



**PARLIAMENT OF AUSTRALIA**

**Parliamentary Joint Committee on Law Enforcement**

**Law Enforcement capabilities in relation to child exploitation  
Additional Information received from the Uniting Church in Australia, Synod of  
Victoria and Tasmania**

Attached is our correspondence with the Victorian Government and Victorian Police on requesting that the Victorian Government grant AUSRAC access to the Victorian sex offender register, as the Committee asked other witnesses questions about this issue. We also raised the issue with the recent Victorian Parliamentary Committee inquiry into the management of child sex offender information. The report from that inquiry is attached.

**Mark Zirnsak**

Senior Social Justice Advocate  
Synod of Victoria and Tasmania

Uniting Church in Australia

4 February 2020

Chief Commissioner Graham Ashton AM  
Victoria Police  
637 Flinders Street  
Docklands, Vic, 3008

Dear Chief Commissioner,

I am writing on behalf of the Uniting Church in Australia, Synod of Victoria and Tasmania, to request a meeting with relevant Victoria Police staff to discuss Victoria Police's view of AUSTRAC being granted access to the Victorian sex offenders register. In December 2019 we wrote to Minister Neville to request that the Victorian Government amend the *Sex Offenders Registration Act 2004* to allow AUSTRAC direct access to the register. The Minister has replied (see the enclosed reply) to advise us the government would be guided by the views of Victoria Police as to if AUSTRAC should be granted access to the register.

AUSTRAC currently receives over 100 reports a month from reporting entities that flag risks of child sexual abuse. Having access to state child sex offender registers would allow AUSTRAC to better target its efforts. For example, a person on the register being reported to have purchased software to conceal their identity online and purchasing plane tickets to a country where child sex offenders travel to carry out abuse would allow AUSTRAC to target their efforts to further investigate the person and possibly refer them to the Australian Federal Police or Victoria Police.

Improving the risk analysis capabilities of AUSTRAC by allowing them access to the register established by the *Sex Offenders Registration Act 2004* is highly likely to prevent some children from suffering further sexual abuse. It will also enhance the ability to AUSTRAC to assist the Australian Federal Police in their work with foreign police forces to rescue children from situations where they are being used for commercial child sexual abuse by Australian offenders.

I look forward to hearing from you regarding the willingness of Victoria Police to meet with us and discuss the above issue.

Thank you in advance for consideration of this request.

Yours sincerely,

Dr Mark Zirnsak  
Senior Social Justice Advocate



## Minister for Police and Emergency Services

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Our ref: CD/20/5618

Dr Mark Zirnsak  
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Dear Dr Zirnsak

### **REQUEST FOR AUSTRAC ACCESS TO THE SEX OFFENDERS REGISTER**

Thank you for your letters of 9 December 2019 to myself and to the Attorney-General, the Hon Jill Hennessy MP, regarding your request, on behalf of the Uniting Church in Australia, Synod of Victoria and Tasmania, for amendment to the *Sex Offenders Registration Act 2004* to give AUSTRAC direct access to the sex offenders register. As the matter you raise falls within my portfolio responsibilities, the Attorney-General has referred your letter to me for my consideration and response.

The Victorian Government is continually monitoring the effectiveness of the *Sex Offenders Registration Act 2004* (the Act) and has made a range of important reforms to the Act in recent years. These reforms include the creation of a prohibition order scheme. A court may make a prohibition order if satisfied that a registered sex offender subject to reporting obligations poses a risk to the sexual safety of a person or to the community generally, and making an order will reduce that risk. The order can include conditions prohibiting the offender from attending certain places or taking up paid or voluntary work where they would pose a risk to children. The contravention of a prohibition order is an offence punishable by up to five years imprisonment.

Other reforms include clarifying the prohibition on child-related employment, giving police enhanced search powers specifically tailored to the investigation of suspected offences against the Act, and new powers to obtain DNA samples from registered sex offenders.

As each state and territory of Australia has sex offender legislation that is broadly consistent, significant reforms may also be progressed through consultation and collaboration at the national level. The National Working Group on Child Sex Offenders is currently considering the Commonwealth's proposal for a national public register of child sex offenders and related proposals under the auspices of the joint Council of Attorneys-General and Ministerial Council for Police and Emergency Management. The National Working Group is expected to report to Ministers early in 2020.

As you will be aware, Victoria Police manages the Victorian sex offenders register. Accordingly, the Victorian Government will continue to be guided by Victoria Police on what, if any, further reforms may be required to ensure that we are doing all we can to keep the community, and especially our children, safe. However, the Government also recognises the need to ensure laws are appropriately directed and do not have unintended consequences.

The proposal regarding AUSTRAC access to the sex offenders register is most appropriately considered through consultation with Victoria Police and our national colleagues and I thank you for drawing that proposal to my attention.

I trust this information is of assistance and thank you again for taking the time to write to me about this important issue.

Yours sincerely

**Hon Lisa Neville MP**  
Minister for Police and Emergency Services

20 / 20



VICTORIA POLICE

**Intelligence & Covert Support Command**  
Level 6/313 Spencer Street  
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Our Ref: FF-161946

06-April-2020

Dr Mark Zirnsak  
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Dear Dr. Mark Zirnsak

**Legislative Amendment to the Sex Offenders Registration Act 2004**

Thank you for your letter to the Chief Commissioner dated 4 February, 2020 regarding legislative amendment to provide AUSTRAC access to Victoria's Sex Offender Register.

In June, 2019 the Federal Department of Home Affairs re-convened the National Working Group on Child Sex Offenders to consider the evidence about a national public sex offender register, and to provide a report to Ministerial Council on Police and Emergency Management and Council of Attorneys-General on this issue.

Additionally, in August, 2019 the Victorian Legislative Council Legal and Social Issues Committee agreed to inquire into and consider the best means to store data and information regarding child sex offenders, prevent sexual offences from occurring through improved public awareness and investigate the circumstances in which the details of convicted child sex offenders can be made public.

As these avenues of inquiry remain open at both the federal and state level it would be inappropriate for Victoria Police to comment on your request at this time. Victoria Police is engaged as a key stakeholder to provide input and expertise for both inquiries and remains confident that each will consider the available evidence and make any necessary recommendations.

We appreciate your shared commitment to the sexual safety of the Victorian community.

Yours sincerely,

Chris Gilbert  
Acting Commander  
Intelligence & Covert Support Command



# PARLIAMENT OF VICTORIA

## LEGISLATIVE COUNCIL

### Legal and Social Issues Committee

# Inquiry into management of child sex offender information

Parliament of Victoria  
Legislative Council Legal and Social Issues Committee

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# Committee membership



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# About the Committee

## Functions

The functions of the Legal and Social Issues Committee (Legislation and References) are to inquire into and report on any proposal, matter or thing concerned with community services, education, gaming, health, and law and justice.

The Legal and Social Issues Committee (References) may inquire into, hold public hearings, consider and report on other matters that are relevant to its functions.

The Legal and Social Issues Committee (Legislation) may inquire into, hold public hearings, consider and report on any Bills or draft Bills referred by the Legislative Council, annual reports, estimates of expenditure or other documents laid before the Legislative Council in accordance with an Act, provided these are relevant to its functions.

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This report is available on the Committee's website.



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# Terms of reference

## Inquiry into management of child sex offender Information

On 28 August 2019, the Legislative Council agreed to the following motion:

That this House requires the Legal and Social Issues Committee to inquire into, consider and report, by no later than 30 June 2020, into the best means to -

- a. store data and information regarding convicted child sex offenders;
- b. prevent sexual offences from occurring through improved public awareness;
- c. investigate the circumstances in which the details of convicted child sex offences can be made public;

and any other matters the Committee determines to be relevant.

The Legislative Council agreed to extend the reporting date to 30 August 2021.



# Chair's foreword

I am pleased to present this report on the Inquiry into management of child sex offender information in Victoria.

The Victorian sex offender registration framework was introduced in 2004, to require offenders convicted of certain sexual offences to keep police informed of their whereabouts and other personal details. The purpose of the scheme is to reduce the likelihood of reoffending and assist in the investigation and prosecution of any offences committed by registered offenders.

The Sex Offenders Register is an important post-sentence tool aimed at enhancing community safety through compliance with reporting obligations. It is not intended as a punitive measure as this is the purpose of the Victorian justice and sentencing framework.

Since it came into operation, there have been several reviews into various aspects of the framework, including a comprehensive review of the operation of the *Sex Offenders Registration Act 2004* (Vic) by the Victorian Law Reform Commission in 2011. This led to some amendments, although many of the Commission's more significant recommendations to overhaul the registration framework have not been adopted. There has also not been a comprehensive evaluation of the effectiveness of the framework and whether it is properly achieving its legislated aims. The Committee believes that an independent review of the effectiveness of the Act should be conducted as soon as practicable.

The Committee heard from a range of organisations raising a number of issues about the current framework. We heard that Victoria Police's current inclusion of deceased and deregistered offenders on the Register is an internal practice that is not mandated in legislation and runs the risk of creating a skewed picture of sex offending in the Victorian community. This is a practice that requires immediate review to see if the ongoing storage and reporting of this information could better managed.

