

STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

**INQUIRY INTO CHILDREN AND YOUNG PEOPLE ON THE SEX OFFENDERS
REGISTER—IS MANDATORY REGISTRATION APPROPRIATE?**



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 25 SEPTEMBER 2019**

Members

**Hon Matthew Swinbourn (Chairman)
Hon Colin Holt (Deputy Chairman)
Hon Tim Clifford
Hon Samantha Rowe
Hon Dr Steve Thomas**

Hearing commenced at 10.00 am

Mr CHRIS DAWSON

Commissioner of Police, examined:

Mr COLIN BLANCH

Deputy Commissioner of Police, examined:

Ms SHARRON LEONHARDT

Detective Superintendent, Sex Crime Division, examined:

Mr MARTYN CLANCY-LOWE

Registrar, Community Protection Offender Register, examined:

The CHAIRMAN: On behalf of the committee, I would like to welcome you to the meeting. You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

The WITNESSES: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard and broadcast on the internet. Please note that these broadcasts will also be available for viewing online after this hearing. Please advise the committee if you object to the broadcast being made available in this way.

A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record. Please be aware of the microphones. Try to speak near them and not make any unnecessary noises around them, and please try to speak only one at a time and we will try to afford you the same courtesy. I remind you that your transcript will be made public.

If for some reason you wish to make a confidential statement during the course of today's proceedings, you should request that the evidence be taken in private session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Would you like to make an opening statement to the committee?

Mr DAWSON: Thank you, Chair. On behalf of the Western Australia Police Force, I would like to thank the committee for the opportunity to add to the submission that we have already made. My opening comment really will be quite brief. I think the threshold point of my opening statement will be that the safety of the community, whether they be children or other persons or adults, is the primary reason for this act. The act and the accompanying regulations are very complicated, and do require quite a detailed understanding in the administration of it. Its principal reason of safety is to ensure that persons who commit sexual offences against children do not reoffend. As a primary purpose, the officers that work under the sex offender management team within the Western Australia Police Force obviously deal with a broad range of both offences and persons, a large number being adults, but for this committee's purposes, we are talking primarily about the children that are subject to registration.

My main point I want to make is that, in my view, the best place for the registration of any persons that are affected by this legislation should rest with the President of the Children's Court. The committee may already be aware that aside from Western Australian legislation, which mandates the registration of young people under this regime of legislation, the only other jurisdiction that similarly does so is Queensland. Although the ACT has some slight modification to it, the other primary states have that discretion placed on the informing court. I believe that is the appropriate place, because while police are in possession of statements of material facts based upon conviction, we also have information and intelligence, and we are obviously an important stakeholder in this.

For the mandatory placement or, indeed, those who wish to be either the subject of discretion or suspension from registration, and indeed the conditions and even the appeal provisions that go from that, I believe should be best placed by a judicial officer. The reason I say that is that as Commissioner of Police, and the delegates that make these decisions on my behalf as well, we are only able to be informed by the information that the police are in possession of. We do not ordinarily have necessarily the pre-sentence reports, nor do we have at all times the victim impact statements or indeed submissions made by defence counsel and others or any other agency. I think for a separation in that decision-making process, I believe it is best to give the discretion to a court as opposed to the Western Australia Police Force. That is my main point. I know that the committee has put forward a number of questions. I am happy to field and respond to those, but that was my primary opening comment.

The CHAIRMAN: I appreciate that, and thank you for making it clear at the outset.

Hon COLIN HOLT: I just want to distil what you just said down to about one line. Do you believe that mandatory reporting should be removed from the act and the discretion sit with the President of the Children's Court?

Mr DAWSON: Not the mandatory reporting, but the registration.

Hon COLIN HOLT: The mandatory registration, sorry.

Mr DAWSON: Yes. I believe that the mandatory registration should sit with the President of the Children's Court, and any appeal decisions and discretion should be placed within the court.

The CHAIRMAN: Okay. You can appreciate that, for us, having prepared for this hearing, I think it is fair to say that that is different from the position that WA Police has consistently put in the statutory review and in response to the Law Reform Commission report from I believe 2012. The questions that we have prepared have been prepared perhaps in that context, so just bear with us if we appear to be at cross-purposes sometimes on this stuff. Some of what we want from you today is to explain the police role in the mandatory reporting process—how you undertake that—and certainly some of the areas in which you might see improvements that might be able to be made.

I am going to get to my first question now. In your submission you say that WA Police believes that the purpose of the legislation needs to be foremost in the consideration of the CPOR act. The statutory review of the act in 2012 stated that the act is —

... premised on the serious nature of offences committed by these offenders, the heinous, recidivist and compulsive nature of the offending and the recognition that certain types of offenders should continue to be monitored after their release into the community.

I think it would be fair to say that the members of the committee, if I can speak on their behalf, do not disagree with that sentiment to a large part, but do you think that this statement adequately reflects the overall purpose of the act itself?

Mr DAWSON: Sorry, can you just remind me where you quoted from?

The CHAIRMAN: That came from the statutory review of the act in 2012. I will read out the quote again.

Hon COLIN HOLT: It is page 3, paragraph 2.

The CHAIRMAN: Yes. It states that the act is —

... premised on the serious nature of offences committed by these offenders, the heinous, recidivist and compulsive nature of the offending and the recognition that certain types of offenders should continue to be monitored after their release into the community.

Mr DAWSON: I do agree with that. My opening statement was more about who is responsible for the initial mandatory registration. I do not disagree with this statement that we presently have obligations to monitor after their release into the community. Clearly, there are other opportunities. The obvious alternative in terms of a government instrumentality would potentially be the Department of Justice, as we do for probation, parole and for other criminal conviction regimes. I am not contesting the fact that the legislation is directive that the commissioner and the police force have this responsibility. I think there is clearly an opportunity for the committee to examine that. My main point is: who should be on the register and how should the appeal mechanisms and discretions apply? The difficulty in giving it to other government agencies is that they do not have the spread across a very large state of 2.5 million square kilometres, and if it were to be another department—we have named one—I know that their present resourcing would actually place them at quite some difficulty in enforcing or monitoring where any of the reportable offenders might live or work. I can understand why the decision was made a number of years ago and it was legislated to that effect, so I do not disagree with the merit of that particular statement.

