



Commissioner for Children and Young People
Western Australia

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Dear Ms Brearley

Submission to the Inquiry into the Community Protection (Offender Reporting) Amendment Bill 2011

Thank you for the opportunity to make a submission to the Legislative Council Standing Committee on Uniform Legislation and Statutes Review on the Community Protection (Offender Reporting) Amendment Bill 2011.

I was appointed as Western Australia's inaugural Commissioner for Children and Young People in December 2007 pursuant to the *Commissioner for Children and Young People Act 2006*. Under this Act my role is to advocate for policies, programs and laws for the half a million Western Australian children and young people under the age of 18, that strengthen their wellbeing.

In performing my role the best interests of children and young people must be my paramount consideration. I must give priority to, and have special regard to, the interests and needs of Aboriginal and Torres Strait Islander children and young people, and children and young people who are disadvantaged for any reason. I am also required to have regard to the United Nations Convention on the Rights of the Child.

It is with these responsibilities in mind that I make my submission. I confine myself to those issues related to the safety and wellbeing of children and young people as reflected in these proposed amendments to the *Community Protection (Offender Reporting) Act*. I have previously commented on the Statutory Review of this Act, and attach a copy of my submission to that review.

Amendments to Section 26

The changes to this section reduce the time a reportable offender can:

- Reside at a particular location;

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- stay in a household with children; or
- have regular unsupervised contact with children

before triggering a reporting requirement. By reducing the time period permitted it is likely to provide better protection for children and young people.

Amendment to Section 29

This amendment reduces the timeframe for a reportable offender to advise changes to personal details regarding their residence, the residence of a child or where the reportable offender has unsupervised contact with a child, from seven days to 24 hours. This is also likely to assist in protecting children and young people. That being said, I remain concerned that this may have a particularly onerous effect on Aboriginal reportable offenders, given the increased mobility of many Aboriginal people. There is the likelihood that both the reportable offender and children may move in or out of a residence with some frequency, and the need to report this may have a more severe impact on Aboriginal people. I do not advocate, though, that the rules should be less stringent in these cases, but as I noted in my submission to the WA Police Statutory Review of the Act in August 2011, suggest that only reportable offenders who do in fact pose a risk to children are included on the register in the first place.

Amendment to Section 91

I note the amendment to this section which removes the maximum length for a prohibition order placed on a young reportable offender (previously 2 years) and replaces it with a provision for that prohibition order to be any period no longer than that of the offender's prescribed reporting period. I note this will increase the reporting period for young offenders. In some cases this may be necessary, and I believe that it is not inappropriate as long as proper consideration is given to whether an offender actually poses a risk to children before including them as a reportable offender.

Amendment to Section 92

I agree with the amendment of the provision for an interim protection order. In cases where it is clear that a person about to be released from custody poses a danger to a child or children, or children generally, an application for a protection order should not fail simply because the person is in custody and cannot pose an *immediate* risk by virtue of their incarceration. The safety and wellbeing of the child or children must be the paramount consideration.

Amendment to Section 93

For the reasons stated above, I agree with the provisions that allow for restriction of specified behaviour by a particular offender that would otherwise be lawful, which is considered appropriate to reduce the risk to children posed by the offender.

Inclusion of Section 94C

This provision, to allow a police officer to inspect or seize a computer for inspection is welcomed. It is recognised that some child sex offenders use the internet, and particularly social networking sites, to 'groom' children.

I thank you again for the opportunity to make comment on these amendments. I would be happy to discuss or provide additional information on specific aspects of the amendments.

Yours sincerely



MICHELLE SCOTT

Commissioner for Children and Young People WA

29 May 2012

Commissioner for Children and Young People

Submission to the Western Australia Police Statutory Review of the *Community Protection (Offender Reporting) Act 2004*, Issues Paper, June 2011 (3 August 2011)

Thank you for the opportunity to provide a submission in response to the Western Australia Police's Issues Paper ('the Issues Paper') for the Statutory Review of the *Community Protection (Offender Reporting) Act 2004* (WA).

