

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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WITNESS

Mr Sam Norton, Senior Vice-President, Liberty Victoria.

The ACTING CHAIR (Ms Garrett): Thank you so much, Mr Norton, for joining us today. I will just explain briefly about the evidence that you are going to give and its protections. All evidence taken is protected by parliamentary privilege as provided by the *Constitution Act 1975* and further subject to the provisions of the Legislative Council's 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, those 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 that you are appearing on behalf of.

Mr NORTON: Thank you. My name is Sam Norton. I am appearing on behalf of Liberty Victoria.

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

Mr NORTON: Thank you. Thanks very much for the invitation to come and speak on this most important topic. I am grateful to have had the opportunity to sit in on the previous witness's evidence because it highlights a number of the issues and a number of the underpinnings of some of the concerns related to a public register. The difficulty in dealing with anything that involves sex offences or sex offenders is that the person is branded as a sex offender and, consistent with the evidence that was just given by the previous witness, they are essentially viewed as a disposable person. The analogy that he gave about the integrity of a person who is a sex offender being popped like a balloon and never being capable of being recovered in my view underpins the great difficulties that there are in having a sensible and reasoned view of this issue. He spoke about assets and them being of equally high value, of course until they turn 18, after which they appear to be disposable.

If we look at this issue on the basis that people who commit sex offences are not all disposable, are not all irredeemable, and we look at the breadth of the scheme that has been formed since the introduction of the sex offender register and it now capturing somewhere in the vicinity of 10 000 citizens, then we have to look at what can be done to ensure that those citizens can be contributing members of our community, can be rehabilitated—and public registration would be a hammer blow to any prospects of reformation and reintegration.

When one looks at the statistics in terms of the cohorts who commit sexual offences, and I have brought one printout with me—and I am sorry I have only printed five copies—this is a printout from the bureau of statistics, which indicates the offender rate per age group for the period 2018–19 to 2019–20. The highest bracket is 15 to 19, then 20 to 24, then 25 to 29, and then it goes down and down and down. If we look at this issue on the basis that a good portion of those early cohorts—the 15 to 19, the 20 to 24—commit offences firstly, that are likely to be, particularly in the 15 to 19 cohort, against other teenagers, potentially children, noting that 'child' is defined in the Act as under 18, and we look at the fact that simply by viewing the graph we can see that maturation reduces the risk of reoffending, then we have got to look at the prospect that these people are far from disposable, that their integrity is far from being popped and that what is required is the establishment of circumstances in which they can best reform themselves, because that is going to protect our community in the longer term.

We do not have a position in our state—and plainly we cannot and must not—that the commission of a sexual offence strips you of every right that you will ever possess. We do not simply put people on a boat and send them to Tasmania. We are a civilised society, and we have got to view this with all of the nuance that comes with it. The consequence of a public register would not be the reduction in offences—it would be an increase. I heard this morning Ms Tania Wolff give evidence on behalf of the law institute, and she spoke about the fact that 80 per cent of the members of the register now have not reoffended. That is 8000 people that are on the

register who, consistent with the evidence of the previous witness, have given up their integrity and who ought to have their details publicly available, notwithstanding the fact that they no longer pose any risk to the community at large. And it is important to note—and I know that this is not part of the terms of reference—that the breadth of the scheme is far wider than what was initially intended, and the mandatory regime means that more and more and more people are being captured on the register. And of course because of the length of time over which these registrations are in place we are not having anything like the number of people come off the register, and so the sheer number of people that are going to be on this register going forward is going to get bigger and bigger and bigger.

I heard Ms Wolff also speak of a couple of examples. It is very important for the committee to understand that what Ms Wolff spoke about is not some sort of isolated incident. These examples are littered through the registrants that are currently subject to the reporting conditions. It is very regular to have clients come and speak about the fact that they are on a register, they committed an offence when they were 18, 19—and that might be six or so years ago—that they are now in a stable relationship, they are in employment, but the difficulties that are being created by their ongoing registration are hampering their prospects of contributing to the community.

