

**Submission
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**INQUIRY INTO MANAGEMENT OF CHILD SEX OFFENDER
INFORMATION**

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Submission to the Parliamentary Inquiry into the Management of Child Sex
Offender Information

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Introduction

I welcome the opportunity to make a submission to the current inquiry on managing child sex offender information, and note that I do not represent any other organisation with which I am affiliated in so doing. This submission responds to the second and third terms of reference, with a focus on bringing to bear the evidence on whether allowing the public to access information about convicted child sex offenders will work to keep our communities safe. It draws on my own research and reviews of the literature in this area over the past 15 years, arguing that public registers do nothing to keep our communities safe.

Sexual offences arguably elicit greater public fear and condemnation than any other type of crime. In recognition of the serious nature of sexual offences and the fear that they incite, there have been numerous legislative responses specific to sex offenders. In the United States (US), the response over the past two decades has included approaches such as sex offender registration, community notification, civil commitment, residence restrictions, enhanced sentencing guidelines and electronic monitoring. In Australia, legislation has been enacted to allow the continuing detention in prison or supervision in the community of sex offenders after their sentences have been completed, as well as sex offender registration and 'serious sexual offender' provisions.

But many of these legislative initiatives are based neither on evidence nor theory and have thus proven to be ineffective at preventing sexual offending. A key lesson from the US experience of enacting such laws has been summarised as follows:¹

One of the key lessons learned from the US experience is that policies introduced rapidly in response to single, widely publicised incidents are generally not successful in achieving their aims. Policy responses to sexual offending need to be carefully considered and must be based on strong theoretical foundations, supported by evidence.

Myths and misconceptions about sex offenders

The proliferation of sex offender registries and community notification schemes seen in the US is based on the belief that an effective way to prevent sexual offending is to ensure that we can all identify (and thus avoid) the sex offenders among us. This belief has provided the impetus for governments not only to create registers that enable law enforcement to monitor sex offenders, but to give the public access to this information – often names, addresses and images. The most widespread use of such sex offender register and community notification schemes is seen in the US, although other jurisdictions have adopted their own forms of registration and limited notification schemes.²

Public sex offender registry laws, however, are based on a number of myths about sex offenders – myths that are firmly entrenched in the minds of both the public and governments and that underlie the rhetoric around responses to sexual offending. The primary myths around sex offenders may be summarised as follows:³

- 1) Sex offenders inevitably reoffend.
- 2) We are most at risk from 'stranger danger' with sex offenders.
- 3) Sex offenders can't be treated – they can never change.

Each of these myths has been proven incorrect by a large body of evidence over the past two decades or more. The following offers a very brief summary of the key findings of this research.

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Sex offender recidivism and public registers

Sex offenders registers assume that sex offenders will inevitably reoffend, so require ongoing monitoring. By releasing information about sex offenders to the public, people can keep their distance from known sex offenders, thus reducing their opportunities to reoffend.

Sex offenders, however, are known to reoffend at rates lower than that of other types of offender: even taking into account under-reporting and low rates of detection, robust research shows rates of homologous (that is, sexual) recidivism among sex offenders is low, at around 14%.⁴

'Stranger danger' and public registers

Public registers are designed to notify the community about strangers who may pose a threat to them and their families. They enable people to seek information on those who may have access to their children, or those who live or work in their neighbourhoods. The underlying premise is that people need to be able to find out about potential dangers that the unknown poses.

Sexual offending, however, is primarily perpetrated by people known to the victim, often members of the victim's family. The most recent Victorian data show that almost three-quarters (72%) of sexual assault victims in 2019 knew the perpetrator; of these, 40% involved a family member.⁵ For sexual offending against children, the risk of 'stranger danger' is even lower: 83% of child sexual assault victims aged 14 and younger are assaulted by someone they know and only 10% are assaulted by a stranger.⁶

Sex offender treatment and public registers

Linked with the belief that sex offenders will inevitably reoffend is the myth that they are 'irredeemable' and 'monstrous' – that they can never be successfully treated and therefore remain a danger to the public.⁷ Due to this danger, people need to be able to protect themselves by knowing who the sex offenders in their community are.

