

*Standing Committee on Environment and Public Affairs — Fifty-second Report —
“Punitive Not Protective: When the Mandatory Registration of Young People Is Not Based on Risk”*

Resumed from 21 May.

Motion

Hon ALISON XAMON: I move —

That the report be noted.

If no-one else wishes to speak, I wish to speak to this excellent report. I commend the Standing Committee on Environment and Public Affairs for the excellent work it has done on the report titled “Punitive Not Protective: When the Mandatory Registration of Young People Is Not Based on Risk”. I am aware, of course, that the committee undertook this inquiry as a result of petitions that were tabled—it has also been the subject of debate in the chamber—about concerns about how best to deal with the issue of children and young people who engage in sexually inappropriate or even sexually dangerous behaviours. It is a really complex issue. It is a distressing issue that we struggle to grapple with. I need to acknowledge the thoughtful consideration that has gone into this report. I believe the findings and recommendations will prove to hold up to the test of time.

The committee effectively found that the current mechanism for dealing with children or young people who engage in sexually harmful behaviours is not working and that we need to have a radically different approach to working with children in this situation. It found that very often the children themselves have been exposed to situations that are quite sexually harmful. I think it is fair to say that, in many instances, the children themselves are victims of sexually predatory or sexually inappropriate behaviour and that a disproportionate number of them come from situations of great disadvantage and, as such, we require a very different approach to deal with concerns about their behaviour.

It is important to note that the committee found that, unfortunately, children’s ready access to online pornography, for example, has aggravated the risks of children engaging in sexually harmful behaviour. This is an issue that I personally find very distressing. I am aware that far too often children’s exposure to pornography can be the first time they are exposed to the world of sex. As we know, the world of pornography very rarely resembles anything approximating healthy sexual relationships. It is too much to go into here, but it is something that we as a society globally are going to have to grapple with. What do we do about the early dangerous sexualisation of children? We are going to have to look at how we ensure that a whole generation of young children learn about healthy sexual relationships. It also means, unfortunately, that a generation of children increasingly have a poor understanding of the idea of consent and what that means in practice. If children have been exposed to sexual abuse or have some sort of cognitive impairment or anything like that, it is a recipe for disaster.

The questions that this report asks are: When dealing with these children, is it the best thing to put them on a register that is going to effectively follow them for life? Is this the most therapeutic and appropriate way to ensure that these children are able to get the supports that they need and hopefully be able to live healthy lives? What the committee found, I think unsurprisingly—I am not surprised—was that simply engaging in a punitive approach to these children and putting them on the sex offender register, which will follow them for the rest of their life, is not going to work. That is not the best outcome and we need to find a better way to deal with these problematic behaviours.

The first recommendation states —

The Government adopt a scheme which provides government funded treatment and a therapeutically focussed approach within the juvenile justice system for dealing with young people who have exhibited harmful sexual behaviour.

What a sensible, intelligent recommendation, and one that I dearly hope will be taken up by this and any future governments. We know that a disproportionate number of young people in the juvenile justice system have been exposed to sexual abuse and we know that a disproportionate number of them have cognitive impairment. That was borne out by the Telethon Kids Institute research that found that 98 per cent of children in Banksia Hill Detention Centre in particular have some form of cognitive impairment. This is knowledge that we have. Clearly, anything that will help children at that level to address their behaviours will be better for not only them, but also the community as a whole. A failure to intervene at that level to support children who are engaging in sexually inappropriate or harmful behaviours is a failure by everybody. This is an area where I hope we will see some significant progress. We need to do that.

I note that the second recommendation states —

The Director of Public Prosecutions should review all decisions to commence the criminal prosecution of a child or young person for a reportable offence.

Again, I think that is an eminently sensible recommendation. It recognises that there is a lack of consistency in the way that these prosecutions are being pursued, depending on the children's circumstances. One of the findings in the report states that young people in regional areas are being prosecuted for less serious offences, whereas those in Perth are not. That is nothing to do with justice. That is just to do with often a lack of resources or a lack of capacity to think about how on earth we can provide the services to make sure that these children are supported. I am devastated if a white child in Cottesloe can get therapeutic treatment, but an Aboriginal child in Kalgoorlie cannot. Effectively, what is being found is that children across the state who exhibit offending behaviours are not being treated equally in how we are best responding to that. Low socioeconomic status, a lack of family and community support, neglect and inadequate access to services and rehabilitative options were found to be factors that might deter police from using their discretion to caution rather than charge a young person for an offence. I think that is a devastating indictment of the system. The fact that we are putting children who are already inherently vulnerable in a situation in which they not only do not get the therapeutic assistance that they need, but also then end up in the criminal justice system with a record that will potentially follow them for life is absolutely devastating.

We need to look at making sure that we have culturally appropriate therapeutic programs and appropriate treatment programs. That was one of the committee's findings. We do not have that now. It is a huge challenge for us as a community and one that will not generate popularity amongst voters. I recognise that. As someone who spends a fair bit of time talking about advocating for Aboriginal offenders and criminal law mentally impaired accused people, I know these are not popular issues within the community, but we need to do this. We should do it because it is the right thing, because we are talking about children and also because, ultimately, if we do not look at a better way of looking after children who engage in inappropriate sexual behaviours, it is, as I said before, the community that will end up paying the price for that.

The committee talked about the need to adopt discretionary options such as a restorative justice solution within the Young Offenders Act. This is where I am going to remind people that we have been waiting for a review of the Young Offenders Act for years. It is something that I have been raising in this place for three and a half years, since I came back in this term.

