



WESTERN AUSTRALIA POLICE FORCE

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Hon Matthew Swinbourn MLC  
Chair  
Standing Committee on Environment and Public Affairs  
Legislative Council  
Parliament House  
PERTH WA 6000

**BY EMAIL & POST:** [env@parliament.wa.gov.au](mailto:env@parliament.wa.gov.au)

Dear Mr Swinbourn

**INQUIRY INTO MANDATORY REGISTRATION OF CHILDREN AND YOUNG PEOPLE  
ON THE SEX OFFENDERS REGISTER**

Thank you for your correspondence dated 15 April 2019, inviting the Western Australia Police Force to provide a submission regarding the Standing Committee on Environment and Public Affairs' (the Committee) inquiry into aspects of the *Community Protection (Offender Reporting) Act 2004* (the CPOR Act).

I note that submissions are due by 24 May 2019 and the Committee hopes to report by the end of 2019.

**Purpose of the *Community Protection (Offender Reporting) Act 2004***

The CPOR Act was developed and enacted following an agreement at the Australasian Police Ministers' Council in 2004 to introduce laws in all Australian jurisdictions requiring the registration and post-sentence monitoring of offenders convicted of sexual offences against children.

The second reading speech stated the legislation was intended to provide greater protection to children and the broader community<sup>1</sup>. Within this broader purpose, the key specific aims of the CPOR Act are to reduce the likelihood of reoffending through the registration and monitoring of offenders, to assist in the investigation and prosecution of future offences and to address community expectations that child sex offenders will be monitored by police post-sentence<sup>2</sup>.

<sup>1</sup> Hansard, Legislative Assembly, Hon. Michelle Roberts, 22 September 2004, p6279

<sup>2</sup> Hansard, Legislative Assembly, Hon. Michelle Roberts, 22 September 2004, p6279

The WA Police Force believes the purpose of the legislation needs to be foremost in any consideration of the CPOR Act.

## **Application of the CPOR Act to Adults**

Under the CPOR Act, a person becomes a reportable offender, and is therefore subject to its obligations, upon meeting the criteria set out in section 6 of the CPOR Act. Section 6(1) provides that, subject to two limited exceptions<sup>3</sup>, a reportable offender is a person whom a court sentences for a reportable offence under the CPOR Act. A reportable offence is defined in section 9 of the CPOR Act as a Class 1 or Class 2 offence, or an offence that results in the making of an offender reporting order or past offender reporting order. Reportable offences generally comprise a sexual or serious element involving a child or an incapable person. A Class 1 offence is defined in section 10 of the CPOR Act, and includes offences listed in Schedule 1 of the CPOR Act, equivalent offences in foreign jurisdictions and offences prescribed in the regulations. A Class 2 offence is defined in section 11 of the CPOR Act, and includes offences listed in Schedule 2 of the CPOR Act, equivalent offences in foreign jurisdictions and offences prescribed in the regulations. The CPOR Act also applies to reportable offenders from other jurisdictions who come to reside in Western Australia.

Once subject to the CPOR Act, a reportable offender must comply with reporting obligations set out in Part 3 of the CPOR Act. Additionally, persons who become reportable offenders have their details entered onto the Community Protection Offender Register (known as the Sex Offender Register). The Community Protection Offender Register (the Register) links into the National Child Offender System (NCOS), which is a national database. There are strict information access and disclosure restrictions regarding any information on the Register. Information from the Register is not publically available.

Adult reportable offenders can become subject to the reporting obligations of the CPOR Act for 8 years, 15 years or their lifetime. The reporting period is determined by the class and number of reportable offences committed by the offender. These are set out in section 46 of the CPOR Act. By way of summary:

- An adult who has been found guilty of a single Class 2 offence will have a reporting period of 8 years.
- An adult who has been found guilty of a single Class 1 offence or of two Class 2 offences will have a reporting period of 15 years.
- An adult who has been found guilty of more than one reportable offence that includes a Class 1 offence will have a lifetime reporting period. Adults convicted of three or more Class 2 offences will also have a lifetime reporting period.

The CPOR Act applies equally to all adults convicted of reportable offences. It is noted that other jurisdictions have different thresholds at which a person becomes subject to their equivalent legislation.

Victoria is the only jurisdiction to have enacted legislation that allows for an age based consideration relating to adults, namely for a court to be able to order that an 18 or 19 year

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<sup>3</sup> The exceptions are outlined in s.6(4) and(5) of the CPOR Act

old convicted of certain prescribed offences be exempt from the CPOR Act. Although the Bill passed the Victorian Parliament in 2017, this particular provision only commenced on 1 March 2018. The legislation also contains retrospectivity provisions, requiring all existing registrable offenders who fall within this category to be notified of their entitlement to apply to the court for an exemption order. The WA Police Force is monitoring the operation of the Victorian amendment.