Role of the Commissioner for Children and Young People

In December 2007 I was appointed as Western Australia's inaugural Commissioner for Children and Young and People pursuant to the *Commissioner for Children and Young People Act 2006* (WA). The role of the Western Australian Commissioner for Children and Young People is one of broad advocacy – under the Act, I have responsibility for advocating for the half a million Western Australian citizens under the age of 18 and for promoting and monitoring their wellbeing. I must always observe and promote the right of children and young people to live in a caring and nurturing environment and to be protected from harm and exploitation. One of the guiding principles of the Act is the recognition that parents, families and communities have the primary role in safeguarding and promoting the wellbeing of their children and young people and should be supported in that role.

In performing all functions under the Act, I am required to have regard to the United Nations Convention on the Rights of the Child, and the best interests of children and young people must be my paramount consideration. I must also give priority to, and have special regard to, the interests and needs of Aboriginal and Torres Strait Islander children and young people, and to children and young people who are vulnerable or disadvantaged for any reason.

Accordingly, this submission is limited to the matters raised in the Issues Paper that do or may potentially impact upon children and young people. The *Commissioner for Children and Young People Act* provides that the 'children and young people' means people who are under the age of 18 years. In this submission the phrases 'child or young person' and 'children and young people' have the same meaning. The term 'juvenile child sex offender' will be used to refer to a person who has committed a sexual offence against a child who, at the time of committing the offence, was under the age of 18 years and the term 'juvenile reportable offender' will be used to refer to a reportable offender who was under the age of 18 years at the time of the commission of the relevant reportable offence.

Key Issues

Pursuant to s 115 of the *Community Protection (Offender Reporting) Act 2004* (WA) ('the CPOR Act') the Minister is required to carry out a review of the operation and effectiveness

of the Act. In order to comment upon the effectiveness of the CPOR Act is it important to take into consideration the main purpose of the legislation. The CPOR Act establishes a sex offender register and imposes reporting obligations upon certain types of offenders (generally, those who commit sexual offences against children). These obligations are imposed in order to 'reduce the likelihood of reoffending and assist in the investigation and prosecution of future offences'.¹

I strongly support measures designed to protect children and young people from sexual abuse and other harm. However, I must also take into account the fact that the CPOR Act imposes obligations on and applies to juvenile child sex offenders. Hence, in providing this submission I must have regard to the best interests of children and young people generally as well as the best interests of those juvenile child sex offenders who are caught by the legislation.²

As noted above, I am also required to have special regard to the interests and needs of Aboriginal and Torres Strait Islander children and young people; and children and young people who are vulnerable or disadvantaged for any reason. For this reason, I have paid particular attention to the impact of the CPOR Act upon Aboriginal children and young people (especially those in remote areas) and children who are mentally impaired, intellectually disabled or otherwise disadvantaged.

In addition, I wish to emphasise the importance of recognising the inherent differences between children and adults in the context of criminal justice and child protection responses to child sexual offending. It is well recognised that juvenile offenders should be treated differently from adult offenders in the criminal justice system.³ Clearly, the general focus for children and young people in the criminal justice system is rehabilitation. Moreover, it is well known that negative 'labelling' can be particularly detrimental to children and young people and impede their efforts at rehabilitation and reintegration into the community. Relevantly, it has been stated that 'labelling' and 'overly punitive' responses to young people who commit sexual offences are 'likely to be more harmful than rehabilitative'.⁴

While I appreciate that the CPOR Act applies differently to children in a number of ways⁵ I do not consider that the Issues Paper sufficiently acknowledges the differences between children and adults in the context of sexual offending against children. The 'Introduction' to the Issues Paper includes a section headed 'An overview of child sex offenders'. This discussion describes 'child sex offenders' as a group of offenders commonly also referred to as 'paedophiles' and it then considers the general characteristics of this group. In order to properly assess the operation and effectiveness of the CPOR Act, I am of the view that it should be clearly acknowledged that the CPOR Act does not apply to 'paedophiles' per se but that it applies to 'reportable offenders'. The definition of a reportable offender potentially

¹ Western Australia Police, *Statutory Review of the Community Protection (Offender Reporting) Act 2004*, Issues Paper (June 2011) 1.