[10.10 am]

The CHAIRMAN: I think you raised a point there that has been raised by others about who is appropriate to monitor, and, as you have suggested, the Department of Justice has been mentioned to us previously as well, but I think there has also been an indication that they do not have the reach that WA Police has, just in terms of the geographical placement of police in communities outside of the major urban areas. Do you have a view about where monitoring should be appropriately placed—with WA Police or perhaps a suggestion of another department that has that responsibility? Do you have a view about that?

Mr DAWSON: I have a view, but I am also pragmatic about how that might be applied. The other legislation that is relevant to this issue is the dangerous sex offender legislation. That is presently monitored by the Department of Justice in terms of the actual monitoring, although, in a practical sense, the electronic monitoring of DSOs, as we call them, are collocated with WA Police in terms of monitoring electronic bracelets and the GPS reads that come from that, so we have to work side-by-side, and we do. I think that is appropriate. The difficulty, unless there was sufficient resourcing placed upon another government department and spread right over the state, I am well aware that there are registered offenders in very remote communities—in some cases, several hundred kilometres from a regional centre—and the difficulty that police have would only be further, I think, exacerbated by less resourced government departments to actually try and maintain that monitoring. While, fundamentally, the role of police is to enforce the law, to prevent crime, and coordinate emergencies, I do not see functionally that it necessarily must sit with police.

There is one other matter, though, that I think the committee should be well aware of. I delegate a lot of the registration data to the national criminal offender system. I was once, in a former role, the chief executive officer of the Australian Crime Commission. They host a number of very important national intelligence and registrations; indeed, in this case, for these types of convicted persons. If

it were to go to another department other than police, I would have to broker with our compatriot police forces around the country as to how you exchange that information, because persons who are reportable offenders are mobile. They do not necessarily reside at one location. They travel and they are allowed to recreate and move about the country for work or other reasons, and we have to have an ongoing relationship with other police forces, which we do. Our specialists regularly liaise with others. Persons who may be ROs, as we call them, moving into Western Australia, and people who are on our register that move outside of WA. I appreciate that there is a national picture that we have got to address as well.

The CHAIRMAN: Okay, thank you for that. I might have to pause a bit because some of these questions might no longer be relevant, given the statement that you have previously made, so please bear with me.

One of the things we have been looking at is the unintended consequence of the legislation that children and young people who are at low risk of reoffending have been captured by the legislation. For instance, we note that the Western Australian Law Reform Commission stated in its final report that under the present system, an 18-year-old who has engaged in consensual or willing—we do not like to use the word “consensual” because that implies a legal relationship—but a willing sexual relationship or activity with a 15-year-old girlfriend is equally a reportable offender as a 40-year-old man who has abducted and sexually abused a very young child. This is the evidence we received from the DPP, for example —

... the justice system does not like mandatory ... consequences of any description, because it prevents you from exercising a discretion in an appropriate way to ameliorate the severe effect on a person who does not merit them.

The prosecutorial guidelines —

are designed to enable flexibility of dealing with people and not bringing a sledgehammer to crack a problem that does not require something like that in order to address what is going on in that particular case. Criminalising what is normal adolescent behaviour is a sledgehammer ...

The statutory review supported the current approach of mandatory registration, and I think you have made it clear to us that you now take the view that that should rest with the judicial officer—namely, the Children’s Court President. We would like to consider some of the reasons, though, that were put into the report. Do you have a particular view about the process that might apply—I am deviating here—in relation to how a child or young person is put on the register in terms of the actual process itself? If we presume that discretion exists, how do you propose that that might occur in terms of before the judicial officer.

Mr DAWSON: Rather than mandate it, and my opening remark is that I do not disagree with the approach that the DPP has presented, save for the President of the Children’s Court. It should be, in my view, the judicial officer who is best informed as to the circumstances of a particular imminent registration. That way, because they have access to the full information and the circumstance, my view is that the actual registration can be best placed with a judicial officer in the circumstances where parties may be willing—it may be statutorily underage sex, to put it frankly—it is very different than a paedophile preying on a young child. But they are both still statutory offences. This is where—my main point is, while I accept the existing regime where police are monitoring, the placement of who should be on that must also take into account the attendant risk attached to the particular person. One of my colleagues here can expand on what I do not explain properly, but we apply a risk register which is consistent with both the United Kingdom approach, and it is applied nationally across Australia, as to whether a person on a register is classified as being a higher or

lower risk of recidivism. By applying a risk matrix to the individual circumstances, we take into account whether the victim was—I appreciate why you do not use the word “consensual”—a willing participant in a sexual activity as opposed to, I might phrase it, a classic paedophile who has groomed an unwilling victim.

Hon COLIN HOLT: I hope I do not jump ahead too far, but that risk matrix, does it apply before you charge as well, or do you just use it when they come on the register?

Mr DAWSON: We use it for—the registrar sits alongside me—primarily the monitoring of persons who are on the register. However, it is still an informing strategy for when we are investigating suspected breaches or whatever, because we will have to apply very close monitoring. You cannot categorise all persons and all registered offenders as the same type of individual. It will very much be an assessment, which is why we apply it through a risk register. I might get the registrar to further inform you.

Mr CLANCY-LOWE: Yes, it is after conviction. It is conviction based. I use the analogy that it is the same as—it is a bit of a dirty analogy—but it is the same as insurance on your house or your vehicle. It is based on the age—based on these factors, it puts them into, with these criteria, it puts them into different risk categories. On top of that, because they are all static factors, we also use a dynamic risk tool, which takes into account their family situation, any support networks they have got. This is probably more aimed for the older people—whether they have got drugs—other factors that may lead them to precipitate reoffending. Those are also factors that we use to, I suppose, proactively use the limited resources to try to risk-assess people.