The Committee investigated public information disclosure frameworks in Western Australia, the United Kingdom and the United States. There are already certain circumstances in which offender information on the Victorian Register is released in the interest of community safety. However, the Committee believes that a trial for disclosure of sex offender information in certain limited circumstances is worth investigating and has recommended the Victorian Government pursue this through an appropriate body such as the Victorian Law Reform Commission.

However, any public disclosure system for child sex offender information must carefully balance the need to protect the community against the potential impact on offender compliance and recidivism rates. It is important that law reform is driven by data and an empirical evidence base.

The laws governing the registration of sex offenders and use of their information must be complemented by preventative programs. These are designed to stop child sex offending from occurring and help give parents and carers the knowledge to identify concerning behaviour. Similarly, it is crucial that we have programs available for offenders during their sentence and upon their release to address their behaviours and help prevent reoffending.

I would like to express my gratitude to the organisations and members of the public who gave their time to provide evidence to the Inquiry. The Committee heard the concerns of victim survivors, advocacy groups, academic and legal experts and members of Victorian and international government bodies. Their contributions enabled us to formulate the Report's recommendations to make improvements to the child sex offenders framework.

I wish to thank the Committee staff for their work in preparing this comprehensive report. In particular the research team of Vivienne Bannan, Samantha Leahy and Anquie Owen, with administrative assistance Justine Donohue, Sylvette Bassy, Christianne Andonovski and Rachel Pineda-Lyon, under the management of Lilian Topic and later Matt Newington. Their hard work in producing this comprehensive report during challenging times is very much appreciated.

I would also like to thank my colleagues on the Committee for their work on the Inquiry and in preparing the Committee's Final Report.

I commend this report to the House.

**Fiona Patten**  
**Chair**

# Inquiry snapshot

- This Inquiry was an examination of how Victorian laws manage child sex offender information. The Committee's key areas of focus were:
  - how existing information is collected and stored on the Victorian Sex Offenders Register by Victoria Police
  - whether introduction of wider public disclosure of this information would improve community safety
  - ways to improve community education to prevent child sexual abuse occurring in the first place.
- The Committee also examined alternative and complementary initiatives aimed at reducing child sex offending and reducing recidivism rates for people who are on the Sex Offenders Register.
- Public sex offender registers and public disclosure schemes for child sex offender information are already in operation in jurisdictions including Western Australia, the United Kingdom and the United States.
- The Committee was unable to engage with representatives from Western Australia in order to review its public disclosure scheme in detail.
- To date evaluations of existing public registers and disclosure schemes have focused on assessing community uptake and instances of vigilantism against registered sex offenders.
- The possible adverse impacts of the introduction of a public sex offenders register are serious. Arguments presented to the Committee included:
  - impeding offender rehabilitation and reintegration, possibly increasing recidivism
  - encouraging vigilantism by exposing the identify of offenders
  - promoting inaccurate community perception of the risk posed by child sex offenders
  - identification and re-traumatisation of victim survivors
  - encouraging offenders to evade the attention of law enforcement by concealing their identity or location.
- Counter arguments presented to the Committee in support of public sex offender registers included:
  - the ability to access information on the geographical whereabouts of high-risk offenders
  - potential deterrent effects on child sexual offending

- supporting and assisting police management of offenders
  - assisting people to protect themselves and their children from sexual predators
  - prioritising rights of children to be protected over an offender's right to privacy.
- A review of the operation of the *Sex Offenders Registration Act 2004* (Vic) was conducted by the Victorian Law Reform Commission in 2011. No evaluation of the effectiveness of the registration framework in fulfilling its purposes has been undertaken since its inception.
  - Programs aimed at rehabilitating convicted child sex offenders and reintegrating them into the community can reduce recidivism. As such they are an important complement to the *Sex Offenders Registration Act 2004* (Vic) and other legislation and policies aimed at safeguarding the community's safety.
  - High quality preventative education is an important element of a wholistic public policy response to child sexual abuse. It must be available to all children and their carers at a minimum and tailored to meet the needs of children with specialised accessibility requirements.
  - Stakeholders believe the Victorian Government should provide education providers—including early learning centres, primary schools, secondary schools and organisations providing specialised services to vulnerable children—with annual funding to access preventative education.
  - Best practice guidelines for the delivery of education aimed at preventing child sexual abuse may help ensure the quality of preventative education is consistent.

# Findings and recommendations

## 1 Child sexual abuse and the Victorian Sex Offenders Register

**FINDING 1:** Underreporting and barriers to disclosure of child sexual abuse make it difficult to collect accurate data on the prevalence of these crimes. 3

## 2 Issues identified with the operation of the sex offender registration framework

**FINDING 2:** Mandatory registration under the *Sex Offenders Registration Act 2004* (Vic) does not allow for consideration of individual circumstances that apply in each case. This can result in disproportionate or adverse outcomes for registered, low-risk offenders. 22

**FINDING 3:** Regardless of victim age, sexual offender management based on an assessment of an offender's risk profile is consistent with the risk principle of offender rehabilitation as an effective means of reducing a sexual offender's likelihood of sexual offending recidivism. 22

**FINDING 4:** The Victorian Sex Offenders Register is established under the *Sex Offenders Registration Act 2004* (Vic). Under the purposes of the Act it is intended to operate as a post-sentencing mechanism to enhance community safety and is not a punitive tool. 22

**FINDING 5:** The ongoing inclusion of deceased and deregistered offenders on the Victorian Sex Offenders Register may result in a skewed picture of sex offending in the community and runs the risk of distorting sex offender data. 30

**RECOMMENDATION 1:** That Victoria Police reviews the current practice of retaining deceased and deregistered offenders on the Victorian Sex Offenders Register. 30

**RECOMMENDATION 2:** That in line with recommendation 68 of the Victorian Law Reform Commission’s *Sex offenders registration: final report*, the Victorian Government amends the *Sex Offenders Registration Act 2004* (Vic) to provide for an independent review of the operation and effectiveness of the Act to be conducted as soon as practicable, and every five years thereafter. The report should be tabled in Parliament. 37

### 3 Public access to offender information and alternative offender interventions

**FINDING 6:** Any expansion to provisions for the disclosure of information under the *Sex Offenders Registration Act 2004* (Vic) should be informed by a robust, peer reviewed, empirical evidence base. 61

**RECOMMENDATION 3:** That the Victorian Government refers to the Victorian Law Reform Commission (or other appropriate body) an inquiry into the circumstances in which a limited public disclosure scheme for registered sex offender information could be trialled. This inquiry should:

- Include consideration of the legal framework, including but not limited to:
  - appropriate privacy protections
  - appropriate limits on the amount and type of information disclosed
  - appropriate limits on the access and use of information disclosed
  - interaction with existing information access regimes.
- Have regard to:
  - limited disclosure schemes operating in the United Kingdom and Western Australia
  - relevant federal laws and regulations.
- Consider how a trial could best be structured to assess its capability to prevent and reduce child sexual offending.

Any recommendations for the conduct of a trial must include a framework to collect evidence from its operation and evaluate the effectiveness of the trial against its stated purposes. 62

**FINDING 7:** Programs aimed at rehabilitating convicted child sex offenders and reintegrating them into the community can reduce recidivism. As such they are an important complement to the *Sex Offenders Registration Act 2004* (Vic) and other legislation and policies aimed at safeguarding the community’s sexual safety. 73

## 4 Preventative education and awareness

**FINDING 8:** High quality preventative education is an important element of a holistic public policy response to child sexual abuse. It must be available to all children and their carers at a minimum, and tailored to meet the needs of children with specialised accessibility requirements.

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**RECOMMENDATION 4:** That the Victorian Government provides education providers—including early learning centres, primary schools, secondary schools and organisations providing specialised services to vulnerable children—with annual funding to access preventative education.

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**RECOMMENDATION 5:** That the Department of Education and Training develops best practice guidelines for the provision of education aimed at preventing child sexual abuse in all its forms, including online grooming.

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# What happens next?

There are several stages to a parliamentary inquiry.

## The Committee conducts the Inquiry

This report on the Inquiry into management of child sex offender information is the result of research and community consultation by the Legislative Council Legal and Social Issues Committee at the Parliament of Victoria.

We received written submissions, spoke with people at public hearings, reviewed research evidence and deliberated over a number of meetings. Experts, organisations and other stakeholders expressed their views directly to us as Members of Parliament.

A parliamentary committee is not part of the Government. Our Committee is a group of members of different political parties. Parliament has asked us to look closely at an issue and report back. This process helps Parliament do its work by encouraging public debate and involvement on issues. We also examine government policies and the actions of the public service.

## This report is presented to Parliament

This report was presented to Parliament and can be found on the Committee's website: <https://parliament.vic.gov.au/lsc-lc/article/4326>.

## A response from the Government

The Government has 6 months to respond in writing to any recommendations we have made. The response is public and put on the inquiry page of Parliament's website when it is received: <https://parliament.vic.gov.au/lsc-lc/article/4327>.

In its response, the Government indicates whether it supports the Committee's recommendations. It can also outline actions it may take.

# Child sexual abuse and the Victorian Sex Offenders Register

## At a glance

Child sexual abuse is a serious crime committed against many Victorian children, which can have an ongoing negative impact on the lives of victim survivors. Perpetrators are predominantly men, who are typically members of the child's family, family friends or other trusted adults in positions of authority within the community.