² For further discussion of the principle of the best interests of the child in the context of the CPOR Act, see LRCWA, *Community Protection (Offender Reporting) Act 2004 (WA)*, Discussion Paper (February 2011) 25.

³ See Richards K, 'What Makes Juvenile Offenders Different From Adult Offenders?' (2011) *Australian Institute of Criminology Trends and Issues in Crime and Criminal Justice*, No 409, 1.

⁴ O'Brien W, 'Youth Justice: Challenges in responding to young people convicted of sexual offences (Paper presented to the National Rural/Regional Law and Justice Conference, Warrambool, Victoria 19–21 November 2010) 1–2.

⁵ For example, by imposing shorter reporting periods; by enabling the Commissioner of Police to suspend reporting obligations for certain children and young people; and by the inclusion of a statutory exemption to mandatory reporting for single pornography-related offences.

captures a much broader range of circumstances than what would commonly be regarded as 'paedophilia' (eg, the definition of a 'reportable offender' equally captures a 14-year-old who engages in his first sexual experience with his 12-year-old girlfriend and a 60-year old man who engages in a sexual relationship with a 12-year neighbour after a lengthy 'grooming' process).

In addition, the Issues Paper highlights the importance of national consistency in the approach to the registration of child sex offenders.⁶ I agree that national consistency is important in so far as it ensures that registered child sex offenders cannot avoid or lessen their reporting obligations by moving from one jurisdiction to another. Likewise, it is important that the consequences of failure to comply with reporting obligations are consistent across jurisdictions so that reportable offenders are not encouraged to move to avoid more stringent penalties. However, the Issues Paper fails to address the differences between Australian jurisdictions in regard to who is and who is not considered a reportable offender. Specifically, the Issues Paper does not mention that Victoria, South Australia, Northern Territory and Tasmania provide for judicial discretion when determining if juvenile child sex offenders should be subject to registration and reporting obligations. For this reason, I stress at the outset that the goal of national consistency does not prevent Western Australia from adopting a non-mandatory approach to juvenile child sex offenders.

RESPONSES TO RELEVANT QUESTIONS IN THE ISSUES PAPER

1.1 The Definition of 'reportable offender'

The Issues Paper states that the Western Australia Police are currently progressing an amendment to the *Community Protection (Offender Reporting) Regulations 2004* (WA) to expand the range of offences which can exclude children from being deemed reportable offenders. I support this approach and, as is discussed in more detail directly below, I also strongly submit that the registration and reporting scheme created by the CPOR Act should not *automatically* apply to juvenile child sex offenders.

1.2 Discretion

The Issues Papers notes that the statutory review may examine whether the mandatory application of the provisions of the CPOR Act should remain and invites submissions on this issue. Nevertheless, it is also stated that the Western Australia Police support the continued mandatory approach and a number of reasons are provided. In summary it is argued that the mandatory scheme enables the law to be applied consistently and uniformly; reduces any potential error in the decision-making process; saves time and resources for police and the courts; and enables police to respond quickly and begin monitoring offenders.⁷

⁶ Western Australia Police, *Statutory Review of the Community Protection (Offender Reporting) Act 2004*, Issues Paper (June 2011) 4.

⁷ Ibid 8.

It is my view that court discretion should be available when considering whether the provisions of the CPOR Act apply to a juvenile child sex offender. While I can understand the administrative attraction of a mandatory scheme, I am concerned that the CPOR Act may be impacting unfairly upon children and young people. In this regard, I have been informed by the case examples and commentary in the Law Reform Commission of Western Australia's 2011 Discussion Paper (in particular, cases examples involving mutually agreed sexual activity between two relatively closely aged young people or experimental sexual conduct between two young people). I am also mindful of the increase in the practice of 'sexting' among children and young people and consider that it is important to ensure that children and young people who engage in this conduct are not automatically subject to sex offender registration.

