

**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  
MONDAY, 26 AUGUST 2019**

**SESSION THREE**

**Members**

**Hon Matthew Swinbourn (Chairman)  
Hon Colin Holt (Deputy Chairman)  
Hon Tim Clifford  
Hon Samantha Rowe  
Hon Dr Steve Thomas**

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**Hearing commenced at 1.02 pm****Mr STEVEN ALEX HEATH****Chief Magistrate, Magistrates Court of Western Australia, examined:**

**The CHAIRMAN:** On behalf of the committee, I would like to welcome you to the hearing. You will have signed a document titled “Information for Witnesses”. Have you read and understood that document?

**Mr HEATH:** I have read and understood that, thank you.

**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 that you may refer to during the course of the hearing. Please be aware of the microphones and try to speak near them and not make any unnecessary noise. 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. Would you like to make an opening statement to the committee?

**Mr HEATH:** Firstly, I have no objection to the broadcast and I have no desire to make a private statement. I will make a short opening statement, if I may. Simply, obviously the Magistrates Court deals with a very small percentage of the matters that require a person to become a reportable offender. Indecent assault is the only matter, and of course the more serious matters are all dealt with in the District Court or in the Children’s Court in relation to juveniles. What we see are people who breach their obligations because it is an offence that is dealt with in the Magistrates Court—in the majority of cases, carrying a summary penalty. My motivation for responding to the inquiry was because of dealing with people who have been convicted of or pleaded guilty to breaching their obligations where they were either a juvenile or a young person at the time they were put on the order. In my letter to the committee, you will see that it was approximately 200 people per year breaching an order that was placed on them when they were at that age. In my submission, I indicated that I think it is a time when young people are leaving home, looking for their employment and accommodation, so often those things contribute to them breaching their order not in a way that is consistent with a desire to re-offend—not going to areas where children are or anything of that nature, but a failure to report that they have got a new telephone, missing an interview that they were supposed to go to—things that were only going to lead to a moderate fine and usually a warning about the need to comply with the legislation, which has the unfortunate effect of bringing them back into the criminal justice system. I thought that was something that the committee, in making their inquiry, would be interested in knowing about, because it seems to me that if that can be avoided, that would be something that would aid the rehabilitation of these young people.

**The CHAIRMAN:** Just to be clear, you deal with children who breach or is that —

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**Mr HEATH:** No; sorry. They have to be an adult by the time the breach occurs. I cannot give you figures on the number of children that breach their obligations, but I deal with them once they turn 18. Then the offence is —

**The CHAIRMAN:** So those 200 people you referred to —

**Mr HEATH:** Are all over 18 years of age at the time they breach their obligations —

**The CHAIRMAN:** But were children —

**Mr HEATH:** — but were children or under 20, because I think that was the guide as to young people in the terms of the inquiry. There are approximately 200 offences a year when they are that old.

**Hon COLIN HOLT:** Would that be 200 individual distinct cases or could it be someone being accounted for 10 times?

**Mr HEATH:** That could be someone who breaches 10 times. I need to go back and explain our statistics. We call a case someone who appears on any one day. They may have 10 charges on that day or they may have one. That counts as one. If they come on another day for another set of charges, again, whether it is one or 10, that will count as two. They are not 200 individuals necessarily, but I cannot tell you how many individuals and I cannot tell you how many charges entirely.

**The CHAIRMAN:** So it is 200 points of contact with the court related to breaches of registration conditions?

**Mr HEATH:** If I just refer to my letter just to make sure I have told you cases not —

**Hon COLIN HOLT:** You said convictions.

**Mr HEATH:** Convictions? I take what I have said back. Convictions—they would be 200 separate charges, but they could be multiple charges to an individual.

**Hon COLIN HOLT:** You cannot interrogate your statistics to indicate how many people it represents?

**Mr HEATH:** No. The only way to find individuals is to do it manually and count them, because, as I say, we have this odd statistical figure of cases, which is this number of appearances, and we have charges, which are the charge numbers, but we do not do individuals. It would be a manual extraction.

