

Additional answers to questions from the
STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS
INQUIRY INTO CHILDREN AND YOUNG PEOPLE ON THE SEX OFFENDERS REGISTER – IS
MANDATORY REGISTRATION APPROPRIATE?

(1) There is a wide range of conduct that may result in a child or young person being registered as a reportable offender. Offences can involve serious sexual abuse to other behaviours that are less easy to categorise. Can you give examples of the types of behaviour by children that might be associated with the following registrable sexual offences:

- Sexual penetration
- Indecent assault
- Indecent dealing
- Procures, incites or encourages child to engage in sexual behaviour or an indecent act

Children who are exposed to pornography or who may have been exposed to other adult sexual activity, may 'act out' what they have seen. This can include a range of sexual acts including rubbing, touching, and penetrating parts of the body. We mentioned in evidence less serious 'silly' behaviour, such as pinching or grabbing parts of the body such as breasts, bottoms and testicles, or 'dakking' - pulling down another child's shorts or pants, or looking over a shower cubicle at children in public change rooms. These actions have been charged as indecent assaults or indecent dealings. Examples of penetration are more commonly digital or oral penetrations.

Sometimes these children may be repeating sexual acts which have been done to them by adults or older children.

Some young children persuade younger children to play games to experiment in a sexual way or dare each other to do things to each other, thinking it is funny. In one matter, a group of young boys between the ages of eleven and thirteen years, played and filmed a game in which they engage in sexual behaviour.

(2) Provide citation for High Court case referred to in hearing.

RP v The Queen [2016] HCA 53

(3) Why are some young people prosecuted for a registrable offence following consensual underage sex and not others?

- What circumstances lead to prosecution in these cases?

The decisions whether or not to charge a child with an offence is in the discretion of the Police and the Director of Public Prosecutions (the DPP). Each has guidelines for the prosecution of children. We can only speculate as to why some children are charged and not others. The attitude of the victim's family and the age of the children seem to be factors which are taken into account in the decision whether or not to charge. We have had clients who have been told to 'come in for a chat' and who are then charged. Some clients are told they will 'just go to the Juvenile Justice Team' (JJT), but they have been charged with offences which are precluded from going to the JJT and which result in registration.

- What offences might result from an underage sexual relationship?

A child in an underage consensual relationship can be charged with a range of offences contained within Chapter XXXI Criminal Code WA. These offences may include:

Persistent sexual conduct with a child under 16 years;
Sexual penetration of a child;
Indecent dealing with a child;
Indecent assault of a child.

It is a circumstance of aggravation as defined in section 319(1) (b) that the victim is of or over the age of thirteen years and under the age of sixteen years.

(4) You point out in your submission that there seems to be a gender bias in the application of the law against males rather than females.

- Can you provide examples?

We have had very few female clients charged with sexual offences. Only two of our female clients have been charged with penetration offences. The few other female offenders have engaged in sexting activities which have resulted in charges.

- Do you have an opinion why this bias occurs?

We can only speculate as to why there is a bias, however, we believe it may be for the following reasons:

1. That girls suffer from reputational damage ('slut-shaming') from gossip and innuendo, particularly at school. When they seek assistance with this, a mandatory report is made, and the male involved becomes a person of interest.
2. When parents of the female find out about the sexual activity, the female frequently says she was forced to participate in sexual activity.
3. Some parents are tolerant of underage sexual activity until the relationship breaks down and it becomes acrimonious.
4. Females frequently participate in sexting behaviour and send their boyfriends nude photos, but it is generally the males who are caught in possession of their photos or who are caught distributing them to friends.

(5) Do you support a right of appeal or a review mechanism for people on the Register?

We support both a right of appeal and a review mechanism for offenders who have been registered for offences which were committed when they were children. The mechanism should allow for these registered offenders to have their names removed from the State and National registers.

(6) According to your submission, mandatory registration operates contrary to therapeutic intervention. In what way?

The reality and the spectre of being a reportable offender affects all of our clients. They are less likely to:

- Want to admit the allegations against them;
- Want to plead guilty;
- Admit any other behaviour in the course of counselling as it subject to mandatory reporting.

This results in legal proceedings being protracted and victims are more likely to have the prospect of a trial and cross examination.

Mandatory registration discourages:

- Openness and honesty about sexual activity;
- Admissions and acceptance of responsibility for the behaviour and that it was wrong;
- A willingness to undergo appropriate sexual education and psychological intervention.

