

REPORT 50

STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

*Terms of Reference: Inquiry into children and young people on the Sex Offenders Register –
is mandatory registration appropriate*

SUBMISSIONS BY THE YOUTH LEGAL SERVICE

29 May 2019

Introduction

The Youth Legal Service is a Community Legal Centre and part of the National Association of Community Legal Centres. The Youth Legal Service provides a range of free legal services to young people under the age of 25 including legal representation in the Children's Court and Magistrate's Court (metropolitan only).

On average, the Youth Legal Service will have four clients a year who we represent on sexual offences in the Children's Court that are at risk of becoming Reportable Offenders under the *Community Protection (Offender Reporting) Act (the Act)*.

We refer to the Western Australian Law Reform Commission, *Community Protection (Offender Reporting) Act 2004* Final Report January 2012 and support the recommendations made therein.

The information reported by registered offenders is contained on a national database, The Australian National Child Offender Register (ANCOR) which is shared among jurisdictions. We are unsure whether that the information will remain on the Register once the reporting obligations have ceased.

All references to "child" or "children" in these submissions mean boy(s) or girl(s) under the age of 18.

Inquiry pursuant to Standing Order 179

On 10 April 2019, the Standing Committee on Environment and Public Affairs resolved as follows:

To inquire into mandatory registration of children and young people on the Community Protection Offender Register (known as the sex offenders register) in accordance with the *Community Protection (Offender Reporting) Act 2004*.

We address the particulars the Committee will consider as follows:

a) **the current criteria for registration on the sex offenders register.**

Children will automatically go on the sex offenders register under the *Offender Reporting (Community Protection) Act* ("the Act") in the same way as an adult if they are convicted of any of the offences in Schedule 1 or 2 of the Act (Reportable offence). Reportable offences apart from murder all apply to sexual offences where the victim is a child (under 18) with the exception of some offences which specifically state "under 16" will apply.

The Reportable obligations include reporting to police within 7 days of sentence or release from custody (s.24 *the Act*). There is a requirement to notify police of any changes to the personal details of the offender (s.29 – 23 *the Act*). Reporting requirements are on an ongoing basis which are at first periodic (every 3 months) and then at least once a year which is determined by the WA Police (s.28 *the Act*).

The only difference between a child and adult reportable offender is in the length of time they are subject to the reporting requirements. For a child it will be 4 years for a single Class 2 offence (s.47(1) *the Act*) whereas it will be 8 years for an adult. It will be 7½ years for a single Class 1 offence whereas it will be 15 years for an adult (s.47(2) *the Act*). Some adults will be required to report for life but children in the same circumstances will remain at 7 ½ years.

There is also an exception for a single offence relating to the possession of child pornography not being registered which is only available to children.

There is provision for the Commissioner of Police to suspend the reporting obligations of specified juvenile reportable offenders (s.61 *the Act*) but this can be reinstated (s.62 *the Act*).

We note that when the *Community Protection (Offender Reporting) Bill 2004* was introduced on motion by Mrs M H Roberts (Minister for Police and Emergency Services), she stated:

"Sex offenders are not readily typecast; they come from all socioeconomic groups, occupations and backgrounds. What is common to too many sex offenders is that they continue to offend throughout their lifetime. Paedophiles, in particular, are notoriously compulsive and recidivist. Given the serious nature of their offences and the recidivist risks posed by sex offenders. The Government has recognised that it is in the community interest that these offenders continue to be monitored after they have served their sentence."

"The community has a legitimate expectation that sex offenders, especially paedophiles and recidivists, should be subject to tighter supervision and monitoring once released into our community ..."

We question if the aim of *the Act* was to target paedophiles then why are so many children caught up by the Act?

While there is reference to children being treated more leniently, this is in respect of the reporting periods under *the Act* as mentioned above. Little or no reference is given to the fact that children cannot be paedophiles by definition which is to do with adult attraction to children. It is also clear that there was no regard to the objectives and principles of juvenile justice outlined in the *Young Offenders Act 1994* (section 6 & 7) taken into account when *the Act* was passed.