We also know that the vast majority of sexual offences are committed by someone known to the victim. Public register information is going to do little to prevent that. The current situation is such that interactions between children and registerable offenders is either proscribed or highly controlled. The department of human services regularly becomes involved and dictates the nature of, the extent of and the circumstances in which interactions can occur. The consequences for breach of the register are already significant, and prosecutions are brought by Victoria Police for the slightest infraction regardless of whether there is any risk involved.

And if we consider the fact that some registerable offenders have very considerable vulnerabilities—mental health issues and the like—isolating them further and making their details public is only going to exacerbate that and therefore increase the risk of further offending. I can give the committee an example of a client that I have represented, a very seriously unwell fellow who is reliant utterly on his parents for his day-to-day care. He accessed child pornography via the internet and, as such, was placed on the sex offenders register. His parents have to assist him in navigating his registerable obligations, they have to deal with the department of human services if there is any interaction between him and their grandchildren—they have other adult children. They have very considerable difficulties to navigate in assisting him. What possible good could there be in his details being made publicly available? The other fact that needs to be borne in mind is that already people plead not guilty because of the register. People will run cases because of the register, because of its mandatory nature. Much has been spoken about in relation to the difficulty of victims giving evidence. If you put in place a public register, you can expect pleas of guilty to essentially evaporate.

It is important also from a human rights perspective to understand that the charter provides for the right to privacy, and infringements on rights should only be to the extent that it is necessary—only to the extent that it is necessary—and it must serve an aim. What was telling about the previous witness's evidence is that he viewed the whole purpose to be connected to deterrence rather than the actual use of the information. That is telling. I note the committee has invited the previous witness to provide some further information in relation to deterrence theory. I would welcome the same opportunity, because when one looks at the criminal law sphere and increased sentences, it does not mean reduced offences—it just simply does not—and that has been proven in many, many jurisdictions the world over. There has been no better example of it than in the United States.

There was reference earlier on to the Western Australian scheme in a question. I am not utterly familiar with it. I am, however, familiar with the fact that one of the circumstances in which information can be released is if a person has been convicted of an offence punishable by imprisonment for five years or more and there is concern that this person poses a risk to the lives or sexual safety of one or more persons or persons generally. Firstly, the five-year imprisonment covers just about every relevant offence and, secondly, the term 'there is concern that this person poses a risk' is so rubbery and vague as to be meaningless. It is also worth noting that as a rate of offence Western Australia has 1600 offenders per 100 000, we have 1200. It is a fairly significant proportional difference.

There was discussion this morning about rehabilitation. It is the key. Education and rehabilitation are the key. What is telling at the moment in Victoria in our criminal justice system is that outside of a court order I can engage my client in any number of safe driving courses, in any number of anger management courses, drug and alcohol rehabilitation courses—you name it—but I cannot get them involved in a proper sex behaviour

education program outside of a court order. The only way that is done at the moment is when it is done through private psychologists and psychiatrists. You cannot do those sorts of programs at present unless they are part of a community correction order or indeed part of a prison sentence. These are programs that have been introduced and are doing some work in the Children's Court, but there are none that are properly established in relation to adults, even those in their late teens. There is some stuff that is commencing in the middle of this year which is a step in the right direction, but that is where the attention needs to be directed. We want to be in a position where we can avoid crimes occurring by educating people. Without traversing ground that has already been spoken about very publicly, ads about milkshakes are not going to cut it; there needs to be a proper system by which people can be educated. I think I have probably used up my 5 minutes.

The ACTING CHAIR: Thank you very much, Mr Norton, for your contributions, both written and oral, today. Mr O'Donohue, I think you get the right to kick off first if you have got some questions.

Mr O'DONOHUE: Thank you very much, Chair. I do welcome the opportunity. Thank you very much for your submission and for what you have got to say, your evidence. I suppose the question I have for Liberty Victoria is: is there a circumstance in which you believe a register or even the current legislative regime should be maintained, or do you think they are futile?

