

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Management of Child Sex Offender Information

Melbourne—Thursday, 13 May 2021

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Ms Sheena Watt

WITNESSES

Ms Tania Wolff, President, and

Ms Gemma Hazmi, General Manager, Policy, Advocacy and Professional Standards, Law Institute of Victoria.

The ACTING CHAIR (Ms Garrett): I declare open the Legislative Council Legal and Social Issues Committee public hearing for the Inquiry into Management of Child Sex Offender Information. Please ensure that mobile phones have been switched to silent—good point—and that background noise is minimised.

Before we begin the hearing, I would like to respectfully acknowledge the traditional custodians of the various lands which each of us are gathered on today and pay my respects to their ancestors, elders and families. I particularly welcome any elders or community members who are here today to impart their knowledge of this issue to the committee or who are watching the broadcast of these proceedings. I also welcome any members of the public in the gallery or watching via the live broadcast.

My colleague Mr Grimley and I are delighted to be attending today, in person and virtually, and I believe other committee members will be joining us as the day progresses.

I will just take a moment to explain parliamentary privilege to our first witness, Ms Wolff. All evidence taken in these committee proceedings is protected by parliamentary privilege, as provided by the *Constitution Act 1975* and further subject to the provisions of the Legislative Council standing orders. Therefore the information you provide during this hearing is protected by law. You are protected against any action for what you say during this hearing, but if you go elsewhere and repeat the same things, these comments may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence is being recorded. You will be provided with a proof version of the transcript following the hearing. Transcripts will ultimately be made public and posted on the committee's website.

For the Hansard record, can you please state your name and any organisation you are appearing on behalf of.

Ms WOLFF: Tania Wolff, appearing on behalf of the Law Institute of Victoria.

The ACTING CHAIR: Thank you for being here today, Ms Wolff, and we welcome your opening comments. I would ask that they be kept to a maximum of 5 to 10 minutes to ensure we have plenty of time for discussion. Thank you.

Ms WOLFF: Thank you, Ms Garrett, and thank you to the committee. I am here today accompanied by Gemma Hazmi, who is the General Manager of legal policy and professional standards at the law institute. Thank you for the opportunity to appear here today. I was not quite sure where to be looking, but I am going to look there, because that is a blank screen now.

As President of the Law Institute of Victoria, I represent over 19 000 solicitors, law students and affiliated people in the legal profession. We have provided our written submission to the inquiry, which drew on the work of our criminal law section members who deal with these issues at the courts as part of their practice.

We understand that there is unlikely to be a more vexed or controversial issue in the justice system than sexual offences against children. As your inquiry, I am sure, will canvass all the views that are expressed in our community, I am here today to advocate for the justice system and for the expectation that everyone within it will be treated equally and fairly.

The sex offender registration is a blunt instrument. It does not stop anyone from offending, but it can have lifelong consequences for the offenders, through isolation and stigmatisation and exclusion, which make them more likely to commit further offences and unable to access rehabilitation which would prevent further offending.

Not all sex crimes, even those against young people, are the same. There are degrees of offending. But we say that the current register is too broad, and the undifferentiated and automatic registration is problematic. We recommend that amendments to the *Sex Offenders Registration Act* are made so that automatic and mandatory

registration is removed. We recommend instead that it be replaced by a system that allows for judicial discretion. The judge, in our view, is in the best position, after hearing all the facts of each case and considering evidence of risk to children, to decide which people should be on the register and which people should not.

The register is now too big and too broad to work properly as originally intended, which is to protect the community from dangerous sex offenders. We think there should be a review of the sex offenders register by a panel of experts to remove those people who would pose little risk to the safety of members of the community, especially to children. This would alleviate the strain upon the sex offender register and also ensure that the focus is limited to only serious offenders posing great risk to the community. There are many issues with the current register, including with the management and storage of the register, which is manually handled by Victoria Police and located across multiple systems. To be clear to this committee, we do support sex offender registration, but it should be targeted, and it should be targeted to sex offenders who pose a continued risk of reoffending to the community. The sex offenders register should serve dual purposes of both community protection and also seeking to reduce offending.

We all know that child sexual abuse has long-term impacts, devastating impacts, on victims, so it is also important that alternative supports to rehabilitate offenders and to prevent future offences are provided. The current register does not focus on rehabilitation. It exposes offenders to lifelong consequences and prevents them from obtaining jobs, volunteering and maintaining relationships. They must advise the register by updating police of relatively minor events in their life, such as changing a mobile phone number or a computer password or an email address, within a couple of weeks or they will have committed an offence, and they must continue to do this for eight years, 15 years or for life.