This is all contrary to a therapeutic intervention and outcome.

- What effect can labelling or public vilification have on a child or young person?

Labelling and public vilification has a negative effect on a child's mental wellbeing and self-esteem. This also affects an offender's family, particularly their siblings. We have had at least five young people openly express suicidal ideation as a result of advice that they would be reportable offenders.

Registration may affect a child having the confidence to be part of a community or engage in normal age appropriate community activities such as sport.

- Are you aware of any particular cases?
1. Mrs Rossi gave an example in her evidence dated 21 August 2019 of a seventeen-year-old child who became suicidal after being charged with sexual penetration of a child under 16 years. The victim willingly engaged in sexual intercourse with the client, but she was too young to be able to consent to the activity. The client regarded mandatory registration as labelling him as a paedophile. He had no abnormal paedophilic preference for young children as sexual partners. He had been sexually abused himself as a young child and was distressed that he was being categorised in the same way as the adult who had sexually abused him.
 2. Ms Dewsbury gave evidence that she has had two clients who have had to change suburbs and schools as a result of the victims and their families disclosing that the young people were on the register. Each of these young boys, both under fourteen years of age, were suicidal. Social and mainstream media publicity was relentless for these young people and their families, and made it very difficult for them to live in small communities. Despite the statutory protection against their identification, their identities became known.

- How common is it?

We are only able to give examples of clients of whom we are aware. There may be many more.

- What kind of therapeutic intervention should young offenders receive? Does this occur?

Young offenders should be given the following:

- Age appropriate sexual education that is targeted to take into account any mental health problems or intellectual disabilities.
- Psychological counselling, as recommended.
- Victim empathy education.

- Family counselling as recommended which should involve open and frank disclosure of behaviours. We would not recommend this unless there was a guarantee that there were no negative ramifications or consequences.
- For some young people, safe housing to suit their particular needs is vital. For example, children who are not able to live in the family home need 'child informed' care to ensure they can continue to develop positive family relationships. This should also be designed to help them develop into a sexually healthy adult.

Therapeutic intervention is always ordered as part of a court sentencing order, but we are unable to comment as to whether a young person is required to do further counselling as a requirement of their status as a reportable offender.

(7) Does mandatory registration, without therapeutic intervention, serve its purpose to protect children?

Mandatory registration, without therapeutic intervention, does not necessarily protect children. Mandatory registration was designed to monitor 'perverts and paedophiles' in the community and prevent them from re-offending. There is an opportunity when children are charged with sex offences to address any underlying causes. Despite the power in section 94A of the Act to order 'appropriate treatment', registration does not encourage openness in counselling.

For example, one young person was encouraged by his counsellor to write down his fantasies and feelings. He did this as part of this treatment. He was subsequently charged with further offences on the basis of the notes and the Sex Offender Management Squad applied to have further restrictions added to his reporting conditions.

Your submission refers to a case of a 22-year old, given a spent conviction, who could not rely on a defence that he believed the child was over 16 because the age difference between them was more than three years.

- What is your view regarding these types of exceptional circumstances where the offender is over 18 years of age?

If the court had a discretion with respect to registration, then exceptional circumstances should be taken into account. Youth is always regarded as a powerful mitigating factor in both juvenile and adult jurisdictions. If sex offender registration were not mandatory, and it were for a court to determine whether or not a person should be on the register, a court could take into account factors such as the age of the convicted person, and the issue of 'factual consent' and 'factual mistake' as to age. Not all sexual activity has sinister paedophilic connotations.

- What age difference should apply if a discretionary approach to registration was adopted?

This is a matter which needs case by case consideration. We would be reluctant to state a particular age range.

Some people might believe that a similarity of age defence sends the wrong message to young people by condoning sexual relationships with underage people. What is your view?

We believe that the issue is whether this sort of relationship and sexual behaviour, as long as there are no sinister undertones or coercion, should be made the subject of criminal charges. It may be better dealt with by public health and education campaigns. Young people do not necessarily think about 'the age of consent' when they have sexual relationships.

(8) Are you aware of any overseas jurisdictions where registration on a sex offenders register is not mandatory which you believe could be a good model for Western Australia for follow?

We have not undertaken any research about overseas jurisdictions and are not able to comment on this question.

Dated 3 September 2019

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