Every Australian state and territory, including Victoria, has enacted similar legislation to manage the risk to the community posed by child sexual abuse and other sexual crimes. The *Sex Offenders Registration Act 2004* (Vic) is a non-punitive post-sentence scheme, which establishes a register of sex offenders and requires registered offenders to regularly report to Victoria Police.

## Key issues

- Inclusion on the Register is mandatory for offenders convicted of certain sexual crimes, predominantly against children. Courts have discretion when it comes to registering offenders under the age of 18 years, offenders convicted of sexual crimes against adults and offenders who commit sexual crimes who are deemed an ongoing risk to community safety.
- As at April 2021 there were 9,110 people on the Register. Of these, 4,467 registrants (49%) were subject to active reporting requirements. Inactive registrants included those deceased, interstate, overseas, in custody or deregistered.
- Access to the information contained on the Register is strictly limited. Information about child sex offenders is only publicly disclosed in specific circumstances provided for in the Act.

## Finding

**Finding 1:** Underreporting and barriers to disclosure of child sexual abuse make it difficult to collect accurate data on the prevalence of these crimes.

## 1.1 What is child sexual abuse?

The Australian Institute of Health and Welfare defines child sexual abuse as ‘any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards’.<sup>1</sup>

Child sexual abuse can take many different forms. The Royal Commission into Institutional Responses to Child Sex Abuse reported that sexually abusive behaviours can include ‘non-penetrative contact abuse, penetrative abuse, violations of privacy, exposure to sexual acts and material, and sexual exploitation’:

Sexually abusive behaviours can include the fondling of genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger or any other object, fondling of breasts, voyeurism, exhibitionism, and exposing the child to or involving the child in pornography. It includes child grooming, which refers to actions deliberately undertaken with the aim of befriending and establishing an emotional connection with a child, to lower the child’s inhibitions in preparation for sexual activity with the child.<sup>2</sup>

Children of all ages and both genders are sexually abused. It is predominantly perpetrated by men, who are typically members of the child’s family, family friends or other trusted adults in positions of authority within the community.<sup>3</sup> However, the proportion of children entering the criminal justice system and child social services who have sexually harmed other children has increased in recent years.<sup>4</sup>

Because child sexual abuse is generally an underreported crime, it is difficult to assess the extent to which it occurs in Victoria. There are many reasons child sexual abuse is not reported to the police. Barriers to reporting can include:

- a lack of language skills to communicate the abuse
- inability to recognise instances of abuse
- fear of not being believed
- coercion by the perpetrator of the abuse or by a trusted adult (i.e. intra-familial offenders<sup>5</sup>)
- trauma or difficulties remembering
- cultural considerations
- fear of what will follow a disclosure.<sup>6</sup>

1 Adam Tomison, ‘Update on child sexual abuse’, *National Child Protection Clearinghouse*, Issue No. 5, December 1995, <<https://aifs.gov.au/cfca/publications/update-child-sexual-abuse>> accessed 1 July 2021.

2 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 2 Nature and cause*, 2017, p. 9.

3 Adam Tomison, ‘Update on child sexual abuse’, *National Child Protection Clearinghouse*.

4 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 2 Nature and cause*, p. 34.

5 Intra-familial offenders perpetrate abuse exclusively against victims within their own family.

6 Queensland Government, *Understanding indicators of child sexual abuse and barriers to disclosure*, <[https://cspm.csyw.qld.gov.au/practice-kits/child-sexual-abuse/working-with-children/seeing-and-understanding/understanding-indicators-of-child-sexual-abuse-and#Barriers\\_to\\_disclosure](https://cspm.csyw.qld.gov.au/practice-kits/child-sexual-abuse/working-with-children/seeing-and-understanding/understanding-indicators-of-child-sexual-abuse-and#Barriers_to_disclosure)> accessed 5 July 2021.

The Australian Institute of Family Studies has estimated the extent of child sexual abuse across Australia and suggests that before the age of 16:

- from 14% to 26.8% of girls and 5.2% to 12% of boys have experienced non-penetrative child sexual abuse, such as non-penetrative contact abuse
- from 4% to 12% of girls and 1.4% to 7.5% of boys have experienced penetrative abuse.<sup>7</sup>

Child sexual abuse can have an ongoing negative impact on the lives of victim survivors. Research on this topic has demonstrated a link between being sexually abused as a child and adverse social, behavioural, mental health and physical health consequences later in life. Victim survivors are more vulnerable to re-victimisation, depression, alcohol and substance abuse, eating disorders (for predominantly female survivors), and anxiety-related disorders (for predominantly male survivors). Victim survivors are also at a higher risk of exhibiting suicidal behaviours.<sup>8</sup>

In Victoria child sexual abuse is considered a serious crime. Individuals convicted of perpetrating child sexual abuse are required to comply with the requirements of the *Sex Offenders Registration Act 2004* (Vic). A principal aim of the Act is to manage the ongoing risk offenders pose to the sexual safety of the community. The Act establishes the Victorian Sex Offenders Register and imposes a range of obligations on offenders to report their whereabouts and interactions with children.

**FINDING 1:** Underreporting and barriers to disclosure of child sexual abuse make it difficult to collect accurate data on the prevalence of these crimes.

## 1.2 Victorian Sex Offenders Register

The *Sex Offenders Registration Act 2004* (Vic) creates a non-punitive post-sentence scheme managed by Victoria Police. It requires people who have been convicted of certain sexual offences against children and other sexual crimes, to be recorded on a register of offenders. Registered offenders must report certain information police to for the period of their reporting obligation. Reporting periods range from a minimum of four years to lifelong reporting.

The Act imposes reporting obligations on sex offenders for the purposes of:

- reducing the risk of reoffending or recidivism
- providing police with up-to-date information for law enforcement purposes.<sup>9</sup>

<sup>7</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 2 Nature and cause*, p. 69.

<sup>8</sup> Judy Cashmore and Rita Shackel, 'The long-term effects of child sexual abuse', *Child Family Community Australia*, Paper No. 11 2013, p. 23, <<https://aifs.gov.au/cfca/sites/default/files/cfca/pubs/papers/a143161/cfca11.pdf>> accessed 1 July 2021.

<sup>9</sup> *Sex Offenders Registration Act 2004* (Vic), s 1(1)(a).

Victoria Police is responsible for both the day-to-day management of registered offenders and the administration of the Register. This includes responsibility for the accuracy, security and integrity of the information kept on the Register, and the lawful disclosure of that information.

At a public hearing, Assistant Commissioner Chris Gilbert, Intelligence and Covert Support Command, Victoria Police explained that the Register operates as:

part of a system and interrelated schemes and protective legislative frameworks in Victoria that aim to protect children and enhance community safety, including Victoria's post-sentence scheme, *Worker Screening Act*, working with children scheme and child protection scheme.<sup>10</sup>

The Sex Offenders Registration Act requires the Chief Commissioner of Police to establish and maintain the Victorian sex offender registration scheme, including the Register.<sup>11</sup> The scheme aims to:

- reduce the likelihood that registered sex offenders will reoffend
- assist the investigation and prosecution of any offences a registered sex offender may commit
- prevent registered sex offenders from working in child-related employment.<sup>12</sup>

The Chief Commissioner has delegated administrative responsibility for the Register to the Sex Offenders Registry Unit in Melbourne. Offender management is undertaken by compliance managers located within Sexual Offences and Child Abuse Investigation Teams (SOCITs) across the police regions. This arrangement reflects recent changes made by Victoria Police in line with recommendations in the Victorian Auditor-General's 2019 report *Managing Registered Sex Offenders*.<sup>13</sup>

## 1.2.1 Background of child sex offender legislation

Every Australian state and territory has enacted similar legislation, including the Victorian Act, based on national model legislation that was formally agreed to by the Australasian Police Ministers' Council in June 2004 (with some variation across jurisdictions). The premise of the legislation is that knowledge of the whereabouts and activities of convicted sex offenders:

- better enables police to prevent child sexual abuse
- assists in the investigation and prosecution of child sex offences committed by recidivist offenders

<sup>10</sup> Assistant Commissioner Chris Gilbert, Intelligence and Covert Support Command, Victoria Police, public hearing, Melbourne, 22 April 2021, *Transcript of evidence*, p. 2.

<sup>11</sup> *Sex Offenders Registration Act 2004 (Vic)*, pt 4, s 62(1).

<sup>12</sup> *Ibid.*, s 1(1).

<sup>13</sup> Victorian Auditor-General's Office, *Managing Registered Sex Offenders*, August 2019, pp. 7–9; Assistant Commissioner Chris Gilbert, *Transcript of evidence*, pp. 3–4.

- provides a deterrent to reoffending
- affords child abuse victims and their families an increased sense of security.<sup>14</sup>

The Sex Offenders Registration Act commenced operation in Victoria in 2004. Its primary legislated purposes are:

- reducing recidivism
- aiding the investigation and prosecution of offences committed by registered sex offenders
- preventing registered sex offenders from working in child-related employment
- imposing prohibition orders on registered offenders to prohibit them from engaging in certain activities and behaviours.<sup>15</sup>

Notably, the addition of prohibition orders in 2017 has been the only substantial change to the statutory purposes of the Act since it was enacted.<sup>16</sup> Other amendments have focused on refining the Act's operation.

