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Hon Matthew Swinbourn MLC  
Chair, Standing Committee on  
Environment and Public Affairs  
Legislative Council Committee Office  
Parliament House  
Perth

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Dear Mr Swinbourn,

### **Inquiry into Mandatory Registration of Children and Young People on the Sex Offenders Register**

I refer to your letter of 15 April 2019. The Legal Services Commission of South Australia (the Commission) is the State's largest legal assistance service provider. We provide legal representation to clients who meet our means and merit guidelines, and legal education, advice and information to all. In the previous financial year, the Commission provided almost 1,000 duty lawyer services to young people facing criminal charges. We also provide legal services to children detained in the State's youth detention facilities.

The Commission submits that the South Australian system of discretionary registration is an appropriate and effective way of dealing with the question of whether juvenile child sex offenders should be included on a Child Sex Offender Register.

The registration of child sex offenders in South Australia, regardless of offender age, is administered under the *Child Sex Offender Registration Act 2006*.

Section 6(3) of that Act states that "...a person is not a registrable offender merely because he or she – (a) while a child committed a class 1 or class 2 offence for which he or she has been sentenced."<sup>1</sup>

In other words, the inclusion of juvenile offenders on the register is not automatic or simply contingent upon conviction for certain offences. Class 1 and 2 offences under the Act concern serious sexual offences such as rape, indecent assault and unlawful sexual intercourse.

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<sup>1</sup>*Child Sex Offenders Registration Act (SA) 2006*,  
<https://www.legislation.sa.gov.au/LZ/C/A/CHILD%20SEX%20OFFENDERS%20REGISTRATION%20ACT%202006.aspx>

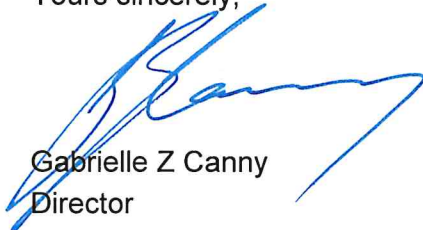
The Court has the power to order a juvenile child sex offender to comply with reporting requirements under the Act even if he or she is not on the register (s.9(1)(b)).

The Commission's legal practitioners who work in the Youth Court advise that it is rare for a juvenile offender to be included on the register. Registration is only considered by the Court after an application for registration by the prosecution.

It is the Commission's experience that some matters which fall into the technical category of child sexual offence concern parties who are both school-age teenagers in a 'boyfriend/girlfriend' situation but where one turns 18 during the relationship. South Australian courts have been critical of these types of prosecutions<sup>2</sup> and it is worth considering whether a discretion to include an offender on a register is also appropriate here.

Thank you for the opportunity to comment on this inquiry.

Yours sincerely,



Gabrielle Z Canny  
Director

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<sup>2</sup> "SA District Court Judge Paul Muscat says 'draconian' child sex laws need reviewing", The Advertiser, 11 June, 2014, <https://www.adelaidenow.com.au/news/south-australia/sa-district-court-judge-paul-muscat-says-draconian-child-sex-laws-need-reviewing/news-story/5135f1dda7fca6f6a93e6113e5412f5b>