In reality, though, treatment for sex offenders – especially treatment in a community setting – has proven effective in reducing sexual reoffending and assisting sex offenders to reintegrate into the community.⁸

The effectiveness of public sex offender registries

Given that the assumptions on which public sex offender registration schemes were created are in fact mistaken, it should be unsurprising that the established body of US research on public registries has found them to be ineffective.⁹ Robust studies have shown that sex offender registration and notification laws do not reduce sex offence recidivism; indeed, some studies have found that community notification actually increases sex offence recidivism. It has been suggested that sex offender registration and notification laws attach substantial stigma to offenders, impeding their opportunities to recast themselves in a pro-social narrative to create new non-offending identities, disrupting their journeys to desistance and reducing their ability to reintegrate successfully. The stigma of the laws can thus lead to higher recidivism rates for these offenders.¹⁰ Being placed on a public register can result in exclusion from housing or education, loss of employment or relationships, and health/mental health problems, all of which hamper integration into the community and are thus counter-productive in reducing recidivism. Others have found that, while registration solely for law enforcement purposes appears to reduce recidivism, public notification does not.¹¹

Summarising the US approach to public registers, one Australian researcher has noted: 'the 20-year legislative experiment in the US has been an abject failure...[it has] left prisons overcrowded, families devastated, victims publicly identified, survivors re-traumatised, and communities fractured'.¹²

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Crime control theatre

If public sex offender registries are ineffective at reducing sexual offending, why do there continue to be calls for such schemes to be introduced? Why has the Legal and Social Issues Committee been tasked with considering such a scheme?

There is a dominant narrative of the child sex offender that is deeply embedded in the public mind: a narrative of sex offenders as typically older, male strangers who prey on young girls and are innately evil and irredeemable – a media-created narrative that feeds on the emotional responses of the community and policymakers.¹³ But this narrative is based on the myths and misconceptions about sex offenders that contribute to community fear and create support for retributive and ineffective policy¹⁴ – about the predatory nature of sex offenders, their high likelihood of reoffending and their inability to change.¹⁵ Retributive policies may help the public to *feel* safer, but they do little to *make* them safer. Policies that have the appearance of crime control but that are ineffective at preventing sexual offending have been labelled as ‘crime control theatre’.¹⁶ Laws that can be considered as crime control theatre appeal to myths about sex offenders; they derive public and political support from moral panics but show little evidence of being effective in reducing sexual offending. But they offer powerful mechanisms to garner support for political agendas by contributing to feelings of fear, anger and disgust towards sex offenders.

What does the public think about sex offenders and sex offender registers?

Perceptions about sexual offenders are likely driven, at least in part, by sensationalised media coverage of sexual offences¹⁷ that draws on established but incorrect stereotypes.¹⁸ But Australian research has shown that people are not as uniformly punitive about sex offenders as we may assume and that they hold quite nuanced and complex views.

Led by Professor Emerita the Honourable Kate Warner at the University of Tasmania, the Australian National Jury Study examined perceptions of sex offenders among 989 jurors from sexual and violent offence trials across Australia as well as 450 people called for jury duty but not empanelled and 306 general community members in Western Australia. I was part of the team undertaking analysis of the data, and we have found that perceptions of sex offenders are not as punitive as one might expect.

Overall, around three-quarters of participants supported the use of sex offender registration orders, particularly for offences against children. While 73% supported access to sex offender registers by parents or carers of children,¹⁹ only 35% supported releasing sex offender information to the general public. This means that more than one in four people did not support access to this information, even for parents and carers, while two-thirds did not support access for the general public. Many of the respondents therefore appeared to appreciate the potential problems with allowing access to sex offender register information.