The fact of automatic registration on the list can make it also less likely that offenders will plead guilty to offences, causing their victims to go through the stress of a trial. As you may be aware, some of the offenders have cognitive impairments, but there is no way to accommodate this under the current scheme and failing to comply with requirements of the scheme and the register is an offence of itself. It is also worth pointing out to this committee that the vast majority of sex offenders are first-time offenders, and research indicates that 80 per cent of offenders do not pose a risk to the community—that is, offenders who are on the register. The VLRC, the Victorian Law Reform Commission, has estimated that there are approximately 10 000 offenders on the register since 2020 and indications are that it is likely to be in just a little over a decade 20 000, so the register is awash, effectively, with thousands of offenders who pose no threat to the safety of children.

So what do we do instead? I suggest that other measures involving targeted rehabilitation programs and restorative justice initiatives, such as roundtable justice, could be more effective for some offenders and for some victims. Among these ideas are the child exploitation material or CEM-COPE program, which has been commenced and which is about to commence again in June, which is a voluntary psychoeducational treatment program for individuals who have accessed child exploitation material—for example, child pornography and child abuse images. This program aims to teach offenders new ways of managing and self-regulating.

The LIV is also concerned about any prospect of a public sex offenders register. Despite the good intentions behind it a public register would create more problems than it solves. Not the least of these would be vigilantism and removing any prospects of being able to get jobs and reintegrate into the community at any time. They would only be a Google click away from exposure and ongoing humiliation.

So to summarise, we support judicial discretion as to who goes onto the register, why and for how long, and more targeted approaches to rehabilitation. Thank you, everyone, for your time. I am now happy to take any questions.

The ACTING CHAIR: Thank you so much, Ms Wolff, and we appreciate your time and your submission today. I would like to welcome my colleague Ms Sheena Watt, who has joined us, and also, I think, Mr O'Donohue is joining us as well. Mr Grimley, you were here first. Would you like to kick off?

Mr GRIMLEY: Thank you, Chair. Thank you very much for your submission today. There is some very interesting information there. I have got a few questions, and then I suppose we will just go around, Chair. I will ask a couple of questions and then we will just go around and swing back hopefully at the end for those that have some more.

So you talk about the register being too big to be effectively managed, which is something that the VAGO report has also picked up on as well and I think will only get worse, given, like you said, the amount of offenders on the sex offender register is going to increase. In your opinion, would removing deceased victims from that list be of any benefit at all?

Ms WOLFF: Deceased victims or deceased—

Mr GRIMLEY: Those that have passed on that still remain on the sex offender list.

Ms WOLFF: So deceased offenders. That certainly would help.

Mr GRIMLEY: Yes. And do the current reporting obligations for high-risk offenders—for instance, the higher the risk you do, the more reporting you have to do and the more often you have to do it—make for more effective management for those who are higher risk?

Ms WOLFF: I think there is a value in making the registration requirements and the compliance requirements a little bit more fit for purpose for the particular individual concerned, whether that requires a more bespoke sort of offering for those who are higher risk—that makes sense—and by the same token, less imposing restrictions or less cumbersome restrictions for those who pose little risk or less of a risk.

Mr GRIMLEY: It is sort of an interesting situation because the more sex offenders you have on the register, the more resourcing police need to monitor effectively that particular program, and I suppose the argument you are purporting is that given the size of the register police are unable to effectively manage that register for one reason, being the lack of resourcing. Would that be correct?

Ms WOLFF: I mean, there are efficiencies. If you are targeting a particular group of people who you think are going to be posing a risk to the community, it stands to logical reason that the more people who are on that register the more you are supposed to be managing and that would involve more resources. And there are inefficiencies, because at the end of the day we know that there is a significant concern with extra-familial offending effectively, so where there is a perpetrator who continues and is at high risk of offending, and if you put that next to perhaps an offending which is intrafamilial or maybe a sexting situation of a young person, there is no way to distinguish necessarily between the kind of monitoring or activities between either of them in the current composition of the register and the current monitoring of the register. So to take your point, yes, there is an inefficiency. It is not only resources though, but is this the best way of doing what we are trying to do, which is to monitor those high-risk offenders?

Mr GRIMLEY: Yes, that is right. And those that are high risk or placed within a certain tier of offending are subject to being on the register for certain periods of time and subject to certain conditions, so those that are charged and convicted with, for instance, offences such as sexting, like you mentioned, would not necessarily be on the register. That would be at the discretion of the magistrate though, wouldn't it?