The automatic registration of children and young people without regard to their individual circumstances or their offending behaviour is not compatible with the 'best interests of the child' principle or with the accepted practice of treating juveniles and adults differently. After balancing the necessary considerations of the best interests of children generally and the best interests of juvenile child sex offenders, I am of the view that full judicial discretion should be provided to the courts in these matters to ensure that the CPOR Act meets its aim of protecting the community without wasting police resources or imposing unnecessary and possibly detrimental obligations on those who pose little or no risk of reoffending. I am also of the view that the CPOR Act should expressly incorporate the principle that the best interests of the child should be a consideration when determining if a juvenile child sex offender should be subject to registration and reporting obligations.

1.3 Other types of offenders

The Issues Paper discusses whether the CPOR Act could be expanded to other types of offending behaviour such as arson.⁸ Pursuant to s 13 of the CPOR Act a sentencing court currently has the power to make an 'offender reporting order' if satisfied that the person 'poses a risk to the lives or the sexual safety of one or more persons, or persons generally'. This power may well be sufficient to enable a court to invoke the provisions of the CPOR Act in cases where there is risk to the lives of members of the community.

I am not in a position to comment upon the characteristics of arsonists or whether, as a specified group of offenders, they should be subject to ongoing monitoring by the police. However, if the CPOR Act is expanded to include additional offences I reiterate the view expressed above that the registration and reporting obligations under the Act should not be applied automatically to children and young people.

2.1 Proving risk

It is explained in the Issues Paper that the Western Australia Police have experienced difficulties when applying for a discretionary 'offender reporting order' or a 'past offender reporting order' in establishing to the satisfaction of the court that a

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Ibid.

particular offender poses a risk to the lives or sexual safety of one or more persons or persons generally.⁹ I acknowledge that assessing 'risk' is difficult but I consider that the concept of risk must continue to underpin the application of the scheme, especially its application to children and young people. Unless juvenile child sex offender poses a risk to other persons there is no justification for imposing reporting and registration obligations. While there may be difficulties experienced in 'proving' risk in particular cases, I am of the view that the court is best placed to assess all of the relevant and available evidence in relation to the risk posed by a particular individual.

3.1 Personal details

According to the Issues Paper, the *Community Protection (Offender Reporting) Amendment Bill 2011* will insert new personal details to the list of details which must be provided by a reportable offender to the police (ie, passport details; user names, codes, and passwords used to gain access to the internet or email address; and addresses of each premises at which the reportable offender is regularly present where children generally reside). Given the insidious nature of online grooming and the ever increasing use of social networking and media sites by children and young people, I support these changes in order to ensure that the online activities of reportable offenders who pose a risk to children and young people can be monitored by police.

3.2 Changes in personal details

Changes are also proposed to shorten the time period in which a reportable offender is required to report unsupervised contact with a child. Currently, a reportable offender can have up to 21 days unsupervised contact with a child before being required to report that contact to the police. Under the proposed changes a reportable offender will be required to report unsupervised contact with a child after four days. In principle, I support these changes. However, I also note that these proposed changes may impact more severely upon Aboriginal reportable offenders. The changes will mean that a reportable offender will have only one day to report a three-day period of unsupervised contact with a child and will have seven days to report a seven-day change in address. Increased mobility among many Aboriginal people may mean that Aboriginal reportable offenders are subject to more onerous reporting obligations than non-Aboriginal reportable offenders. Any disproportionate impact caused by imposing more stringent reporting conditions would be lessened by ensuring that only those reportable offenders who do in fact pose a risk to children are included on the register in the first place. This is particularly relevant for Aboriginal children and young people who may be moved from one family to another for cultural and family reasons and come into contact with other children on a regular basis.

4.1 Reporting periods

I agree that the reporting period for children and young people should be less than it is for adults and I also support the continued discretion for the Commissioner of

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Ibid 9–10.

Police to suspend reporting obligations for juvenile reportable offenders. In addition, I am of the view that there should be provision in the CPOR Act for a court to suspend the reporting obligations of a juvenile reportable offender if the circumstances demonstrate that the juvenile reportable offender does not or no longer poses a risk.