Examining perceptions of aggravating and mitigating factors at sentencing, our analysis showed that people were more likely than judges in actual sex offence trials to give ‘a lot of weight’ to the mitigating factors of age, a disadvantaged background and mental disorder. Broadly, there was ‘considerable alignment between the public and judges with respect to sentencing factors’.²⁰

A belief in the ability of sex offenders to change – known in the literature as a ‘belief in redeemability’ – has been shown to be negatively related to support for punitive policies²¹ and positively related to support for rehabilitation and inclusionary correctional policies.²² Beliefs about the redeemability of offenders are thus fundamental to understanding the rise of punitive criminal justice reforms.²³ This is perhaps a function of views about the characteristic attributes of offenders: research has shown that people who view attributes as fixed (rather than malleable) hold more negative attitudes about sex offenders, because they see sexual offending as an immutable part of the perpetrator’s moral

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character (rather than as arising out of situational factors) and therefore judge it to be more deserving of punishment.²⁴

Our analysis showed an interesting mix of pessimism and optimism about sex offenders' redeemability. Around half of our sample agreed that the majority of sex offenders will reoffend, even with specialised treatment. Nonetheless around half disagreed that treatment is a waste of time. Participants were more likely to agree than disagree that most sex offenders can go on to lead productive lives with help and hard work, but they were more likely to disagree that serious young sex offenders can grow out of their offending. And while jurors were more likely to disagree that most sex offenders have little hope of changing for the better, unempanelled jurors were more likely to agree with this statement.

In sum, the analysis found that the community's feelings of anger, disgust and fear are counter-balanced by more optimistic emotions based on a hope that offenders can be treated, highlighting the tension between punishment and rehabilitation for sex offenders.

A better way forward

Perceptions that sex offenders will inevitably reoffend and are unlikely to change has important implications for the successful reintegration of sex offenders into Australian communities. To enhance support for effective, evidence-informed policies and to increase the likelihood of successful reintegration, we need to address the widespread myths about sex offenders.

Harper and colleagues emphasise the importance of influencing public attitudes 'such that people understand and are comfortable in the knowledge that potential "sexual offenders" are able to live law-abiding lives'.²⁵ They suggest that the most effective way to achieve this is to examine stereotypical images of sex offenders and to challenge them through the presentation of 'humanized exemplars' – presenting sex offenders as people, rather than as 'a monstrous "other"'.²⁶

But at the same time, we should allocate appropriate funding aimed at optimising the effectiveness of evidence-based treatment interventions that will facilitate reintegration – promoting more timely and widespread access to treatment both in prison and in the community, ensuring robust programs of through-care from custody to community, and implementing practices and programs that support people's reintegration.

Conclusion

Public access to sex offender registers is no small issue: in Victoria alone, there were 8,286 registered sex offenders as of May 2019.²⁷ Law enforcement resources are finite and should be focused on detecting, investigating and apprehending active criminals, rather than monitoring thousands of people who have already completed their sentences and whose offending may have been decades old or isolated to single instances. Releasing information about convicted sex offenders not only has the potential to impact adversely on their chances for returning to a non-offending and productive life, but also has the potential to impose collateral damage on victims who may be identified, on offenders' families who may be vilified themselves, and even on the neighbours of offenders.²⁸ Allowing public access to information in Victoria's sex offender register will not keep our children safe.

The findings of the Australian National Jury Study show that members of the public are less punitive than commonly assumed, even when it comes to as reviled a cohort as sex offenders, and highlight the need to ensure that policy is based on actual, rather than presumed, opinion. Taken together, these findings, plus evidence on the lack of effectiveness of public sex offender registers to reduce sexual offending, reinforce that great care should be taken to ensure that reform is carefully considered and not merely an instance of 'crime control theatre'. We need to ensure that our criminal justice policies are based on evidence, not emotion.

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¹ Napier, S., Dowling, C., Morgan, A., & Talbot, D. (2018). *What impact do public sex offender registries have on community safety?* Canberra: Australian Institute of Criminology; p. 14.

² The UK scheme, colloquially known as 'Sarah's Law', allows some public access to the police sex offender register on a 'limited disclosure' basis via special request. Australia has both law enforcement registers that are accessible only by police, and the Western Australian version, modelled on Sarah's Law, which allows public access in limited circumstances. See further: Jones, T. and Newburn, T. (2013). Policy convergence, politics and comparative penal reform: Sex offender notification schemes in the USA and UK. *Punishment and Society* 15(5): 439; Napier, S., Dowling, C., Morgan, A. and Talbot, D. (2018). *What impact do public sex offender registries have on community safety?* Canberra: Australian Institute of Criminology.