Mr NORTON: No, we do not think they are futile, and we have previously made submissions to Parliament acknowledging that the need for a register is accepted. The need for post-sentence schemes, such as ESOs—they are necessary. The capacity to have offenders placed, where it is assessed by a judge that it is required, on those orders, including being placed at Corella Place—they are matters that Liberty Victoria accept the necessity of. We accept that they are infringements of people's rights that are necessary.

In terms of the current legislative scheme, though, it has been Liberty Victoria's position over a number of years—and we have previously made submissions to Parliament in relation to this—that the mandatory registration of offenders is bad. It is a bad law. It ought not be maintained. The recent comments from the County Court in this regard, really, we echo and endorse. It is not the case, particularly when one looks at that lower age cohort, that all of those who would be caught by the current provisions pose an ongoing risk to the sexual safety of our community. It just simply is not the case.

And so, whilst it is not a term of reference here, we are of the view that for a scheme to work it ought to be on the basis that assessment is made of the individual case and the need for that individual offender to be placed on the register. And when you have that sort of scheme in place it is going to be far less unwieldy than the current scheme of having 10 000 registrants, some of whom pose not the slightest risk to the sexual safety of any member of the community.

Mr O'DONOHUE: Some of them, as we have been discussing, are deceased as well.

Mr NORTON: Indeed.

Mr O'DONOHUE: Thank you, Chair.

The ACTING CHAIR: Great, thank you. Do you have a further question at the moment, Mr O'Donohue? No? Okay, terrific. Ms Maxwell.

Ms MAXWELL: Thank you, Acting Chair. And thank you, Mr Norton, for your valuable insight. It talks here about promoting human rights and freedom within Victoria. I am wondering how you see that balance for offenders against the balance for victims' validation. And I am actually only referring to those serious sex offenders who are likely to reoffend, or that very high end of offending—so not your low-risk reoffenders; I am talking about a really high-risk area. What do you see as that balance?

Mr NORTON: Well, if we look, for example, at the current extended supervision order scheme and we look at the powers that are available to the County Court judges—they are the ones who deal with those applications—and we look at the restrictions that can be placed on the liberty of those high-risk offenders, including the taking away of their liberty entirely, not simply the placement in Corella Place, which is effectively a prison, there are schemes that are in place which enable prison sentences to be extended. In those circumstances, where we have that rigorous judicial oversight—now, that latter category is in fact dealt with by the Supreme Court, which is reflective of the level of rigour that is required before those sorts of steps are taken—that balance, through that scheme, is being struck.

Ms MAXWELL: We do know that there have been serious offenders, though, released from prison who have gone on to commit further sexual offending, and violent sexual offending, in fact. And I guess that is the area that I am most concerned about—that this aligns, this register, however it may look or may not look—and looking at those prevention strategies. Is there the opportunity for rehabilitation within prison? Are serious rehabilitation attempts made in prison for those serious sex offenders?

Mr NORTON: There are going to be, whether it is in relation to sexual offences or violent offences, a small group of people who cannot be rehabilitated. It is a very, very small proportion of offenders. This is where dealing with the instrument of the criminal justice system is a very difficult one, because the eradication of crime in its entirety is a laudable aim but it is unrealistic. If we find ourselves in a position where we, as I said at the outset of my comments, acknowledge that not all sex offenders are disposable and we have to assess the individual cases, then we realise that the public registration of the entire 10 000 cohort, which is going to go up and up and up and up, cannot be justified.

Getting back to your question about those serious offenders, there are schemes which are currently in place that would do considerably more to guard against them further offending—those schemes that I have spoken about, the ESO, the ongoing attention—that would do far more than a public register.

Ms MAXWELL: You alluded to this before, stating that it was difficult within community, within society, to gain access to rehabilitation programs. Hence my question is: is that being made available within prisons for those who have actually been incarcerated?

Mr NORTON: Yes, it is. Offenders who are sentenced to prison are required to undertake sex offender programs before they are eligible for parole. So people that are in custody often have their parole refused if they have not done the requisite programs.