4.2 Notification of obligations

I agree that reportable offenders should be notified of their reporting obligations as soon as possible. According to the Issues Paper the Western Australia Police have experienced difficulties in serving reportable offenders who are not sentenced to a custodial sentence because the police are not notified of the sentence until after the offender has left court.¹⁰ Generally, under s 67 of the CPOR Act a reportable offender must be given notice of his or her reporting obligations as soon as is practicable after he or she is sentenced or released from custody. It is suggested that because there is a time lag between when the offender is sentenced and when court advises the police of the nature of the sentence imposed (in accordance with s 68 of the CPOR Act) there may be a delay in notification by the police.

However, it is noted that s 67(4) of the CPOR Act states that the notice must be given by a person prescribed under the regulations. Regulation 19 of the *Community Protection (Offender Reporting) Regulations 2004* (WA) provides that notification is to be given—for a reportable offender who is sentenced to custody—by an officer of the Department of Corrective Services. For a reportable offender who is present in court when sentenced in the District Court and is sentenced to a non-custodial sentence notification is to be given by an officer of the District Court. In all other cases notice is to be given by the Commissioner of Police. The problem discussed in the Issues Paper would seem to arise in cases where the offender is not present in court or where a non-custodial sentence is imposed by the Supreme Court, the Children's Court or the Magistrates Court. While it may be ideal for one agency to have responsibility for notification (ie, Western Australia Police) and then for processes to be adopted to ensure that the police are informed *before* a sentence is likely to be imposed for a reportable offence, this option may not be workable if amendments to the CPOR Act are made to enable a court to determine whether a particular offender is a reportable offender under the scheme. In any case where a court has such discretion it would seem simpler and more efficient for an officer of the court to notify the offender at the time the decision about registration status is made.

6.3 Community disclosure

It is stated in the Issues Paper that *Community Protection (Offender Reporting) Amendment Bill 2011* will introduce a 'public register'.¹¹ In the absence of clear evidence that a public register is an effective child protection tool, I do not support the establishment of a public sex offender register in this state. Nonetheless, if such a register is established I submit that it should not apply to a juvenile reportable offender. I am particularly concerned about the negative impact of 'labelling' a child or young person as a 'sex offender'. Further, the establishment of a public register may well give rise to a degree of complacency on the part of parents and families of

¹⁰ Ibid 12–13.

¹¹ Ibid 14.

children and young people. Parents and families may believe that they will be told (or be able to find out) if a sex offender lives nearby or has access to their children. Of course, any information provided to the public under such a scheme can only relate to those child sex offenders who are included on the register created by the CPOR Act. Community notification schemes can give rise to a false sense of security because they do not take account of the considerable proportion of child sex offenders who have not yet been convicted of an offence. I also consider that it is important to take into account the best interests of the children of reportable offenders. Children of reportable offenders who are subject to community disclosure may be stigmatised by a public registration scheme.

7.1 Prohibition Orders

The Issues Paper outlines some problems that have been encountered in relation to Child Protection Prohibition Orders (CPPOs). These orders prohibit the offender from engaging in specified conduct and the court can make such an order if satisfied that the offender poses a risk to the lives or sexual safety of one or more children or children generally and the making of the order will reduce that risk. CPPOs operate in addition to the general reporting obligations under the CPOR Act and they are therefore a more onerous and stringent imposition than ordinary reporting obligations. CPPOs can be imposed upon a child or young person for up to two years (or for longer if the order is extended).

I support amendments designed to ensure that CPPOs are more effective; however, I believe that such orders should be used sparingly for juvenile child sex offenders. The Law Reform Commission stated in its Discussion Paper that the Western Australia Police have only ever sought a CPPO against a child on one occasion and, therefore, it appears that the powers are being exercised cautiously in regard to children and young people.

Currently, in order to obtain an interim CPPO the police must establish that the offender poses an *immediate* risk. For this reason it is said that applications have failed in relation to offenders who are in custody and about to be released because a prisoner poses no risk at all while he or she remains in custody. The CPOR Act could be amended to enable the court to consider the level of risk that will be posed by the prisoner immediately upon his or her release from custody. This would enable the police to apply for an interim CPPO shortly before the prisoner is released so it is in effect at the time of release.