**The CHAIRMAN:** Of those 200, is there any way you might give us an indication of your feel as to how many people might be involved? We understand that you are, to some extent, guessing here, but based on your experience.

**Mr HEATH:** Of the 200, my guess would be 100 individuals, because some would have perhaps two or three convictions and others would have only one.

[1.10 pm]

**The CHAIRMAN:** What are some of the principal reasons offenders breach their reporting requirements? What is the common stuff?

**Mr HEATH:** The common explanation is they simply forgot or they did not understand the full extent of their obligation. They got a new telephone and did not bother reporting it until they had their next appointment, which was 14 days away, and thought that was good enough.

**The CHAIRMAN:** Does every breach come before the court?

**Mr HEATH:** I cannot answer that. There is obviously a discretion in the prosecution as to when they do prosecute, so I would envisage that there are occasions when the police say, “We accept what

you have said and we'll give you a warning on this occasion" but I do not know their prosecution policy.

**The CHAIRMAN:** We do have the police coming, so we will ask them that question. What range of penalties are imposed on young offenders who breach reporting requirements and what factors do you take into account when determining penalties?

**Mr HEATH:** Obviously, a wide range carries imprisonment as one of the options, even when dealt with in the Magistrates Court. Perhaps if I explain, this is called an either-way offence; it can be dealt with in the Magistrates Court or on indictment before the District Court. It is an election that the prosecution can make to the court to have it dealt with on indictment. I would say exclusively in all the matters I have ever dealt with, the prosecution is happy to have it dealt with in the Magistrates Court and it carries lesser penalties. The current penalties are up to five years' imprisonment in the District Court; two years or a maximum fine of \$12 000 when dealt with in the Magistrates Court. In terms of young offenders, I do not recall anyone having received a term of imprisonment. Adult offenders have been, but generally for the 200 people a year who are still young offenders, the fines range around the \$500 mark for a first offence where it is inattention-type offending—basically to give them the message that it is a serious offence, that it carries these much harsher penalties, so the importance of complying with it. There are other sentencing options, obviously, available—the full gamut is there—but the common outcome would be a fine. The things you take into account are obviously the nature of the breach, because a breach that is consistent with the type of offending is more serious than one that is not. Perhaps looking at an offender who has had improper dealings with children, who has breached it by having contact with children, going to school areas or something without reporting, is going to look at something towards the top end of the range. Someone who simply forgot or attended late for a reporting exercise when nothing else has been alleged will expect a fine towards the bottom end of the scale.

**The CHAIRMAN:** So the seriousness of the original offence can be taken into consideration in your sentencing.

**Mr HEATH:** More the nature of the offence because that colours the breach in a sense. Given that the object of the scheme is to protect the community, a breach where that protection has been voided is obviously much more serious than one where it is not.

**The CHAIRMAN:** How are the original reporting conditions formulated? Are they formulated through your court?

**Mr HEATH:** No. Obviously, we do not formulate the reporting conditions and, to the best of my knowledge, neither does the District Court or the Children's Court. It is a consequence of the conviction for the offence and then that is dealt with automatically under the act. The only variations then are by application to the Commissioner of Police.

**The CHAIRMAN:** Okay. When they come before you with breaches, you could impose not so much additional conditions under the sex offenders register act but under the normal sentencing-type provisions?

**Mr HEATH:** No, not really. We could impose a conditional release order with some conditions but they would not be conditions as to additional reporting or something of that nature. They would be more counselling, more of the steps that are rehabilitative in terms of a penalty. We could not impose, for example, additional reporting conditions or anything of that nature because that would not be seen as an appropriate penalty under the Sentencing Act.

**The CHAIRMAN:** Some submitters have referred to the particular disadvantages experienced by those offenders with physical and mental impairments. To what extent do these challenges affect

the ability to comply with reporting requirements and how often does the Magistrates Court encounter this?

