

5TH MINISTERIAL COUNCIL FOR POLICE AND EMERGENCY MANAGEMENT - POLICE

19 JUNE 2009 PERTH WESTERN AUSTRALIA

AGENDA ITEM 3.2

NATIONAL APPROACH TO CHILD PROTECTION OFFENDER REGISTRATION –

REPORT FROM NATIONAL WORKING PARTY

SPONSOR	New South Wales (Ministry for Police)
PURPOSE/ISSUE	To discuss the outcomes of the National Child Protection Register/ANCOR Working Party established by SOG in April 2008.
RELATIONSHIP TO AUSTRALASIAN POLICING STRATEGY	
RELATIONSHIP TO MCPEMP MINISTERIAL PRIORITIES	Child Protection / Child Pornography / ANCOR is Ministerial Priority No. 4 for 2009.
SENSITIVITY/IMPACT	Australia's ongoing commitment to minimising harm to children.
URGENCY	Routine.
JURISDICTIONAL IMPLICATIONS	Consistency among jurisdictions of penalties and of reporting obligations.
IS A BUSINESS CASE PROVIDED / IS A BUSINESS CASE REQUIRED	No / No
RIS REQUIRED (YES OR NO)	No
RIS DEVELOPED (YES OR NO)	No
CONSULTATION	All police jurisdictions, and CrimTrac.
PREVIOUS RELATED WORK BY OTHER AGENCIES	Enactment of legislation by all States and Territories to implement ANCOR.
MAJOR NON-POLICE INTERESTS	State and Territory child protection agencies and CrimTrac.
ACTION STATUS	For decision.
DRAFT RESOLUTION	MCPEMP: a) noted the agreement by all jurisdictions to implement changes to their Child Protection Registers to reflect the changes made by NSW in the <i>Child Protection (Offenders Registration) Amendment Act 2007</i> ; b) endorsed the recommendations contained in the agenda paper, subject to the endorsement of their Cabinets where necessary; and c) noted that Victoria does not support Recommendation 3 and 13.

BACKGROUND

The NSW Child Protection Register is a confidential register established under the *Child Protection (Offenders Registration) Act 2000* ('the Act') that contains the details of persons who have committed certain offences of a sexual or otherwise serious nature against children.

New South Wales was the first Australian state to introduce a mandatory system of registration for people who have committed child sex offences and/ or other serious offences against children. The Act commenced in October 2001 in NSW.

By October 2007 legislation had commenced in all Australian States and Territories to establish registers in their jurisdictions as part of the national approach to child protection registration.

NSW conducted a review of the Act in 2007, resulting in changes being made by the *Child Protection (Offenders Registration) Amendment Act 2007* ('the Amendment Act'). The Amendment Act commenced on 22 October 2008.

A summary of the more significant changes made in NSW was presented to the MCPEMP Senior Officers Group (SOG) at their April 2008 meeting. It was agreed by SOG that a Working Party should be established, chaired by NSW and consisting of all SOG jurisdictions and Crim Trac, to look at reflecting these changes nationally to ensure consistency.

The Working Party was tasked by SOG to make recommendations to Ministers by June 2009 relating to:

- i) an agreed model for updated ANCOR legislation in each jurisdiction to take account of legislative amendments that have been made in individual jurisdictions, and the CrimTrac sustainability assessment of the ANCOR system
- ii) national best practice benchmarks for monitoring of offenders including approaches to risk assessment, and for monitoring offenders who travel interstate and overseas, drawing on the experience of each jurisdiction to date
- iii) any other matters relevant to ensuring an effective national approach to monitoring of offenders

A Working Party was established, chaired by the NSW Ministry for Police and with representatives from each jurisdiction and CrimTrac, to consider the issues outlined by the MCPEMP SOG.

The members of the Working Party are listed in **Annexure A**.

The findings of the Working Party were presented to the SOG at their April 2009 meeting, resulting in SOG resolving to:

- i) note the agreement at officer level by all jurisdictions to implement changes to their Child Protection Registers to reflect the changes made by NSW in the *Child Protection (Offenders Registration) Amendment Act 2007*;
- ii) refer this paper to MCPEMP for consideration and endorsement of the recommendations in principle, noting that Ministers may need to seek the endorsement of their Cabinets; and
- iii) noted that Victoria does not support Recommendations 3 and 13.

As per the SOG resolution, the paper is now presented for the consideration and endorsement of MCPEMP.

