

Petition 070 Sex Offenders Register of WA

Thank you for the opportunity to address several concerns about the current system of sex offender registration in WA. My first point is that amendments be made to the current legislation to exclude people given a **Spent Conviction** at the time of sentencing from automatic placement on the sex offender register, and if already on the register have their name removed from the register. This amendment would apply to a *very small number of people* who the courts have determined not to be a risk to the sexual safety of the community. They are on the register due to mandatory placement regardless of the nature of the offence. What is a Spent Conviction Order? The waiting period before a conviction can be spent is usually 10 years, plus the length of any term of imprisonment imposed. In rare case, at the time of sentencing you may ask the magistrate who has been privy to all the details of proceedings of the case for a Spent Conviction Order. The court may order a spent conviction if it is satisfied that: 1. You are unlikely to commit an offence again. 2. The offence is of a **minor nature**. 3. You are a person of good character. Spent Convictions are RARELY given at the time of sentencing. The court has heard all evidence of the case and has determined the individual does not pose a risk to the sexual safety of children. Is it a fair and just system that a person is placed on the register due to mandatory placement laws when the court deems they are not a risk? This is not why registers were originally legislated. These reporting conditions vary from 8-15 years and massively affect the person's ability to obtain employment, travel and live a normal life. SOMS is responsible for coordinating the on-going management, registration and monitoring of all reportable offenders and if you ask them like I did, they agree that having individuals with Spent Convictions on the register diverts valuable resources away from monitoring serious sex offenders. They are the frontline people who deal with the register each day. The current Community Protection (Offender Reporting) Act 2004 (Act) was introduced to monitor the location and movements of **serious sex offenders**; assist in the investigation and prosecution of sex offences committed by recidivist offenders and assist our police and police from other jurisdictions in monitoring **high-risk sex offenders**. In her second reading speech when this legislation was introduced, the then Minister for Police, the Hon. Michelle Roberts stated that this legislation would provide "the most stringent and toughest reporting requirements for convicted **paedophiles** and **serious sex offenders** in the country. Please remember that not all people on registers are paedophiles and serious sex offenders. Such a comment indicates that she was not aware that there are many young adults and teens on the register for minor offences but are trapped by this blanket legislation that fails to include any differentiation of cases. The CPOR Act partly follows the 2003 recommendations of the Australasian Police Ministers' Council national working party. The working party acknowledged that there may be cases where registration is inappropriate, and a blanket mandatory approach may, therefore, **operate unfairly**. I maintain that this would be the case of a person convicted of an offence who is given a Spent Conviction at the time of sentencing. Spent Convictions are RARELY given at the time of sentencing. The Law Council of Australia has recently pronounced its view that registration should only apply if a sentencing court is satisfied that the offender 'poses a risk to the lives or sexual safety of one or more children, or children generally'.

I ask that great consideration be given to making amendments to the current legislation which would ensure people given a Spent Conviction at the time of sentencing not be included on the sex offenders register and if they were given a Spent Conviction at the time of sentencing can apply to have their names removed from the register and ongoing reporting obligations. This would be a fair a just amendment. The government cannot push 'tough justice' if it is indeed unjust and lacking any compassion for young adults who are not a risk to society. Surely common sense should prevail.

I would also ask that the government introduce similar amendments to the present system of sex offender's registration in WA such as those included in the Sex Offenders Registration Amendment (Miscellaneous) Bill 2017 recently adopted in Victoria. These amendments would allow a person who has been found guilty of a registrable offence that is a specified offence who at any time during the commission of a specified offence was 18 or 19 years of age and at all times during the commission of a specified offence was not older than 19, to apply for exemption orders from the sex offenders register. The need to maintain national consistency was relied on by the WA government to justify many aspects of the legislation when it was first introduced. In 2008, when the then opposition sought to amend the CPOR Act, the Minister for Police argued that if the proposed amendment was passed, Western Australia would be 'out of step' with the rest of the nation. Relying on this justification of national consistency, Western Australia should also introduce similar amendments to the Sex Offenders Registration Amendment (Miscellaneous) Bill 2017 recently adopted in Victoria to 'keep in step' with the rest of the nation. The Law Reform Commission of Western Australia 2011 Discussion Paper was introduced after the commission received concerns that the Western Australian sex offender registration scheme established by the Community Protection (Offender Reporting) Act 2004 (WA) ('the CPOR Act') was unnecessarily capturing low-level offenders. The Commission considered the purpose and operation of the registration scheme and the types of offending behaviour that may lead to registration. Because the purpose of the CPOR Act is community protection, offender registration should, as far as practicable, be based on an individual assessment of risk. In this regard the Commission found that the mandatory nature of the current registration scheme is problematic. The Commission found a number of case examples that demonstrate serious concerns about the fairness of mandatory registration. I know of an instance where an 18-year-old was convicted of 'encouraging a child to engage in sexual behaviour' (no onus of proof behaviour occurred) which involved sending a