Hon COLIN HOLT: Does that same matrix inform the commissioner around if he suspends reporting requirements?

Mr CLANCY-LOWE: It is one of the factors, because under section 61(3), there are a number of factors: the seriousness of the offence, the age difference—I cannot remember them all off the top of my head—the time the person has been on the register, the difference of age between the victim, the reportable offender’s present age, the seriousness of their total offending, and any other matters that the commissioner—that would fit into other matters that the commissioner may feel go into the assessment of suspending or not suspending.

[10.20 am]

Hon Dr STEVE THOMAS: Thanks for your attendance. This may fall under the position of opinion rather than fact and you may choose not to answer it, but does WA Police have an opinion as to whether mandatory reporting, particularly for juveniles, has an effect on recidivism rates? That is, is it an effective tool on recidivism, or is it making us feel better without necessarily providing the result we think it is?

Mr DAWSON: We prepared for such a question, so in terms of the current number of children that have been registered on the register, a total of 361 have been registered. Of those, 58 remain under the age of 18, but interestingly, as a broad total, the number of persons who we estimate have been subject of reoffending—that is, charged persons, not convicted—ROs who have been charged in the current year is 0.8 per cent of the current total, so it is under one per cent, and that is a broad category. With your permission, I will ask Mr Clancy-Lowe to add to it. That, I think, is quite demonstrative that if there is presently only under one per cent per annum charged with further sex offences, the act and the regime does provide a great deterrent.

Hon Dr STEVE THOMAS: So would it be fair to say that significant resources are going into the monitoring for a 0.8 per cent recidivism rate?

Mr DAWSON: That is on the current year, but since the inception of the act since 1 February 2004, it has remained at around about one per cent. There is a cumulative total which is up in the order of around 10 per cent, if you add all the years up, but on a one per cent per annum basis, that is an approximate number of persons that are further charged with sexual offences that we already know about.

Hon Dr STEVE THOMAS: And is that specific to the under-18 category, or is that across the board?

Mr CLANCY-LOWE: If I can jump in, sir. That is across the board. For 10 to 13-year-olds, over the entire period, it is a 17 per cent recidivism rate. For the 13 to 18-year-olds it is similar, 17.3 per cent. This is the entirety of the register, so juveniles in general since 2004 have a recidivism rate of 17.5 per cent, whereas the over-26 in its entirety has an average recidivism rate of seven per cent. The younger age group, 25 and below, have higher recidivism over the entirety of the register. I do not have a figure on a per annum basis. When we are talking, I suppose, in the order of 30 or 35 per annum, we could do that, but it would probably show very small variances, but if you wanted that —

Hon Dr STEVE THOMAS: Just to check, you are talking number of offenders, not number of offences in those recidivism rate figures?

Mr CLANCY-LOWE: Yes.

Hon Dr STEVE THOMAS: Thank you.

Hon COLIN HOLT: Can I just explore that a bit, too? It is hard to interrogate, and is probably hard for you guys to interrogate it too, but you would assume that on the register right now is a whole heap of low-risk offenders because of the mandatory nature of registration. If that was a discretion of the court—and this is crystal ball gazing—you would expect that the ones who end up on the register are those who the court deems should be on the register for more monitoring and reporting, potentially affecting that recidivism rate. It is crystal ball gazing, but I do not know if you can interrogate it or not.

Mr DAWSON: In anticipation of a further question that you may ask, applying the register at the discretion as we suspend reportable offenders presently, we suspend at the moment in terms of—correct me if I am wrong—children that are presently registered in the order of excess of 60 per cent. We suspend them because of the nature of what they have been convicted of and, in the assessment that is made by our specialist officers, they consider that 60 per cent of those currently on the register do not need to comply with a higher reporting regime than the other—I think it is 68 per cent.

The CHAIRMAN: Can I just ask a question? How soon are you suspending their registration after their conviction that puts them on the register?

Mr CLANCY-LOWE: They are reviewed immediately or as soon as practical after they come into the register and then reviewed annually if they were not suspended initially.

The CHAIRMAN: So there is a component that are suspended immediately that you get the opportunity to review straight after their convictions or their pleading of guilt or whatever it might be, because we understand that not every situation involves an admission of guilt but an admission of responsibility in the Children's Court. That happens, it comes to you, you then review it and then there are cases where you are immediately suspending the reporting requirements?

Mr CLANCY-LOWE: Yes, or close to.

The CHAIRMAN: Yes, and what proportion of them would that be?

Mr CLANCY-LOWE: I would have to take that on notice. It would be a very small number.

The CHAIRMAN: If we can perhaps get a breakdown, and we will put these questions on notice. We will put them to you and they will be in the transcript as well, as to the proportion that are immediately suspended, and then perhaps at the next review what the proportion is then, and so on and so forth, so that we can get an idea about how many young people, particularly. I note at the beginning we talked about children, but the inquiry does extend to young people as well, so although that is not a very definite cohort, it has been suggested up to the age of 25, and that is probably the upper limit to what we are interested in in this stuff, but if we could also have that information in relation to that group as well.

Hon SAMANTHA ROWE: Is there specific criteria that you use when you look at whether or not to suspend?

Mr CLANCY-LOWE: Yes, we are guided by the criteria under section 61 of the act, which sets the considerations that the commissioner must take into account.

Hon SAMANTHA ROWE: Okay.

The CHAIRMAN: One of the questions we have prepared in advance is about the current uniform application of the legislation being inconsistent with the principles of the Young Offenders Act. Do you have a view about that as to whether or not mandatory registration actually cuts across those Young Offender Act principles, particularly in relation to sentencing and therapeutic approaches?