Further, there is no indication in the lead up to *the Act* being passed that children mixing with children are more likely to be engaging in sexual relationships with children their own age, and children under 16 consenting to sexual behaviour cannot consent to sexual behaviour as far as the law is concerned and by virtue of these facts will all be potentially placed on the sex offenders register regardless of whether or not they are "*notoriously compulsive and recidivist*".

b) The advantages and disadvantages of mandatory registration

The obvious advantage of mandatory registration is allowing the Police to keep track of registered offenders. We are unaware whether the mandatory registration has had any affect in the reduction of recidivism.

The disadvantages of mandatory registration in respect of children.

1. Children must attend for reporting at the Sex Offenders Management Service (SOMS) which is usually a Police Station. There will be other reportable offenders there also reporting. Children will be waiting along with adults.

One mother reported to us as follows:

"It's beyond awful going into SOMS. We have been told to take him (the child) into the foyer as the paedophiles look the teen boys up and down and get physically "off" on seeing them."

2. Parents of the child will bring the child to the police station which is stressful for the parent as well as the child.
3. In the first couple of years, it seems the reporting requirements are once every 3 months and then once a year. Reporting is difficult for families and there is a lot of uncertainty attached to both the reporting requirements and obligations. One parent said:

"We were told 12 months, next appointment ... sadly no it's every 3 months for at least the next year. Possibly even 3 monthly beyond this. (The police have zero idea of what they are doing)."

4. Regardless of age, failure to report is an offence. Once children turn 18, if they fail to comply with reporting obligations, they are charged and will get an adult conviction which alerts anyone who sees their record to the fact that they are a sex offender.

One young person was told by SOMS at his yearly meeting, his next reporting date which was 12 months later. He forgot the date (*received no reminders*). The Police came to his house and arrested him and he was charged and convicted. He now has an adult conviction for failing to report (s.63(1) *the Act*). He was aged 15 when he became a reportable offender. He is prevented from getting work as a result of his record. Had he not been a reportable offender, he would never have got the adult record.

Another young person was convicted under *the Act* because he joined his local gym, failing to report this. This is because children from the age of 16 could join the gym. He was aged 22.

5. Children cannot move on from the original offence which is contrary to the principles of juvenile justice. Section 6(k) *Young Offender's Act*:

"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"

After the child has served their sentence, the child continues for either 4 years or 7 ½ years as a reportable offender.

6. Children tend to live with brothers and sisters of similar age. It becomes really difficult for the family in complying with the obligations under the Act. One mother has told us:

"I queried (with SOMS) about our youngest having friends over (or neighbours kids) and if I had to grab milk from the shops (2 minutes away). The Detective informed us that that was fine but my son was to run around the block till I returned. We worry every day about breaches ... it has affected the entire family"

7. Children are stigmatised as Paedophiles because they must Report despite the fact that a "Paedophile" is an adult that is attracted to children not a child attracted to a child. One 14 year old boy complained to SOMS about the fact that the victim's mother had gone around telling neighbours that he was a Paedophile. The SOMS police told him that she was allowed to tell who ever she wanted. It was only after referring them to section 36 *Children's Court Act* did they become aware that the victim's mother was committing a serious offence in doing this. However, the boy is now known and branded as a paedophile and shunned by his community.

c) Circumstances that may not warrant mandatory registration

It is our submission that mandatory registration should not apply to any of the Class 1 or Class 2 offences when a child has been convicted of such an offence. We are of the opinion that the decision to be placed on the sex offenders register must be a decision for a Magistrate or President of the Children's Court.

There are many circumstances that may not warrant mandatory registration.

1. Where children under the age of 16 and engaging in consensual sexual activity with each other and are of similar age. In these situations, it is our experience that the male gets charged not the female when both are committing an offence. These circumstances do not warrant mandatory registration.

2. Where a child is convicted of Class 1 or Class 2 offence relating to a child who is older than them. These circumstances do not warrant mandatory registration.