Ms WOLFF: No. It depends on the offending itself. It depends on what images you are producing and distributing and how that is defined. That is why time and time again if you sit in a court—when we were able to do that in person, and soon we will be able to do that again—you would often hear magistrates and judicial officers, in imposing a sentence against a sex offender, stating on occasion that although they are obliged by law to make sure that this person is on the sex offender register, there is no ongoing risk to the community as a result of their offending or that they can perceive from looking at the forensic report, but that is what they have to do by law, and sometimes that includes offending like displaying or sending pictures of another, which could be the sexting, and the way in which that crime or offending took place. So it is possible.

Mr GRIMLEY: Moving from the low-risk offender to the high-risk offender, how do you propose sex offenders are monitored effectively post sentence if you speak about perhaps rearranging the sex offender register reporting obligations? How do we monitor those offenders, the high-risk offenders, effectively in our community to ensure that there is no risk to the community?

Ms WOLFF: Well, I think, to start off with, there has to be an evidence basis for what we are doing, and I think as a community we have come a long way in understanding that we sometimes need to look at science and evidence basis to make decisions. So if on the basis of evidence, and again this is why we say it should not be automatic or flow from a particular offending ipso facto—it should not flow from particular offending as it was and just as an automatic. But if there is an evidence basis for the fact that this person poses a continued risk

to the community, particularly to children—there are ways of doing that; that is, through forensic reports and through various tools that can be adopted—there ought to be a more sort of onerous obligation for that person in terms of monitoring and keeping them under some kind of supervision by the police to make sure that they are not, for example, working with children, which was the primary idea of the act; accessing sites that they should not. So that is why there are some other requirements in relation to passwords and emails and what have you.

But we need to be following advice of experts. I am not here to be explaining the best way to manage this. I am saying that under its current scheme and the current way the register operates it is unfair because it targets everyone in the same way and it does exclude and stigmatise those who do not pose any threat to the community on an ongoing basis, which is actually counterproductive because it is not what we are trying to do as a community. They are part of the community and part of the society. Often people who have offended offend not in a vacuum. There are complex reasons about them and about their lives which have predated their offending and are often a contributing factor. Unless we work at dealing with the underlying causes and supporting those individuals, we are actually not going to change the behaviours. That is why some of the rehabilitative programs that I have been discussing in my submission are ones that we ought to be looking at. So it is not just punitive, it is not just surveying, it is not just monitoring. It is also actually trying to address underlying behaviour and promote change which will be beneficial for the community at large.

Mr GRIMLEY: Thank you. Thank you, Chair. I have got more questions. I will swing back later.

The ACTING CHAIR: Yes, I will circle back. I will go to Ms Watt and then Mr O'Donohue. I had a few; I guess they are really discussion points, Ms Wolff. I was on a committee, although it was an upper and lower house committee, that explored sexting in great detail and made recommendations around the distribution of material without somebody's consent and the impact that that has on the victims of that. I think, if anything, my concerns have grown louder. I appreciate what you are saying about the impact on offenders, but I think the impact on victims of something like sexting and the loss of your own image and where that can go in the net is incredibly profound. I myself am concerned that we would see a wind back of the consequences for people who engage in that behaviour, because it is terribly damaging to victims. How do you balance the voice of victims in this?

Ms WOLFF: I take your point, and there is nothing in what I have said that I hope would be interpreted as not understanding the significance of that for victims. Certainly we understand the impact of that would be very, very significant. The question here, though, is the continued risk to the community, which is what the *Sex Offenders Registration Act* is supposed to be dealing with, the recidivist aspect of child sex offenders—for this committee in specifically looking at that. There is no way I want to say anything that would state that I do not have anything but complete understanding of the significance of that offending. However, does that person pose an ongoing risk to the community, for which that person—after sentence for the offending, which would be treated appropriately according to law—should have the extra-curial imposition, post by a court, of having to comply with going to the police, updating the police on a monthly, weekly, annual basis about address, where they attend, whether they go interstate? Is that an appropriate response, and as a community is it doing what—

I mean, is that person a continuing risk to the community? My submission is that it must be evidence based whether or not someone should be placed on this register, and it should be determined by a judge.

The ACTING CHAIR: Thank you. Ms Watt, did you have questions?

Ms WATT: Yes, Acting Chair, I do. Earlier on you spoke about the risk of vigilantism, and I am interested in exploring that and ask: what additional protections for child sex offenders or victims would be required if offender information was publicly available? That is something I am certainly grappling with.

Ms WOLFF: Sorry, what further—

Ms WATT: Legal protections for offenders if we were to continue down the path of a limited disclosure scheme.

