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Dear Committee Members

Inquiry – Children and young people on the Sex Offenders Register – is mandatory registration appropriate?

Thank you for the opportunity to provide a submission in response to the Committee's inquiry into the registration of children and young people under the *Community Protection (Offender Reporting) Act 2004*. As the Greens (WA) spokesperson for children and youth, and justice, I believe this is an important and timely inquiry that I hope will lead to much-needed reform of the *Community Protection (Offender Reporting) Act 2004* (the Act).

Child sexual abuse is a terrible crime that has a lasting impact on victims, and the community rightly expects that our approach to this type of offending will be a strong and effective one, with community safety a paramount consideration. The questions posed by this inquiry, however, are not about whether a young person should be held accountable and punishable for their crimes, but rather whether it is then appropriate that sex offender registration should follow.

The current approach to registration of young people appears neither particularly effective at reducing risk, nor, in many circumstances, does it provide a just response to low-level offending. I note that in January 2012 the Law Reform Commission of Western Australia released a comprehensive report into this aspect of the *Community Protection (Offender Reporting) Act 2004*, giving thorough consideration to the issue of the treatment of young offenders. Importantly, the Commission also considered the implications of the Act in regard to children and young people with special needs. I will not use this submission to address in detail each of the 20 Recommendations made by the Law Reform Commission; I do, however, draw the Committee's attention to the quality and comprehensiveness of the Commission's report and note that the majority of the Commission's findings and recommendations remain relevant today. I support the Commission's conclusion that 'the approach for juvenile offenders must be different to the approach for adult offenders.'¹

¹Law Reform Commission of Western Australia, Final Report: Project No 101, Community Protection (Offender Reporting) Act 2004, available at: <https://www.lrc.justice.wa.gov.au/files/P101-FR.pdf>

I also note that it is extremely disappointing the Commission's recommendations have not been acted upon in the seven years since this review was undertaken.

A statutory review of the Act was also undertaken by WA Police in 2012 and while its recommendations differ somewhat to those of the Law Reform Commission, the review report does acknowledge that some young offenders 'become reportable offenders when the individual circumstances of their offence may not warrant such a consequence (in that they do not pose a risk to the lives or sexual safety of children)'.² The statutory review notes the potential benefits of adopting a discretionary approach which assesses risk, and that 'would enable WA Police to concentrate resources on those persons who pose a risk to the lives and sexual safety of children.'³ The review found that a more discretionary approach would be appropriate for young offenders, as well as reportable offenders who were identified as having a mental illness or cognitive impairment.⁴

The Greens (WA) have long held significant concerns about the impact of the *Community Protection (Offender Reporting) Act 2004* on children. When the Community Protection (Offender Reporting) Bill 2004 was debated in the Legislative Council, my colleague Hon Chrissy Sharp spoke on behalf of the Greens, noting that while the Greens supported the objectives of the bill, we held a range of concerns including that the bill was unbalanced, did not discriminate between comparatively minor offences and serious offences, and that it did not deal with the largest victim group; that is, children abused by a family member who had not been previously convicted of a sexual offence.

A basic tenet of our criminal justice system, and one that I believe should not be undermined, is the differential treatment of children under 18 years. This principle is enshrined in international and state law⁵, and is supported by a significant evidence base regarding the developing brain. Differential treatment of children and young people is predicated on recognition of the developmental needs of young people, and that their decision making is impacted by their relative psychosocial immaturity. Western Australia's youth justice system rightly prioritises diversion and rehabilitation, and a core principle of the *Young Offenders Act 1994* is that 'punishment of a young person for an offence should be designed so as to give the offender an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways' (s.7(j)).

A wide range of research demonstrates that children are more likely than adults to respond to rehabilitation and therapy, and as such diversion and deterrents are particularly important and

² Statutory Review: Community Protection (Offender Reporting) Act 2004, Final Report September 2012, available at:

[http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3910394a77cdb08aa150574a48257b8f00221721/\\$file/394.pdf](http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3910394a77cdb08aa150574a48257b8f00221721/$file/394.pdf)

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[https://powanet.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3910394a77cdb08aa150574a48257b8f00221721/\\$file/394.pdf](https://powanet.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3910394a77cdb08aa150574a48257b8f00221721/$file/394.pdf)

⁴ Statutory Review: Community Protection (Offender Reporting) Act 2004, Final Report September 2012, available at:

[http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3910394a77cdb08aa150574a48257b8f00221721/\\$file/394.pdf](http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3910394a77cdb08aa150574a48257b8f00221721/$file/394.pdf)

⁵ Article 3.1 of the UN Convention on the Rights of the Child (to which Australia is a signatory), provides that the best interests of the child shall be a primary consideration in all actions concerning children

effective for young offenders. Offending rates peak around 15 to 19 years of age and then decrease as young people 'grow out' of offending behaviour, with reoffending rates in children generally significantly lower than adults.⁶⁷⁸ As noted by the Australian Institute of Criminology, there is no evidence to suggest that young sex offenders will become adult sex offenders,⁹ and Human Rights Watch note that available research indicates 'sex offenders, and particularly people who commit sex offenses as children, are among the least likely to reoffend.'¹⁰ In regards to the consideration of risk, it is also worth noting that the vast majority of child sex offending is by perpetrators without a previous sex abuse conviction, and these offences are almost always committed by a person known to the victim.

There is clear evidence that mandatory registration for certain offences under the Act, particularly in regards to juvenile offenders, is inappropriate. As noted by the Law Reform Commission, the Act applies to a wide range of unlawful sexual behaviour, and children may risk placement on the register for consensual activity with another child or as the result of experimental behaviour.¹¹ Examples provided by the Commission include that an 18-year-old who engaged in consensual sexual activity with his 15-year-old girlfriend is equally a reportable offender as a 40-year-old man who has abducted and sexually abused a very young child.¹² It is pertinent here to repeat a question commonly asked around these provisions; is the purpose of the register to protect children from paedophiles or from each other?

In its report the Commission examined a range of specific cases, finding that 'offenders as young as 13 were subject to registration and reporting obligations' and described one case involving a 21-year-old 'who was subject to registration as a consequence of offending that occurred when he was only 11 years old'. As at 31 December 2009, of the 74 reportable offenders who were under the age of 18 years, there were five 13-year-olds and one 14-year-old. The Commission raised serious concerns about the automatic registration of these very young offenders without any consideration of their individual circumstances, of the circumstances of their offending, or of any potential risk they might pose to the community.

It is difficult to find any evidence that supports mandatory registration of juvenile offenders as effective at decreasing offending. Mandatory registration can be unfair and unjust, and its consequences for children and young people can have life-long impacts on mental health, employment and travel opportunities. The Law Reform Commission found that young offenders 'may experience anxiety and depression and even suicidal thoughts as a consequence of registration'. Furthermore, labelling young children as 'sex offenders' and

⁶ Sentencing and treatment of juvenile sex offenders in Australia, Riddhi Blackley and Lorana Bartels, Trends & issues in crime and criminal justice, No. 555 July 2018, Australian Institute of Criminology

⁷ http://www.justicepolicy.org/uploads/justicepolicy/documents/08-08_fac_sornakidsaredifferent_jj.pdf

⁸ Registration and notification of juveniles who commit sexual offences, by Christopher Lobanov-Rostovsky (U.S. Office of Justice Programs, October 2014)

⁹ Sentencing and treatment of juvenile sex offenders in Australia, Riddhi Blackley and Lorana Bartels, Trends & issues in crime and criminal justice, No. 555 July 2018, Australian Institute of Criminology

¹⁰ <https://www.hrw.org/report/2013/05/01/raised-registry/irreparable-harm-placing-children-sex-offender-registries-us>

¹¹ Law Reform Commission of Western Australia, Final Report: Project No 101, Community Protection (Offender Reporting) Act 2004, available at: <https://www.lrc.justice.wa.gov.au/files/P101-FR.pdf>

¹² Law Reform Commission of Western Australia, Final Report: Project No 101, Community Protection (Offender Reporting) Act 2004, available at: <https://www.lrc.justice.wa.gov.au/files/P101-FR.pdf>

subjecting them to ongoing obligations to report to police can be detrimental to their rehabilitation, thus potentially increasing the risk to the community.¹³ It is important, therefore, that the benefits of requiring registration outweigh these impacts.

The Commission also noted a range of concerns around the ability of young people to comply with reporting requirements, including where a young person may also report to police as a requirement of bail, or to a community corrections officer or a youth justice officer as part of a community-based sentence. The Commission noted that this could be confusing and onerous for a young person (and bearing in mind the age of some offenders, also potentially their family), and recommended relevant changes.