Mr DAWSON: The difficulty I am placed in in responding to that is that we have, obviously, hundreds of acts which we must comply with, and where there are different interpretations or applications or, indeed, inconsistencies, we have to make a judgement call on how we apply the statute that is in front of us. My response to that question is: I am presently not able to give a definitive discrepancy between the merits of the Young Offenders Act's overarching principles, because this is a specified application of law that applies to a discrete number of people. We process just under 100 000 persons before the courts under a myriad of offences. What I should remind the committee, if I am permitted to, in my response, some of the persons on the register, be they children or persons that have graduated to adulthood, are very dangerous offenders.

The CHAIRMAN: We accept that, yes.

Mr DAWSON: So we have in the high-risk category persons who require constant monitoring because they are very predatory individuals. I think you will know from our responses that with the volume that we suspend under the discretionary provisions that we have, you cannot characterise every child convicted of an offence as higher or lower than another by virtue of their conviction, so I guess my response is saying: children, of course, are exceptional under the law, by virtue of their age, but the nature of the offending is not always predicated on age. Some of them are very violent and very dangerous individuals. That is why I must, I guess, caution myself in responding to say that you have to treat them all differently.

The CHAIRMAN: Yes.

[10.30 am]

Mr BLANCH: If I could add also that I heard a theme about pre-charging or prior to charging by the police and discretion that exists at that point. I think that is an important element to add in to the conversation, because it is not all about mandatorily putting everyone about whom a complaint is put into the police ending up on the register. Just to give you some statistics around that, since 1 January 2019—this relates to sexting offences or sending intimate images and committing an offence that way—of the 180 offences that were reported to police, 134 of these have not been proceeded with and 46 are still under investigation. So only the most serious, where we have evidence, proceed to charge, and those offenders may find themselves as registered offenders. But

there are a lot of who do not and a lot of diversionary opportunities exist for police prior to charge, such as education packages, JJTs. That range of options is often used by police. That is quite a large number—the 134 of the 180 do not even find their way into it. When we talk about the least serious offending, a lot of options exist for the police to try to divert them away before they end up charged and on the registration.

Hon COLIN HOLT: I am glad you brought that in. I was going to ask a question about it later. Obviously, this discretion at each step of the process, so police have discretion to charge. I assume DPP then look at your charge that you have some discretion actually whether we proceed with the prosecutions. In that example that you have just given, which is really useful, is there any idea whether DPP review that and then go, “Actually, we’re not going to proceed, even though you guys want to?”

Mr BLANCH: We follow the DPP guidelines; that is our responsibility as well. Obviously, for a charge, evidence has to exist, a crime has to have occurred, but then there is the public interest discussion. Where it is unclear or were not sure, we seek advice of the DPP and work together to decide which way we are going to proceed. But sometimes they are very clear; the evidence is just not available or there are a better options for the individual based on the public interest and weighing up the circumstances that we have before us. There is quite a mature approach in the management of these offenders to try to get the right outcome before we even proceed to charge, and we will include the DPP in those discussions if it is a borderline one.

Hon COLIN HOLT: As you would know, we had the DG of the DPP in here, who suggested that they have discretionary powers, too. I am kind of interested in this interplay between the police discretion and deciding to take a charge forward, and when the DPP, if they do or do not, override that discretion at that point. The reason I ask is the difference that exists between Perth metro and regional Western Australia, where you guys have responsibility for prosecutions outside of Perth, whereas DPP have responsibility for prosecutions in Perth. At some point in time, and you can correct me if I am wrong, do the DPP override your decisions to say, “No, we’re not going to proceed with that one in a metro setting”?

Mr DAWSON: I might respond and then invite the Superintendent Leonhardt to add. With the prosecution, responsibility always remains with the DPP, and they have the primary responsibility. Yes, we do follow guidelines. The actual prosecuting function, you are quite right, in regional areas for lower courts primarily rests with police effecting the prosecution, but at all times we must comply with the prosecution guidelines. When they are serious offences that might involve a sexual penetration-type of an offence, the DPP will always be the body that indicts and forms indictment. So they do in fact take over the prosecution per se. Although the police might either divert, decide to use our discretion not to charge, that will be for the lower category of offences, but when they fall within the schedule under the Young Offenders Act, the DPP will always maintain, and should, primacy informing the indictment. They do at times upgrade charges and they do at times elect not to indict when police have already charged. We have a good, functional working relationship with them. I submit that the police should always under the law, where it is permissible, exercise as much discretion as possible, particularly involving young offenders. It is actually consistent with the Young Offenders Act that we should drive to avoid where possible putting children before the courts if there are other good alternative options. But as for practical day to day, Superintendent Leonhardt, deals with this very regularly and I might with your permission invite her to talk.

Ms LEONHARDT: I cannot provide any additional statistics with that, but that certainly is the experience of the sex crime division. We do have a very close working relationship, operational relationship, with the DPP. I just want to include in addition to the number of discretionary options

that we have in relation to charging juveniles that on occasion also will go to the Children's Court. They will be charged, so you will go through the various cautions, JJT and education packages and whatever, and get to the point where a decision is made to charge the individual. It will go to court. On occasions the Children's Court will refer it back to the JJT. There are a number of steps in that process looking at time, place and circumstances of the particular offences.

Hon Dr STEVE THOMAS: Just on the reverse angle, has there been a position where police have preferred not to proceed, but DPP has insisted on going forward? We have talked about the reverse direction, but has there been any difference of opinion in the reverse?

Ms LEONHARDT: I am not aware in my time; I have been at the sex crime division now for three years and I have not come across that situation—not to my knowledge.

The CHAIRMAN: Just coming in back to the discretion here. One of the issues that arose was in relation to Aboriginal people in particular and how they were probably more likely to end up in the system. The ALS talked about the major police exercise in the Kimberley that involve prosecutions for reportable offences from police where the police accessed the medical files of young Aboriginal girls. The first question we have is: was that done with the consent of those particular Aboriginal people—that is, the accessing of their medical files and records?

