

## **GOVERNMENT RESPONSE TO THE RECOMMENDATIONS OF THE ENVIRONMENT AND PUBLIC AFFAIRS STANDING COMMITTEE REPORT 52 – PUNITIVE NOT PROTECTIVE: WHEN THE MANDATORY REGISTRATION OF YOUNG PEOPLE IS NOT BASED ON RISK**

### **Recommendation 1.**

The Government adopt a scheme which provides government funded treatment and a therapeutically focussed approach within the juvenile justice system for dealing with young people who have exhibited harmful sexual behaviour.

#### *Response*

Agree in principle. The provision of funded treatment and a therapeutically focussed approach to supporting young people who have exhibited harmful sexual behaviours is supported. Treatment programs are best provided by an agency which can maximise participation, including during periods where the young person is not under the Department of Justice's management.

### **Recommendation 2.**

The Director of Public Prosecutions should review all decisions to commence the criminal prosecution of a child or young person for a reportable offence.

#### *Response*

Agree in principle. An alternative to all decisions being reviewed by the Director of Public Prosecutions is for any application for registration of a person, who was a juvenile at the time of the commission of the offences, to be determined by the President of the Children's Court or a Judge sitting in the Children's Court. This will ensure that the Office of the Director of Public Prosecutions will have carriage of such matters in the Children's Court.

### **Recommendation 3.**

The Government adopt discretionary options, such as a restorative justice solution, within the *Young Offenders Act 1994* for responding to low risk sexual offending by children.

#### *Response*

Agree. Under the *Young Offenders Act 1994*, restorative justice principles underpin the basis for Juvenile Justice Teams. Some matters (Schedules 1 and 2) cannot be referred to a Juvenile Justice Team. Where low risk sexual offending is not a Schedule 1 or 2 offence, referral to a Juvenile Justice Team can be made by Police or the Court.

**Recommendation 4.**

In circumstances where a sentencing court orders a spent conviction for an adult, the court also determines whether registration as a reportable offender is appropriate.

*Response*

Agree in principle. Offences that occurred under exceptional circumstances that are found to be less serious in nature and do not reflect an ongoing threat to community safety to be considered.

**Recommendation 5.**

The *Community Protection (Offender Reporting) Act 2004* be amended to exclude children from mandatory registration requirements with registration the subject of judicial discretion.

*Response*

Agree in principle. Further consideration to be given to amending the *Community Protection (Offender Reporting) Act 2004*.

**Recommendation 6.**

Western Australia's registration scheme should be refined to enable the President of the Children's Court of Western Australia to determine if it is appropriate for a juvenile offender to be registered as a reportable offender.

*Response*

Agree. This is consistent with the provisions of the *Young Offenders Act 1994*, incorporating principles of juvenile justice and consideration of information about the offender including the nature and seriousness of the offence; the history of offences previously committed by the offender; and the cultural background of the person.

**Recommendations 7, 8, 9 and 10.***Recommendation 7*

The *Community Protection (Offender Reporting) Act 2004* be amended to create the following new orders by the Children's Court of Western Australia in circumstances where a child is, or has been, found guilty of a reportable offence:

- (1) an order to make a juvenile offender a reportable offender (a "Juvenile Offender Reporting Order") where the Children's Court considers that registration as a reportable offender is appropriate; and
- (2) an order to expunge the reportable offender status of a person who offended as a child and was mandatorily registered under the current scheme (a "Juvenile Registration Exemption Order") where the Children's Court considers that registration as a reportable offender is inappropriate.

*Recommendation 8*

An application to the Children's Court of Western Australia to make a "Juvenile Offender Reporting Order" may be made by the prosecution.

*Recommendation 9*

An application to the Children's Court of Western Australia to make a "Juvenile Registration Exemption Order" may be made by a person who was found guilty of a reportable offence committed as a juvenile.

*Recommendation 10*

The decision of the Children's Court of Western Australia to make or not make a "Juvenile Offender Reporting Order" or a "Juvenile Registration Exemption Order" be subject to appeal by the offender or the prosecution.

*Response*

Agree. Further consideration to be given to amending the *Community Protection (Offender Reporting) Act 2004*.

**Recommendation 11.**

The Government to make funding available to not-for-profit legal services to meet additional demand arising from changes to the scheme.

*Response*

Agree in principle. The legal assistance sector is funded by both State and Commonwealth Governments. Additional funding requests will be considered by Government in due course.

**Recommendation 12.**

The *Community Protection (Offender Reporting) Act 2004* be amended to require Western Australia Police Force to inform reportable offenders of any new appeal or review mechanisms relevant to their reportable status.