**Mr HEATH:** Occasionally we hear it, more in relation to mental capacity, that it is difficult for them. Not that often. I think that may be because police exercise greater discretion to charge in those circumstances because of course that is one of the provisions that provides a defence—failing to comply with the obligations without reasonable excuse is the offence. In the offence section, the reasonable excuse provision expands to include things such as mental capacity and physical health. I think sometimes the prosecution takes that into account in deciding not to prosecute. I cannot say that I can recall offhand anyone running a defence on that basis, although it is available. That might also be as a result of the fact that people of that character are unlikely to be getting Legal Aid and probably say, “Look, I’d rather get it over and done with and get a fine” and they plead guilty.

**The CHAIRMAN:** Are they often self-represented in those circumstances?

[1.20 pm]

**Mr HEATH:** They are often self-represented, but more often they would have duty counsel for the Legal Aid Commission lawyers who have seen them on the day to provide a plea in mitigation for them.

**The CHAIRMAN:** It could be a matter of mitigation though if, for example, they were able to argue they had an impairment of some description or disability.

**Mr HEATH:** Absolutely. The penalty that you would apply to someone—I mean, obviously there is a much greater awareness of FASD diagnoses these days. If someone came before the court having failed to report, where they had a FASD diagnosis, you would be inquiring about what supports they had. If they have now lost their supports, they forgot how long they missed their appointment or a series of appointments by, a matter of days, you would be probably looking towards a suspended fine, something much more lenient than if it was a person with full capacity who had simply been neglectful in not attending.

**The CHAIRMAN:** These matters proceed as a charge by the state against the individual, and the state still bears the onus of proving that they failed to meet the obligation?

**Mr HEATH:** Yes.

**The CHAIRMAN:** Are these cases generally defended or are most of them —

**Mr HEATH:** No. The vast majority are pleas of guilty, simply because the fact of whether they have complied with the obligation is pretty clear-cut. Either they reported on the day or they did not. They either reported their change of address, purchase of phone or whatever within the particular time. That is usually not in dispute. The only real defence is in the reasonable excuse for not doing it, and most of the time they would say, I assume, either it is too hard or I cannot prove it.

**Hon COLIN HOLT:** Is there any sort of feeling around the level of penalty associated with that then?

**Mr HEATH:** Again, as I said, a first offender with full capacity, only not reporting, I would say a fine of about \$500. A person with mental impairment, a FASD diagnosis, maybe a suspended fine. Once you move into a child sex offender going on the internet, going near schools, and not reporting his address, you are going to big fines, but for multiple breaches, you are looking at imprisonment or suspended imprisonment. Again, it is trying to get the right characterisation of the offence as opposed to the offending—it is the protection element. If they are breaching a protection element, then it is much more serious a penalty than a noncompliance that does not indicate a breach of the protection.

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**The CHAIRMAN:** This inquiry is essentially interested in children who are on the sex offender register, or young people, rather than perhaps the paedophile who is an adult and committed a crime against a child. I think it is always important to distinguish or for us to understand, of the 200 cases you have referred to, how many of these might be of that serious end or may have just been —

**Mr HEATH:** I cannot recall any that I have dealt with. I would say that the vast majority of those 200 were not serious breaches of a protective regime.

**The CHAIRMAN:** The Western Australian Law Reform Commission, in its inquiry into the Community Protection (Offender Reporting) Act, has referred to the breach of reporting requirements being disproportionately higher in regional areas and among young Aboriginal reportable offenders. What has been your experience in this regard and how often does the Magistrates Court deal with such offenders?

**Mr HEATH:** I would say that probably the Children's Court is still dealing with the majority of those. I am afraid I cannot give you any breakdown of those 200 across the regions.

**The CHAIRMAN:** Is that because you do not presently know, or because your information cannot be interrogated that way?

