

20 May 2019

The Hon Matthew Swinbourn MLC  
Chair  
Standing Committee on Environment and Public Affairs

*via email – [env@parliament.wa.gov.au](mailto:env@parliament.wa.gov.au)*

Dear Mr Swinbourn,

**RE: INQUIRY INTO MANDATORY REGISTRATION OF CHILDREN AND YOUNG PEOPLE ON THE SEX OFFENDER REGISTER**

I refer to your letter dated 15 April, received by my chambers on 25 April. The Sex Offences Committee of the Magistrates' Court of Victoria have familiarized itself as to the Victorian legislation.

In summary, prior to 1 March 2018 there were two categories of registration; mandatory and discretionary. The mandatory scheme applied only in the adult jurisdiction i.e. to offenders who were 18 years or over. All sex offenders in the Children's Court were, and are, subject to a discretionary scheme where the onus of proof is on the prosecution to persuade the court beyond a reasonable doubt that the offender poses a sexual risk.

In the Magistrates' Court of Victoria, if an offender was convicted of a registrable offence, registration was mandatory (or automatic). In addition, an offender may be placed on the Register upon application by the prosecution; the test for discretionary registration is the same as in the Children's Court.

The mandatory scheme has proved to be a very blunt instrument with no distinction between offenders who are high or low risk. It was also seen to be productive of injustice in cases where a young offender could be sentenced without conviction but still be placed on the Sex Offenders Register for a minimum of eight years.

From 1 March 2018 young offenders (18 and 19 years of age) have in certain circumstances been able to apply for an exemption from registration. Applications may also be made by young people retrospectively, i.e. by those who were sentenced prior to 1 March 2018. The exemption applies only to specified offences in circumstances of consent, and the complainant must have been 14 years or over. The court must also be satisfied that the offender poses a low or no sexual risk to the safety of one or more persons of the community.

This has not opened any floodgates in terms of numbers. In the Magistrates' Court of Victoria state-wide there have been only a handful of applications.

Encouragingly, none of these applications were opposed by the prosecution and it can be accepted that the March 2018 legislative amendments have applied to situations in which the injustice was manifest.

The Magistrates' Court of Victoria would support the extension of the Registration Exemption Orders to include offences who are 20 years of age; this would be consistent with the definition of "young offender" (under 21 years of age) in the Victorian Sentencing Act.

Otherwise, the Registration Exemption Orders are fully supported by the Magistrates' Court of Victoria.

Yours faithfully,



**Judge Peter Lauritsen**  
**Chief Magistrate**