



██████████
██
2 June 2021

Committee Secretariat
Parliament of Victoria
Legislative Council, Legal and Social Issues Committee
Parliament House, Spring Street
East Melbourne VIC 3002

By email only to: CSOInquiry@parliament.vic.gov.au

Inquiry into Management of Child Sex Offender Information

Dear Committee Secretariat,

The Law Institute of Victoria ('LIV') welcomes the opportunity to provide additional feedback to the Legal and Social Issues Committee ('the Committee'), following our appearance at the Inquiry into Management of Child Sex Offender Information's ('the Inquiry') public hearing.

Matters Taken on Notice

1. In relation to vigilantism: What additional protections for child sex offenders or victims would be required if offender information was publicly available?

As set out in our submission and reiterated at the public hearing, the LIV is opposed to a public register. The LIV does not consider introducing additional protections for child sex offenders would be sufficient to address the perils of a public register. The Office of the Victorian Information Commissioner ('OVIC') recognised the difficulty in practice of limiting how information is accessed with the protection of children.¹

¹ Office of the Victorian Information Commissioner, Submission to the Inquiry into Management of Child Sex Offender Information (16 November 2020) 7-8.

Both OVIC and the Law Council of Australia have also identified the potential misuse and harmful use of such information, including vigilantism or harassment.²

Under the current scheme, the *Sex Offender Registration Act 2004 (Vic)* (**'SORA'**) makes it an offence where a person publishes information about a registrable offender if the person knows or ought reasonably to know, that the publication would create, promote or increase animosity towards, or harassment of, the registrable offender or an associate.³ This relates to information about a registrable offender that is published pursuant to section 61A by the Commissioner of Police authorising publication of registered offender details, including their name and a photograph, where the offender has failed to comply with their reporting requirements and their current whereabouts is unknown.⁴ A safeguard which matches the purpose of the publication with the potential for vigilantism is built into the provision that the missing offender's photograph is removed as soon as the offender reports their whereabouts to the Commissioner of Police.⁵

Limiting the circumstances only to situations where the safety of specific individuals are at risk, or the general public where a registered offender is missing, is a proportionate response that demonstrates the types of circumstances in which offender information can be publicly available. However, **if** offender information must be made publicly available, additional protections ought to include:

1. Amendment to the existing provision under section 61G of the SORA

The existing deterrent mechanism under section 61G of the *SORA*, which mirrors the Western Australia regime, ought to be amended to align with the WA's offence which makes it an offence where a person engages in conduct intended to incite animosity or harassment of identified offenders.⁶

² *ibid*; Law Council of Australia, Submission to the Department of Home Affairs: National Public Register of Child Sex Offenders (19 February 2019) [23].

³ *Sex Offender Registration Act 2004 (Vic)* s 61G.

⁴ *Sex Offender Registration Act 2004 (Vic)* s 61A.

⁵ *ibid* s 61E.

⁶ *Community Protection (Offender Reporting) Act 2004 (WA)* s 85L.

2. Limited disclosure in specific circumstances

Given the risk of adverse community attention, only offenders with a demonstrated risk should be placed on the register. Aspects of a limited disclosure scheme could emulate the United Kingdom or Western Australian schemes. This may include:

- as in the United Kingdom, permitting disclosure in limited circumstances, such as where a child protection interest is registered.⁷ The UK scheme requires applicants to sign an undertaking that they agree the information is confidential and they will not disclose it further.
- as in Western Australia's semi-public register, for offender information to be managed through a three-tiered system, with applicants required to provide their name and driver's license to request information on specific registered sex offenders and sex offenders living in their locality.⁸ The Western Australian register also provides information on missing sex offenders, local search options for dangerous sexual offenders, serious repeat reportable offenders, and persons convicted of an offence punishable for 5 years or more if the person poses risk to lives or sexual safety of a person or persons generally.⁹ Under the Community Protection Disclosure Scheme, a

⁷ *Criminal Justice Act 2003* (UK) s 327A; Home Office United Kingdom, *Child Sex Offender Review (CSOR) Public Disclosure Pilots: a process evaluation* (Research Report No. 32, March 2010) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/214959/horr32c.pdf>

⁸ Government of Western Australia, *Access registered sex offender information* (Webpage, 14 May 2019) <<https://www.wa.gov.au/service/security/law-enforcement/access-registered-sex-offender-information>>; Sarah Napier et al, 'What impact do public sex offender registries have on community safety' *Australian Institute of Criminology* (No. 550, May 2018) 8 <https://www.aic.gov.au/sites/default/files/2020-05/ti_what_impact_do_public_sex_offender_registries_have_on_community_safety_220518_0.pdf>; *Community Protection (Offender Registration) Act 2004* (WA) ss 82, 85G(2) and 85J.