³ Freiberg, A., Donnelly, H. and Gelb, K. (2015). *Sentencing for child sexual abuse in institutional contexts*. Sydney: Royal Commission into Institutional responses to Child Sexual Abuse.

⁴ Hanson, R.K. and Morton-Bourgon, K. (2004). *Predictors of sexual recidivism: An updated meta-analysis* (Report No. 2004-02). Public Safety and Emergency Preparedness Canada; Hanson, R.K. and Morton-Bourgon, K. (2005). The characteristics of persistent sexual offenders: A meta-analysis of recidivism studies. *Journal of Consulting and Clinical Psychology*, 73(6): 1,154-1,163; Hanson, R.K. and Morton-Bourgon, K. (2009). The accuracy of recidivism risk assessments for sex offenders: A meta-analysis of 118 prediction studies. *Psychological Assessment*, 21(2): 1-21; Vess, J. and Skelton, A. (2010). Sexual and violent recidivism by offender type and actuarial risk: Reoffending rates for rapists, child molesters and mixed-victim offenders. *Psychology, Crime & Law*, 16(7): 541-554. For an overview of issues around sex offender recidivism, see further: Gelb, K. (2007). *Recidivism of sex offenders*. Melbourne: Sentencing Advisory Council.

⁵ Australian Bureau of Statistics (2020). *Recorded Crime – Victims, Australia, 2019*; calculated from Table 15.

⁶ Napier, S., Dowling, C., Morgan, A., & Talbot, D. (2018). *What impact do public sex offender registries have on community safety?* Canberra: Australian Institute of Criminology. Slightly earlier data showed an even smaller risk from 'stranger danger' – only 6% of child sexual assault offenders were not known to their victims. See further: Australian Bureau of Statistics (2014). *Sexual assault in Australia: A statistical overview*.

⁷ Pickett, J. T., Mancini, C. and Mears, D. P. (2013). Vulnerable victims, monstrous offenders, and unmanageable risk: Explaining public opinion on the social control of sex crime. *Criminology*, 51(3): 729-759.

⁸ For a more detailed discussion of the effectiveness of treatment for sex offenders, see: Gelb, K. (2007). *Recidivism of sex offenders*. Melbourne: Sentencing Advisory Council.

⁹ For an overview, see further: Cubellis, M., Walfield, S. and Harris, A. (2018). Collateral consequences and effectiveness of sex offender registration and notification. *International Journal of Offender Therapy and Comparative Criminology*, 62(4): 1080-1106.

¹⁰ Freeman, N. (2012). The public safety impact of community notification laws: Rearrest of convicted sex offenders. *Crime and Delinquency*, 58(4): 539-564.

¹¹ Prescott, J. and Rockoff, J. (2011). Do sex offender registration and notification laws affect criminal behavior? *Journal of Law & Economics*, 54(1): 161-206.

¹² Harris, D. (2019). Why Australia should not have a public register of child sex offenders. *Sydney Morning Herald*, 9 January. Retrieved from <https://www.smh.com.au/national/why-australia-should-not-have-a-public-register-of-child-sex-offenders-20190109-p50qcy.html>

¹³ Brown, S., Deakin, J. and Spencer, J. (2008). What people think about the management of sex offenders in the community. *The Howard Journal of Criminal Justice*, 47(3): 259-274.

¹⁴ Marteache, N. (2012). Deliberative processes and attitudes toward sex offenders in Spain. *European Journal of Criminology*, 9(2): 159-175; Pickett, J. T., Mancini, C. and Mears, D. P. (2013). Vulnerable victims, monstrous offenders, and unmanageable risk: Explaining public opinion on the social control of sex crime. *Criminology*, 51(3): 729-759.

¹⁵ Quinn, J. F., Forsyth, C. J. and Mullen-Quinn, C. (2004). Societal reaction to sex offenders: A review of the origins and results of the myths surrounding their crimes and treatment amenability. *Deviant Behavior*, 25(3): 215-232.