series of **text messages** to an underage girl he considered his girlfriend. He could not hear or see her; no images were sent, and he was found guilty and placed on the register for **15 years**. This young man sent **text messages**. If he raped an adult no automatic placement on the register. There was no physical contact or images. Can anyone in Parliament honestly state that this is a just result in today's society with the advent of social media and early age sexual experimentation? *This young adult lives in fear of social politicians like Derryn Hinch who press for a Ntl Public Register and having his name exposed and labelled a paedophile for texting . He has become a suicidal recluse who will not date as he knows people will judge him, cannot hold a job due to his placement on the register, cannot travel for 15 years due to ANOTHER BLANKET BAN instigated by Hinch and basically has no life to speak of.* A survey of 3000 Australian secondary school students in 2008 found that 27% of Year 10 students and 56% of Year 12 students had engaged in sexual intercourse. This means that a large percentage of students could easily be placed on the register for consensual sex. This young man is grouped on the register with a 55-year-old male who prostituted his child out and has sex with her. Is this approach just and fair? To include low-level or low-risk offenders in the registration scheme drains police resources and undermines the goal of community protection. Moreover, it is unfair that such offenders should be subject to onerous obligations that extend way beyond the sentence imposed for the original offence. The Commission made several proposals for reform and endeavoured to reach a balance between ensuring that the sex offender registration scheme is effective and efficient and ensuring that low-level or low-risk offenders are not unnecessarily subject to onerous registration and reporting requirements. The Commission was particularly careful to approach the reference **objectively**. Thorough research has been undertaken and most importantly, the Commission consulted widely in both metropolitan and regional Western Australia and obtained clear case studies. The Commission consulted with over 80 individuals *from numerous agencies including the Western Australia Police, Office of the Director of Public Prosecutions, State Solicitor's Office, Legal Aid WA, Aboriginal Legal Service, Mental Health Law Centre, Department for Child Protection, Department of Corrective Services, Commissioner for Children and Young People, Child Witness Services, Victim Support Services, Law Council of Australia, National Children's and Youth Law Centre, members of the judiciary, lawyers and psychologists.* Critically, the Commission examined a number of case examples to ensure that its proposals for reform were *directed to practical, and not merely theoretical*, issues with the current scheme. It was recommended that certain low-level sentences should be excluded from the ambit of mandatory registration. The Commission's research and consultations revealed a number of exceptional cases involving adult (young adult) offenders where there is a strong argument that sex offender registration is inappropriate. The Commission found from its examination of case examples that a variety of circumstances may be considered 'exceptional'. In such cases mandatory registration is inappropriate. Instead, the offender should have the right to argue against registration such as young adult offenders (e.g., 18–21 years) who have engaged in 'consensual' sexual activity with an older underage child (e.g., 14–15 years). The Commission has formed the view that there should be a mechanism to exclude some adult offenders from the mandatory sex offender registration scheme because not all adult offenders found guilty of a child sexual offence necessarily constitute an ongoing risk to children. The current mandatory approach: registration is applied automatically upon conviction and sentence. As noted above, to ensure that resources are allocated to those offenders who pose the greatest risk to members of the community it is necessary to ensure that sex offender registration is not applied too broadly – otherwise resources will be redirected away from high-risk offenders to low-risk offenders. Overall, the Commission has concluded that limited discretion should be available to the sentencing court to determine that an adult offender should not be subject to registration and reporting under the CPOR Act. The Commission believes that the sentencing court is best placed to determine the issue because it will already have before it a significant amount of relevant information and because it is appropriate that the question of registration is not unnecessarily delayed. On the strength of its research, the Commission was of the view that there is likely to be some adult reportable offenders who do not need to remain on the sex offender register. Therefore, in the *interests of justice*, existing young adult reportable offenders should be entitled to seek a review of their registration status. All submissions received upon a review of this issue were supportive of a discretionary process to some extent. The Magistrates Court, the Office of the Director of Public Prosecutions (DPP) and the State Solicitor's Office submitted that it is desirable for the legislation to provide for a process in certain exceptional or limited circumstances for 'doubtful cases'. Submissions received from the Department for Child Protection (DCP), the Department of Corrective Services (DCS), Legal Aid and the Commissioner for Children and Young People were supportive of a broader discretion. The Commission has formed the view that there should be a mechanism to exclude some adult offenders from the mandatory sex offender registration scheme because not all adult offenders found guilty of a child sexual offence necessarily constitute an ongoing risk to children. Based on solid research which I have shared, I implore that WA makes amendments to legislation similar to the Victorian Model to allow some young adults to apply for exemption orders to have their names removed from the register and resume their lives. Placement on the register is essentially a LIFE SENTENCE after the fact. Not all people on registers are paedophiles but are treated in this manner. The ongoing effects for some young adults is devastating to them and their families. Their lives are ruined. These complaints have not been taken to the Parliamentary Commissioner for Administrative Investigations Ombudsman.

Kind Regards

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