



## ***CHILDREN'S COURT OF WESTERN AUSTRALIA***

Judicial Secretary: [ryan.small@justice.wa.gov.au](mailto:ryan.small@justice.wa.gov.au)  
Telephone: (08) 9218 0185  
Fax: (08) 9218 0114

PRESIDENT'S CHAMBERS  
160 PIER STREET  
PERTH WA 6000

Our ref: L1 06

The Honourable Matthew Swinborne MLC  
Chair – Standing Committee on  
Environment and Public Affairs  
Legislative Council  
Parliament House  
PERTH WA 6000

ATTN: The Committee Clerk – Maddison Evans

Dear Mr Swinborne,

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

I thank you for inviting me to give evidence at the Inquiry at 11.15am on 26 August 2019.

I would like to provide this supplement to my submission dated 2 May 2019. This supplement is based in part on information received from Dr Andrew MacDonald, Counselling Psychologist (Women and Young People), Corrective Services, Department of Justice.

Judges and Magistrates in the Children's Court are in the best position to assess the needs and risk of young people who commit sexual offences because they legislatively have the ability to order a variety of specialist reports and take those reports into account in determining the ultimate outcome. For sexual matters it is usual for the judicial officer to order a psychological report, a youth justice

report, a Department of Communities report (if the young person is under the care of the CEO of the Department or is known to the Department), a psychiatric report and, where appropriate, a FASD report or reports in relation to other forms of disability suffered by the young person.

The penalty imposed by the court will usually be an order with conditions of compliance and program requirements or a detention period to be served in the community by way of an order requiring supervision and program compliance. Any order will also have a safety plan. The safety plan is dynamic and will address the needs and development of the young person taking into account matters such as the age of the young person (given he or she could be 10 through to 18 years old), the level of disability of the young person (for example does the young person have a psychiatric disorder, an intellectual impairment, down syndrome, autistic spectrum disorder, foetal alcohol spectrum disorder, post-traumatic stress disorder) or other conditions that may impact on his or her ability to take part in a safety plan. Youth Justice statistics show that for the calendar year 2018 the court requested 33 psychological reports in relation to young people who has committed a sex offence and for the calendar year of 2019 to date 37 court reports have been requested with an additional 11 referrals arising from those reports for specialist psychological counselling directly through Youth Justice.

There are no psychological profiles or actuarial tools that assist in identifying the category of risk of future reoffending for a young person because of factors including:

- Young people rarely have an established pattern of offending. The circumstances for each young person and each offence differs significantly.
- Emotional and personal development continues to develop into approximately 25 years of age.
- Young people are more impulsive than adults and have less control over their circumstances.
- Young people learn at different rates to adults.

- Only a relatively small number of young people reoffend.
- Risk is best couched in terms of risk factors identified rather than expressed as quantitative estimate of the likelihood of reoffending.

The only research conducted in relation to youth justice reoffending rates for sexual offences in Western Australia was carried out on data recorded between 1991 and 1998 based on 108 young people who received Youth Justice psychological services. Ten of those who received counselling were convicted of a new sexual offence however two of the ten reoffended during the counselling period. This recidivism rate of 9% is comparable with other research in relation to reoffending by young offenders. It should be noted that the services now provided to young people who have been convicted of sexual offences are more focused on the individual needs of the young person rather than asking the young person to take part in a generic program. It is arguable that the more targeted approach which may demonstrate a greater success rate and a lower percentage of reoffending.

Psychologists recognise that group programs are not appropriate because:

- There is no heterogeneity in the youth population who have committed sexual offences. It is difficult to provide group programs that effectively meet all needs and risk factors.
- Individual format means that treatment is adaptable to the particular young person and their context.
- It has been identified in Australia that there is real concern related to contamination amongst the young people in a group if they attend group programs. In this format anti-social problems that may be demonstrated by some young people who have committed sexual offences may derail the group.
- Psychological services are moving towards a "good lives" approach.

The "good lives" approach is based on the work of Professor Tony Ward, Victoria University of Wellington New Zealand. His program is based on promoting human goods and reducing risk and identifies that there is a need to target both

risk and rehabilitation through therapy. Rehabilitation is best achieved by working on primary goods. Primary goods are actions, experiences and activities that are intrinsically beneficial to human beings and are sought for their own sake. In other words they are things that the young person enjoys doing, are socially positive and can attract the young person's focus. Dr. Ward has stated in presentation "we have been so busy looking and thinking about how to get rid of sexual crimes that we have overlooked a rather basic truth: offenders want better lives not simply the promise of less harmful ones!"

Psychological Services are provided in the metropolitan and regional areas including the Pilbara and the Goldfields. Work is presently under way to ensure psychological services are available in the Kimberley.

Youth Justice Psychological Services are also investigating Griffiths University's Psychological Intervention Program which is a program that deals with the individual. The promising results recorded indicate that a similar program is likely to work well with young people in Western Australia because the cohort in Queensland is similar to that of Western Australia.

The Children's Court must also consider cultural issues given the disproportionately large number of aboriginal young people who are in the criminal justice system in this State. Psychological services and safety plans must address the cultural needs of the young person. Being on the register is likely to impact adversely on the young person's ability to take part in vital cultural activities such as funeral attendance, taking part in lore etc. The long term psychological damage that removal from culture has caused and continues to cause is well documented.

Given the services provided to young people on orders imposed under the *Young Offenders Act 1994* and the dynamic and wrap around nature of the safety plans implemented by Youth Justice as part of the orders made by judges and magistrates in the Children's Court it is not appropriate to make registration

compulsory. The court and Youth Justice Psychological Services support allowing the court to exercise its discretion in the making of an order on those occasions where, in the President's view, having applied considerations similar to those set out in s. 13(4), such an order is appropriate.

Yours sincerely,



**Judge J Wager**

**PRESIDENT**

**CHILDREN'S COURT OF WA**

14 August 2019