A 2011 review of the scheme undertaken by the Victorian Law Reform Commission<sup>17</sup> led to changes to the Act in 2014.<sup>18</sup> Together with further amending legislation in 2016 and 2017,<sup>19</sup> this broadened the current function and application of the scheme in comparison to its original 2004 iteration.

## 1.2.2 Number of offenders on the Victorian Register of Sex Offenders (RSOs)

As at April 2021 there were 9,110 people on the Register. Of these, 4,467 registrants (49%) were subject to active reporting requirements. The remaining 51% were not subject to active reporting requirements because they were:

- in custody
- interstate or overseas
- deregistered (i.e. their reporting obligations had expired)
- deceased
- suspended from reporting (provided under ss 39 and 39A of the Act in circumstances where an offender poses no threat to community safety).

<sup>14</sup> Law Council of Australia, *Policy Statement of Registration and Reporting Obligations for Child Sex Offenders*, 2010, pp. 1–2.

<sup>15</sup> *Sex Offenders Registration Act 2004* (Vic), s 1(1).

<sup>16</sup> Prohibition orders were inserted into the principal Act by the *Sex Offenders Registration Amendment Act 2016* (Vic), pt 2.

<sup>17</sup> Victorian Law Reform Commission, *Sex Offenders Registration*, (n.d.), <<https://www.lawreform.vic.gov.au/project/sex-offenders-registration>> accessed 7 July 2021.

<sup>18</sup> *Sex Offenders Registration Amendment Act 2014* (Vic).

<sup>19</sup> *Sex Offenders Registration Amendment Act 2016* (Vic); *Sex Offenders Registration Amendment (Miscellaneous) Act 2017* (Vic).

Some currently inactive registrants become subject to future active reporting obligations, for example, upon release from custody, or return from interstate or overseas. A detailed breakdown of the number of persons on the Register from 2014–15 to 2020–21 (as at 30 April 2021) appears in Table 1.1.

**Table 1.1** Number and category of persons on the Sex Offenders Register 2014–15 to 2020–21 (as at 30 April 2021)

Year	2014–15	2015–16	2016–17	2017–18	2018–19	2019–20	2020–21 <sup>a</sup>
<b>Total RSOs</b>	<b>6,049</b>	<b>6,678</b>	<b>7,247</b>	<b>7,793</b>	<b>8,335</b>	<b>8,818</b>	<b>9,110</b>
<b>Total active (in community)</b>	<b>3,751</b>	<b>4,047</b>	<b>4,257</b>	<b>4,397</b>	<b>4,454</b>	<b>4,473</b>	<b>4,467</b>
<b>Total inactive<sup>b</sup></b>	<b>2,298</b>	<b>2,631</b>	<b>2,990</b>	<b>3,396</b>	<b>3,881</b>	<b>4,345</b>	<b>4,643</b>
In custody	776	796	877	910	970	956	912
Interstate/overseas	675	750	987	1,092	1,202	1,285	1,371
Expired reporting obligations	575	759	764	984	1,230	1,533	1,740
Deceased	261	318	359	407	466	548	605
Suspended	11	8	3	3	13	23	15

a. To 30 April 2021.

b. Total inactive includes RSOs in custody, interstate, overseas, deceased and RSOs with expired or suspended reporting obligations

Source: Assistant Commissioner Chris Gilbert, Intelligence and Covert Support Command, Victoria Police, Management of Child Sex Offender Information hearing, response to questions on notice received 23 June 2021, pp. 1–2.

Inquiry stakeholders highlighted a significant deficiency of the Register was caused by the ongoing reporting of deceased offenders and those with expired reporting obligations as ‘inactive’ cases. In addition, they raised the consequence that mandatory registration of offenders has on inflating the number of people on the Register. This is discussed in detail in Chapter 2.

## 1.3 Operation of the Victorian Sex Offenders Register

### 1.3.1 Registerable offences

The Act requires all perpetrators of child sexual abuse who are convicted of a Class 1 or Class 2 sexual offence against a child to be included on the Register.<sup>20</sup>

Class 1 sexual offences include crimes such as rape, incest, sexual penetration and facilitating sexual offences. In contrast, Class 2 sexual offences include crimes such as sexual assault of a child under the age of 16 or possessing child abuse material.<sup>21</sup>

<sup>20</sup> *Sex Offenders Registration Act 2004* (Vic), s 7(1).

<sup>21</sup> *Ibid.*, sch 1, sch 2.

Victorian courts also have discretion to include an offender on the Register if they are:

- an adult convicted of an offence (other than a Class 1 or Class 2 offence), including against an adult victim, and the court is satisfied beyond reasonable doubt that the offender poses a risk to the sexual safety of one or more persons or to the community
- a child convicted of any offence (including Class 1–4 offences), and the court is satisfied beyond reasonable doubt that the offender poses a risk to the sexual safety of one or more persons or to the community.<sup>22</sup>

Class 3 and Class 4 offences are sexual offences committed by a serious sexual offender against an adult. A person is deemed to be a serious sexual offender if he or she has at any time been sentenced by a court for two or more offences listed in a schedule to the Act.<sup>23</sup>

A summary of Class 1–4 offences under the Act appears in Appendix B.

### 1.3.2 Reporting periods

The Act requires registered sex offenders to keep Victoria Police informed of their whereabouts and other personal details.<sup>24</sup> It also precludes them from engaging in child-related employment during their reporting period.<sup>25</sup>

The length of the reporting period depends on the number and nature of the offences for which the registered sex offender was sentenced, and whether the offender was an adult or a child at the time they committed the offence(s).<sup>26</sup> Table 1.2 below summarises the reporting periods for adults<sup>27</sup> and children based on the type of offence.

**Table 1.2 Reporting periods for registered offenders**

Offences	Age of offender	Reporting period
A Class 2 offence	Adult	8 years
	Child	4 years
A Class 1 offence, or Two Class 2 offences	Adult	15 years
	Child	7.5 years
Two or more Class 1 offences, One Class 1 and one Class 2 offence, or Three or more Class 2 offences	Adult	Life
	Child	7.5 years

Source: *Sex Offenders Registration Act 2004* (Vic), div 5.

<sup>22</sup> Ibid., s 11.

<sup>23</sup> Ibid., pt 2, div 1, s 8.

<sup>24</sup> Ibid., pt 3.

<sup>25</sup> Ibid., pt 5.

<sup>26</sup> Ibid., div 5.

<sup>27</sup> Aged 18 or older at the time of the offence.

### 1.3.3 Reporting obligations

All registered sex offenders are subject to the same reporting requirements regardless of the length of the reporting period,<sup>28</sup> although courts do have some discretion in modifying reporting obligations for registered child offenders.<sup>29</sup> It is an indictable offence for a registered sex offender not to comply with reporting obligations without a reasonable excuse or to provide false information. Maximum penalties for these offences are two or five years of imprisonment, depending on the reporting breach.<sup>30</sup> Table 1.3 below provides a summary of the reporting obligations.

**Table 1.3 Reporting obligations for register offenders**

Reporting requirement	Details	Timeframe (reporting method)
Change of address	All addresses where the RSO spends seven or more days in a year, whether consecutive or not	Within 24 hours (must be in person)
Contact with children	The name of each child with whom the RSO has contact as defined by the Act	Within 24 hours
Scars, tattoos and marks	Any tattoos or permanent distinguishing marks that the RSO has (including details of any tattoo or mark that has been removed)	Within 7 days (must be in person)
Clubs/associations	Association with any clubs or organisations that have child membership or participation in their activities	Within 7 days
Contact details	All of the RSO's phone numbers, email addresses and internet service providers	Within 7 days
Internet usage	Usernames the RSO uses on the internet or other electronic communication services, including instant messaging, chat rooms or forums	Within 7 days
Employment	Any employment (including voluntary, unpaid and self-employment) and locations where the RSO is employed at those premises for 14 days—whether consecutive or not—within a 12-month period	Within 7 days
Motor vehicles	Any motor vehicle or caravan owned or generally driven by the RSO (driven 14 times—whether consecutive or not—within a 12-month period)	Within 7 days
Travel	<ul style="list-style-type: none"> <li>Overseas—for any length of time</li> <li>Interstate—for two or more consecutive days or permanently</li> </ul>	7 days prior to departure (if travelling overseas, in person)

Note: The *Sex Offenders Registration Act 2004* (Vic) sets out the reporting obligations imposed on offenders convicted of child sexual abuse. Part 3, s 14 describes the details which offenders must provide to police. Part 3, div 2 describes how long offenders have to report any changes to their personal circumstances and div 3 describes where and how offenders must report changes.

Source: Compiled by the Committee Secretariat using information in the *Sex Offenders Registration Act 2004* (Vic).

<sup>28</sup> *Sex Offenders Registration Act 2004* (Vic), pt 3, div 1, s 14.

<sup>29</sup> *Ibid.*, s 11(2B).

<sup>30</sup> *Ibid.*, div 7.

### 1.3.4 Disclosure of information on the Register

Access to information contained on the Register is limited to people, or classes of people authorised by the Chief Commissioner of Victoria Police.<sup>31</sup> Victoria Police may share confidential information in line with the Family Violence and Child Information Sharing Schemes:

As a prescribed Information Sharing Entity (ISE) under the Family Violence Information Sharing Scheme (FVISS) and Child Information Sharing Scheme (CIS), Victoria Police is also permitted to share confidential information with other prescribed entities. Under these schemes, Victoria Police may share details of an individual's criminal record including prior convictions for sex offences, either proactively or in response to a request. Consistent with the objectives of the SORA, Victoria Police is not permitted under these schemes to disclose whether a person is a registered offender.