Ms MAXWELL: Because we do know that the SOATS program is made available for people once they have been released. But the trouble with that is it is only within metropolitan areas. So those rural areas do not have access to that, which I think aligns with what some people have been asking, that a public register may actually identify those who are living in rural and regional areas. I just wonder: what sorts of outcomes have they had from having the rehabilitation whilst they were incarcerated? Do we have any data on success rates, of no further reoffending?

Mr NORTON: There is variation in individual accused who are incarcerated. But the rates of reoffending—and I am sorry, I do not have access to them; I do not have them at my fingertips—are not particularly high. The rates of offending whilst on the sex offender register, for example, are low. I am sorry, I am not sure that I can assist further in answer to that question. The only thing I will say, though, is that if we have a system where there are rehabilitative programs available to those in the metropolitan area but not in the regional area, the answer to that is not to make those in the regions be part of a public register. It is to provide them with the opportunities to engage in the rehabilitative measures.

Ms MAXWELL: Thank you.

The ACTING CHAIR: Thanks, Ms Maxwell. Ms Watt, did you have a question?

Ms WATT: Thank you, Mr Norton, for your presentation today. It certainly got us all thinking, no doubt. I had a question just about the history of advocacy of Liberty Victoria on this, and if you could expand on what sort of past advocacy and policy work Liberty Victoria has done on this—it is a similar question that I asked the law institute—just to understand your longstanding position, advocacy and policy on the issue of the *Sex Offenders Registration Act*.

Mr NORTON: Yes, we can certainly provide the previous submissions. I mean, they will be somewhere in the archives, but we can certainly provide the previous submissions that we have provided. We have provided a submission dated 29 March 2016 in relation to the Sex Offenders Registration Amendment Bill 2016. We provided also a submission in 2014 in relation to the Sex Offenders Registration Amendment Bill of that year. We have been actively putting our position in relation—

Ms WATT: I think that was really on the question ‘Have you indeed actively been advocating on this?’, and I am very clearly understanding that.

Mr NORTON: Yes, we certainly have, and I apologise that I have not presented a written paper. The opportunity to speak directly was the one that we welcomed, noting that we have previously put written submissions in.

Ms WATT: No, I appreciate that. Can I have a follow-up question please, Acting Chair, if that is all right?

The ACTING CHAIR: Absolutely. Of course.

Ms WATT: So with that history of submissions and that position on the *Sex Offenders Registration Act*, does Liberty Victoria have a position on how the Act in its current form balances community safety concerns with the rights of victims and offenders? I mean, it is a pretty high-level question, but I am keen to understand particularly where Liberty Victoria sits on that.

Mr NORTON: We do. Our view is that there are far too many people on this register. Our view is that mandatory registration is an anathema to justice and it is not going to assist in the proper protection of the community. I am sure that those that administer the register would prefer to have those that are a genuine risk that they have to manage rather than the however many thousand that pose no risk. It is the position of Liberty Victoria, and has been consistently, that there ought to be discretion from the court and there ought to be a greater capacity to make application to be taken from the register, because—again harking back to that graph—a person who is 19 is going to be very different when they are 29. If they are placed on the register for 15 years, they have still got another five years ahead of them before that register is off their back.

Ms WATT: Yes. Just to this graph, I am particularly interested in and wanting to understand. What exactly am I looking at with these numbers? If you could just indulge me for a moment to further explain what statistics are presented and the rates.

Mr NORTON: It comes from the Australian crime statistics, so the webpage is from the Australian Bureau of Statistics. There is recorded crime and there are details about offenders, so the page—

Ms WATT: Am I looking at Victorian statistics?

Mr NORTON: Yes, these are Victorian statistics.

Ms WATT: There we go. I missed that pretty fundamental point in this graph.

Mr NORTON: My apologies; I ought to have explained it better. Their website is very helpful. It sets out the various statistics, including the shift in offences that has occurred. Obviously there was a reduction in offences in 2019–20, which in part is explained by the fact that licensed premises and the like were closed, because we know that if we look, for example, at those cohorts of 15 to 19 and 20 to 24, licensed premises are where a large number of offences occur. So that perhaps explains the difference in the statistics year on year. But again, the statistics paint a fairly stark picture in my view.