The Issues Paper also discusses whether the CPOR Act should include a provision to require that a reportable offender's place of residence is approved before he or she leaves government custody.¹² I am concerned that, in the absence of appropriate available accommodation, such a provision might mean that a juvenile reportable offender remains in custody after his or her sentence has been completed. Therefore, any such amendment should ensure that there is a positive obligation on the part of the relevant government agencies to find and approve a place of

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Ibid 22.

residence before the offender is due for release. In other words, I support such an amendment if it is designed to ensure that the most suitable accommodation is found before the offender released. I would not support the amendment if it meant that a juvenile reportable offender does not have to be released until appropriate accommodation is found.

8.1 Offences generally

The Issues Paper states that the Bill will add s 204A of the *Criminal Code* (showing offensive material to a child under the age of 16 years) to Schedule 2 of the CPOR Act (this will make s 204A a Class 2 offence). While I understand the basis for including this offence in Schedule 2 of the CPOR Act I note that it may unnecessarily capture children and young people. For example, a 16-year-old could be charged with such an offence for showing his 15-year old girlfriend an offensive DVD (and the definition of 'offensive' is not limited to sexually offensive material). Any detrimental impact upon children and young people from the inclusion of s 204A would be removed if there is court discretion for juvenile offenders under the CPOR Act. At the very least, s 204A should be added to Regulation 8 of the *Community Protection (Offender Reporting) Regulations 2004* so that a juvenile who is convicted of a single offence under s 204A is not automatically a reportable offender.

8.3 Non-sexually motivated murder and infanticide cases

I note that the mandatory provisions of the CPOR Act apply to an offender who has been found guilty of a non-sexually motivated murder of a child (and this may include an infanticide case). As explained above, I do not agree with the mandatory application of the provisions of the CPOR Act to any person who was under the age of 18 years at the time of the commission of the offence. There is no objection to the retention of murder as a Class 1 offence so long as the CPOR Act is amended to enable a court to decide if a child or young person should be subject to the registration and reporting obligations.

9.0 Schedule 3: Offences committed against adults

I have no specific comments in relation to whether the CPOR Act should extend to sexual and other serious offences committed against adults other than to emphasise that if the total number of reportable offenders is significantly increased by such a change this may impact upon the ability of the scheme to effectively protect children and young people from sexual and other serious harm.

10.0 Move on Notices

Section 27 of the *Criminal Investigation Act 2006* (WA) provides that a police officer may order a person who is in a public place to move on, if the officer reasonably suspects that the person intends to commit an offence or is committing an offence. The Issues Paper refers to concerns that have been raised about the disproportionate impact of the move on power upon Aboriginal people, homeless people mentally impaired persons and other vulnerable persons.¹³ Given the breadth of the current power and the potential for vulnerable and disadvantaged children and

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Ibid 28–29.

young people to be impacted by the move on power I do not support any extension of the power under s 27 of the *Criminal Investigation Act 2006* (WA).

11.0 The Role of Western Australia Police

The Issues Paper questions whether the Western Australia Police are the appropriate body to continue to monitor and manage reportable offenders under the CPOR Act and whether the Department of Corrective Services is better positioned to monitor reportable offenders in the community.¹⁴ It is also acknowledged that the police have a far greater presence in remote locations and have broader enforcement powers than Department of Corrective Services' staff. It is suggested that a special joint unit could be set up between Western Australia Police and the Department of Corrective Services.

While I am not in a position to comment on the logistics of such a proposal, a joint-agency approach to the monitoring of reportable offenders between the Department of Corrective Services and the Western Australia is supported. Such an approach would be particularly beneficial for children and young people who are likely to benefit from the involvement of youth justice workers. In this regard, the Law Reform Commission referred to the issue of 'overlapping obligations' in its Discussion Paper.¹⁵ Reportable offenders may be required to report to police in compliance with the provisions of the CPOR Act and, at the same time, they may be required to report regularly to their youth justice officer. A joint-agency approach would assist in ensuring that children and young people (especially, vulnerable and disadvantaged children and young people) are not unduly burdened by simultaneous and onerous reporting requirements.