**Mr HEATH:** It is because I do not presently know. I was not anticipating questions to the country breakdown.

**The CHAIRMAN:** Perhaps we can put that on notice.

**Mr HEATH:** If you could put that on notice to me, I can find the locations of those offences within the Magistrates Court.

**The CHAIRMAN:** Do you identify by Aboriginality as well in your figures?

**Mr HEATH:** We rely on a designation that police enter when they make the charge. If the person has identified themselves as Aboriginal when charged, that will appear. I can give you a breakdown as to country location and Aboriginality.

**The CHAIRMAN:** We will put that question to you on notice and those details.

**Mr HEATH:** If you could, then I could provide those figures to you for the last five years, which is where that figure came from.

**The CHAIRMAN:** That would be greatly appreciated—with obviously the rider that Aboriginality is something that is self-identified.

**Mr HEATH:** Obviously, the country regions produce additional difficulties because of travel, the placement of police officers, Aboriginal communities, lack of transport. There is obviously a lot of additional difficulties imposed in terms of compliance with the reporting.

**The CHAIRMAN:** You refer in your submission to the difficulties faced by children living without support of a responsible adult with reporting requirements. Given your practical application of reporting requirements, have you identified any issues with current reporting requirements and how these might be overcome?

**Mr HEATH:** It is difficult to provide a one-size-fits-all answer to that, because it would be advantageous if there was an easier system to make application to vary the reporting conditions, or if there was flexibility in terms of setting the reporting conditions to take into account individual circumstances when they change, but the difficulty is to set up that mechanism, you end up with perhaps a more complicated one. A lot of the breaches are probably the first time that those problems actually get identified. It would be interesting for the committee to discuss with police what level of flexibility they are applying, because obviously if they are taking into account a

person's circumstances in their meetings, if that is already being exercised, it is probably a method in which there is a degree of flexibility that can be assessed. It is not ideal, I suppose, when you leave in it police hands, who are going to prosecute, but they do have the day-to-day dealings with the individual. It is a quick, easy sort of application. If we are talking about people who are lacking in supports, expecting them to then go and make an application to court or another body is probably unrealistic, so the face-to-face meeting with the officer in charge of their supervision is probably the best way, if that officer has got some kind of discretion to assist.

**The CHAIRMAN:** I suppose the issue you have there is that if they just refuse for any number of reasons, which could be for reasons that are not fair, there is no other avenue —

**Mr HEATH:** Yes. Perhaps there needs to be a review from that. How that would be operated and to which body it should go is a question that would need to be resolved.

**The CHAIRMAN:** The question is: the original reporting requirements are not a court order or judgement; they are an administrative decision and normally those would go to the SAT rather than to the court.

[1.30 pm]

**Mr HEATH:** Yes.

**The CHAIRMAN:** Do you see a role for your court in assessing the reasonableness of conditions that are imposed?

**Mr HEATH:** The only advantage of it going to my court is that it is conveniently located—well, more conveniently located perhaps around the state than any of the other bodies. It is one of those things where obviously the person being able to go in to the local court to make the application is easier than trying to do it from a distance.

**The CHAIRMAN:** Yes. Does the court exercise any administrative powers?

**Mr HEATH:** It does not. Most of those were given to the State Administrative Tribunal. On the other hand, magistrates can sit as members of the administrative tribunal, but that still requires the initial applications to be made into Perth. It might be something that was better left with the Magistrates Court. If it was to be there, it would be interesting to know how many applications there would be.

**The CHAIRMAN:** Yes. Obviously, the Magistrates Court is probably the most mobile of all courts and the most accessible.

**Mr HEATH:** It is the most accessible in terms of physical locations.

**The CHAIRMAN:** Yes. You actually take the court to places.

**Mr HEATH:** Yes. We are actually located across the state and circuit to a lot more other places.

**The CHAIRMAN:** Yes. Whereas I do not think the SAT does that at all.

**Mr HEATH:** No. They try to conduct across the state by using telephone links. They do some visits and our magistrates do hear some occasional matters for them, but I think in terms of a physical presence that locals know about, the local courthouse is better known.