Ms WATT: So which offences are we particularly looking at with this?

Mr NORTON: These are sex offences.

Ms WATT: Sex offences. Okay, there we go. Thank you. No further questions from me, Acting Chair. Thank you so much for your indulgence.

The ACTING CHAIR: Great. That is terrific. Mr Grimley, did you have any discussion you wish to pursue at this time?

Mr GRIMLEY: Yes, thank you, Chair. Thanks for your presentation today. It was very interesting. I read that Liberty Victoria work to promote human rights, which is fantastic. I would assume that this also includes a right to be safe in the community as a human right, and given that, and in particular reference to the terms of reference part c, can you explain to the inquiry what Liberty Victoria's view is on if there would be any circumstances in which the details of convicted child sex offenders can be made public?

Mr NORTON: Well, in short, in public, if we are talking about publicly available, available to people who can access it, the answer is none. It is important to understand that this is not a situation where that position is underpinned by a preference for the rights of an offender above the rights of people to be safe. Our position is

that this does not assist in making people safe. Our submission, and I made reference to it in my opening remarks, is that public register information is going to increase the risk rather than reduce it. It is going to mean that offenders—people that are on the register—will be more isolated, that their mental health will be more compromised. It will mean that their prospects of properly engaging in the community, in employment and those things is reduced, all of which are risk factors that increase the risk rather than reduce it.

Mr GRIMLEY: So under the current scheme, if a registered sex offender who is classed as high risk has for whatever reason failed to report or has gone missing within the community, the policy is currently for that information to be released to the community so that members of the public can be kept aware of this person who may be a danger to the community. Are you suggesting that that should not be released at all?

Mr NORTON: No, that is someone who has committed a crime. They have committed an offence by breaching the register; they are effectively a fugitive. It is a different scenario. Now, if we have a scenario where someone has escaped from prison or whatever it is, then of course they ought to be tracked down, and if tracking them down includes publicising some information in relation to them, then that is a completely appropriate and necessary measure.

Mr GRIMLEY: Yes. Can I just have one or two more, please, Chair?

The ACTING CHAIR: Absolutely you can. We are well within time.

Mr GRIMLEY: Wonderful. Thank you. You mentioned also that the public register releasing information on sex offenders publicly results in an increase in offences. Have you got any evidence of that to provide to the inquiry?

Mr NORTON: We can provide you with some information about what occurred in, for example, the United States.

Mr GRIMLEY: That would be great. That is fine—take that one on notice. You also mentioned that there are no sexualised behaviour programs outside of court. Is that right?

Mr NORTON: Essentially they are all private—and when I say private, they are psychologists being engaged for the purpose of providing that assistance.

Mr GRIMLEY: From my experiencing working in the SOCIT not too long ago, we had a number of cases come before us of juvenile offenders that exhibited sexualised behaviours, and in that regard, where it was deemed that prosecution or charging that person was not in the public interest, we could defer to at that time DHHS, which is probably now DF-something—I forget the name—who have a sexualised program that runs outside of—

Mr NORTON: Sorry, I made reference to that in my preliminary remarks about that being dealt with in the Children's Court sphere. There is no similar program—

Mr GRIMLEY: You do not even have to go to court. It is totally outside of court. It is just directly through DHHS and Victoria Police and the perpetrator as well, so that has got nothing to do with the Children's Court, and it goes up to 18 years of age—just for the purposes of the committee, so that we are aware of those programs and that they do exist.

Mr NORTON: Can I ask: there is no scheme, is there, that goes beyond that 18-year-old threshold?

Mr GRIMLEY: Once they hit past 18—I think it actually goes up to 19, but yes, I am not too sure post 19.

Mr NORTON: My understanding, consistent with the remarks I made at the start, is that it cuts off as it does with the threshold for being in the Children's Court.

Mr GRIMLEY: Yes. Just quickly also—actually, no, I will pass on to the next person, Chair. I do have a couple more, but I will let other people have a chance.