KEY INTERJURISDICTIONAL ISSUES

- The alignment of Child Protection Registers (or equivalent) between jurisdictions is the key issue of this paper. It is important to maintain consistency amongst Registers, especially in areas such as reporting requirements and penalties, to deter registrable persons from 'jurisdiction shopping'.

LEGISLATIVE IMPLICATIONS

- Any legislative changes which may be required for the implementation of each recommendation are considered in the Issues section of the paper below.

RESOURCE IMPLICATIONS

- There should be no resource implications for jurisdictions as a consequence of this paper.

ISSUES AND DISCUSSION

This paper contains a summary of the issues considered by the Working Party, the relevant changes NSW has made in those areas and the recommendations of the group for change in other jurisdictions.

Note: In NSW persons on the Child Protection Register are referred to as 'registrable persons', in other jurisdictions they are referred to as 'registered persons'. For the purposes of this paper the NSW terminology has been used.

I) AGREED UPDATES TO CHILD PROTECTION REGISTER/ANCOR LEGISLATION

Increase in Penalties for Breaching the Act

The NSW Amendment Act increased the maximum penalty for offences of failing to comply with reporting obligations or furnishing false or misleading information from the current maximum penalty of two years imprisonment to a maximum penalty of 500 penalty units or 5 years imprisonment or both.

SOG agreed that jurisdictions would 'work towards' adopting a uniform approach to penalties for registration schemes.

Uniform penalties are important to ensure that registrable persons do not engage in 'jurisdiction shopping', taking up residence in the state with the lowest penalties for breaches of their reporting requirements.

9/9/2010

Other Jurisdictions

Victoria has increased the penalty for failing to comply with a reporting obligation to five years as of 28 February 2008.

Queensland, Western Australia (WA) and the ACT all have a two year penalty but are currently considering increasing to five years.

South Australia and the Northern Territory currently have a two year penalty.

Tasmania currently has a penalty of up to 50 penalty units or a maximum of six months imprisonment.

Recommendation 1

That all jurisdictions agree to increase the penalty for failing to comply with a reporting obligation to five years.

Provision of Email Addresses

The Amendment Act introduced a requirement that registrable persons are to report to police all their active electronic communication identifiers, including:

- details of any carriage service (within the meaning of the *Telecommunications Act 1997* of the Commonwealth) used, or intended to be used, by the person,
- details of any internet service provider or provider of a carriage service (within the meaning of the *Telecommunications Act 1997* of the Commonwealth) used, or intended to be used, by the person,
- details of the type of any internet connection used, or intended to be used, by the person, including whether the connection is a wireless, broadband, ADSL or dial-up connection,
- details of any email addresses, internet user names, instant messaging user names, chat room user names or any other user name or identity used, or intended to be used, by the person through the internet or other electronic communication service,

It is recognised that this requirement will not stop convicted child sex offenders from using the Internet. However, it may deter registrable persons from inappropriately using telecommunications and provide an added layer of protection for children while using the Internet.

Other Jurisdictions

Provision of email addresses is currently a reporting requirement in Victoria, including details of internet service providers. A requirement to report user names and passwords is to be included in a future review.

The reporting of electronic identifiers has been a reporting requirement in Western Australia since 1 July 2008, and it is currently being considered in Queensland.

There is no legislative requirement to provide electronic identifiers to police in the other jurisdictions.

Recommendation 2

That all jurisdictions require registrable persons to report their email addresses and other electronic identifiers to police as part of their reporting obligations, as per the recent legislative changes in NSW and Western Australia.

DNA Samples

The Amendment Act gives police the power to take and retain DNA (buccal swab) of registrable persons. Police are given this power under the *Crimes (Forensic Procedure) Act 2000*. The sample can be taken when registrable persons either make their initial report or their annual report to police as required under the Act.

By having the DNA of persons on the Register, more persons who commit child sex crimes will be identified, they will be identified faster and they will be more likely to be successfully prosecuted.

Other Jurisdictions

The provision of DNA is a registration requirement in the ACT.

No other jurisdictions have legislation specifically requiring persons on the Register to provide DNA, though in many cases those persons would already have DNA in the system in relation to their offence.

Victoria does not support requiring the provision of DNA as part of the Child Protection Register process. Their DNA provisions will however be enhanced later this year through the *Criminal Investigation Powers Bill (Vic)*.

Final out why we didn't progress this

Recommendation 3

That all jurisdictions require registrable persons to provide a DNA sample on registration, and progressively back-capture the DNA of those persons currently registered.*

* As noted in the resolution, Victoria does not support this recommendation.