**The CHAIRMAN:** In your opinion, do you think an application to vary reporting requirements would be something that would be much better served by face-to-face appearances rather than through teleconferencing-type facilities?

**Mr HEATH:** I think certainly for young people it would be in terms of being able to present the case, because at least if they appear in person in front of someone, it might require an adjournment but

the magistrate can say, “I’m going to need some evidence of your physical disability or the fact that you haven’t got X or Y.” As video-link facilities extend around the state, perhaps it could be done in that manner. In that case, the State Administrative Tribunal could deal with that in that manner, but I think the actual face-to-face exchange is important rather than just the audio link, where there is not the ability to get that body language exchange.

**The CHAIRMAN:** Yes. Do you have any feedback on the recommendations regarding the reporting requirements that were included in the 2012 statutory review of the act?

**Mr HEATH:** I think that provided a little bit more discretion that would enable perhaps some people to be excluded from the reporting requirements. I thought it had a good distinction between children and adults. With adults, the presumption was that you went on the register unless there was an application, whereas with children, there was no starting point but the court had to consider whether or not it was appropriate. There are the obvious cases. I think, again, it particularly goes to those consensual sexual offences where the problem arises because of age. When you compare that perhaps to the rapist, they are just chalk and cheese. If a young person is a grandmother rapist, he is going to go on the register and he needs to be on the register and the community wants him to be on the register, but for the boyfriend and girlfriend where there is an age difference, look, do they really need to be on the register for that long? Let us look at it. The recommendation that allowed for reports to be called for so that you were going to have access to expert reports which would be able to identify, “Look, there are potential concerns for this person”, as opposed to, “We don’t identify any”, makes the decision-making good. I thought that their recommendation put in place a lot of review and appeals for both sides. When a Children’s Court magistrate is making a decision, you could review it to the judge and you can appeal from that, so there is a double layer of appeals for both sides for a decision made by a Children’s Court magistrate. In the adult court with a magistrate making a decision, as I say, they are minimal decisions because they are only the indecent assaults, but, again, either side can appeal to the Supreme Court if they do not like the outcome. I think that really would help the act serve its purpose, because we are identifying people that the community needs to be protected from. It seems to me that if we exclude people that are no threat to the community, we can be much harsher on and concentrate on those that need it. I think that would be a useful thing for the police resources.

**The CHAIRMAN:** Yes, because, arguably, at the moment we are expending resources.

**Mr HEATH:** There are a lot of people that just turn up on their ever-reducing reporting requirement as the police say, “There’s no danger. We’ll put you off from monthly to two monthly to three monthly”, and hope they do not forget.

**The CHAIRMAN:** Yes. In terms of the breach procedures, is it a significant use of the court’s time?

**Mr HEATH:** There are 200 charges a year. Most of them are pleas of guilty, so probably in actual court time it is not a huge resource. But, of course, there are also the add-ons—the police officer that prefers the charge, the officer that has to go and serve it, the duty lawyer or private lawyer that takes the instructions, the appearance in court, the references that they get, and mum and dad coming with them to court. So, yes, it builds up to a resource. It certainly kind of builds.

**The CHAIRMAN:** Yes. To what extent can the consequences of mandatory registration, such as reporting requirements, lead to things such as public vilification of young offenders where their details of registration have been disclosed?

**Mr HEATH:** There is potential for that, because of course when they appear in court, the nature of the offence is obviously disclosed.