The ACTING CHAIR: Does anybody else have any more questions? I do not believe they do. Ms Maxwell, had you finished?

Ms MAXWELL: Yes, I am fine. Thank you, Acting Chair.

The ACTING CHAIR: Before I throw back to you, Mr Grimley, this may be well outside the remit of this, and I do not mean to put you on the spot, but we are having quite the interesting discussion. Clearly the overwhelming number of people on the registry are males, and potentially I suppose that is going to be the case in any public register. Outside we heard evidence that it is often small boys who are the victims of paedophilia, but as you move up in the main it is young women. Do you feel that enough has been done to have a gender lens put on this in terms of the view of the powers that be about the severity of these crimes? And this is more a broader discussion perhaps for another day, but are you concerned that perhaps these crimes are viewed as being of less importance and people should not be on this because it is so gendered and that we have not properly given a proper gender analysis of this and perhaps these crimes are more serious than we have thought or that society has viewed them? You can take that on notice if you wish.

Mr NORTON: No, I think it is a really good question. I think the participants in the criminal justice system—prosecution, defence, judiciary—are keenly aware of the impacts of sexual crime, and there is a significant and erroneous impression in the public, which comes through various media publications, it comes through some tabloid journalism that we unfortunately see, that in fact courts are soft on these sorts of offences and that they are out of step with the community. The recognition of the harm that is caused by this offending has increased. I have been practising for 20 years. It has certainly increased very significantly over that time, but it is not a recent shift. Courts, prosecutors, defence are all keenly aware of it. We all see it in various guises, whether it is the cases that we actually do—the instant case of an offence—or whether it is dealing with someone who as a child was abused and has had their life very significantly damaged by it and later goes on to commit offences. It is a frustration of many of us within the jurisdiction that the view from outside is that we are not keenly aware of these issues. It could not be further from the truth.

The ACTING CHAIR: I do not suggest for a moment that you are not keenly aware and that you are not fighting for justice and it was not singling out. I mean, I think it is a society-wide issue that is well recognised that we are still well far from gender equity in all levels of our community. I think the courts and the profession have taken great steps in acknowledging that some of the ways in which evidence and trials are conducted can be really very counterproductive for victims of sexual assault or child victims of sexual assault. So I think we can all agree that there is room for improvement wherever we are, whichever of the community we find ourselves in. That is not to say that there is not so much good work that is being done. I guess I just put that as a question for the committee and the broader issue around when we step back and think about how we have approached justice for sexual assault victims over many decades—we have made great improvements and seen that there have been really unhelpful methods that have evolved. I guess I just put that out there. Thank you for your considered response. Mr Grimley, did you have a couple more?

Mr GRIMLEY: Thanks, Chair, if I may. You spoke about the breaches of those on the register as being very low—

Mr NORTON: No, I just want to correct you. I did not say that.

Mr GRIMLEY: Okay. What did you say?

Mr NORTON: I said that the prosecution of breaches—they prosecute consistently regardless of the extent of the breach, regardless of whether there is any risk that is posed by the breach.

Mr GRIMLEY: Yes. What do you mean by the prosecution is low in that regard? For the breaches.

Mr NORTON: I did not say that the prosecution is low. I said that they prosecute any breach.

Mr GRIMLEY: Sorry, the bar.

Mr NORTON: Yes. The bar is low.

Mr GRIMLEY: Yes, got you. I thought you were referring to the prosecution level of breaches.

Mr NORTON: Perhaps if I can give you an example—

Ms WATT: An example would be helpful for me.

Mr NORTON: An example that occurs quite regularly. Someone is employed. Their email is changed by their employer—they do a server-wide change. They do not report that fact straightaway because it is a matter of oversight. It is connected directly to their employment; they have not made that change. They then go in for their review. They tell the person administering the register what their email is, and they say, ‘Well, hang on, that doesn’t match the last one’ and they are charged. So those types of breaches. It is completely understandable that access to communication devices is something that is restricted, something that the register wants to know about, but those types of prosecutions—I have got a client facing a matter at the moment where his username for his PlayStation was different and they are prosecuting him for that. So it is those levels of breaches which are prosecuted regularly.

