



CHILDREN'S COURT OF WESTERN AUSTRALIA

PRESIDENT'S CHAMBERS
160 PIER STREET
PERTH WA 6000

Our ref: L1 06

The Honourable Matthew Swinborne MLC
Chair – Standing Committee on
Environment and Public Affairs
Legislative Council
Parliament House
PERTH WA 6000

The Committee Clerk – Maddison Evans

Dear Mr Swinborne,

Inquiry into Mandatory Registration of Children and Young People on the Sex Offenders Register

Thank you for inviting me to make a submission in relation to the Inquiry into Mandatory Registration of Children and Young People on the Sex Offenders Register.

Mandatory registration of a young person who has committed a class 1, 2 or 3 offence places an obligation that is a significant burden on a young person. In many cases that burden conflicts with the objectives and principles of the *Young Offenders Act 1994* (YOA) because:

1. The restrictions on the young person associating with children may impact on the school that the young person can attend, the vocational training the young person may choose and the pro-social recreational activities that the young person can take part in.

2. A significant number of young people who commit sex offences have impairments including autism spectrum disorder, foetal alcohol spectrum disorder, mental health issues or intellectual disability. It is important to encourage these young people who are likely to already be marginalised to involve themselves in age appropriate community activities. Expert opinions support that further isolating and marginalising young sex offenders is unlikely to lead to positive rehabilitation in the future.
3. The young person may not have a supportive responsible adult. The parent may be homeless, have drug and alcohol or mental health issues and may not be in a position to assist the young person to comply with reporting requirements. The young person may be illiterate, innumerate, homeless, a victim of family violence or sexual abuse or be ill equipped to comply with the requirement to advise about his future living circumstances and the young people with whom he may have contact.

Statistics from 2014 -2018

Over the 5 year period from 2014 until 2018 there were 262 young offenders registered under the *Community Protection (Offender Reporting) Act 2004* (CPOR) in respect of class 1 and class 2 offences.

The age of the offenders at the date of the offences were:

Min age at offence	Number of accused
10	2
11	8
12	32
13	37
14	47
15	46
16	51
17	39
Grand Total	262

Over the same 5 year time period 34 offenders failed to comply with reporting obligations on 80 occasions under the CPOR. The age of the offender and the date of the breach was:

Min of Age at offence	Number of accused
13	1
14	2
15	7
16	9
17	15
Grand Total	34

Those registered included 35 young people charged with offences relating to the possession or distribution of child exploitation material. Their ages and number of charges were:

Min of Age at offence	Count of Charges
16	3
16	1
17	2
17	1
16	1
13	1
14	2
17	2
17	1
16	1
14	1
16	2
14	1
13	1
14	1
17	1
16	2
15	11
1	35

Objectives and Principles of the YOA

The reporting and registration requirements are inconsistent with the principles of juvenile justice that are set out in the YOA. Although the registration is not seen to be a punishment it significantly impacts on the freedom and future of a young person.

Section 47(2) of the CPOR sets out that a young person is required to be subject to a reporting period for half of the period of an adult or for 7 ½ years if an adult would be required to report for life. The applicable period for 15 years or for life is therefore 7 ½ years. Given the young ages of those who have offended a period of 7 ½ years often includes all of their teenage years and extends into early adulthood. For example if the young offender is 10 years old then the order will be in place until the young person is nearly 18. If the young offender is 15 years old the order will be in place until the young person is nearly 23. When sentencing a young person aged 10 to 17 the judicial officer is required by s.46(4) of the YOA to consider how young the offender is when determining severity of sentence. The principles and objectives of the YOA section 7 of the YOA include:

- j) 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;
- k) A young person who is dealt with for an offence should be dealt with in a time frame that is appropriate to the young person's sense of time;
- l) In dealing with the young person for an offence the age, maturity and cultural background are to be considered;
- m) A young person who commits an offence is to be dealt with in a way that:
 - i) strengthens the family group of the young person,
 - ii) fosters the ability of families and family groups to develop their own means of dealing with offending by the young persons,
 - iii) recognises the right of the young person to belong to a family.

The Circumstances of Young Offenders who Commit Offences

On occasion young people are charged following a consensual sexual relationship with a similar aged person who is under the age of 16. Usually only one of the young people is charged with an offence and ends up on the register. The register should not target and restrict the movement and life choices of these young people. They should not be treated in the same way as an adult

who has taken advantage of the immaturity and youth of a young person for sexual gratification.

Often the sexual offending will occur because the young person through impairment or disability has a limited understanding of appropriate sexual boundaries. The young person may have reached puberty, seen online pornography or have been the victim of sexual abuse himself. He may experimentally touch another young person out of curiosity or may behave in an impulsive but inappropriate fashion. Consistent with juvenile justice principles these young people should be encouraged to learn about appropriate sexual boundaries and should be mentored and supported into age appropriate activities. Placement on the register further marginalises these young people, because it may preclude them from joining in with age appropriate activities.

Both groups of sex offenders are more likely to proceed to trial in relation to sex offences because they do not want to be on the sex offender register. Given that it is for the State to prove any charge that it brings to the judicial officer's satisfaction beyond a reasonable doubt, going to trial means that the complainant will be put through the trauma of giving evidence and being cross examined. It is in the best interests of the complainants to encourage young people to take responsibility and to admit their offending.