Freedom of Information

When the Register was created, it was the NSW Parliament's original intention that information held on the Register should not be available to the public. The restriction of access to information held on the Register enables more effective case management of registrable persons; higher levels of compliance with reporting obligations; minimises the risk of vigilante activity; and reduces the capacity of registrable persons to network.

To ensure that information is appropriately restricted, the Amendment Act exempts documents relating to the NSW Child Protection Register from disclosure under the *Freedom of Information Act 1989*.

Other Jurisdictions

Queensland, South Australia, Tasmania and the ACT already have an FOI exemption.

Victoria does not have a specific FOI exemption, but has strong information disclosure restrictions in their *Sex Offenders Registration Act* which prevents information being released under FOI.

Other jurisdictions do not have any FOI exemption.

Recommendation 4

That all jurisdictions ensure that information relating to their Child Protection Register is clearly exempt from Freedom of Information requirements.

Unsupervised contact with children

The Amendment Act followed Victoria in reducing the number of days in the definition of regular unsupervised contact with a child and residing in the same household as a child from 14 days to three days. The Amendment Act also shortened the time frame in which a registrable person must report such contact from 14 days to three days.

This requirement is important as some serial offenders enter into sexual relationships, or establish friendships, with people who have children.

This is often part of their offending modus operandi, with these relationships being used to gain access to children. Intra-familial offenders will frequently rejoin their family. Information about offender access to, and relationships with children, is considered critical in assessing a registrable person's risk of re-offending.

Other jurisdictions

Victoria has reduced the limit for reporting contact to police to three days, and is considering further reducing it to 24 hours.

Tasmania and ACT have a limit of seven days.

WA has a limit of 14 days.

The Working Party agreed that an appropriate national standard was a total of three days unsupervised contact with a child, to be reported within 24 hours. This will result in further legislative change for all jurisdictions, including NSW.

Recommendation 5

That all jurisdictions limit the number of days of regular unsupervised contact with a child a registrable person can have to a maximum of three days, and require the contact to be reported to police within 24 hours.

Power to prevent name changes

The Amendment Act now requires registrable persons in NSW to apply to the Commissioner of Police before changing their name. The Commissioner is authorised to prevent the name change if it is reasonably likely to be regarded as offensive by the community, the person's victim or the victim's family; or where it might undermine the NSW Police Force's ability to supervise and monitor the person.

Other jurisdictions

Victoria has the same power as NSW, however they have taken this further by specifically allowing the Commissioner (or Secretary of the Department of Justice) to provide the Victorian Registrar with the name, date of birth and previous addresses of a registrable offender. *s29A Births, Deaths & Marriages Act Registration Act 1996*

In practice, this means that police are able to provide their Births Deaths and Marriages with a list of currently registrable persons, so that if they attempt to change their name without obtaining permission from the Commissioner it will be picked up and they can be breached. *s63 Sex offender Registrations Act 2004 (VIC)*

This exchange of information is very carefully controlled to avoid breaching the privacy of registrable persons. If a registrable person attempts to change their name, a flag is raised on the Births, Deaths and Marriages system which refers the application to a specialist unit who have access to the details of registrable persons.

This scheme means that attempts to breach the name change legislation can easily be detected. In NSW, without the ability to exchange information between the agencies, registrable persons may be able to change their names without seeking the permission of the Commissioner and without it being detected by police.

Tasmania requires name changes to be reported within seven days.

Other states do not control name changes.

Recommendation 6

That all jurisdictions agree to give the Police Commissioner the power to prevent name changes for registrable persons in certain circumstances, and to consider introducing a model similar to that used in Victoria for exchanging information with Birth, Deaths and Marriages (or equivalent).

Disclosure of information by responsible agencies

Under the NSW Act, a government agency may disclose information concerning a registrable person to the Commissioner of Police or a supervising authority.

At present, all other aspects of information disclosure in relation to the NSW Child Protection Register are dealt with administratively. While there is a presumption against disclosure of such information by the NSW Police Force, there are circumstances where disclosure to other responsible agencies should and does occur. This practice is governed by Police's *Registrable Persons – Child Protection Registry: Information Disclosure Policy and Procedures*.

The Amendment Act introduced an offence for improperly disclosing information on a registrable person.

The maximum penalty for improper disclosure of information on registrable persons is now 100 penalty units or two years imprisonment or both.

This is consistent with section 18(1) of the *Child Protection (Offenders Prohibition Orders) Act 2004* which restricts publication of identity of registrable persons and victims.

Other jurisdictions

All jurisdictions have an Information Disclosure Policy governing the release of information relating to the Child Protection Register.