Mr GRIMLEY: Thanks for clarifying that. You also said that most perpetrators are known to the victims, which has been something that has been brought up previously. Even one of the submitters this morning, Dr Davis, was speaking about how 90 per cent of people are abused by someone that they know. I am just interested to hear your thoughts or comments—and you might not be able to answer this; that is fine—about grooming. Because one thing that I have found in my investigations with children that have been sexually abused is that at the time of the abuse they were known to the abuser, be it a coach, a neighbour or a friend of the family for whatever reason. However, prior to the grooming commencing, which could have taken years or months, that abuser was not known to the victim at that particular time, if that makes sense. What I am trying to say I suppose is that although at the time of the offence 90 per cent were known to the abusers, prior to the grooming commencing, which is all part of the whole process of sexually abusing children, those people were not known. Are you aware in your experience in dealing with the sex offence matters if this is a known issue at all?

Mr NORTON: It is pretty rare. It is pretty rare for an offender to commence the grooming of their ultimate victim prior to knowing them—to identify them and work their way up to it. We see offences which are committed in the online environment where people meet in chat rooms. Very, very often the way in which those matters are in fact brought to someone like me—I am a criminal defence lawyer—is because the person at the other end of it is not in fact a 13-year-old girl, it is in fact an AFP member who has been chatting with the accused. But in terms of that sort of grooming from the commencement of the person being unknown, that is certainly far, far more common than any sort of contact offence.

Mr GRIMLEY: Thanks for that. It is probably a question more suited to Dr Davis than yourself but that is fine, I appreciate your answer for that one. Just two more questions. You mentioned that most plead not guilty because of the register—most of your clients plead not guilty. Is that what you said?

Mr NORTON: No. Again, I did not say that. I said that there are people who now, presently, will plead not guilty because they know that if they plead guilty, they are going to go on the register.

Mr GRIMLEY: Yes. How many of those cases where people plead not guilty result in a conviction?

Mr NORTON: The variation is enormous. It really is; the variation is enormous. Most cases overall result in a plea of guilty. But if there is a tipping point, if the accused person is giving any consideration to pleading not guilty and as their advisor you have to say to them, ‘If you plead guilty, you are going to go on the register’, then that answers their question for them.

Mr GRIMLEY: So it is quite alarming—I find it alarming—that just because of a threat of being on a register or even a threat of imprisonment or threat of anything that anyone would plead not guilty to something that they have done. I would find that quite concerning—that they wanted to avoid being put on there even though they have committed a crime. That is why I was trying to work out how many of those have pled not guilty for the simple fact that they do not want to cop the consequence.

The ACTING CHAIR: Mr Grimley, on that point if I can just supplement your questioning, do you then acknowledge or are you of the view that the sex offender register does act as a deterrent, given people are scared of it or do not like it?

Mr NORTON: No. So this gets back to deterrence theory. So once they are sitting in your office and they are contemplating things in a detached fashion, then they are able to make decisions about, ‘Okay, well, if I plead guilty, I’ll get a slightly lesser sentence but I’ll be on the register. Or I can take my chances and I might

not be on the register'. That is a very different aspect of deterrence as opposed to, 'I'm considering engaging in sexual activity with this person who's with me here and now'.

This is why I asked earlier on to have the capacity to provide some level of information to the committee about deterrence theory, because it is a misnomer to think that at the point in time that a person is about to commit an offence they are thinking about the prospect that they are going to end up on a sex offender register. It just does not happen.

The ACTING CHAIR: But if you have got a large group of young adolescent men, for example, who are being taught that—with Respectful Relationships and the like, which is being rolled out everywhere now, as it should be—and you are grappling with those and they hear that they can be put on a sex offender register, I get that perhaps it does not tweak into every adolescent brain but if you are seeing that at the pointy end of the season they are stressed about it, do you think it can play any role in those kinds of respectful relationships, or do you feel they just do not think at all? I am just interested, because my view, I guess, would be it must reach some of them in that stage.