**The CHAIRMAN:** That is in open court.

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**Mr HEATH:** That is in open court. If anyone is there, the prosecutors usually are discreet and describe it simply that they are a reportable offender, without describing the nature of the original offence. I find that out from the record when it is handed up. But that may be good or bad, because everyone is tarred with the same brush when you see “reportable offender”. I have not experienced it in court myself with anything happening and I am not aware of any offences that have arisen as a result of disclosure, but obviously a lot of this stuff kind of happens by way of social media these days and that happens beneath the surface. I am not qualified to say to what extent it does occur.

**The CHAIRMAN:** Yes, but do you think that exposure could have an effect on the individual’s rehabilitation?

**Mr HEATH:** Absolutely. The very fact that we are bringing a young person, who may have committed all their offences as a juvenile, back for a breach because they forgot a reporting condition, that suddenly brings them back into the criminal justice system, so they are back associating with that. Then, of course, if there is some kind of degree of vilification that arises from them being labelled as an offender, I mean it could mean that their employer may find out about it and go, “Well, I didn’t know that. I’m not employing you.” Obviously, as a juvenile, they did not need to declare the offences. It can have all sorts of ongoing consequences that affect their rehabilitation.

[1.40 pm]

**The CHAIRMAN:** What are some of the other impacts on the young offenders you deal with being brought before the criminal justice system?

**Mr HEATH:** I think it is a scary offence in any event, but, of course, they then have to tell their employer that they have got to go to court or take a day off. There are the financial consequences of the fine, when they are still young people perhaps on a low income. It brings back to the forefront the original offence, which they are probably trying to forget. So there are all those consequences, and it brings them into the courthouse. The people you meet in courthouses are not necessarily the ones you want to meet.

**The CHAIRMAN:** No. You are excluded, of course!

**Mr HEATH:** I hope so, but I always tell them they do not want to see me.

**The CHAIRMAN:** Do you think that there is a risk of undoing what might have been achieved through the rehabilitative orders that the Children’s Court might have put in place to help them to move on?

**Mr HEATH:** There is always that risk, because, as I say, if it results in them losing their job, I think it is well established that getting a good job is one of the strongest rehabilitation things, particularly for young men; and, so, if that is unsettled, they are suddenly back with nothing on their hands and trouble finds them.

**The CHAIRMAN:** Would it be fair to say that almost everybody who comes before you in this area is a young man?

**Mr HEATH:** Yes; just about exclusively men. But, again, if you would like to include it in the letter, I can give you the breakdown.

**The CHAIRMAN:** Yes; that would be appreciated.

**Hon COLIN HOLT:** We have heard about the benefits of pro-social activity in a rehabilitative sense, can you give us any idea about the offenders who appear before you because they have breached some order who potentially cannot go to the gym or cannot play footy or cannot coach football or even boundary umpire—any feelings around that?

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**Mr HEATH:** None of those are examples of breaches that I have dealt with; mine have all been failure to report or failure to report a telephone or the like. But, certainly, anything that excluded or prevented pro-social activities would be a concern. I think that obviously arises in relation to some of the requirements in terms of associating with other young people, so that would be a concern if there is not the flexibility to permit appropriate involvement in things like sport, because quite often you will see in the references that you get, it is someone's involvement with a sporting club that is giving them the support that they might not be getting from their own family and immediate relatives.

**Hon TIM CLIFFORD:** We have heard about the impact of how it affects the wider family of the offender; have you heard many statements from, say, the parents of these people when it does come to court? Do they talk about the impact that it has had on their family?

**Mr HEATH:** No. Generally speaking, usually it is just the duty lawyer who will explain. Sometimes mum and dad will be there as a show of support, but I cannot say that I have either received anything directly from the parents or that the plea has gone into the involvement or the impact on the family; though, obviously, there is that impact.

**The CHAIRMAN:** You state in your submission that when the court has concluded, a young offender is unlikely to offend, again, their rehabilitation would be best served by them being excused from onerous reporting obligations. Are you aware how often this has been undertaken by the Commissioner of Police and in what circumstance it might occur?