Mr DAWSON: I cannot answer that without taking it on notice, unless one of my colleagues has that information. It is the case that when, one, there is a complaint made that persons are offending against children, we obviously have a duty to investigate all those matters thoroughly. We have accessed medical records in the past, but it will not necessarily involve the consent of the individual. We have got situations where infants have been found with sexually transmitted diseases found in their nappies. We clearly cannot ask the infant for consent. We obviously worked very closely with Department of Communities' child protection agencies, but it may be a familial relative who might be suspected of it, so is certainly not going to see consent.

The CHAIRMAN: Were trying to understand that process a little bit more, because it was described to us, so that is one of the reasons we asked, and we will put that question on notice. I think that might be question on notice 2. The issue there would be about how it interacts with mandatory reporting of sexual offences and how that might be dealt with differently than one where somebody has self-reported, so, you know, the classic sexting example where two young people have sent naked images of themselves to each other, and one parent finds out and complains to the police. The police then finds out that it has been mutual; both of them have probably technically committed an offence under the act. There is conversation that happens with the parents, an everybody agrees that the process itself is probably sufficient punishment for the young person. They do not get on register or any of those sorts of things. But then you have the situation where you have a person who is in foster care or state care, their carer finds the image, the carer is mandatorily required to report to police, and then the response to that could be different. How is that different in those circumstances in your experiences of likelihood of prosecution and conviction for those particular people?

Mr DAWSON: I think the evidence we have already given is that I do not have the breakdown of the discretionary matters that we have not proceeded to progress. You are surmising, I think, probably in the right direction. It would be those mutual participants in a sexting type of scenario that would lead to the matters that we have fully given evidence on. We have to take the vulnerability of the child into close consideration. Whether they are or are not under state care at all times the approach the police must take is to address the vulnerability of the child, and, indeed, and it is a consideration that child protection also has to have, whether the child remains at risk in the particular living conditions or circumstances thereunder. Look, what I will say is that there is a very tried and tested

joint operation that takes place where we co-locate our offices with child protection and welfare offices. That has proven to be very successful and certainly, Superintendent Leonhardt, who is an expert in the field, can expand on that approach.

[10.40 am]

Ms LEONHARDT: At this point we have a multi-investigation support team which is made up of Communities, police, Parkerville and other advocates at Armadale. We are about to commence another centre out at Midland and we are working at the moment to get some additional support into our central location in Perth. At the moment we have CPFS and police there. We are looking at getting some advocates, so certainly we do work very closely. I suppose the other thing is in relation to your question regarding a person who may be in care, they should not be dealt with any differently. If they are a juvenile, we obviously look across the circumstances. It will always be on the time, the place and the circumstances of the individual.

The CHAIRMAN: But I think even beyond the exercise of police discretion to prosecute, one of the issues that arose, even for the Children's Court, was the level of community and family support a person has in terms of their environment and whether what happens is that a person who is already vulnerable because they are in state care, gets into trouble and then, because they lack those community supports, they are more inclined to end up being treated more harshly over time. Usually, through no fault of their own, they do not have parental or family support; they do not have those structures. Yet, if you do, you avoid being put on a mandatory register and you avoid reporting obligations and all those sorts of things. Do we have a structural problem in the sense that we treat these people more seriously or the outcome is more serious for them than it might be for those who live in a much more comfortable family environment and get the support of their parents, peer support at the school and all those sorts of things? We just get this compounding affect for these people.

Ms LEONHARDT: WA Police policy and procedures are very clear with children in relation to these whole diversions, wherever they might come from. We also have some protective behaviour training that we work with and we also have referral to see CPFS where we believe children, siblings or victims may be at risk. We work really closely with trying to assess, not only from a criminal point of view, some of the other options that may be available to look after those children. The child abuse squad in Perth has a really good format and a good system of linking these kids to other agencies. That is why we are working at the moment to try to get an additional advocate within child abuse so that they can actually be more supportive of the families, including, obviously, if the child is in care they get that CPFS support as well.

Hon Dr STEVE THOMAS: There must be a fair gap between the services and capacity in the metro and the regional and remote areas. This is a little bit out of left field but I would imagine that there would be a significant impact on police officers trying to manage that process of offenders in small regional and remote communities where it is almost impossible to avoid having offenders and victims in a similar area and it is probably almost impossible in some cases, for a whole range of issues—community size and cultural—to be able to remove victims out of an area. That must have an enormous toll on remote policing. Is that a real issue that you have to deal with? I would imagine that the psychological damage on occasions to police officers in those circumstances is not insignificant.

Mr DAWSON: I agree with the broad comments in your question. In remote communities where we have police, they are faced with situations where—a matter was referred to earlier about an earlier operation in the Kimberley. You would be aware that we have done a significant charging of persons in and around the Pilbara region as well. It is not uncommon for persons who have been charged to

be either bailed before the court matter or the matter has proceeded to trial. In some of those communities, having family members or neighbours in a very remote small community is difficult to police. It is difficult for the victims and it is difficult for the whole process to be done in a timely manner when everyone knows each other, they are living quite closely, yet it is remote. The access to services, be they psychological, health or all those other attendant issues, that all go to, "How can we firstly protect the vulnerable people?" is challenging. It is just the nature of Western Australia and the nature of some of our communities that we police.

Hon Dr STEVE THOMAS: You do not have to be all that remote to be living in a small community where everybody knows everybody's business. The anonymity of the metropolitan region is probably sometimes a benefit.

Mr DAWSON: At times, yes.

The CHAIRMAN: In your submission, you said that you are monitoring the Victorian amendments that occurred to their similar provisions. Can you give us an indication of what monitoring you are doing and whether or not you have reached any conclusions with respect to the application of the Victorian changes?