The penalty for disclosure varies:

- In Western Australia there is a 10 year penalty and a \$60,000 fine if the disclosure was done for a benefit of more than \$10,000, or a 5 year penalty and a \$30,000 fine if the disclosure was done for a benefit of less than \$10,000. If the disclosure was not done for benefit there is a 3 year penalty and a \$18,000 fine.
- The Northern Territory has the same structure as Western Australia but without the fines, and with a two year penalty if no benefit obtained.
- In South Australia there is a 5 year penalty, or a \$5,000 fine for secondary disclosure.
- In Victoria there is a 2 year / 240 penalty unit penalty.
- In Queensland there is a 2 year / 140 penalty unit penalty.
- In Tasmania there is a fine not exceeding 100 penalty units or imprisonment not exceeding 2 years, or both

Recommendation 7

That it be noted that there is variation in the penalties for improper disclosure, but that consistency is not considered critical in this area as long as a penalty is in place.

Initial report to police

The Amendment Act requires registrable persons to make their initial report to police within 7 days. Currently, registrable persons who have previously been on the Register still have 28 days to report (under Section 9B of the Act).

A legislative amendment is currently being progressed in NSW to amend Section 9B to seven days, in line with Section 9A. Previously registrable persons were required to make their report within either 14 or 28 days.

The 7 day timeframe enhances the ability of police and other agencies to monitor registrable persons in the community, and rapidly identify situations where children may be potentially at risk.

Other jurisdictions

In Victoria registrable persons have 28 days to report to police.

In WA, NT, Tasmania and the ACT it is 7 days.

In Queensland it is 14, 28 or 90 days.

In South Australia it is 14 or 28 days.

Recommendation 8

That all jurisdictions require registrable persons to make their initial report to police within seven days of release from custody.

Presentation of passports

The Amendment Act has made it a mandatory requirement for registrable persons to present their passport/s (if any) for inspection whenever a report is required to be made in person.

Other jurisdictions

To monitor overseas travel, Western Australia now requires all registrable persons to present their passport and travel documents to verify their itinerary when they return from overseas. Police can request inspection of all travel documents, including receipts from hotels and airlines to confirm that the person did in fact travel to the locations which they had said they would.

Victoria is currently introducing the requirement to provide all valid passport numbers as part of the personal information provided on initial reporting, and update police on any changes to passport information. This is to enable Passenger Analysis Clearance Evaluation (PACE) alerts to be accurately placed on registrable persons so that any overseas travel can be easily detected.

Most jurisdictions have some requirement for registrable persons to present their passports, however the additional requirement to show travel documents could provide additional information regarding entry to countries where a passport may not be stamped.

Recommendation 9

That all jurisdictions require registrable persons to present all valid passports when reporting in person to police, and/or to provide and update passport details as part of their relevant personal information.

That each jurisdiction consider requiring registrable persons to present their passport and all travel documents (including itineraries, receipts, etc) when returning from overseas travel.

General recommendations

The Working Party believes that consistency in these areas is important and should be pursued as a priority by all jurisdictions.

Recommendation 10

That jurisdictions commit to making the recommended changes to their respective Child Protection Registers by 2010. A progress report in this regard should be provided to the second MCPEMP meeting in 2010.

II) NATIONAL BEST PRACTICE BENCHMARKS FOR MONITORING OF OFFENDERS

The Working Party also examined the practices in each jurisdiction surrounding monitoring of offenders and risk assessment, to develop best practice benchmarks.

Risk assessment

All jurisdictions with the exception of Tasmania already use risk assessment tools to categorise offenders.

Jurisdiction	Tool used	Categories	Management
NSW	NSW Child Protection Register Risk Assessment Tool	Extreme High Medium Low	Depends on risk level. Highest risk can be managed through Interagency Child Protection Watch Team.
Victoria	Sex Offender Registry Risk Assessment Tool (has Dynamic and Static sections, currently only using Static sections)	Very High Risk High Risk Medium Risk Low Risk	Offender Management Plans mandatory for Very High and High Risk categories.
Queensland	Sex Offender Risk Assessment Tool (SORAT)	Low, Moderate-low, Moderate-high, High	Graduated response depending on risk.
Western Australia	RM2000	Very High Risk (13%) High Risk (28%) Medium Risk (39%) Low Risk (20%)	Monthly visits Quarterly visits Bi-annual visits Annual visits (these are minimums)
South Australia	Static 99		
Tasmania	None (under review)	N/A	N/A
Northern Territory	RM2000		
ACT	As per NSW.		