Ms WOLFF: Well, as I stated in my opening remarks, the law institute is opposed to a public register.

Ms WATT: Yes.

Ms WOLFF: And in our submission we are opposed to a public register. We do think that there are significant risks about that, and we are very concerned about a public register. We do not think it aids—and in fact it is counterproductive to—re-integrating in the community for people who, you know, are already being monitored by the police to then be exposed to harmful assaults and other harassment by community members in this way. And I think as a society we have probably evolved—I would hope—from the public lynching that we may have been subject to in the past, so we are opposed to that.

In terms of additional protections, if I could take that on notice and provide that information to you subsequent to this, that would be very much appreciated.

Ms WATT: Yes, I would certainly welcome that, and can I just say thank you for your contributions this morning and my apologies for arriving late.

Ms WOLFF: Thank you.

Ms WATT: Chair, do I have time for another question?

The ACTING CHAIR: Yes. If you do one more, then we will throw to Mr O'Donohue.

Ms WATT: Yes, excellent, lovely. What past advocacy has the law institute pursued in relation to a sex offender registration Act? I am interested in understanding your history in this space.

Ms WOLFF: We have continued to be opposed to an automatic and mandatory registration of sex offenders.

Ms WATT: That is a long-term view of the institute?

Ms WOLFF: Yes, I think that has been from the beginning. And, as I mentioned I think, that it be replaced by judicial discretion effectively so that judges make this decision on a case-by-case basis. That is very central to our view in relation to this—that after a judge has heard a case, all the facts and circumstances of the case, all the particulars of the individual who is before them and has reviewed any forensic material that might be of relevance about continued risk, they are in the best position to be able to make a decision as to whether or not that person poses an ongoing risk and should be on the register. So we have said that from the beginning.

We have also urged a wider view of how we can help people who have offended in the community, and that is essentially looking at one of the important sentencing aims, which is rehabilitation. This particular Act is more focused on protection of the community, but there is an idea that we want to rehabilitate those who have offended. We have focused on restorative justice initiatives and we have focused on other programs which are therapeutic in aim and in direction. So restorative justice, as you probably know, is sort of a process where the people who are most involved in the offending have an opportunity, in a facilitated therapeutic way, to get around a table and reflect on the behaviours and the motivations behind and actually lead to a healing rather than a continuation of the behaviour which is a problem. That has worked in places like Canada beforehand, and I think we have introduced that as an option and as a suggestion.

Also, in those kinds of settings it does an important thing which the legislation does not do and unfortunately the criminal justice process in wider ambit does not do, which is give victims a voice. And it gives victims a voice to be directly involved rather than removed from the proceedings, which is often what happens in the criminal justice system. There are other submissions that we have made, and I can provide that to you subsequently too in relation to this, but I think that sort of covers it.

Ms WATT: No, I think that has, so I appreciate that.

Ms WOLFF: We have continued to maintain that we do not want those.

The ACTING CHAIR: Thank you for that. We are running quite close to the bone in terms of time. We did start a bit late, so I propose we just chew into our break at 10.30. I do not know if anyone has got an issue with that, but maybe we just chew into the break and grab a bite later on in the proceedings. Mr O'Donohue, you were next. And I welcome Ms Maxwell, who has joined us virtually. Mr O'Donohue, did you have questions?

Mr O'DONOHUE: Yes. Thank you, Acting Chair, and apologies for not being there in person. I have longstanding electorate commitments today, so I am grateful for the opportunity to be able to dial in remotely.

Ms Wolff, thank you for your presentation and your submission. I am interested in your comments and the points in your submission about rehabilitation and recidivism. A lot of work has been done by some, you know, very learned experts over many years to try and address the causes of offending behaviour and reduce recidivism. I am interested in the LIV's perspective in where we are at in that understanding and what more can be done to try and reduce reoffending. For the very serious offenders there is the post-sentence scheme where there can be very intensive rehabilitation offered, but perhaps for those serious offenders that do not qualify for that scheme that opportunity is not there. The issue of recidivism is, I think, an important one, and I would be interested in your thoughts on that point, Ms Wolff.

Ms WOLFF: Well, thank you for that question. With the developments that we have made in neuroscience generally and the studies that have been made internationally, there are programs and there are effectively sort of therapeutic modalities that can help to change behaviours. We know that. And by using those modalities and those programs and employing those programs we can affect change and we can change situations where there has been a dysregulation of behaviour which has been at the core of the offending behaviour.