Mr CLANCY-LOWE: We have not got any information back as yet, but we have contacted our counterpart's register in Victoria to assess how that is actually working operationally. I have not heard from them for a couple of weeks. I will take that as a point to follow-up this week to get some response back from them.

The CHAIRMAN: If you could, yes. That will be question on notice 3. We will reframe the question but the response will be in relation to what the outcome is of your monitoring of the Victorian model.

Mr CLANCY-LOWE: If I could add, South Australia has got similar legislation in that space, so we will also seek information from the South Australian police—although they have a much smaller register—to see how it has impacted in that space as well.

The CHAIRMAN: The recommendation from the committee is that discretion be introduced into the system similarly along the lines that you seek. Is WA Police supportive of a review mechanism for those who are already on the register to be removed from the register if they can satisfy, for example, the President of the Children's Court—if that happens to be the person—that it is no longer appropriate or it never was appropriate for them to be on the register?

Mr DAWSON: I think, consistent with my opening remarks, I believe that any such review or appeal should be considered by a judicial officer. I think they are best placed to do that.

The CHAIRMAN: In terms of how that might occur, we have had evidence from the Aboriginal Legal Service that there would be Aboriginal people who live in remote and regional areas that are unlikely to be in a position to make an application themselves or be aware that they could make such an application. Does WA Police have a view in relation to what that process might look like: would it be RO-initiated or should it be an act on the part of the state to make people aware of their right or to automatically review those who are on the register? It is a very broad question. I think I want a broadbrush answer than anything specifically about whether you have turned your mind to that sort of thing and what might it look like appropriately.

Mr CLANCY-LOWE: Yes, we have had other amendments to our act and other acts that have impacted reportable offenders or ROs. We have taken it upon ourselves to advise the ROs of what those changes are, be it changes to things they have to report or if there are other acts that may impact their behaviour. The commissioner may have other ideas but I would see that perhaps as the police being on the front foot in advising the reportable offenders.

Mr DAWSON: If I could expand on that, my interpretation of both your question and what Mr Clancy-Lowe has added, is that if there is an amendment to the existing legislation that changes the reporting type of conditions, then I think we do bear that responsibility to inform those persons who might be impacted by that. I think that the question as to whether a legal body such as ALS should do an ex parte-type application on behalf of an individual without their knowledge needs close consideration. But I understand the reasons —

The CHAIRMAN: To be fair, I do not know that they were proposing that as such.

Mr DAWSON: But if their conditions are such, I think that is one that policymakers and committees such as this, with respect, are probably the ones that can weigh up the merit of that. I think it is a fact that certain reportable offenders live in very remote communities and do not have ready access to a lot of the services that are provided in the regional and metropolitan area—that is undeniable.

Hon COLIN HOLT: I notice in the last page of your submission, you actually point that out that —

Additionally, it is requested that the Committee consider the issue of retrospectivity and the impact on court and police resourcing of any recommendations for further reform.

If the committee potentially says, “We need to change the law and we probably think there are some people who are caught up with mandatory registration”, it could be a judicial review or it could be a police review. Would you like to expand on that sentence in your submission?

[10.50 am]

Mr DAWSON: I will let my colleagues add to what I may not put in there. The fact that we presently suspend the reporting obligations of 68 per cent of persons under the child register at the moment I think lends weight to that. We apply a discretion to the existing reporting regime, given the circumstances as I previously expanded, upon the risk register. In terms of retrospectivity, I think that does require very detailed analysis, because if I can hypothesise on this: a person may be presently on a sex offender register because of the conviction for a particular matter. At times, victims come forward subsequent to a known conviction of a person, and they then feel incentivised to report historical matters. It may be far more serious than the matter for which have presently been convicted on a matter. That element of retrospectivity, I think, needs to be very carefully weighed up to say that if it is a historical matter that a person has now brought to the attention of the police or any other body, it may be an aggravated set of circumstances. So I would like to exercise some caution about saying broad retrospectivity can apply, you might say, in one sense, in a positive manner, but it can also be applied in a negative manner.

Hon COLIN HOLT: Yes, because you have already said that there is a 17 per cent recidivism rate, too, so that has to be considered too, I would have thought.

Mr DAWSON: Yes, it does.

The CHAIRMAN: Let us just go to some of the technical aspects of the role that WA police play in respect to both the register and the reporting requirements and the process you go through to suspend reporting requirements. What is the process you go through to determine what the reporting requirements will be for a particular individual? How do you make that judgement?

Mr CLANCY-LOWE: The legislation dictates that everyone has to report the information in section 26 and 29 of the act. That is just mandated; we have no remit to modify that. Whether they are 12 or 88, they still have to report the same.

The CHAIRMAN: So they are all the things like they have to provide you with their email addresses, where they live, if they licence a vehicle, if they move interstate—all those sorts of things?

Mr CLANCY-LOWE: Yes; plus they attend where there may be children present, things like that—yes, that applies for all reportable offenders.

The CHAIRMAN: So that is a like a block of reporting requirements that, regardless of the level of risk, a person continues to have to comply with, regardless of the level, as I say, of the risk? Then when the commissioner, in your role, can suspend the reporting requirements, I presume you have delegated that to the registrar; is that correct?

Mr CLANCY-LOWE: Yes.

The CHAIRMAN: Then you make that assessment yourself and then you go through, I suspect, some sort of risk matrix; I think you spoke about that?

Mr DAWSON: I might invite, with your consent, Superintendent Leonhardt, because there is more than one person who makes an assessment on these matters.

The CHAIRMAN: Absolutely.

Ms LEONHARDT: Depending on whether it is in regional WA or whether it is actually within the Perth metropolitan area, we will talk with the case officers, so the case officers will pull an application together in the review. The SOMs inspector—so a detective inspector—will talk and meet with the case officers and make a recommendation that will then eventually go to the registrar who will make the ultimate decision and, obviously, change the paperwork/administrative side of it. In regional WA it actually goes back to the detective inspectors in the crime areas within regional WA.