## **Application of the CPOR Act to Juveniles**

It should be noted, the WA Police Force has the initial discretion as to whether a person is charged with a reportable offence. The WA Police Force apply the Director of Public Prosecutions' Prosecutorial Guidelines (DPP Prosecutorial Guidelines), whereby an assessment is made as to whether there is a prima facie case. If such a case exists, the WA Police Force will then assess whether it is in the public interest to prosecute and if there is a reasonable prospect of conviction. In the case of a young person, there are considerations under the *Young Offenders Act 1994* (the Young Offenders Act), namely Schedule 1 and 2 offences where diversionary options are not available. However, offences not contained in Schedule 1 and or 2 could be considered for diversionary opportunities. Such opportunities include referral to a juvenile justice team, juvenile cautions, verbal cautions and diversion through an education or awareness stream.

Examples of offences that would attract reporting obligations under the CPOR Act if convicted but where juveniles could be considered for diversionary options under the Young Offenders Act instead include, but are not limited to:

- Indecently dealing with a child under 13 years – Section 320(4), *Criminal Code*;
- Distribute child exploitation material – Section 219(2), *Criminal Code*; and
- Invite, offer, procure or cause a child under 16 years to be involved in the production of child exploitation material pornography or offensive media – Section 217(2), *Criminal Code*.

The assessment of diversionary opportunities and the DPP Prosecutorial Guidelines is instrumental in the decision to charge or not charge a juvenile. Further, the assessment about the DPP Prosecutorial Guidelines is often made at a number of stages, including at the time of deciding to charge and in the preparation for, or at, first appearance.

The CPOR Act treats persons convicted of reportable offences as a juvenile differently from adults in three respects.

Firstly, if a juvenile is convicted of a single offence prescribed in the regulations, they do not become a reportable offender<sup>4</sup>. Prescribed offences are contained in regulation 8 of the *Community Protection Offender Reporting Regulations 2004* (the CPOR Regulations) and currently include the production, distribution or possession of child exploitation material, as provided in the *Criminal Code*, or of objectionable material, as provided for in section 101 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*.

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<sup>4</sup> s.6(4) of the CPOR Act

Secondly, the reporting period for juveniles is half that of adults<sup>5</sup>. Juveniles are subject to a reporting period of either 4 or 7½ years. The 7½ year maximum applies to both the adult equivalent 15 year and lifetime categories.

Thirdly, under the CPOR Act, the Commissioner of Police has the discretion to suspend the reporting obligations of juveniles in certain circumstances<sup>6</sup>. Whilst a person's reporting obligations are suspended, the reporting period continues to run. The foregoing applies once a person has been convicted and sentenced for an offence.

There are 325 persons who are reportable offenders as a result of having been convicted of reportable offences whilst a juvenile. This represents less than 10 per cent of all reportable offenders with reporting obligations under the CPOR Act. Of these, 131 have had their reporting obligations suspended by the Commissioner of Police under section 61 of the CPOR Act

### **Role of the WA Police Force**

Under the CPOR Act, the WA Police Force is responsible for the registration, monitoring and management of reportable offenders in the community in accordance with the legislation.

Whilst the legislation sets the parameters for the applicability of the CPOR Act, it should be noted that policy and guidelines also inform its operation.

The Sex Offender Management Squad is responsible for the registration and monitoring of persons subject to the CPOR Act. It employs a pro-active approach to the management of reportable offenders. Those assessed as a higher risk are more closely monitored, whereas reportable offenders assessed as a lower risk are not required to report as often.

### **Reviews of the CPOR Act**

It is noted that the CPOR Act has been subject to a number of reviews, including:

1. A reference to the Law Reform Commission of Western Australia (LRC) in 2009 from then Attorney General, the Hon. Christian Porter MLA, on the application of the CPOR Act to persons convicted of offences committed whilst a juvenile, as well as to adults in exceptional circumstances. The LRC Final Report on the CPOR Act (Project No. 101) was tabled in Parliament on 3 May 2012;
2. A statutory review required under section 115 of the CPOR Act was tabled in Parliament on 19 June 2013; and
3. Internal operational reviews conducted by the WA Police Force.

These reviews have variously recommended both legislative and non-legislative reform. Recommendations for legislative reform are currently under consideration by the State Government for amendment to the CPOR Act. As these amendments will be considered by Cabinet, the WA Police Force is not able to currently discuss the proposed changes.

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<sup>5</sup> s.47 of the CPOR Act

<sup>6</sup> s.61 of the CPOR Act

## Conclusion

Any proposals for further reform need to be considered in light of the purposes of the CPOR Act, particularly continued public expectations regarding monitoring of convicted child sex offenders and the function the CPOR Act performs in assisting investigation of further offending.

Additionally, it is requested that the Committee consider the issue of retrospectivity and the impact on court and police resourcing of any recommendations for further reform.

I thank the Committee for the opportunity to provide a submission to the inquiry into this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris Dawson', with a long horizontal stroke extending to the right.

CHRIS DAWSON  
COMMISSIONER OF POLICE

29 May 2019