In limited circumstances, these schemes allow for Victoria Police and other ISEs to discreetly share relevant risk information with victim-survivors and caregivers if doing so is necessary in order to manage their safety. The decision to discreetly share this information with members of the public is determined on a case-by-case basis, with detailed consideration given to:

- what specific information should be made available,
- the nature of a perpetrator's criminal history and the threat they pose,
- the safety and wellbeing of a child or group of children (known or unknown),
- the governing legislation, and
- the need to protect the perpetrator's privacy and safety.<sup>32</sup>

Victoria Police may also disclose information from the Register to other persons or organisations for specific purposes, including:

- to the Registrar under the *Births, Deaths and Marriages Registration Act 1996* (Vic)
- to the Secretary to the Department of Justice and Community Safety for the purpose of administering the *Worker Screening Act 2020* (Vic)
- to the Firearms Appeal Committee under the *Firearms Act 1996* (Vic)
- to a government department, public statutory authority or court for specified purposes
- to the Australian Crime Commission for entry on the Australian National Child Offender Register
- disclosure of information (under s 66ZZC) about prohibition orders and registration orders if it is necessary for the enforcement of the orders (for example, informing the parents of a juvenile registered offender that their child is subject to a prohibition order so they can assist with compliance)

<sup>31</sup> Ibid., s 63 (1).

<sup>32</sup> Victoria Police, *Submission 83*, p. 3.

- publication of information and a photograph of a registered sex offender (under div 10 of pt 3) if they fail to meet their reporting obligations and cannot be located (unless they are a child); this information must be taken down when they are located.<sup>33</sup>

The Chief Commissioner of Victoria Police may also publish de-identified information about offenders on the Register.<sup>34</sup>

### 1.3.5 Offences for publication of information by third parties

The Act provides some protection for registered sex offenders from vigilantism. It creates an offence to republish information about a registered offender that would incite or would be likely to incite animosity or harassment.<sup>35</sup> Individuals convicted of this offence may be sentenced to two years imprisonment or incur a fine of 240 penalty units. A corporation convicted of this offence may incur a fine of 1,200 penalty units.<sup>36</sup>

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<sup>33</sup> *Sex Offenders Registration Act 2004* (Vic), pt 4, ss 63, 64.

<sup>34</sup> *Ibid.*, pt 4, s 64A.

<sup>35</sup> *Ibid.*, s 61G.

<sup>36</sup> At the time of writing, 240 penalty units equated to a fine of \$43,618 and 1,200 penalty units equated to a fine of \$218,090. The value of penalty units is updated annually. The fines included in this report are accurate to 30 June 2022. See the Department of Justice and Community Safety, *Penalties and values*, <<https://www.justice.vic.gov.au/justice-system/fines-and-penalties/penalties-and-values>> accessed 20 July 2021.

## Issues identified with the operation of the sex offender registration framework

### At a glance

The *Sex Offenders Registration Act 2004* (Vic) imposes automatic, mandatory and standardised reporting obligations on offenders found guilty of certain sexual offences against a child and other sexual crimes.

### Key issues

- The Sex Offenders Registration Act does not provide a right of appeal against automatic registration. An application for suspension of reporting obligations is only available to offenders subject to registration for life. Only after 15 years have elapsed since their release from custody for a registrable offence. An exemption from registration is available to certain young offenders in specific, limited circumstances.
- Since 2014–15, the number of people added to the Register each year averages over 500, more than double the average yearly number of offenders whose reporting obligations expire (deregistered offenders), or who die. As a result, the Register significantly expands each year.
- Mandatory registration results in large numbers of low-risk offenders being added to the Register while high-risk offenders who commit sexual offences against adult victims are often excluded.
- Automatic registration and standardised reporting obligations may impose disproportionate outcomes on individuals whose level of offending and ongoing risk to the community may not warrant the imposition of such conditions.
- The Sex Offenders Registration Act contains no obligation to destroy information held on the Register or to remove an offender's name from the Register when their reporting period ends, or if they die. The inclusion of deceased and deregistered offenders on the Register may result in a skewed picture of sex offending in the community and distort data that is used to inform policy and policing approaches.
- A review of the operation of the *Sex Offenders Registration Act 2004* (Vic) was conducted by the Victorian Law Reform Commission in 2011. No evaluation of the effectiveness of the registration framework in fulfilling its purposes has been undertaken since its inception.

*(Continued)*

## Findings and recommendations

**Finding 2:** Mandatory registration under the *Sex Offenders Registration Act 2004* (Vic) does not allow for consideration of individual circumstances that apply in each case. This can result in disproportionate or adverse outcomes for registered, low-risk offenders.

**Finding 3:** Regardless of victim age, sexual offender management based on an assessment of an offender's risk profile is consistent with the risk principle of offender rehabilitation as an effective means of reducing a sexual offender's likelihood of sexual offending recidivism.

**Finding 4:** The Victorian Sex Offenders Register is established under the *Sex Offenders Registration Act 2004* (Vic). Under the purposes of the Act it is intended to operate as a post-sentencing mechanism to enhance community safety and is not a punitive tool.

**Finding 5:** The ongoing inclusion of deceased and deregistered offenders on the Victorian Sex Offenders Register may result in a skewed picture of sex offending in the community and runs the risk of distorting sex offender data.

**Recommendation 1:** That Victoria Police reviews the current practice of retaining deceased and deregistered offenders on the Victorian Sex Offenders Register.

**Recommendation 2:** That in line with recommendation 68 of the Victorian Law Reform Commission's *Sex offenders registration: final report*, the Victorian Government amends the *Sex Offenders Registration Act 2004* (Vic) to provide for an independent review of the operation and effectiveness of the Act to be conducted as soon as practicable, and every five years thereafter. The report should be tabled in Parliament.

## 2.1 Impacts of mandatory registration

The Sex Offenders Registration Act predominantly operates on the assumption that people convicted of the same type of offence pose the same risk of reoffending and must be subject to the same reporting obligations for the same period of time. As noted in Chapter 1, the Act imposes automatic, mandatory and standardised reporting obligations of offenders found guilty of certain sexual offences against a child.<sup>1</sup> There is no provision<sup>2</sup> for individual circumstances to affect the manner in which an offender is subject to the mandatory registration requirements of the Act. In addition, the courts have discretion to include offenders who are not otherwise subject to mandatory

<sup>1</sup> Under of s 341 of the *Serious Offenders Act 2018* (Vic), mandatory registration in certain circumstance also applies to serious sex offenders who would not otherwise be subject to registration under the *Sex Offenders Registration Act 2004* (Vic).

<sup>2</sup> A court has discretion to alter reporting obligations in respect of a child offender subject to a registration order (also made at the court's discretion) under s 11(2B) of the *Sex Offenders Registration Act 2004* (Vic).

registration if satisfied beyond reasonable doubt the offender poses a risk to the sexual safety of one or more persons or to the community.<sup>3</sup>

All registered sex offenders have the same reporting obligations regardless of the length of the reporting period imposed on them. It is an indictable offence for an offender not to comply with the reporting obligations without a reasonable excuse. Maximum penalties for these offences are two or five years of imprisonment, depending on the reporting breach.

Since 2014–15, an average of over 500 people have been added to the Register each year. This is more than double the average yearly number of offenders whose reporting obligations expire (deregistered offenders), or who die, over the same period. This is due to the automatic inclusion of the majority of convicted child sexual offenders on the Register.

As a result, the Register is growing at a significant and exponential rate year on year.

Table 2.1 below shows a breakdown of annual average increases of registered sex offenders. The inclusion of deceased and deregistered offenders on the Register is discussed in Section 2.2.4.

**Table 2.1 Annual increase of total Registered Sex Offenders (RSOs) and deceased/deregistered offenders on the Register**

Year	2014–15 to 2015–16	2015–16 to 2016–17	2016–17 to 2017–18	2017–18 to 2018–19	2018–19 to 2019–20	2019–20 to 2020–21 <sup>a</sup>	Annual average increase
Annual increase in total number of RSOs <sup>b</sup>	629	569	546	542	483	292	525
Annual increase in number of deregistered RSOs	184	5	220	246	303	207	200
Annual increase in number of deceased RSOs	57	41	48	59	82	57	59

a. As at 30 April 2021.

b. There is an observable correlation between the timing of COVID-19 impacts in Victoria and the below average number of offenders added to the Register in 2019–20 and 2020–21 (as at 30 April 2021) compared to the previous four years. However, Victoria Police informed the Committee that data from the previous 12 months covering COVID-19 lockdowns indicated there had been an increase in online activity to access child abuse material. Source: Assistant Commissioner Chris Gilbert, Intelligence and Covert Support Command, Victoria Police, public hearing, Melbourne, 22 April 2021, *Transcript of evidence*, p. 12.

Source: Legislative Council Legal and Social Issues Committee using data from Assistant Commissioner Chris Gilbert, Intelligence and Covert Support Command, Victoria Police, Management of Child Sex Offender Information hearing, response to questions on notice received 23 June 2021, pp. 1–2.

<sup>3</sup> *Sex Offenders Registration Act 2004* (Vic), s 11.