Mr DAWSON: If I could add, the act does not give me discretion; I have to comply with section 61(3)—I must. It does not say “may”. I have got to take into account, and my delegates do, in terms of those mandated conditions. I think there are some other additional matters that we have got to weigh up based on that risk registered profile and metrics that we apply. But there are some things that I simply must not avoid.

The CHAIRMAN: In terms of your discretion to suspend reporting, there are some offences in which you do not have any discretion at all. I suppose that leads me to a question: if discretion is given to judicial officers to put people on the register, are there some offences you think should still remain mandatory for reporting requirements?

Mr DAWSON: That is a very interesting question. My intuitive response is, yes. I think in a very high listed schedule of very, very serious offences, and can envisage sexual penetration by lineal relatives in certain situations, incest, those sorts of matters; I think there are elements which must be weighed, very, very closely and heavily. So, look, it is really opinion-based.

The CHAIRMAN: It is important to us to understand that if you think there is an element that should remain mandatory, where you think that limits should rest. Perhaps we could put a question on notice. I understand with the dangerous sex offenders register, there are things like categories of serious offences that attract circumstances consequences, but it may be the case that you have the opportunity to consider it in more detail, because you may wish to provide a list of offences you say should still require mandatory registration and that the circumstances could never justify not monitoring those particular people. Importantly, one of the elements of the police position over time has been the cost and risk element in terms of not having a mandatory side of things, and if discretion is introduced, there will be a burden on police and prosecutors to make a case for a particular person to go on the register. But, as I say, there could be particular offences that are so serious that there could never be a contemplation of circumstances in which —

Mr DAWSON: Sorry—at its highest. Of course, in many instances, offenders who are on this register are also convicted of other versus offences, as high as murder.

The CHAIRMAN: Yes, of course.

Mr DAWSON: If a person murders, but they are also co-convicted and are on a register, then I do not think any reasonable person would say that they should not be on a sex offender register. But there are myriad other convictions that need to be taken into consideration, but Mr Blanch may have an initial comment.

Mr BLANCH: The council could consider that—that shift from mandatory reporting for everyone for an opt-out model by the justice system. So the decision could be made that, yes; the model exists today, everyone has to be mandatorily registered, but then the justice system could make a decision to remove them, or there was an exceptional case to not have them registered. That could be—because it is only a slight shift from where we are.

The CHAIRMAN: Like a presumption for registration that has to be rebutted by the particular individual.

Mr BLANCH: Yes. I think that would cover off on the more serious ones, because then there would have to be a very clear decision by the justice system as to why that person was not kept on there.

The CHAIRMAN: Because I think there are would be lower level offences that are currently getting picked up that really there should be, I suppose, a circumstance in which the prosecution should make the case—I think the DPP even said that the onus should be on the prosecution to make the case as such and not on the individual to argue that they are not being on there. But you have highlighted that to us—because we are dealing with such an incredible spectrum of behaviours here, from the most heinous that is possible that we could not even just contemplate these people coming back into our communities at all, to very low-level, and I hate to use this term, almost innocent level offending where there is a naivety and a lack of responsibility but there is no sense of malice or that sort of heinous type of behaviour. I think that sometimes is missed in the debate about these sorts of things—and police, of course, at the coalface, you have to deal with those very wide ranges of behaviours. There are probably things you could tell us that would curl our toes, sort of thing. We are mindful of that, but we are also hearing other stories of a person who has been caught up, made a mistake and been punished for it, but then living with that stain.

Mr DAWSON: The committee may or may not be aware that across Australian jurisdictions, as I am informed, the Australian Capital Territory has a facility whereby the defence may make application in these instances, so the onus rests on the defence to make that representation in circumstances such as you have described.

The CHAIRMAN: Yes. I think the other fear we have is that a lot of young people going through the system may not have necessarily very good or no legal representation at all and may be inappropriately on the register if they have to opt out because they do not understand the consequences of it until the time goes. I think the evidence has generally been is that what will happen over time if discretion is introduced is there will be a settling so police, prosecutors, defence lawyers and the court will know the cases that just do not deserve registration at all, and then the ones that there absolutely will not be any argument. But I suspect you can reinforce what I am saying, some of the people who commit those most heinous crimes are also very good about tying up police and prosecutors' time in what can only be described as frivolous and pointless arguments—I think that is probably one of the things you would like to avoid—because they do not have much else to do but to waste time on those sorts of things.

Hon COLIN HOLT: I notice in your submission you talk about the reviews that have occurred in the act—one by the Law Reform Commission and a statutory review in 2012. Part 3 of that is internal operational reviews conducted by the WA Police Force. I do not know if you are in a position to

reveal what those internal reviews did, or say. Maybe you can expand on whether there is much discrepancy with what the other reviews said, including the statutory review?

[11.00 am]

Mr CLANCY-LOWE: The internal reviews were really more around the operational implementation and management of how ROs—how the resources would be best placed within districts and which police officers would be best placed both in regional and metro areas. So, that is where the various internal reviews have pretty much focused.

Hon COLIN HOLT: Maybe I can put my question another way; it might be tricky to answer. There is only one statutory review required. Do you think there should be another statutory review into the act; and, if there was, could you envisage that it would be different to what the 2012 review said?

Ms LEONHARDT: When we talk about the previous reviews and the operational review—some of that was policy procedure, et cetera—as a result, a submission has been made through to the minister, which is cabinet-in-confidence and I cannot comment on it here. But, obviously, there is a whole heap of recommendations that have been proposed. Obviously, things have changed since 2012. There are a lot more reportable offenders on the register and with speaking and working with our colleagues in other agencies et cetera, our view has changed, as the commissioner has stated this morning. Those proposed amendments are going through as we speak.