¹⁶ Budd, K.M. and Mancini, C. (2016). Crime control theater: Public (mis)perceptions of the effectiveness of sex offender residence restrictions. *Psychology, Public Policy, and Law*, 22(4): 362-374; deVault, A., Miller, M. K. and Griffin, T. (2016). Crime control theater: Past, present, and future. *Psychology, Public Policy, and Law*, 22(4): 341-348; Socia, K. M. and Harris, A. J. (2016). Evaluating public perceptions of the risk presented by

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registered sex offenders: Evidence of crime control theater? *Psychology, Public Policy, and Law*, 22(4): 375–385.

¹⁷ King, L. L. and Roberts, J. J. (2017). The complexity of public attitudes toward sex crimes. *Victims & Offenders*, 12(1): 71–89. The media are particularly powerful in shaping opinion when it comes to sex offending, which tends to elicit highly emotionally-charged reactions. When media sensationalise sex offence stories, they create misconceptions about its prevalence and nature. Misinformation that inspires fear, disgust and anger is more memorable and spreads faster and deeper throughout the community and social networks, while misinformation that is heard repeatedly, feels familiar and is recalled with fluency is often accepted as true. See further: Brady, W. J., Wills, J. A., Jost, J. T., Tucker, J. A. and Van Bavel, J. J. (2017). Emotion shapes the diffusion of moralized content in social networks. *Proceedings of the National Academy of Sciences of the United States of America*, 114(28): 7313–7318; Lewandowsky, S., Ecker, U. K. H., Seifert, C. M., Schwarz, N. and Cook, J. (2012). Misinformation and its correction: Continued influence and successful debiasing. *Psychological Science in the Public Interest*, 28(11): 1531–1546; Rosselli, M. K. and Jeglic, E. L. (2017). Factors impacting upon attitudes toward sex offenders: The role of conservatism and knowledge. *Psychiatry, Psychology and Law*, 24(4): 496–515; Vosoughi, S., Roy, D. and Aral, S. (2018). The spread of true and false news online. *Science*, 359(6380): 1146–1151.

¹⁸ Malinen, S., Willis, G. M. and Johnston, L. (2014). Might informative media reporting of sexual offending influence community members' attitudes towards sex offenders? *Psychology, Crime & Law*, 20(6): 535–552.

¹⁹ The most common type of individual or organisation that was suggested as having access was a school and/or childcare centre. See further: Bartels, L., Gelb, K., Spiranovic, C., Warner, K., Roberts, L. and Davis, J. (2020): What does the public think about sex offender registers? Findings from a national Australian study. *Psychiatry, Psychology and Law*. First published online: 11 September, 2020.

²⁰ Warner, K., Bartels, L., Gelb, K., Spiranovic, C. and Davis, J. (2021). Comparing legal and lay assessments of relevant sentencing factors for sex offences in Australia. *Criminal Law Journal*, 45(1): 57-74; p. 73

²¹ Pickett, J. T., Mancini, C. and Mears, D. P. (2013). Vulnerable victims, monstrous offenders, and unmanageable risk: Explaining public opinion on the social control of sex crime. *Criminology*, 51(3): 729–759.

²² Burton, A. L., Cullen, F. T., Burton, V. S., Graham, A., Butler, L. C. and Thielo, A. J. (2020). Belief in redeemability and punitive public opinion: “Once a criminal, always a criminal” revisited. *Criminal Justice and Behavior*, 47(6): 712–732.

²³ Maruna, S. and King, A. (2009). Once a criminal, always a criminal? “Redeemability” and the psychology of punitive public attitudes. *European Journal on Criminal Policy and Research*, 15(1-2): 7–24.

²⁴ Harper, C. A. and Bartels, R. M. (2018). Implicit theories and offender representativeness in judgments about sexual crime. *Sexual Abuse*, 30(3): 276–295.

²⁵ Harper, C. A., Hogue, T. E. and Bartels, R. M. (2017). Attitudes towards sexual offenders: What do we know, and why are they important? *Aggression and Violent Behavior*, 34: 201–213; p. 210.

²⁶ Ibid.

²⁷ Victorian Auditor-General’s Office (2019). *Managing registered sex offenders*. Melbourne.

²⁸ There is evidence that these laws create financial and psychological costs for the neighbours of registered sex offenders, such as declines in property value. See further: Prescott, J. and Rockoff, J. (2011). Do sex offender registration and notification laws affect criminal behavior? *Journal of Law & Economics*, 54(1): 161–206.