The Committee heard from numerous stakeholders who were concerned about the mandatory automatic registration of offenders. They believed the inability to consider individual circumstances and a lack of judicial discretion had resulted in a bloated scheme that was not fit for its intended purpose. Stakeholders also noted the increasing administrative burden of the scheme diverted police resources away from a proper focus on high-risk offenders.

The main arguments presented to the Committee covered a range of effects that were contrary to the aims and purpose of the Register. A summary of these arguments is as follows:

- A lack of judicial discretion prevents the courts from considering individual circumstances of a person and the specific nature of their offending.
- Automatic registration captures offenders who pose a lower risk to the community and causes a drain on police resources.
- The scheme often fails to capture high-risk offenders who commit sexual offences against adult victims.
- Complex reporting obligations and a tendency to prosecute all reporting breaches, including minor breaches, increases the burden on the justice system.
- All registered offenders are prohibited from applying for or engaging in child-related employment regardless of whether the registrable offence was related to child sexual offending.
- Standardised registration and reporting obligations impose disproportionate and unfair outcomes on individuals whose level of offending may not warrant the imposition of such conditions.
- Being placed on the Register can result in detrimental prospects of rehabilitation and reintegration into the community after completing a custodial sentence, which potentially increases risk to the community and risk of recidivism.
- Ongoing reporting requirements unnecessarily extend a person's contact with police and the criminal justice system, creating the potential for further adverse outcomes.

This chapter does not include a specific examination of the issue of judicial discretion under the Inquiry's Terms of Reference. However, the Committee notes this issue is due to be reported on in August 2021 by the Victorian Law Reform Commission as part of its review on *Improving the Response of the Justice System to Sexual Offences*.<sup>4</sup>

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4 Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences*, April 2020, <<http://www.lawreform.vic.gov.au/all-projects/improving-response-justice-system-sexual-offences>> accessed 9 July 2021.

## 2.1.1 Size of the Register

In speaking to the operative effectiveness of the Register, Ms Tania Wolff, President of the Law Institute of Victoria, was clear in her support for sex offender registration.<sup>5</sup> However, she expressed a very dim view of its current approach:

The sex offender registration is a blunt instrument. It does not stop anyone from offending, but it can have lifelong consequences for the offenders, through isolation and stigmatisation and exclusion, which make them more likely to commit further offences and unable to access rehabilitation which would prevent further offending.<sup>6</sup>

Ms Wolff argued that many offenders on the register do not pose a risk to child safety:

the vast majority of sex offenders are first-time offenders, and research indicates that 80 per cent of offenders do not pose a risk to the community—that is, offenders who are on the register ... the Victorian Law Reform Commission, has estimated that there are approximately 10 000 offenders on the register since 2020 and indications are that it is likely to be in just a little over a decade 20 000, so the register is awash, effectively, with thousands of offenders who pose no threat to the safety of children.<sup>7</sup>

Ms Wolff criticised the Register as being too big and too broad to work properly and as originally intended, to protect the community from dangerous sex offenders. She asserted the need for a review of the register by an expert panel to remove those who pose little risk to community safety and ensure its focus was limited to serious offenders.<sup>8</sup>

Liberty Victoria, an organisation promoting human rights and civil liberties, held very similar views on the negative effect of mandatory registration on the current operation of the scheme. Mr Sam Norton, Senior Vice-President, told the Committee that Liberty Victoria acknowledged the need for the Register and related post-sentence schemes as a necessary infringement of people's rights. However, he was firmly of the view that mandatory registration of offenders was a 'bad law [that] ought not be maintained'.<sup>9</sup> Mr Norton argued that the register captured too many people and believed courts should have greater discretion in registering and removing offenders:

Our view is that there are far too many people on this register. Our view is that mandatory registration is an anathema to justice and it is not going to assist in the proper protection of the community ... It is the position of Liberty Victoria, and has been consistently, that there ought to be discretion from the court and there ought to be a greater capacity to make application to be taken from the register.<sup>10</sup>

<sup>5</sup> Ms Tania Wolff, President, Law Instituted of Victoria, public hearing, Melbourne, 13 May 2021, *Transcript of evidence*, p. 2.

<sup>6</sup> *Ibid.*, p. 1.

<sup>7</sup> *Ibid.*, p. 2.

<sup>8</sup> *Ibid.*

<sup>9</sup> Mr Sam Norton, Senior Vice-President, Liberty Victoria, public hearing, Melbourne, 13 May 2021, *Transcript of evidence*, p. 25.

<sup>10</sup> *Ibid.*, p. 27.

Liberty Victoria also raised the following arguments:

- A workable scheme should be based on an assessment of the individual case and the need for an individual offender to be placed on the Register.<sup>11</sup>
- The lack of judicial sentencing discretion likely posed a significant obstacle to the early resolution of sexual offences in some cases.<sup>12</sup>
- A burden on the courts was caused by the complexity of reporting obligations and over prosecution of minor and inadvertent reporting breaches that were pursued regardless of mitigating circumstances or whether there was any risk to the community<sup>13</sup> Victoria Police informed the Committee there were 1,754 charge/intent to summons breaches of reporting obligation in 2019–20.<sup>14</sup>

Ms Wolff from the Law Institute of Victoria suggested there was value in a system that allowed for ‘bespoke’ registration and compliance requirements based on the risk posed by individual offenders.<sup>15</sup> She also pointed out that automatic registration could make it less likely for offenders to plead guilty to offences, causing their victims to go through the stress of a trial.<sup>16</sup>

The Australian Lawyers Alliance echoed the concern that mandatory registration acts a disincentive to plead guilty which leads to a ‘greater likelihood of contested hearings resulting in delays in matters coming to trial in the courts’.<sup>17</sup>

## 2.1.2 Risk and recidivism

The Committee also heard criticism that the vast majority of sexual offences captured under the mandatory registration provisions were perpetrated by first-time offenders. As a group, these offenders are at lowest risk of reoffending.<sup>18</sup> The Law Institute of Victoria submitted that the evidence base in sex offender research did not support the Sex Offender Registration Act’s focus on recidivism reduction.<sup>19</sup>

The Committee received evidence from Dr Michael Davis, Chair, Victorian Branch, and National Chair-Elect, Australian Psychological Society. He highlighted a 2017 Victorian study that found 18.8% of both child and adult sexual offenders were reconvicted of a sexual offence over an average follow-up period of just over 12 years.<sup>20</sup>

<sup>11</sup> Ibid., p. 25.

<sup>12</sup> Mr Sam Norton, Senior Vice-President, Liberty Victoria, response to questions on notice received 4 June 2021, Attachment A, pp 13–4; Mr Sam Norton, *Transcript of evidence*, p. 30.

<sup>13</sup> Mr Sam Norton, response to questions on notice received, p. 3; Mr Sam Norton, *Transcript of evidence*, p. 30.

<sup>14</sup> Assistant Commissioner Chris Gilbert, response to questions on notice, p.1.

<sup>15</sup> Ms Tania Wolff, *Transcript of evidence*, p. 3.

<sup>16</sup> Ibid., p. 4.

<sup>17</sup> Australian Lawyers Alliance, *Submission 75*, p. 7.

<sup>18</sup> Law Institute of Victoria, *Submission 81*, p. 2.

<sup>19</sup> Ibid.

<sup>20</sup> Reeves et al., ‘The Predictive Validity of the Static-99, Static -99R, and Static-2002/R: which one to use?’, *Sexual Abuse*, vol. 30, no. 8, 2018, pp. 887–907, doi: 10.1177/1079063217712216.

Dr Davis stated that research on sexual offender recidivism supported findings that most sexual offenders are committing an offence for the first time and most do not go on to be reconvicted of another sexual offence. He believed this highlighted the point that no registry system was capable of identifying sexual offenders before they have committed an offence.<sup>21</sup>

Dr Davis noted that it was true that people already on the Register were ranked and dealt with on a risk assessment basis by Victoria Police. However, he noted an offence-based approach rather than assessment of an offender's risk profile meant that many low-risk child sex offenders ended up on the Register, while high-risk adult sex offenders were not captured:

If you look across the literature, some studies show very small reductions in recidivism, but others show none. If you put them all together, it is generally the fact that there are no reductions in recidivism rates. Now, the thing to keep in mind is that many offenders that are on these registries—and I know for a fact this applies in Victoria—are not high-risk offenders at all. Being on the register, as the previous witness has already described, is more based on the name of the offence that somebody got convicted of, rather than anything to do with their risk. But registries themselves do assess the risk of people on them and do rank-order those that they need to deal with. I know that for a fact, having trained a lot of the Victoria Police sex offender registry staff in risk assessment. Ironically many high-risk sexual offenders are not on these registries, and they are usually those that target adult females. So for high-risk rapists of adult females, many of them—the vast majority of them, I would suggest—do not end up on the sex offender registry, so that is an irony that you have got a lot of low-risk child sexual offenders on a registry, but a lot of high-risk adult sex offenders are not.<sup>22</sup>

The Law Institute of Victoria also cited research (including the 2017 study) supporting an approximation that 20% of sex offenders go on to reoffend. The Institute further noted the risk of sexual recidivism was higher for adult sexual offenders compared to child sexual offenders.<sup>23</sup>

The 2017 study cited by Dr Davis and the Law Institute of Victoria looked at the recidivism rates of 621 Australian sexual offenders. Of these 414 offended exclusively against child victims, over an average follow-up period of 12.16 years. The study found:

- 18.8% of all sexual offenders reoffended with a sexual offence
- offenders with both child and adult victims had a sexual recidivism rate of 24%
- adult sexual offenders had a sexual recidivism rate of 20.8%
- child sexual offenders had a sexual recidivism rate of 17.4%.<sup>24</sup>

21 Dr Michael Davis, Chair, Victorian Branch, and National Chair-Elect, Australian Psychological Society, College of Forensic Psychologists, public hearing, Melbourne, 13 May 2021, *Transcript of evidence*, p. 9.

