately—of the therapeutic treatment orders system in 2010, so when it had been in action for three years, which indicated that treatment was successful to a best practice standard. About 95 per cent of young people going through the system or through the treatment were deemed to have successfully completed treatment and were what we call managing their sexually abusive behaviours. In other words, they had not recidivated. There has not been any further assessment of the system, but, certainly anecdotally, it is a very successful system. In the last 12 months, I had one young man who I engaged with in a private capacity who had recidivated after treatment, and it was telling that the treatment service that had engaged him in the therapeutic treatment were devastated by him recidivating, because it was the first time that this had occurred in 10 years for them. So I think that tells you how rare this is.

The CHAIRMAN: Yes. I think the crux of what we are trying to get at here, and what is really important, is that you have talked about all the therapeutic responses and the benefits and successes that they can have. What impact does mandatory registration as a sex offender have on the success, would you think, of those therapeutic approaches that you have talked about, where people are then imposed with a series of reporting requirements for several years after they are convicted, for young people particularly?

Dr PRATT: Yes, I do not think that it does anything but negative things, particularly for young people. The majority of these young people, as I said, if we have such low recidivism rates for young people as a starting point, it does not make sense to have a broad-based mandatory reporting scheme and a sex offender scheme for young people. Developmentally it does not fit, because it posits that young people who engage in sexually abusive behaviours are automatically going to become adult sex offenders, and that we need to check up on them for the next seven and a half to 15 years, which, again, none of the research bears out at all. It gets in the way, in that it has such detrimental effects on their lives and on their families' lives that are out of all proportion to the community safety provisions that a register should provide. In fact, it is questionable whether it provides really any safety to the community for virtually every young person that would be placed on it.

The CHAIRMAN: Have you dealt with any children that have been placed on a register and the impacts that that has had on them?

Dr PRATT: I have. I can only speak broadly.

The CHAIRMAN: Of course, yes.

Dr PRATT: When I was the statewide principal practitioner, we had a young person come over from Western Australia and reside in Victoria who wanted to complete their schooling. Of course, the way that the register requirements work is that you have to comply with the state's compliance

requirements that you live in, and when that young person moved to Victoria and started going to school, at the time, we required a report on every young person that that young person came into contact with within three days. There were 750 young people at the school that that young person was going to, and child protection and police were supposed to go out and interview each one of those 750 young people, which is not possible, for a start, but also the young person was deemed to be a low risk, developmentally at 16 or 17 should be forming romantic relationships and friendships, and the expectation was that this young person or their family were required to tell other people that came into contact in a meaningful way that they were on the register. So, again, from any way that you cut it, it did not make a lot of sense. All it would have done was isolate that young person. It would have been questionable if they could finish school. It is hard enough moving to a new state. You could think about young people and their parents who were told that this young person was a registered sex offender, and what that would do for their normative or potentially positive interactions.

[11.10 am]

The CHAIRMAN: I think my final question is: do you think there should be some children or young people put on the register? Will there be circumstances where it is appropriate?

Dr PRATT: After 20 years of engaging in this work with young people at a fairly consistent level, and seeing every difficult case in the state for seven years—or at least half of the state for seven years—I think I have seen two young people in that 20 years who concerned me to a point or to a level that I was concerned about them becoming adult sex offenders, and they were involved in the criminal justice system all the way up through their lives until they were in their mid-30s. I have continued to interact with both those two young people, and also a number of young people who have been successful in treatment who, for some reason, come back when they get married, or show me their children. I think it is to sort of say, “Look, I turned out okay.” So if I take those two young people out of all those thousands, I am not sure that we could create a register that would be so selective, if that makes sense. So, broadly, I do not see it as a good idea. I think that the criminal justice system in general covers off pretty well the young people that—we do it better than we did 20 years ago. I think we can always find one or two young people in a generation who are going to cause us concern. The question is whether it is appropriate to formulate a scheme for those few young people. I am sorry, I am probably not answering your question very well.

The CHAIRMAN: No, I think you have answered it very well actually.

Hon COLIN HOLT: Can I just quickly follow on from that? The changes in law in Victoria gave the discretion back to the sentencing judge, probably in the children’s court. Do you know if they reviewed how they assess young people? Did they use new screening tools or did they just continue the way they used to do it to actually understand themselves how they might make a decision to be on the register or not? Did they do something different?

Dr PRATT: They did not do anything particularly different. Am I allowed to mention one of the submissions and the name of the judge that is clearly identified in that?

The CHAIRMAN: Yes.

Dr PRATT: Judge Jennifer Bowles, I believe, provided a de-identified case from Victoria to your committee. It talked about a situation in which she placed a young person on the register in 2009. At that point in time, she had spent quite a deal of time—I believe it was probably her ruling—to explain how she actually came to that decision. When I reviewed that, I could not see anything that was particularly new in there. However, she showed a remarkably strong understanding of child development, attachment and juvenile sex offender issues at the time, and sexually abusive

behaviour issues and the difference between adult sex offenders and young people. Even though she came to a decision that this young person should be on the register, I think that she showed that good training and understanding of what is out there to use at that point in time, can most likely provide an adequate framework of going forward with decisions. There was nothing new but just a good use of what was out there.

The CHAIRMAN: Dr Pratt, I really appreciate your attendance today and for giving your time freely and your advice. This brings the hearing to an end. Can we stop the broadcast.

A transcript of this hearing will be forwarded to you for correction. If you believe that any correction should be made because of typographic or transcription errors, please indicate these corrections on the transcript. Errors of fact or substance must be corrected in a formal letter to the committee. If you would like to provide additional information or elaborate on any particular points, you may provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence. Once again, I would really like to thank you for your perseverance. Skype is a very useful tool but it has its limitations and you persevered through that and we greatly appreciate it. I certainly appreciate the insights that you have given us into children and young people. Thank you.

Dr PRATT: Thank you for having me speak as well. I appreciate it.

The CHAIRMAN: No worries, thank you, and all the best.

Hearing concluded at 11.15 am