12.1 Sexual offending committed by young people

It is stated in the Issues Paper that out of the 2,500 reportable offenders in Western Australia, 86 are young people.¹⁶ In its Discussion Paper the Law Reform Commission stated that:

As at 31 December 2009, there were 1704 registered offenders in Western: 1630 adults and 74 juveniles. However, a proportion of the adult offenders are subject to the registration scheme as a result of offences that occurred when they were under the age of 18 years. The Western Australia Police advised the Commission that at the end of 2009 there had been 212 offenders who had been registered as a result of offences committed when they were under the age of 18 years.¹⁷

When considering the impact of the CPOR Act upon children and young people it is necessary to consider not only those reportable offenders who are currently under the age of 18 years but also those reportable offenders who are subject to the regime as a result of offending behaviour that occurred when they were children. This is in accord with the general criminal law and juvenile justice principles: a person who is alleged to have committed an offence when he or she was under the age of 18 years is dealt with in the Children's Court and subject to the principles of juvenile justice.

¹⁴ Ibid 29.

¹⁵ LRCWA, *Community Protection (Offender Reporting) Act 2004* (WA), Discussion Paper (February 2011) 115.

¹⁶ Western Australia Police, *Statutory Review of the Community Protection (Offender Reporting) Act 2004*, Issues Paper (June 2011) 30.

¹⁷ LRCWA, *Community Protection (Offender Reporting) Act 2004* (WA), Discussion Paper (February 2011) 115.

12.2 Approaching sexual offending by young people under the Act

The Issues Paper recognises that, generally, 'sexual offending as a young person is not a strong indicator that a young person will commit further sexual offences as an adult'.¹⁸ Bearing this in mind, together with the importance of rehabilitation and reintegration for children and young people, it is my view that the CPOR Act should distinguish between child sexual offenders who were children themselves at the time of the offending behaviour and child sexual offenders who were adults at the time of the offending behaviour. At the same time, I acknowledge that there will be examples of serious sexual offending committed by children and young people and in such cases monitoring and registration pursuant to the CPOR Act may be required.

The Issues Paper states that:

The Act makes provision for young reportable offenders in only limited circumstances. As the primary focus of the Act is community safety, it was not thought to be appropriate to provide too much leniency on the basis of age especially where a young person's sexual offending can be as serious as an adult.¹⁹

While a young person's sexual offending may be as serious as an adult it is not necessarily always so and that is exactly why a discretionary approach is required for juvenile child sex offenders. As stated above, the CPOR Act should provide for judicial discretion in the determination of whether juvenile offenders will be subject to the provisions of the CPOR Act.

12.3 Therapeutic treatment

The Issues Paper acknowledges that treatment and diversion is the best approach for juvenile child sex offenders and that Western Australia lacks effective treatment programs for juvenile sexual offenders, especially in regional and remote areas.²⁰ The Issues Paper then questions whether some form of treatment order should be incorporated into the scheme for children and young people. I support the concept of court-ordered therapeutic treatment for children and young people who commit sexual offences so long as such orders are only imposed when necessary and proportionate. I am not in a position to comment on whether such orders should be linked in with registration and reporting under the CPOR Act. Most importantly in this context it is imperative that resources are provided to ensure that treatment programs for juvenile child sex offenders are available at the earliest opportunity and are available throughout the entire state.

Conclusion

¹⁸ Western Australia Police, *Statutory Review of the Community Protection (Offender Reporting) Act 2004*, Issues Paper (June 2011) 30.

¹⁹ Ibid 31.

²⁰ Ibid 32.

I would like to draw the Western Australia Police's attention to the guidelines I have published, *Improving Legislation for Children and Young People*, which encourage the consideration of the issues above when undertaking the creation or review of legislation. These guidelines are available on my website at www.ccyp.wa.gov.au.

I would be happy to provide further comments on any draft legislation arising from the statutory review of the CPOR Act in the future.