22 Ibid.

23 Ms Tania Wolff, President, Law Institute Victoria, Management of Child Sex Offender Information hearing, response to questions on notice received 2 June 2021, p.5.

24 Reeves et al., 'The Predictive Validity of the Static-99, Static -99R, and Static-2002/R: which one to use?', pp. 887, 893, 897-898.

The recidivism rates of offenders on the Register (predominantly child sexual offenders) provided by Victoria Police were even lower. Assistant Commissioner Chris Gilbert told the Committee that 10.1% of registrants go on to commit further reportable sex offences.<sup>25</sup> The figure calculated by Victoria Police was based on the following methodology:

Calculated from the commencement of the SORA on 1 October 200[4], the Victorian registered sex offender recidivism rate is 10.1% as at 03-Jun-2020. This figure was noted by Assistant Commissioner Chris Gilbert at the public hearing. This figure was calculated by identifying the date when all 8,787 RSOs would have been considered to be able to have 'reoffended' following registration. 425 RSOs were excluded because the requisite period for these RSOs was not able to be identified (generally because their reporting period commenced before the Sex Offenders Registration Act 2004 was introduced, in most cases because they originated in a foreign jurisdiction). The remaining 8,362 RSOs were analysed to determine whether they had committed any subsequent sexual offences in Victoria and 844 RSOs were identified.

Deceased RSOs and RSOs with expired reporting obligations were included in the sample because the recidivism rate was calculated from the commencement of each RSO's reporting obligations who were, at the time, capable of committing further sexual offences. The methodology described does not include RSOs who reoffended in another jurisdiction, RSOs whose reporting period expired and then subsequently re-offended, or RSOs who re-offended with a non-sexual offence.<sup>26</sup>

Addressing the ability of the registry scheme to mitigate the risk of sexual recidivism, Dr Davis considered that 'a greater association between assessed risk for sexual recidivism, regardless of victim age, and allocation to the register may be advantageous.' He noted it would also be consistent with the risk principle of offender rehabilitation, which matches the intensity of offender management to the level of risk posed by the offender.<sup>27</sup>

In a 2019 article, Dr Melanie Simmons, a clinical and forensic psychologist at the Victorian Centre for Forensic Behavioural Science, made a series of observations about the recidivism of sexual offenders (see Box 2.1 below). Dr Simmons noted in particular that rates of reoffending were relatively low and more likely to be non-sexual in nature.

<sup>25</sup> Assistant Commissioner Chris Gilbert, *Transcript of evidence*, p. 4.

<sup>26</sup> Assistant Commissioner Chris Gilbert, response to questions on notice, p. 2.

<sup>27</sup> Dr Michael Davis, Chair of the Victorian Branch, and Chair-Elect of the National College of Forensic Psychologists, Australian Psychological Society, Management of Child Sex Offender Information hearings, response to questions on notice received 11 June 2021, p. 2.

### **BOX 2.1: Observations relating research on offender risk and recidivism to the operation of the Victorian Sex Offenders Register**

Drawn from her article 'Evaluating the legal assumptions of Victoria's *Sex Offender Registration Act 2004* from a psychological perspective', Dr Simmons' observations are based on an extensive body of research relating to the risk posed by, and recidivism rates of, sexual offenders and how this relates to the Victorian registry framework:

- Although sexual offenders are singled out in the Sex Offenders Registration Act, research suggests that they are less likely to reoffend than violent offenders.
- A United Kingdom study found that after the 10-year follow-up period, violent offenders were twice as likely to have a new conviction for any offence compared to sexual offenders. Of the sexual offenders who were reconvicted of another crime, 50% had convictions that were for non-sexual offences.
- Research shows that non-sexual recidivism is the most prevalent form of recidivism for sexual offenders.
- Research suggests that 80–95% of sexual offences are perpetrated by individuals who have not previously been detected by the justice system.
- It is estimated that only 20% of those who commit sexual offences are detected, and only 1% receive convictions.
- Of those who are convicted of sexual offences, approximately 5–20% are detected for reoffending.
- It is unlikely that registered offenders pose a greater overall risk to the community than violent offenders, who account for a greater proportion of the offender population and have higher rates of recidivism.
- Sexual offender recidivism research is incongruent with the Sex Offenders Registration Act's assumption that child sexual offenders are more likely to reoffend than adult sexual offenders.
- While the Register automatically captures relatively high-risk extra-familial child sex offenders, it also captures the intra-familial offenders who are, as a group, at the lowest risk of recidivism.
- In 2012, 81% of all sexual offenders on the Registry were listed as either low- or medium-risk. These results contradict the Risk, Need, Responsivity<sup>a</sup> theory.

a. A prominent theory in forensic psychology, which posits that resources should be allocated according to risk level for intervention to be effective.

Source: Melanie Simmons, 'Evaluating the legal assumptions of Victoria's Sex Offender Registration Act 2004 from a psychological perspective', *Psychiatry, psychology, and law: an interdisciplinary journal of the Australian and New Zealand Association of Psychiatry, Psychology and Law*, vol. 26, no. 5, 2019, doi:10.1080/13218719.2019.1642254, accessed 15 July 2021 (with sources).

The Committee heard from Dr Kelly Richards, Associate Professor, School of Justice at Queensland University of Technology at a public hearing. She similarly stated there was an ‘immense amount of research that clearly shows that most of these people [on the Register] are not at risk of recidivism ... but that a small cohort are very highly motivated to [reoffend]’.<sup>28</sup> She argued the broad assumption that sex offender registers reflected an entire group of people very likely to reoffend was problematic in that it tarred everyone with the same brush irrespective of individual circumstances:

That is what makes this a very difficult area because we need very flexible and agile responses, and we need to target our resources towards that very high-risk cohort—not towards the lower end where it is at best a waste of resources and at worst possibly increasing the risk of that group of people.<sup>29</sup>

Dr Davis from the Australian Psychological Society also drew attention to the need for treatment and management of offenders to be targeted to the level of risk posed by an individual:

there are people on the sex offender register that pose a low risk of committing another offence. And you have got to keep in mind too that when we talk about offender rehabilitation there are some real principles that have a lot of empirical backing for them, and one of them is the risk principle. You have to target your treatment and management to the risk level that the person poses. So if someone is a high risk, you give a high level of supervision and resources and management. But if somebody is a low risk and you try and give high levels of supervision and support, paradoxically you end up with increases in recidivism. It is something that is a truism. It has been found across offenders, and it has also been found with sex offenders.<sup>30</sup>

In its submission the Australian Lawyers Alliance, an advocacy group of lawyer, noted that the Tasmanian registered sex offender framework allowed for some discretion by the courts. It noted that offenders were registered ‘unless the risk of reoffending is far-fetched or fanciful’ according to expert opinion. The Alliance submitted it was unaware of any offender who was not listed on the Tasmanian register for this reason who subsequently reoffended in the 15 years the discretion had existed.<sup>31</sup>

### 2.1.3 Punitive effects

The Australian Lawyers Alliance also asserted that the Victorian scheme unnecessarily extended contact with police and the criminal justice system to those already subject to excessive police attention, including:

- Aboriginal and Torres Strait Islander people
- homeless people

<sup>28</sup> Dr Kelly Richards, Associate Professor, School of Justice, Queensland University of Technology, public hearing, Melbourne, 22 April 2021 *Transcript of evidence*, p. 47.

<sup>29</sup> Ibid.

<sup>30</sup> Dr Michael Davis, *Transcript of evidence*, p. 11.

<sup>31</sup> Australian Lawyers Alliance, *Submission 75*, p. 8.

- people with mental illness or cognitive impairment
- people from culturally and linguistically diverse communities.<sup>32</sup>

In support of this, the Victorian Aboriginal Child Care Agency described the challenges faced by registrants in undertaking successful rehabilitation and reintegration into the community:

For those included on the register we believe it will likely affect their ability to effectively and meaningfully rehabilitate and reintegrate into the community, and impede their access to basic social and economic rights such as education, employment, housing, and family and community connections, all of which are vital for rehabilitation and reducing the risk of recidivism.<sup>33</sup>

Liberty Victoria emphasised that offender punishment was a function of the sentencing process and that punitive deterrence was not a stated aim of the Sex Offenders Registration Act. It acknowledged that the Act had punitive effects that compounded an offender's punishment. However, Liberty Victoria argued that the Register should 'never be conceived as a mechanism of punishment that sends a "message" to would-be offenders, while imposing further suffering on an offender'. It cautioned that to reorient the Act around punitive deterrence would require a radical recasting of the entire sentencing process.<sup>34</sup>

The Australian Lawyers Alliance observed many of these concerns were consistent with the Law Council of Australia's *Policy Statement on Registration and Reporting Obligations for Child Sex Offenders*:

Inclusion on the Register, and the reporting obligations it entails, has the potential to extend a persons' contact with police and the criminal justice system well beyond the expiry of any sentence they receive. Likewise, it casts the constant spectre of negative exposure and unwarranted discrimination over a persons' future employment opportunities and engagement in the community. The consequences, particularly for first time and one-off offenders, can be unduly punitive.<sup>35</sup>

The Committee considers that arguments that the current operation of the Register is not fit for purpose is concerning and warrants further interrogation as to whether the scheme meets its intended aims. Most sexual offences are perpetrated by first-time offenders and research suggests that the vast majority of these people do not pose a high or ongoing risk to the community. Accordingly, the Committee considers that the Register has very little effect in reducing the likelihood of reoffending in regard to the majority of people on it.