*Response*

Agree in principle. The WA Police Force can, and advises does, communicate with reportable offenders when legislative changes are made that affect them.

**Recommendation 13.**

Youth Justice Officers should provide ongoing support to juvenile reportable offenders that require assistance to comply with their reporting obligations.

*Response*

Agree in principle. At present the Department of Justice is limited to providing a support role for the young person to fulfil their obligations under the *Community Protection (Offender Reporting) Act 2004* while they are subject to a community supervision order imposed by the Children's Court. Police monitor and take appropriate enforcement action regarding young people that are subject to the register.

**Recommendation 14.**

The *Community Protection (Offender Reporting) Act 2004* be amended to provide a reportable offender who was registered as a child with: (1) the right to apply to Western Australia Police Force for a review of their reporting conditions every twelve months; and (2) the right to apply to the Children's Court of Western Australia for a review of a decision by Western Australia Police Force to refuse an application to modify or amend reporting conditions.

**Response**

Noted. The Act currently contains an obligation on the Commissioner to consider suspending the reporting requirements of juveniles who have committed prescribed offences and received prescribed sentences.

**Recommendations 15, 16, 17, 18, 19, 20, 21 and 22.****Recommendation 15**

(1) The *Community Protection (Offender Reporting) Act 2004* be amended to create the following new orders by a court:

- (a) an order to exempt a person from registration as a reportable offender (an "Adult Registration Exemption Order"); or
- (b) an order to expunge the reportable offender status of a person that was mandatorily registered under the current scheme (a "Retrospective Adult Registration Exemption Order").

(2) A court may make an "Adult Registration Exemption Order" or a "Retrospective Adult Registration Exemption Order" in circumstances where:

- (a) a young person aged 18, 19 or 20 years is, or has been, found guilty of a specified reportable offence; and
- (b) the court determines that registration as a reportable offender is inappropriate.

**Recommendation 16**

An application for an "Adult Registration Exemption Order" may be made by the offender but an application is not necessary for the court to make the order.

**Recommendation 17**

An application for a "Retrospective Adult Registration Exemption Order" may be made by the offender.

**Recommendation 18**

The decision of a court to make or not make an "Adult Registration Exemption Order" or a "Retrospective Adult Registration Exemption Order" be subject to appeal by the offender or the prosecution.

**Recommendation 19**

(1) The *Community Protection (Offender Reporting) Act 2004* be amended to give a person who has been found guilty of a reportable offence the right to apply to the court for an "Adult Registration Exemption Order" in relation to offending that occurred in exceptional circumstances involving all of the following:

- willing sexual activity where there is no more than a 10 year age difference between the parties; ·
- the victim was not less than 14 years of age; ·
- there is no evidence of abuse, coercion or breach of trust; and ·
- the offender does not pose a risk to the lives or sexual safety of the community.

(2) An application for an “Adult Registration Exemption Order” for offending that occurred in exceptional circumstances (in accordance with Recommendation 19(1)) may be made by the offender but an application is not necessary for the court to make the order.

#### *Recommendation 20*

The *Community Protection (Offender Reporting) Act 2004* be amended to give a person who has been found guilty of a reportable offence the right to apply to the court for an “Adult Registration Exemption Order” in relation to offending that occurred in exceptional circumstances and the offender held an honest and reasonable, but mistaken belief, regarding the age of the victim.

#### *Recommendation 21*

An application for a “Retrospective Adult Registration Exemption Order” for person that was mandatorily registered as a reportable offender under the current scheme for offending that occurred in exceptional circumstances (specified in Recommendations 19 and 20) may be made by the offender.

#### *Recommendation 22*

The decision of a court to make or not make an “Adult Registration Exemption Order” or a “Retrospective Adult Registration Exemption Order” in relation to offending that occurred in exceptional circumstances be subject to appeal by the offender or the prosecution.

#### *Response*

Agree in principle. The criminal law applies equally to all adults regardless of age. *The Criminal Code* provides a defence of honest but mistaken belief about the age of the other party in relation to sexual offences against a child over 13 but under 16 years of age. This pertains to persons with a three year age difference. The Commissioner of Police could be empowered to suspend reporting obligations of any reportable offender, in exceptional circumstances.

#### **Recommendation 23.**

The *Community Protection (Offender Reporting) Act 2004* be amended to provide for the removal of an offender’s name from the Community Protection Offender Register following a court making a “Juvenile Registration Exemption Order”, an “Adult Registration Exemption Order” or a “Retrospective Adult Registration Exemption Order”.

#### *Response*

Agree in principle in relation to juveniles.