Mr NORTON: What reaches them in a far more effective way is educating them about what is correct and what is incorrect, what is right and what is wrong. And it might sound really quite alarming, but I have dealt with cases where, for example, there is a team party and, you know, multiple people have sex with the same girl on the same night, and it is considered as, 'Well, what's the big deal?', because they had not been properly educated about respectful relations and about the respectful interactions. None of them were thinking at the time, 'Oh well, if this goes bad, I'm going to end up on the sex offender register'.

The other thing about the sex offender register that is important to understand in the context of deterrence: it is not part of the sentence. Parliament has expressly severed it from the sentence. It is an ancillary order almost always made in mandatory circumstances. So the concepts of deterrence, both specific and general, protection of the community, rehabilitation, denunciation—those things that are contained in section 5 of the *Sentencing Act*—do not apply to it.

The ACTING CHAIR: And we are going back and forth a bit here, but my view is if you have chosen a multiple gang rape, really, of a girl who is not able to consent then you should be on the sex offender register, for starters. I mean, that would be, in my view, a very serious sexual offence.

Mr NORTON: Of course.

The ACTING CHAIR: And perhaps they are not mutually exclusive as part of a Respectful Relationships agenda and right and wrong. I do not think it is the be-all and end-all, but that is a tenet for people to think that perhaps if they are not well evolved enough to consider somebody else's feelings or the impact on somebody else they can think, 'Well, what does this mean for my life? It's going to impact my life, and I might end up not as happy as I could be, or in trouble', if they are not able to consider the impact of their actions on another human being.

Anyway, it is just an interesting discussion. Again, I guess it goes back to my gender lens argument. For a long time that kind of scenario was not viewed seriously by anybody, lawmakers or legal professions or others. And we all have to take responsibility for that. And I am just deeply concerned, when we see this new wave of young women who are standing up and not accepting some of the treatments that other women have previously accepted, that perhaps we do not go to the same old arguments that, you know, 'Does this work? Doesn't it work?'. I do not know. I think we have to be just take taking it that these things—and I am not suggesting that you are not; I know you are spending your life doing it—are heinous acts, perpetrated mainly from one gender to another.

Anyway, I think I am sort of outside my scope of Chair. Mr Grimley, I will return to you, I think, and zip my lips.

Mr GRIMLEY: I am happy to leave on that note. Thanks, Chair.

The ACTING CHAIR: Any further questions? Yes, Ms Maxwell.

Ms MAXWELL: Thank you, Acting Chair. One quick question in relation to those who are stating they do not want to be on the sex offenders register. Mr Norton, can you expand on that? What is it? What is their fear of being on the sex offenders register?

Mr NORTON: The registration has very significant impacts on people's lives. It restricts their capacity to travel overseas. It restricts their ability to engage in various forms of employment. It restricts their ability to have any sort of interaction. A current example is of a client of mine. His brother has a child, so therefore they come for dinner. He has got to disclose that to the registration people. He has got to go through those steps. It is not a matter of simple inconvenience; it really is a matter of shame as well.

Ms MAXWELL: So what level of offending would that case in particular be?

Mr NORTON: Well, this is the problem with the mandatory registration. That person had accessed child pornography. That is one client. I have had clients who have been engaging in relationships. The example that Ms Wolff gave this morning of the 18-year-old who was in a relationship with a 15-year-old—there are countless numbers of those. I had a case where a client offended against a female in a nightclub. She was in fact 17. The question of belief in age does not come into it in terms of the register. Once the offence is committed against a child, that is the end of that.

Ms MAXWELL: Thank you.

The ACTING CHAIR: Okay. I think we have reached the end of that. That has been a very interesting discussion. We really appreciate your expertise and your considered evidence today. I confirm that you will provide some more information to the committee on previous submissions, or at least point us to them, and also the deterrent series. So that has been really helpful. These are really good topics to tease out and discuss for us in providing a report with recommendations. So we really do appreciate your time. Thank you very much.

Mr NORTON: Thanks very much.

Witness withdrew.