**Mr HEATH:** No. I am not aware of how many, if any, the commissioner has exercised his discretion in, because, again, it is something from the court. We convict of the offence and that is the last we hear unless they reoffend.

**The CHAIRMAN:** Is there any scope for diverting young people or young offenders who breach their reporting requirements from the criminal justice system instead of them being charged and penalised for breaching?

**Mr HEATH:** Again, it is more the Children's Court's side. There is the cautioning—unfortunately, because I do not do Children's Court I am not sure whether they can be sent to the team for this offence or not. There are diversionary processes for children; not in the adult court. Once adults, they have got to be charged and they stay in the system. For the Children's Court, there is the capacity for cautioning and for community conferencing and juvenile justice team, but some offences are excluded and I am afraid I cannot tell you. But if someone from the Children's Court is coming to you address you —

**The CHAIRMAN:** We have had the President just this morning.

**Mr HEATH:** They will be able to answer that straight off the top of their head.

**The CHAIRMAN:** Do you support a right of appeal or a review mechanism for people who are already on the register, as recommended by the Law Reform Commission in its final report?

**Mr HEATH:** Yes. If we get to the position where we say that it should be discretionary, then, obviously, those who were impacted by a compulsory system, I would say, should have the opportunity to have it reviewed.

**The CHAIRMAN:** Where do you think that might be best placed?

**Mr HEATH:** I would say it is best placed with the court that originally sentenced them.

**The CHAIRMAN:** Even for people who have now become adults?

**Mr HEATH:** Yes, because it was as a consequence of the sentence that was imposed. I think if they were sentenced as a child, the Children's Court would look at—because in essence there will be a

little bit of going backwards to look at it and then assessing it. I think that notwithstanding that they are now adults, we are dealing with something that happened when they were a child, so I think that would be the appropriate court.

**The CHAIRMAN:** Would the Magistrates Court be in a position to make those kinds of assessments for adults?

**Mr HEATH:** Yes, the Magistrates Court could, though, again it would be only the—I would have thought if that they were sentenced by the District Court, the District Court would deal with those adults. The Magistrates Court could deal with those that were sentenced as adults; and if it was felt that we should deal with adults who were placed on it as children, we would have ability and capacity to do that.

**The CHAIRMAN:** Do you think in terms of the onus—say, somebody has been put on the register and they make an application, wherever that might be, that the onus should be on them to establish that they should be removed from the register, or that it should be for the state to establish that they should continue on the register?

**Mr HEATH:** My view would be, given that they were in a position where they have been placed on it, that the onus should be on them to show that they should be lifted. I do not have an objection to the other way around, but it just seems to me that because they would be instituting the application in any event, an onus on them to show why they should not continue to remain on would be not too onerous.

**The CHAIRMAN:** Do you think the burden of proof should be on the balance of probability or beyond reasonable doubt?

**Mr HEATH:** Balance of probabilities, I think. When we are dealing with something—because we are actually assessing a discretion as to whether, in essence, the judicial officer will be trying to weigh up the risk factor. If you are going to make it beyond reasonable doubt, then, whichever way, whoever had the onus was never going to win, but balance of probabilities is, I think, a much more workable one in those circumstances.

**The CHAIRMAN:** That is the end of my questions. Would you like to make a closing statement?

**Mr HEATH:** No, I think you have cross-examined me very thoroughly. I go away a drained man! But if the committee sends me those further questions, I will ensure that those statistics are provided.

**The CHAIRMAN:** Thank you for attending today. Please end 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 typographical 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. We have a couple of questions on notice, so when you receive your transcript of evidence, the committee will also advise you when to provide your questions taken on notice. Obviously, given that you are extracting that information from your databases, it may be appropriate to communicate with the staff about the time frames for being able to return that to us, but we can play that by ear. If you want to provide any additional information to the or elaborate on particular points, you may provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence.

We really appreciate you taking the time out today to speak to us. Thank you for the work that you do.

**Hearing concluded at 1.50 pm**

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