Hon MARTIN PRITCHARD: I was not going to speak about this report this week, but I know that the chair of the committee is quite keen to speak about it. He is away on urgent parliamentary business, so I thought I would take the opportunity to talk about a discrete area and then look forward to his contribution next week, as I understand it.

I am quite pleased. I think that the catalyst for this report was a petition that I tabled in the house some months ago after being approached by constituents who had concerns about this issue. I must say, I think that the committee has done an extraordinary job. Along with Hon Alison Xamon, I believe that this might be a bit of a road map into the future.

I think it is very easy to take the position that I also fall into the trap of taking, which is that we need to be hard on crime. Obviously, this legislation is very much targeted at paedophiles and making sure that the public is safe. But I am concerned that, although that is the objective, a number of people get caught up in the fringes, particularly with regard to mandatory registration. I draw a long bow and refer to a number of reports in the newspapers about young footballers who make some very bad decisions. I do not think that young people under the age of 18 make one set of decisions and then, all of a sudden, when they turn 18, they grow up and make more adult decisions. People over the age of 18 may have a very immature approach to life and people under the age of 18 may have a mature approach to life. Our legal system has a very stark definition of 18 as the age a young person becomes an adult, but I do not think that, as human beings, that is necessarily the case.

I want to read a couple of passages from the report and then make a general observation, if I may. I will then leave it to other people to talk, and maybe next week I will have some further things to say. Page 2 of the executive summary refers to "Sexual behaviour in context". Paragraph 12 states —

Sexual offending by a young person does not necessarily (and often does not) involve sexually abusive or violent behaviour. Mandatory registration as a reportable offender—a sex offender—does not discriminate between inappropriate behaviour that is characteristically childish or adolescent or willing (but illegal) underage sexual activity.

As I said, the law discriminates in a positive way that a person becomes an adult at the age of 18. However, in my view, that does not necessarily mean that an 18-year-old is not a young person who can make silly decisions. Again, I want to stress that what I say does not apply to what I would categorise as serious sexual offences, but there are some areas on the fringes that may be considered as not a serious offence but rather a stupid decision by a young person.

I turn to page 3. Paragraph 23 states —

Once a young person legally becomes an adult at 18 years of age, the consequences of sexual offending changes significantly. The emphasis of adult sentencing is punishment and deterrence with an immediate

term of imprisonment being the norm. Rarely, and in exceptional circumstances (and where the offender does not pose a risk of reoffending), the court will impose a suspended imprisonment order or a spent conviction rather than immediate imprisonment for a sexual offence. Mandatory registration as a reportable offender still applies in these circumstances.

Even when a court believes that a person does not pose a serious risk into the future, they still end up on the register. Paragraph 32 on page 4 of the report states —

There is strong evidence that registration as a reportable offender can have a serious and damaging impact on the wellbeing and development of children and young people, as well as being counter-productive to their rehabilitation. The consequences of registration for young people include:

- being labelled as a paedophile;

That is very common. A young person may make a very silly decision to engage in sexting, which is damaging but does not necessarily mean that the person poses a risk into the future. It seems a bit overkill that the person is considered a paedophile because they have just turned over the age of 18. The report continues —

- public vilification and stigmatisation;
- depression and suicidal ideation;
- disengagement and social isolation;
- compounding impacts on health, education and well-being; and
- a perception that future potential is irretrievably destroyed.

I have concerns about this. This is the situation that led to me tabling the petition and starting this discussion. If a young person—a young man in this case—turns 18 and has a relationship with a girl who is under 18, although it may be thought that the incident will not affect people into the future, the young man ends up on the register, and that register will basically follow him for the rest of his life. I think that this needs to be looked at, and can easily be looked at, so that a court is able to make the decision whether a person should remain on the register or be taken off.

As I said, I just wanted to talk about that discrete area to give the chair the opportunity to look into the report in more detail. I look forward to that and I look forward to discussing more on this report.

Hon ALISON XAMON: In the remaining few minutes, I want to reflect on another thoughtful contribution from the honourable member. As usual, we are in screaming agreement. I think that one of the things I particularly want to pick up from this report in the few moments I have left is the issue of mandatory registration. The committee made observations on how utterly hopeless it is to have mandatory registration and that it is counterproductive, particularly when it comes to children. Members are aware that the Greens are vehemently opposed to mandatory anything when it comes to judicial discretion, and for good reason, but never is that more apparent than when we are talking about children. It is never going to be fit for purpose to have a blanket regime of how to deal with often very troubled children who engage in offending behaviours.

The committee found that having mandatory registration for children has the effect of being punitive, and it often results in delays in the criminal justice system, which is not good for anybody. But I think one of the things that I was particularly concerned about was finding 16, which states —

The prospect of mandatory registration can deter families from voluntarily seeking treatment for young people who have displayed harmful sexual behaviour.

If there is one finding that really highlights how problematic the current regime is, that is it. If someone's child is troubled and is starting to act out sexually, the one thing that person wants is for their child to get help so that they stop engaging in those behaviours, for the benefit of themselves and the community. The fact is that anything that serves as a barrier to people seeking help is something that we need to vehemently resist. Even if that is the only takeaway that people get from this report, that is absolutely key.

I think it is important to note also that mandatory registration is not consistent with the principles of juvenile justice.

Consideration of report adjourned, pursuant to standing orders.

Progress reported and leave granted to sit again, pursuant to standing orders.