⁹ *Community Protection (Offender Reporting) Act 2004* (WA) s 85G; Government of Western Australia, *Access registered sex offender information* (Webpage, 14 May 2019) <<https://www.wa.gov.au/service/security/law-enforcement/access-registered-sex-offender-information>>; Government of Western Australia, *Community Protection Western Australia – Local Search* (Webpage) <<https://www.communityprotection.wa.gov.au/LocalSearch>>.

parent or guardian of a child can apply to the Commissioner of Police for information on a “person of interest” who has regular unsupervised contact with their child and is a “reportable offender”.¹⁰

Without further clarification as to the extent of the register that is made public or how it would operate, it is difficult to indicate how vigilantism or other consequences could be prevented through additional protections.

2. In relation to reoffenders: Where did you get the evidence that 20 per cent of sex offenders will reoffend?

The LIV submission referenced a 2019 paper written by Melanie Simmons, which found that the vast majority of sexual offences are perpetrated by first-time offenders and that ‘80% of registered offenders do not pose a high risk to the community’.¹¹ This conclusion was drawn from Victoria Police’s *2011-2012 Annual Report*,¹² and consisted of data that considered the risk level of persons placed on the Sex Offender Register (‘SOR’),¹³ with 2469 of 3030 registrants (81%) considered low to medium risk and 450 (14%) of those registrants considered high to very-high risk. Drawing on this data, the study affirmed that the Registry has the potential to prevent a relatively small proportion of sexual crimes.

With respect to reoffending a 2018 study by Reeves et al. found that 18.8% of the sampled offenders reoffended with a sexual offence.¹⁴ This sample included 653 Victorian sexual offenders during the period of 1987-2011.¹⁵ More than two thirds of the sample were child sexual offenders, with the offending

¹⁰ *Community Protection (Offender Reporting) Act 2004* s85J.

¹¹ Melanie L. Simmons, ‘Evaluating the legal assumptions of Victoria’s Sex Offender Registration Act 2004 from a psychological perspective’ (2019) 26(5) *Psychiatry, Psychology, and Law Journal* 791 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6896491/>>.

¹² Victoria Police, *Victoria Police Annual Report 2011-2012* (Report, 2012).

¹³ Note that the statistics considered in the report are current as of 30 June 2012: Ibid 48.

¹⁴ Sophie G. Reeves, James R. P. Ogloff and Melanie Simmons, ‘The Predictive Validity of the Static-99, Static-99R, and Static-2002/R: Which One to Use?’, (2018) 30(8) *Sexual Abuse* 897.

¹⁵ *ibid* 893.

behaviour occurring against children less than 16 years of age.¹⁶ The LIV understands that that this data is the most recent evidence that indicates that 80% of sex offenders do not reoffend.

Additional Questions

1. In relation to your comment that 80% of offenders on the sex offender register are unlikely to reoffend (and as a result, that 20% are likely to reoffend): Given the current register includes offenders who have not committed offences against children and the inquiry specifically relates to the prospect of releasing information of child sex offenders only, does the LIV have any statistical information related to the likely reoffending of child sex offenders?

The LIV is not aware of any recent data that exclusively samples child sex offenders and their rate of reoffending in Victoria; however, the LIV recommends that the Committee note Reeves et al.'s 2018 study, given that more than two thirds of the sample were child sexual offenders.¹⁷ The rate of sexual recidivism for child sexual offenders was specifically identified as 17.4%, which was lower than the 20.8% recidivism rate of adult sexual offenders.¹⁸

2. The LIV submission references a number of programs for offender rehabilitation: In what ways does LIV engage with victims through this process?

The LIV submission noted pre-offending and post-offending initiatives associated with the prevention of sexual offences and rehabilitation of sex offenders. These programs include the CEM-COPE Pilot Program, the Refocus Program, the Male Adolescent Program for Positive Sexuality and the Circles of Support and Accountability ('CoSA'). The LIV recommended consideration of these initiatives by the Inquiry (ie. CoSa, which operates in Canada) with a view of emulating programs that assist with the re-integration of sex offenders into society.

¹⁶ *ibid.*

¹⁷ Sophie G. Reeves, James R. P. Ogloff and Melanie Simmons, 'The Predictive Validity of the Static-99, Static-99R, and Static-2002/R: Which One to Use?', (2018) 30(8) *Sexual Abuse* 893.

¹⁸ *ibid* 897.

The LIV promotes and encourages practitioners to refer their clients to the various rehabilitative programs that are available. For example, the LIV has regularly promoted the Swinburne University of Technology's Centre for Forensic Behavioural Science's CEM- COPE program aimed at reducing the risk of future child exploitation material through education on the legal context, problematic internet use, emotional and sexual coping skills. Practitioners can refer clients to the program, with the choice to participate having no bearing on their legal outcomes. The LIV is broadly supportive of these initiatives that advance education of potential re-offenders, provides an intervention for problematic behaviour and assists with research into the underlying causes of offending.

In what ways does the LIV engage with victims through this process?