We have referred to in the past some programs that are existing at the moment. There is something called CEM-COPE, which is the child exploitation material cope program, where people who are accessing child exploitation material can undergo a program which is directed at sort of changing the behaviour and the motivations behind doing so in a way that has proven quite successful. There are, as I mentioned beforehand, restorative justice programs that work and have worked in Canada; I think there is one which is focused on accountability but also support in a roundtable setting. There is another program called Refocus, which is in Victoria, and it is CBT directed in terms of the therapeutic modality, which is again cognitive behaviour therapy, changing behaviour. So we think that sort of to deal with recidivism that actually a wider view needs to be taken of the individual, and not all individuals are the same. The problem, which we have mentioned, about this register is that it is universal in its application. If there is a certain offending or a certain sequence of offending or number of the offending characterisation of it, you are on the register, and it is a stigmatising register and it is an onerous register.

From my personal experience as an advocate in the past, there are people who get entangled in this in a way that the community would not be expecting or hoping for. So, for example, I had a client years ago who had committed an offence when he was 18 years old. Sexual penetration of a child under 16 was the charge. In effect it was his girlfriend who was 15 at the time, and but for her age he would not have had that offending because it was consensual. Now, he ended up being on the register, and several years later his life had derailed. He had witnessed a horrendous family trauma, and he started to sort of derail. He became involved in drugs. When I saw him there had been a minor dishonesty offending and I wanted to get him into rehab, and I could not get him into rehab because he was on the register. So it precluded him from being able to access the rehabilitation which he needed to keep him from offending in the community. I do not think there is anyone in the community that would consider him to be an ongoing danger to the sexual integrity of the community or to children, and yet he was on that register.

Now, yes, there are ways that applications can be made to change that. Not everyone knows about that; not everyone wants to go through that process, so it is a difficulty that continues. And so from your point, Mr O'Donohue, about recidivism and being able to deal with it, we need to be able to look at rehabilitation as a similar goal, an object, in relation to the way in which we manage people who have offended in this way.

Mr O'DONOHUE: Thank you, Ms Wolff, for that answer.

The ACTING CHAIR: Look, I am just conscious of the time. I think we have got about 2 minutes to wrap up. Ms Maxwell, did you have a final question before we thank Ms Wolff?

Ms MAXWELL: No, thank you, Acting Chair. That is fine.

The ACTING CHAIR: Okay. So did anybody else have a final question? I know Mr Grimley did. Mr O'Donohue, did you have anything further you wanted to put?

Mr O'DONOHUE: No, thank you, Acting Chair.

The ACTING CHAIR: Okay. Mr Grimley, I think you have got the last word, unless Ms Watt has anything she wants to add?

Ms WATT: No. None from me.

The ACTING CHAIR: One last question, Mr Grimley.

Mr GRIMLEY: Thanks, Chair. I have got about six, but I will prioritise. Perhaps I can submit some on notice?

The ACTING CHAIR: Try and do your best with one.

Mr GRIMLEY: It is okay. I will submit the other five on notice if that is okay.

The ACTING CHAIR: Absolutely.

Mr GRIMLEY: In your submission you do refer to your being:

... in principle supportive of a trial/pilot of a disclosure scheme in Victoria (similar to that in the UK), as long as there are appropriate limits on disclosure, access and use of personal information.

How does the Law Institute of Victoria potentially see this rolling out within Victoria in certain areas—a limited disclosure scheme?

Ms WOLFF: I understand that that was in relation to sharing with law enforcement authorities. I think when it is limited to law enforcement organisations where you are targeting people who are going to be high-risk offenders, that will sort of move beyond the ambit of Victoria. I think that is what we were referring to in relation to that. So, I mean, I do not have details of how that might sort of roll out, but we look on a pilot basis at in-principle support of sharing information with law enforcement organisations that is going to be able to help to prevent offending of this nature.

Mr GRIMLEY: Can I ask a very, very quick one? It is in relation to evidence for recidivism that you spoke about. Are you able to just provide to the committee where the 20 per cent came from—of reoffending? You mentioned 20 per cent of sex offenders will reoffend.

Ms WOLFF: I think we said that 80 per cent of those on the register are likely not to offend. It is noted, I think, in our submission, but it is a 2019 publication that had reviewed offenders between 2004 and 2009, or even beyond that, I think, perhaps in 2015, but we can give you those details subsequently. That was one of the research pieces that we referred to.

Mr GRIMLEY: That would be great. Thank you. Thank you, Chair.

The ACTING CHAIR: Thanks, Ms Wolff. It has been incredibly informative, and we appreciate your time here and also the time taken to make your submission. So thank you very much, and the committee wishes you well.

Ms WOLFF: Thank you.

Witnesses withdrew.