Example:

- A 14 year old grabs a 15 year old's breast and is convicted of indecent assault (s.323 Criminal Code). *(Note if a 14 year old grabs the breasts of an 18 year old and is convicted of indecent assault, he would not be registered See Schedule 2 Class 2 offences).*
 - An 11 year old shows offensive material to a group of 15 year olds (s.204A Criminal Code)
3. Where there is no evidence that the child convicted is at risk of recidivism.
 4. Low risk offending, which is clearly adolescent behaviour and less-serious offending should not be registered. Some examples of cases at the Youth Legal Service in recent years.
 - A 13 year old child asks a 14 year old girl to give him a "hickey" or he will get his friends to beat her up (s.321(5) Criminal Code)
 - A 13 year old child runs up to the victim (14 year old) and grabs her on the buttocks and attempts to kiss her on the lips. (s.321(4) Criminal Code)
 - A 13 year old sits behind the victim on the bus and puts his hand under the victims shirt grabbing her right breast on top of her bra (s.321(4) Criminal Code)
 - A 14 year old sitting next to the victim during a class at school drops his pencil on the ground and when he picks it up under the desk touches the victim's leg and asks if he could touch her vagina (s.321(4) Criminal Code).
 - A 16 year old boy in a relationship with a 15 year old spent the night in the girl's bedroom with girls parent's consent, when the relationship broke up, the parents of the girl reported him to the police and he was charged (s.321(2) Criminal Code).

It has always been the practise in the Children's Court that before a child is sentenced, the Magistrate or President has a Youth Justice Report prepared which addresses the child's living arrangements, education, drug and alcohol issues and any other factors relevant to the child's circumstances. Psychological or Psychiatric Reports can also be called for. The Magistrate or President will have a good idea about the child and their background as well

as the details of the offence. They are well placed to determine at the time of sentence whether or not the child is at risk of recidivism in which to determine whether an order for registration should be made.

d) The approach employed by other jurisdictions;

In Victoria, South Australia and the Northern Territory the court has full discretion to determine the reportable status of the child at sentencing and in Tasmania there is a more limited discretion.

Sentencing is taken into account in New South Wales, Queensland, the ACT and the Northern Territory where there are Minimum sentencing thresholds which will exclude the Offender from the mandatory registration.

In Western Australia, it does not matter what sentence the child received in the Children's Court, they will still be registered under the Act. For example, a child may have their sentence dismissed with no further punishment under section 67 *Young Offenders Act* where no conviction is recorded, despite this, the child will still become a registered offender.

e) any other matters considered relevant by the Committee

1. We find that the parents of children who have been charged with a sex offence are totally devastated when they are advised that one of the consequences of being convicted is that their child will be a reportable offender.

One father said:

"when I heard, I looked at my child who had so much potential for the future and I saw everything disappear"

The impact of going on the sex offender register affects the family not just the child.

Another mother said:

"why should a stuff up at 14 potentially destroy the rest of your life"

2. A lot of delays occur when a child is charged with a potential Class 1 or Class 2 offence with the defence lawyer trying to negotiate with the prosecution for an amended charge that is not registrable or taking the matter through to trial to try to avoid registration, rather than dealing with the offence in a timely manner. It is our opinion, that the longer the delay between the commission of the offence and the sentence, the less impact the sentence is likely to have on rehabilitation.
3. The treatment given by SOMS when the child reports is not a positive/rehabilitative experience.

One mother reported:

"Our child has been threatened by detectives that once he is 18 there are ramifications. "If you don't tell us any website passwords or break any reporting rules you will have a permanent adult record". That's bullying. He completed his court order and never ever missed one, yet most did not show up. He has a glowing report".

4. It is our opinion when it comes to children who commit sex offences, the criminal justice system is not the appropriate forum to be dealing with these matters. The priority should be immediate counselling, education and welfare considerations which include checking and education for venereal disease and contraception. Sex education is especially important given the number of children who are accessing pornography on a regular basis and model their behaviour of what they have seen, without knowing it is grossly inappropriate. Rather than going through the criminal justice system, first offenders should not be charged but diverted to an intensive education and counselling program to complete and kept out of the courts altogether. We suggest that a Juvenile Justice Team special diversionary program could be established which could address the needs of the child upon them accepting responsibility.
5. The potential that children have to make a positive contribution to society and their culture is crushed once they become a reportable offender. For example, a child's parents explained that their 12 year old son would be prevented from participating

in Welcome to Country at schools if he became a registered offender and would no longer be able to participate with his culture including Aboriginal dance.

The current approach to put children on the sex offenders register is unfair to children and their families and we question if this has proven to have reduced the recidivism of the particular individual. We speculate that it is a waste of SOMS time and resources to be dealing with a constant stream of children. While the sex offender registration may provide a useful tool for law enforcement and community protection for adult paedophiles, the same cannot be said for children. Mandatory registration of children is not appropriate.