The LIV acknowledges that victims undergo an arduous path through the criminal justice process. A victim's experience is deeply personal and often traumatic, exacerbated by the trial process itself. The LIV has supported alternative pathways to justice, for example, through therapeutic jurisprudence and restorative justice approaches that work in conjunction with the criminal justice system.¹⁹ The LIV has advocated for addressing the immediacy of the needs of victims of sexual assault, particularly in applying to Victims of Crime Assistance Tribunal for interim awards that include urgent financial assistance, for example, to cover costs for counselling. This would be particularly acute for a victim of sexual assault that may also have an illness, cognitive impairment, and/or other form of disability that is either pre-existing or caused by the sexual assault. As a result, this may significantly impede their ability to accurately recount the experience of their sexual assault in the required statutory declaration. The LIV has recommended an alternative simplified process for VOCAT applications which solely seek costs for counselling.

The LIV has also supported the Intermediaries Pilot Program, which sought to improve the quality of evidence of vulnerable witnesses and reduce trauma associated with justice system processes. The LIV identified that while the IPP captures child complainants they are unable to make further referrals, even where they identify unmet support needs. These witnesses are likely to be victims of crime as well and are

¹⁹ Tania Wolff, 'From the president: Call to action' (2021) (April 2021) *Law Institute Journal* <<https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/April-2021/From-the-president--Call-to-action>>.

likely to be more vulnerable to victimisation, with complex support needs that require specialist rather than generalist services.²⁰ The LIV has supported the Victim Assistance Programs (‘VAP’) delivered by community services organisations, with sexual offences (including child sexual assault and abuse) accounting for 14.05 per cent of all types of crime handled by the VAP. The LIV supported the new streams of assistance proposed by the Victorian Law Reform Commission’s Review of the *Victims of Crime Assistance Act 1996* (Vic).²¹

3. In relation to the LIV submission stating that “the evidence base in sex offender research is incongruent with the SOR’s focus on reducing recidivism”: Can you please provide reference material to support this claim?

The LIV submission cited material that has commonly found that registration on an SOR, does not effectively reduce recidivism.²² LIV noted that the consequence of automatic and mandatory registration is that sexual offenders who are at a low risk of recidivism are captured on the SOR.²³ The recidivism aspect is necessarily tied to the monitoring capacities and that an overwhelmed register does not effectively meet this purpose. Rather, only offenders posing a demonstrated risk, as assessed by the sentencing court should be included on the SOR.

²⁰ Centre for Innovative Justice, ‘Strengthening Victoria’s Support System – Victim Services Review’ (November 2020) 41.

²¹ Victorian Law Reform Commission, Review of the Victims of Crime Assistance Act 1996 (Report, 19 September 2018) xxxv (‘recommendation 33’); Law Institute of Victoria, Submission to the Victorian Law Reform Commission’s Inquiry into Improving the Response of the Justice System to Sexual Offences (15 January 2021) 11.

²² See Melanie L. Simmons, ‘Evaluating the legal assumptions of Victoria’s Sex Offender Registration Act 2004 from a psychological perspective’ (2019) 26(5) *Psychiatry, Psychology, and Law Journal* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6896491/>>; Sarah Napier et al, ‘What impact do public sex offender registries have on community safety’ *Australian Institute of Criminology* (No. 550, May 2018) 8 <https://www.aic.gov.au/sites/default/files/2020-05/ti_what_impact_do_public_sex_offender_registries_have_on_community_safety_220518_0.pdf>.

²³ Melanie L. Simmons, ‘Evaluating the legal assumptions of Victoria’s Sex Offender Registration Act 2004 from a psychological perspective’ (2019) 26(5) *Psychiatry, Psychology, and Law Journal* 791 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6896491/>>.

Rather, the LIV sought to direct the Inquiry's attention to restorative justice initiatives that aim at reintegration of the offender, such as through CoSA above, which has seen offenders with an 83% reduction in sexual recidivism compared to offenders not involved in the CoSA.²⁴ Further, Melanie Simmons 2019 paper also concluded that 80-95% of sexual offences are perpetrated by people who have not been previously detected by the justice system.²⁵ Accordingly, the LIV's submission is in line with other sex offender research that supports the proposition that an SOR is not the most effective tool to reduce recidivism.²⁶

Should you wish to discuss further, please contact Policy Officer Andy Kuoch or Paralegal Emma Genovese

[Redacted]

Yours sincerely,

[Redacted signature]

Tania Wolff
President

²⁴ Robin J Wilson et al, 'Circles of Support & Accountability: A Canadian National Replication of Outcome Findings' (2009) 21(4) *Sexual Abuse: A Journal of Research and Treatment* 412, 412.

²⁵ *ibid* 786.

²⁶ S. Caroline Taylor, 'Community perceptions of a public sex offender registry introduced in Western Australia' (2017) 18(3) *Police Practice and Research* 278-79; Amanda Y. Agan, 'Sex Offender Registries: Fear without Function?' (2011) 54(1) *The Journal of Law & Economics*.
<<https://www.jstor.org/stable/pdf/10.1086/658483.pdf?refreqid=excelsior%3A416724f538c88f55d383c521e0b410cb>>; J. J. Prescott and Jonah E. Rockoff, 'Do Sex Offender Registration and Notification Laws Affect Criminal Behaviour' (2011) 54(1) *The Journal of Law & Economics*.