Jurisdictions do not believe that there is any necessity to use the same risk assessment tool nationwide, as long as a recognised tool is used and there is a differential level of monitoring of the registrable person depending on their risk level.

Recommendation 11

That jurisdictions re-iterate their commitment to the use of a recognised risk assessment tool to measure the risk of sexual re-offending of registrable persons, and to differential monitoring of registrable persons depending on their level of risk.

Monitoring of interstate and overseas travel

The ANCOR database, run by CrimTrac, is largely successful in monitoring the interstate and overseas movements of registrable persons.

However, sometimes people do 'fall through the cracks'. For example, an offender may tell police in NSW that they are moving to Queensland, but never register to report in Queensland.

To deal with this issue, the Australia and New Zealand Policing Advisory Agency (ANZPAA) Child Protection Committee and the Registrars' Board have been working to develop a set of standard operating procedures for sharing information regarding missing persons on their Registers, and actively trying to locate them where necessary. This will incorporate use of the 'Whereabouts Unknown' functionality which is being introduced into the ANCOR database.

It is estimated that nationally there are around 70 registrable persons who are 'Whereabouts unknown'.

Recommendation 12

That jurisdictions agree to support and progress the work being done by the Registrars Board and the ANZPAA Child Protection Committee in relation to tracking registrable persons who are 'Whereabouts unknown'.

III) OTHER MATTERS

A key point of difference between registers in each jurisdiction is the range of registrable offences (offences for which a person is placed on the Child Protection Register).

The Act defines Class 1 offences to include the offence of murder, where the person murdered is a child.

The definition of a Class 2 offence includes kidnapping offences, where the person against whom the offence is committed is a child, except where the person found guilty of the offence was, when the offence was committed or at some earlier time, a parent or carer of the child.

Some jurisdictions also include adult sexual assault and bestiality as registrable offences.

Research has shown strong links between child kidnapping/abduction, child murder, and child sex offending.

The New South Wales Judicial Commission's study of sentencing trends for kidnapping offences shows that persons convicted of kidnapping offences are convicted for concurrent sexual and indecent assaults more frequently than any other offence.

The Working Party considers that national consistency in regard to child murder and non-familial kidnapping is crucial. Victoria is the only jurisdiction where child murder is not currently a registrable offence.

Recommendation 13

That jurisdictions agree to work towards the harmonisation of registrable offences between jurisdictions, in particular the inclusion of child murder and non-familial child kidnapping as registrable offences.

* As noted in the resolution, Victoria does not support this recommendation.

During the meetings of the Working Party other issues of interest arose, that could be progressed by the Child Protection Committee, which now operates under the auspices of ANZPAA.

The issues include:

- Consideration of the interaction between the ANCOR and the Customs PACE alert system, and how this can best be managed;
- Consideration of how interstate and overseas offences are taken into account when calculating reporting periods; and
- Progressing the recommendations of the ANCOR Sustainability Assessment conducted by CrimTrac, particularly in relation to standard operating procedures.

Recommendation 14

That all future work relating to national harmonisation of child protection Registers, and related issues, is referred to the ANZPAA Child Protection Committee for initial consideration.

ANNEXURE A

WORKING PARTY MEMBERS

Chair – Catherine Allen, Policy Manager, Ministry for Police

Group Members

Name	Agency	Position
Detective Sergeant Tony Marmont	ACT Police	Child Sex Offender Registry Team
Karen Shirley	AFP	Project Manager, High Tech Crime Operations
Susan Cochrane	Attorney General's Department (Cth)	Acting Assistant Secretary, Criminal Law Branch
Peter Brown	CrimTrac	Manager, ANCOR Capability Development
Johanne Scammel	CrimTrac	Business Manager, ANCOR
Fiona Lansdown	NSW Ministry for Police	Senior Policy Analyst
Melanie Olson	NSW Police Force	Manager, Child Protection Registry
Detective Superintendent Joanne Foley	NT Police	Major Crime
Detective Superintendent Peter Crawford	Queensland Police	
Superintendent Phillip Hoff	South Australia Police	Sexual Crime Investigation Branch
Detective Inspector Fiona Lieutier	Tasmanian Police	Officer in Charge, State Intelligence Services / CPOR Registrar
Marisa de Cicco	Victorian Department of Justice	Director, Justice Policy
Conor Flanagan	Victorian Department of Justice	
Jo Mueller	Victorian Police	Sexual Crime Squad
Detective Inspector Paul Steel	Western Australian Police	ANCOR Unit