Vulnerable Offenders

Adult sex offenders have often experienced sexual abuse and have themselves been young abusers. It is vital that the opportunity is taken when a young vulnerable person has victimised another child to give the offender every opportunity to make life changes rather than to allow the conduct to become entrenched. Life changes can occur through appropriate counselling and pro-social activities. An example of how mandatory registration stopped a young person from engaging in pro-social activities arose in April 2019 when a young person aged 13 years was sentenced for sexually offending against his 8 year old cousin. The 13 year old suffered from a physical impairment. Psychologically he had suffered from very severe depression and anxiety. He had been the victim of bullying. He had experienced related self-harm issues. When the offending came to light the Department of Communities (DCPFS) immediately worked with the family to have a safety plan put in place so that the young person's siblings would be protected. The young person's parents acted straight away to address his inappropriate conduct by privately obtaining psychological services for him so that issues that had previously been unaddressed could be identified. The young person had never committed an offence before. He

attended school every day and he played sport. However he was identified as not having a close group of peers and he was a loner. Recently given his difficulties with social interaction but recognising his love of sport he had taken up umpiring football and he had thoroughly enjoyed the experience.

As a result of the offending he was required to change schools because he was only able to go to a very limited area of the school he had previously attended given his bail conditions.

Ultimately the young person pleaded guilty and was sentenced to an intensive youth supervision order (IYSO). He is now required to complete 12 compulsory counselling sessions and then to continue with counselling as directed by the psychologist. DCPFS will continue to monitor the family safety plan.

None of the reports provided to the court suggested he was a future risk to young people. Once he entered his plea of guilty he was placed on the register. The CPOR obligations will mean that his future education and vocation options and his social opportunities for the next 7 ½ years until he is aged 21 will be limited. Of immediate relevance is the result that he will no longer be able to umpire football. Although only aged 13 the young person is keen to start vocational training as soon as he is old enough to do so. His choice of career and employment prospects may be limited because of his registration.

Young Offenders Suffering from Impairment

In 2015 and 2016 the Telethon Kids Institute conducted a study at Banksia Hill Detention Centre of 100 young people. The study was conducted by a paediatrician, a neuropsychology team, a speech pathologist, an occupational therapist and a research officer. The team concluded that one in three of the young people who took part in the study had foetal alcohol spectrum disorder and 9 out of 10 of the young people had at least one severe impairment in a neurodevelopmental domain.

An increasing number of young people who are charged with sexual offences have been diagnosed with autism spectrum disorder. The number of young people with complex diagnoses (including personality disorders, PTSD, ADHD) and who suffer from mental health issues such as depression, anxiety and suicidal ideation is growing. It is counterproductive to isolate these young people by making them reportable offenders because it is likely to restrict their ability to

understand appropriate social boundaries and to limit their social development. The court obtains expert specialist reports in respect of young people prior to sentencing. Any risk factors are identified and will be addressed in the court order that is imposed. If the young person's disorder or impairment has not been previously diagnosed then youth justice can assist the young person's family to ensure that a referral to NDIS occurs. In many cases this is the more appropriate way to address community safety.

Difficulties with Reporting Requirements

The CPOR reporting requirements assume that the young person has the support of a responsible adult. A child who is living at risk is likely to find the reporting requirements to be very difficult. Section 26 (Division 2) of the CPOR sets out the ongoing reporting obligations. These are very onerous if the young person does not have adult support. If the young person's parent is living an antisocial lifestyle then they may not know what the future holds for the young person. This makes it very hard for the young person to report changes and to know what is going to happen in his future. Although s63 of the CPOR that deals with a failure to comply with reporting obligations sets out that a reportable offender does not commit a failure to comply offence unless the failure is without reasonable excuse the young offender may still find it very difficult to report or to understand his obligations in situations where the excuse is not deemed reasonable. Once the young person is charged with an offence contrary to s63 he is back in the criminal justice system before the sentencing court. It is in the community's best interests to keep young people out of the court system unless the young person is committing new offences.

Section 26 of the CPOR deals with the initial reporting obligation of a reportable offender to provide personal details. Section 26(g) requires details of his or her affiliation with any club or organisation that has members who are children or that conducts activities in which children participate. For young people this requirement relates to same aged pro-social activities. It is in the community's best interests that the young person attend community clubs and organisations without a requirement that his or her details of affiliation be provided.

Is it ever appropriate for a young person to be placed on the register?

Sadly there are some cases where the young person's behaviour makes him a risk to other people in the community. It is appropriate for the court to have the ability to exercise discretion to make an order that a young person in this category be declared a reportable offender.

Section 13 of the CPOR already allows the court to exercise discretion in cases that do not relate to a class 1, 2 or 3 offence. . Before making an order pursuant to s13 the court needs to be satisfied that the making of the order is appropriate.

The section 13(4) considerations are:

13(4) In deciding whether to make the order in relation to an offence, the court may take into account the following —

- (a) any evidence given during proceedings for the offence;
- (b) any document or record (including an electronic document or record) served on the offender by the prosecution;
- (c) any statement tendered, or deposition made, or exhibit tendered, at any proceedings in relation to the offence;
- (d) any evidence given by a victim or the offender in relation to the making of the order;
- (e) any pre-sentence report given to the court;
- (f) any victim impact statement given to the court;
- (g) any mediation report given to the court;
- (h) any other matter the court considers relevant.

Similar discretion could be given to the court in relation to the making of an order in respect of a young person. To ensure consistency it may be appropriate that this power be available to the President.

Although I do not specifically request to appear before the committee I am happy to do so if the committee considers that my appearance would assist the inquiry.

Yours sincerely,



Judge J Wager

**PRESIDENT
CHILDREN'S COURT OF WA**

22 May 2019