The CHAIRMAN: Just another technical question, I think. Who has access to the register?

Mr CLANCY-LOWE: I suppose, in a nutshell, authorised officers. The commissioner delegates that authority to authorised officers, and they are broadly police officers that have the responsibility of managing them, but there is probably close to 900 across Western Australia who have access to the register. That probably includes about 80 centralised and then it devolves out to the local police stations, generally OICs and other officers locally, but it is pretty much a restricted register. It does not talk to any other database. It does not talk to another database at the ACIC —

The CHAIRMAN: Sorry; for our benefit, what is the ACIC?

Mr CLANCY-LOWE: Sorry; the Australian Criminal Intelligence Commission. While they manage the administration of the act in case it breaks, it does not talk to any of their other systems or share information. It is pretty much locked down.

The CHAIRMAN: Does Child Protection have access to the register?

Mr CLANCY-LOWE: No, it is only to those authorised police officers.

The CHAIRMAN: Does the commonwealth get access to the register in terms of border Protection and those sorts of people?

Mr CLANCY-LOWE: Yes, it is shared inasmuch as for border protection if someone is travelling and there are alerts because someone is on the register that border protection have, it is facilitated by the Australian Federal Police. But moving back to what you were saying about Department of Communities, on a needs bases, the police will advise the Department of Communities if an RO has access to children and unsupervised access. We have a follow-up because obviously they are busy as well. It is no good just saying, “This person has access to these two children”, and just washing our hands. We then follow-up to see what actions they have taken or recommend that we take with that RO.

Ms LEONHARDT: We have a very close relationship with the Department of Communities in relation to that and it is right at the beginning when someone is actually charged with an offence that we will give that information over if we think people have access to kids or they have their own children, or for a whole heap of reasons we will advise and work with communities. Then, once again, if a

person is actually convicted and sentenced and put on the register, we will obviously assess all that again.

The CHAIRMAN: Yes. One of the other issues we have is—discretion was a recommendation of the committee—as to what point that discretion would end in relation to age. By definition, a child is somebody below the age of 18, but we have had evidence that the people do not necessarily hit maturity at 18 and there is an argument that there should be discretion for—and I think even in your statutory review—for vulnerable people, I think, “doubtful cases” is what you talked about as well, and others. So, does WA Police have a view about where discretion should effectively end and mandatory registration commence from an age point of view?

Mr CLANCY-LOWE: I would probably like to have a look at the Victorian and South Australian impact of those changes on that 18 to 19-year-old group of offenders.

The CHAIRMAN: Yes. Because some of those have committed those offences as children and then the system has only caught up to them as adults, and therefore we are in the situation where they might even be very old. I think the Children’s Court President gave some examples of people in their 40s coming before her, being charged as children for those offences and then going through that process and they have led a very good life and not presented a further risk, but then going on to the register. There are some technicalities and complexities around that, so perhaps we can put that as a question on notice for you to give some consideration to, because the line has to be drawn somewhere, of course. Some people would say that discretion should be in the act for everybody, including adult offenders as well, but this inquiry is mainly interested in the impact on young people in relation to that.

Mr CLANCY-LOWE: I would offer that if they were 40 and committed the offence when they were under 18, under the discretion they would fall under that bracket, because they were a child when they committed the offence. So, they would still have that same discretion.

The CHAIRMAN: For sure, yes, but, as I say, it is not black and white. You do not hit a point in your life and then all of a sudden, you know, you have got all the mental faculties of a fully functioning adult. I think the people who would be most aware of that would be WA Police because they are dealing particularly with young males who get behind the wheels of cars and do stupid things and all sorts of stuff and perhaps do not do that as much in their later lives.

Hon COLIN HOLT: I would assume that some of the people who have been suspended from their reporting requirements would be over 18 and potentially well into adulthood. That is the experience from police. I note some of the statutes supplied to the community also talk about spent convictions, of which there has been six for people aged over 26 and over. I assume they are a low-risk category.

Mr DAWSON: Again, the approaches and the applications that get made, for instance, with people that, one, apply for spent convictions or, two, might apply for working with children cards for employment reasons or volunteering reasons even, we again have to apply the law as it is presently in front of us. Whether a person is suspended or not is really about the self-reporting obligations in a compliance regime, but it does not obviate the need for us to disclose to other parties, be they the Department of Communities, if they have been convicted and are on the register but are simply suspended from actual reporting requirements.

The issue with spent convictions, of course, is also inconsistent across Australia. Where a person might apply for a spent conviction from another jurisdiction, may not disclose certain convictions in other states or territories. So, it is not a uniform spent conviction regime, because the inconsistencies of various state, territory and federal laws apply different approaches to the time limitations and indeed the categorisation of certain offences. It is pretty much a legislative model.

Hon COLIN HOLT: I would assume that has been discussed at COAG level?

Mr DAWSON: It has been discussed many times. It is a recurring conversation.

The CHAIRMAN: Would you like to make a closing statement?

Mr DAWSON: No, other than to thank the committee for the opportunity to expand on our submissions.

The CHAIRMAN: Excellent. We really appreciate that you have come in and shared the position of WA Police. We appreciate the work that WA Police does in this area and that you are dealing with a broad spectrum of offenders and people in our community who have extremely complex issues, but also some of whom do pose a significant risk to us. Thank you for attending today. Please end the broadcast.

A transcript of this evidence will be forwarded to you for correction. If you believe that any correction should be made because of typographical or transcription errors, please indicate these corrections on the transcript. Errors of fact or substance must be corrected in a formal letter to the committee. When you receive your transcript of evidence, the committee will also advise you when to provide the answers that were taken on notice.

If you want to provide additional information or elaborate on particular points, you may provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence. We may add some additional questions that we did not cover today in light of some of the evidence you have given and some further clarification that we might require as we go through our drafting processes and things of that kind. Once again, thank you for your time today.

Hearing concluded at 11.12 am