Although registration under the Act is currently mandatory for all children and young people who have committed specific offences, the Commissioner of Police does have the power to exempt some young offenders from reporting requirements. According to the second reading speech, this provision 'is aimed at juveniles convicted of what might be considered teenage sex and when they have not received a custodial sentence, and when the Commissioner of Police does not believe the juvenile presents a risk to the lives or sexual safety of the community'¹⁴. Police discretion regarding reporting should not be the only protection for young people. One might ask, if these children and young people do not present a risk, why are they on the register in the first place? This is particularly concerning given the Law Reform Commission's findings (and the broad range of international research supporting these findings) that registration can have significant negative impacts on children and young people.

According to the WA Police, as at 2012, 96 young offenders had had their reporting obligations suspended although their details remain on the Australian National Child Offender Register (ANCOR) (a further 93 offenders reported to police at that time)¹⁵. The fact that more than half of the young people on the register were not required to report demonstrates that the Commissioner for Police did not consider them enough risk to justify reporting – we should seriously ask why then they are on the register at all?

In addition to the discretion provided to the Commissioner for Police to suspend reporting obligations, police also have the discretion to choose not to pursue a charge. These small opportunities for discretion in regards to young offenders offer far from sufficient protections, as has been widely recognised including by the Law Reform Commission, WA Police, Department for Child Protection, President of the Children's Court and the Commissioner for Children and Young People, among others.

As noted earlier, the Act captures a very wide range of offending. I believe it is vital the Children's Court is given the flexibility to determine the most appropriate response for each child and young person, taking into account the circumstances of individual cases including assessing the risk offenders present to the community, and the relative merits of placing children and young people on the sex offenders register, as well as the length and

¹³ Law Reform Commission of Western Australia, Final Report: Project No 101, Community Protection (Offender Reporting) Act 2004, available at: <https://www.lrc.justice.wa.gov.au/files/P101-FR.pdf>

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[https://powanet.parliament.wa.gov.au/hansard/hansard.nsf/0/a44f58d5f733f717c825757000173b1e/\\$FILE/C36+S2+20041112+p8099f-8109a.pdf](https://powanet.parliament.wa.gov.au/hansard/hansard.nsf/0/a44f58d5f733f717c825757000173b1e/$FILE/C36+S2+20041112+p8099f-8109a.pdf)

¹⁵ Statutory Review: Community Protection (Offender Reporting) Act 2004, Final Report Final Report September 2012

requirements of any reporting orders. Consideration should also be given to the benefits of introducing therapeutic treatment orders as an option for the court as recommended by the WA Law Reform Commission.¹⁶

I acknowledge that the assessment of risk is not without its challenges and that this would require additional resources and expertise. The statutory review of the Act canvasses a range of issues associated with requiring courts to assess the risk of future reoffending. Nonetheless, the experience of other jurisdictions demonstrates that these challenges are by no means insurmountable and I believe the potential improvements including more fair and just outcomes outweigh any potential costs. I also note that according to the Law Reform Commission, in some cases it is very clear the young person is not a serial offender and the community is not best served by the financial and social cost of placing them on the register.¹⁷

The statutory review of the Act undertaken by WA Police did not support court discretion but instead recommended further discretionary powers be provided to the Commissioner for Police, due in part to the significant financial and resource implications of requiring the court to assess an offender's risk to the community¹⁸. WA Police also considered that giving discretion to the court would 'undermine the policy basis for the legislation given that it may not be possible to obtain the required reports to establish risk even in cases where risk is evident.'¹⁹ This would appear to be a valid argument to ensure that priority is given to ensuring we have adequate capacity and expertise to determine risk, rather than an argument against giving the Court flexibility to determine the best outcomes based on individual case characteristics. While the Greens (WA) would welcome the addition of a mechanism to review decisions made under section 61, as recommended by WA Police in the statutory review, we remain of the opinion that providing for a discretionary approach by the Children's Court is a more appropriate, transparent, and just response than expanding the Commissioner of Police's reporting suspension powers. It would also be a better fit with the principles and objectives of the *Young Offenders Act 1994* if children are only placed on the register where they are considered an ongoing risk to the community.

