



## ATTORNEY GENERAL

Our Ref: 67-08182

Hon. Matthew Swinbourn MLC  
Chair  
Standing Committee on Environment and Public Affairs  
Legislative Council Committee Office  
Parliament House  
4 Harvest Terrace  
WEST PERTH WA 6005



Attention: Ms Maddison Evans  
Committee Clerk

Dear Mr Swinbourn

### **PETITION NO 070 – SEX OFFENDERS REGISTER OF WA**

Thank you for your letter dated 19 September 2018 regarding Petition No. 070 – Sex Offenders Register of WA, inviting me to provide some views on the matters contained therein.

As you would be aware, the matters raised in the petition cross two portfolios, being my own as Attorney General with responsibility for the *Spent Convictions Act 1988* (WA) (the SC Act) and that of the Hon. Michelle Roberts MLA, Minister for Police, with responsibility for the *Community Protection (Offender Reporting) Act 2004* (WA) (the CPOR Act). Minister Roberts is well placed to address the matters raised in the petition; however, I have provided some comments on relevant matters below.

#### Spent conviction orders overriding placement on the Register

I note the petitioners have requested that anyone given a spent conviction order at the time of sentencing for a sexual offence should not face mandatory placement on the register established under the CPOR Act. By virtue of section 111 of the CPOR Act, a spent conviction does not affect the status of an offence as reportable, the inclusion of information about the offence in the register or any reporting obligations of the offender. Implementing changes requested by the petitioners would require legislative amendment to the CPOR Act. Amendments to the CPOR Act are a matter for Minister Roberts. From a spent convictions perspective, I can advise that I currently have no plans to amend the SC Act.

#### *Sex Offenders Registration Amendment (Miscellaneous) Act 2017* (VIC)

The petitioners have referred to this Act as a potential model in relation to reportable offenders aged between 18 and 19. The Act provides for “registration exemption orders” to be made in certain circumstances in respect of offenders between 18 and 19 years of age.

Matters for consideration by the court include that the victim of the offence is of or over 14 years of age, the level of risk posed by the offender to the community, the seriousness of the offence and the offender's offending history. Eligible offenders can apply for exemptions within six months of being notified of their reporting obligations. The Explanatory Memorandum for the Act indicates that an intention of it is to ensure that certain persons are not inappropriately and unnecessarily registered. I note that the Act received Royal Assent on 20 June 2017 and is now operational. The Committee may wish to make contact with the relevant agency in Victoria for a discussion of how the Act is working in practice and whether any unintended consequences have been identified.

#### Length of registration orders

I note the petitioners have requested that the length of registration orders made under the CPOR Act be changed; in particular, that reportable offenders with a Class 1 or Class 2 offence should have a reporting period of five years and a Class 3 offence should attract a reporting period of three years. I note that section 12 and Schedule 3 of the CPOR Act, which deal with Class 3 offences, have not yet been proclaimed. I also note the petitioners' request that the Commissioner of Police have the power to apply to the court for extension of a reportable offender's reporting period. These are matters for Minister Roberts.

#### Other matters – Criminal Law Amendment (Intimate Images) Bill 2018 (WA)

I note that sexting has been highlighted by the petitioners as prevalent in today's society, and being a behaviour which could lead to a person becoming a reportable offender under the CPOR Act. I draw the Committee's attention to the Criminal Law Amendment (Intimate Images) Bill 2018 (WA), which is currently before the Legislative Council. Although not directly relevant to the petitioners' concerns regarding offenders aged between 18 and 19, the Bill does take care to avoid criminalising sexting between young people (at least 16 years of age), including by not classifying consensual distribution of images between the persons depicted as a reportable offence under the CPOR Act.

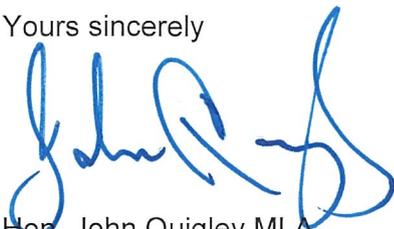
#### Other matters – Law Reform Commission 2012 Reference – Review of the CPOR Act

I note the petitioners have referred to the Law Reform Commission's Project 101, which looked at the operation of the CPOR Act. The Commission made some 20 recommendations for reform including the introduction of exemption orders to allow courts to exempt offenders from becoming reportable offenders under the CPOR Act in exceptional circumstances. This too is a matter for Minister Roberts.

I trust the above comments are useful to the Committee.

Thank you for raising this matter.

Yours sincerely



Hon. John Quigley MLA  
**ATTORNEY GENERAL**

- 4 OCT 2018