While I acknowledge that the broader issue of how we address harmful sexual behaviour in children is not specifically part of this inquiry, I believe it is important to note that ongoing gaps in the provision of therapeutic services for young people, particularly services which address harmful sexual behaviour in children, have significant implications for our capacity to address sexual offending in children. Specialist support services for victims, including those in

¹⁶ <https://www.ccyp.wa.gov.au/our-work/harmful-sexual-behaviours/> and https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_10_children_with_harmful_sexual_behaviours.pdf

¹⁷ The statutory review canvassed the idea of specially training certain professionals the assessment of risk in child sexual offenders. Statutory Review: Community Protection (Offender Reporting) Act 2004, Final Report Final Report September 2012

¹⁸ Recommendation 1 of the review is as follows:

Enable the Commissioner to suspend the reporting obligations of young reportable offenders as follows:

- (a) amend regulation 17 so that all Schedule 1 and Schedule 2 reportable offences are offences for the purposes of section 61(1)(a) of the Act;
- (b) retain regulation 18 in its current form; and
- (c) amend the Act so that a person aggrieved by the decision of the Commissioner made by virtue of section 61 of the Act can apply to the State Administrative Tribunal for a review of the decision.

¹⁹ Statutory Review: Community Protection (Offender Reporting) Act 2004, Final Report Final Report September 2012

regional and remote areas, are also lacking. These are areas that require significant investment, and I draw the Committee's attention to the work undertaken by the Commissioner for Children and Young People on this issue, as well as the 2017 report, *Volume 10: Children with harmful sexual behaviours*, by the Royal Commission into Institutional Responses to Child Sexual Abuse.²⁰ Addressing these gaps will be particularly important if positive consideration is given to the recommendations of the WA Law Reform Commission regarding investigation of therapeutic treatment orders.²¹

It is also relevant to note that ongoing delay in the review of the *Young Offenders Act 1994* has implications for the youth justice system, and the way we approach youth offending, more broadly, and reform in this area is much needed.

Conclusion

As pointed out recently by the Australian Institute of Criminology, reconciling the youthfulness of young sex offenders with the seriousness of their crimes can be extremely problematic, and justice systems can struggle to deliver appropriate responses, given they may be trying to meet sometimes competing imperatives of rehabilitation, accountability and community protection.²² That being said, the Act as it currently stands is unfairly applied to low risk offenders, and this has a particularly unjust effect on young offenders. The best interests of the community, as well as of individual children and young people, would be served by limiting registration and reporting requirements to those children and young people judged to be a real threat to children.

I note that the review by the Law Reform Commission and the statutory review of the *Community Protection (Offender Reporting) Act 2004*, both released in 2012, separately identified that the Act needs changes, including specifically with regard to the way it provides for young people. Seven years later it seems incongruous that these issues still remain despite some very welcome progress in others areas like the current consideration being given to raising the age of criminal responsibility.

²⁰ <https://www.cryp.wa.gov.au/our-work/harmful-sexual-behaviours/> and https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_10_children_with_harmful_sexual_behaviours.pdf

²¹ Recommendation 18: Therapeutic treatment orders

1. That the Western Australian government provide sufficient resources across the state to enable juvenile child sex offenders to participate in appropriate therapeutic treatment.
2. That the Western Australian government investigate the viability of providing the Children's Court with the option of a therapeutic treatment order for juvenile child sex offenders under the Community Protection (Offender Reporting) Act 2004 (WA) as an alternative to a juvenile offender reporting order in appropriate cases.

²² Sentencing and treatment of juvenile sex offenders in Australia, Riddhi Blackley and Lorana Bartels, Trends & issues in crime and criminal justice, No. 555 July 2018, Australian Institute of Criminology

Child sexual abuse is a particularly heinous crime and it is absolutely appropriate that we have strong laws to address this type of offending. However, as noted earlier, this inquiry is not about whether a child or young person should be held accountable and punishable for their crimes, but rather whether it is then appropriate that sex offender registration should follow. Quite clearly, in some cases this is not at all appropriate, and the WA community has every right to expect our laws to better serve the interests of our youngest and most vulnerable members than is the case with the current provisions of the *Community Protection (Offender Reporting) Act 2004*.

I commend the committee for undertaking this important inquiry, and I look forward to much-needed, evidence-based, reform in this area.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Alison Xamon', with a stylized flourish at the end.

Hon Alison Xamon MLC
Member for North Metropolitan

23 May 2019