<sup>32</sup> Ibid., p. 6.

<sup>33</sup> Victorian Aboriginal Child Care Agency, *Submission 79*, p. 4.

<sup>34</sup> Mr Sam Norton, response to questions on notice, Attachment A, p. 6.

<sup>35</sup> Australian Lawyers Alliance, *Submission 75*, p. 6 (with sources).

Further, the Register has no application in facilitating the detection and prosecution of such offenders before they offend.<sup>36</sup> In addition there are concerns regarding the misattribution of public resources to manage, and undue infringement on the rights of, low-risk offenders.<sup>37</sup>

The Committee recognises that the Register exists and should continue to function as a risk mitigation tool that operates in such a way as to protect the community from harm. It is not intended as a form of punishment. Despite the Register existing as a tool for risk mitigation, the Committee heard evidence that risk reduction might be better achieved through restorative justice processes and alternative treatment programs. Further, more effective prevention and reduction of instances of child sexual offending could be achieved through improved public awareness and education. These issues are discussed in detail in Chapters 3 and 4, respectively.

**FINDING 2:** Mandatory registration under the *Sex Offenders Registration Act 2004 (Vic)* does not allow for consideration of individual circumstances that apply in each case. This can result in disproportionate or adverse outcomes for registered, low-risk offenders.

**FINDING 3:** Regardless of victim age, sexual offender management based on an assessment of an offender's risk profile is consistent with the risk principle of offender rehabilitation as an effective means of reducing a sexual offender's likelihood of sexual offending recidivism.

**FINDING 4:** The Victorian Sex Offenders Register is established under the *Sex Offenders Registration Act 2004 (Vic)*. Under the purposes of the Act it is intended to operate as a post-sentencing mechanism to enhance community safety and is not a punitive tool.

## 2.2 Appeal rights and exemption or suspension from the Register

### 2.2.1 Appeals against registration orders

The Sex Offenders Registration Act does not provide a right of appeal against automatic registration. A right of appeal<sup>38</sup> is available in relation to a discretionary<sup>39</sup> registration order.<sup>40</sup>

<sup>36</sup> Melanie Simmons, 'Evaluating the legal assumptions of Victoria's Sex Offender Registration Act 2004 from a psychological perspective', accessed 15 July 2021 (with sources).

<sup>37</sup> Mr Sam Norton, *Transcript of evidence*, p. 24.

<sup>38</sup> An appeal against a sentence is available under the *Criminal Procedure Act 2009 (Vic)*, s 278. Section 3 of the Act defines 'sentence' to include an order made under s 11 of the *Sex Offenders Registration Act 2004 (Vic)*.

<sup>39</sup> *Sex Offenders Registration Act 2004 (Vic)*, s 11: a discretionary registration order can be made by a court against an adult convicted of offences other than Class 1/Class 2 offences, or a child convicted of any offence, if the court is satisfied beyond reasonable doubt that the offender poses a risk to the sexual safety of one or more persons or to the community.

<sup>40</sup> Judicial College of Victoria, *Sex Offenders Registration Act 2004*, February 2019, p 19.

In its 2012 report on the review of the Sex Offenders Registration Act, the Victorian Law Reform Commission noted:

- As a general principle, it is possible to appeal against any court orders in criminal proceedings that result in adverse consequences for a person.
- It is not possible to appeal against mandatory inclusion on the Sex Offenders Register because no court order is involved.
- Registration orders made by courts under the refined and strengthened scheme (recommended by the Commission in its report) should be subject to appeal in the same way as discretionary orders made under s 11.
- There is no reason to depart from the established legal principle of a right of appeal in criminal proceedings. Although a registration order is not a punishment that can be taken into account at the time of sentencing, it is an order that adversely affects an offender who must comply with numerous obligations after having completed a sentence for a crime.<sup>41</sup>

The Commission recommended that all registration orders under the Sex Offenders Registration Act should be treated as sentencing orders for the purposes of appeal rights and may be appealed.<sup>42</sup>

To date, this recommendation has not been adopted into legislation.

### 2.2.2 Exemption from registration

Under pt 2, div 2 of the Sex Offenders Registration Act, upon application by a registrable offender, a court may issue an exemption from the Register when the following apply:

- The offender was 18 or 19 at the time of offending and no older than 19 at all times during the offence (subject to certain specified criteria).
- An exemption application in respect of the registrable offence was made within six months after the offender has been given notice of their reporting obligations.
- The victim was 14 years or older.
- The offender poses no risk or a low risk to the sexual safety of one or more persons in the community (taking into account certain specified criteria).
- Any submission made by the Chief Commissioner in relation to the application has been taken into account.
- If a court makes a registration exemption order, the offender ceases to be a registrable offender for the purposes of the Act.

<sup>41</sup> Victorian Law Reform Commission, *Sex Offenders Registration: final report*, 2012, p. 79.

<sup>42</sup> *Ibid.*, Recommendation 16.

Section 11G provides for victim input to be admitted as evidence in an exemption application hearing as follows:

- A transcript or recording given by the victim in the trial or sentencing hearing for the offence.
- A victim impact statement tendered in the sentencing hearing for the offence.

The exemption provisions were inserted into the Sex Offenders Registration Act in 2017 and came into effect on 1 March 2018.<sup>43</sup>

The Committee heard evidence from Ms Ashleigh Cooper, a victim survivor and sexual abuse advocate, and her partner Mr Scott McKissack, on the impact of the exemption process on her case.

Ms Cooper was groomed and assaulted by a man she met on a family camping trip in the summer of 2004–05. In January 2020 her abuser was convicted of three counts of sexual penetration of a child under 16, and one count of an indecent act with a child. The perpetrator received 200 hours of community work, 50 of which could be spent on treatment, and was placed on the Sex Offenders Register for life. Three months after his conviction, Ms Cooper’s abuser applied for an exemption from the Register. This was granted in August 2020.<sup>44</sup>

Ms Cooper told the Committee that she had not been made aware of the possibility for an exemption during her original case. She spoke of the distress this caused when she was notified of the application. She stated that she may not have agreed to the original plea deal had she been aware of the possibility of exemption at the time:

there were just inherent problems throughout the whole process, everything from being able to get information to who knew what. I may not have agreed to the plea deal that was struck had I known that this was a possibility, and that would have changed the entire court process ... Victims do deserve to have that explained to them as a possibility if it is relevant to their case.<sup>45</sup>

Ms Cooper further stated:

in my experience this law was not made known to me at all at any stage during the legal proceedings, so this was not even floated as a possibility in conferences with my OPP solicitors. It later emerged that they had thought that maybe this was a possibility, but they had not shared that with me, and that is incredible because it really would have changed the plea agreement. So I think victims need to be really informed of what is going on, and I know it is a really tough thing to do, especially because we are often in

<sup>43</sup> *Sex Offenders Registration Amendment (Miscellaneous) Act 2017* (Vic), ss 4–11.

<sup>44</sup> Ms Ashleigh Cooper, public hearing, Melbourne, 13 May 2021, *Transcript of evidence*, p. 33; news.com.au, #LetUsSpeak: Man sexually assaults, rapes girl, 13, after camping trip, 8 October 2020, <<https://www.news.com.au/lifestyle/real-life/news-life/letusspeak-man-sexually-assaults-rapes-girl-13-after-camping-trip-exclusive/news-story/7b81a4aa4bcb684ab6b9bfb39156d2aa>> accessed 7 May 2021.

<sup>45</sup> Ms Ashleigh Cooper, *Transcript of evidence*, p. 35.

a state of active trauma ... but it is important to try and get this information across and make it known, because it will impact the decision-making.<sup>46</sup>

Mr McKissack, spoke about the frustration caused by a lack of communication and a lack of knowledge from some people throughout the process:

we were never informed that [the exemption] was a possibility. When this guy was sentenced, that should have been the end of it, but it was not. When your partner receives a call out of the blue on a Friday afternoon going, 'Oh, by the way, we want your thoughts on this application for exemption'— sorry? That is a thing? At the time we had no information.<sup>47</sup>

Ms Cooper also gave her views about what say a victim should have on whether their offender is included on the Register. She told the Committee:

I think you can definitely have input. I think it is important for victims to have a voice. I do not know that it should be the deciding voice, because I think this is a really complex issue where you need a lot of people coming together to share expertise. You need the OPP to come to the party on this. You need other experts to share. A victim's voice is extremely important because they can offer so much in terms of what it means for the offender to be on the registry. ... For me, it was the only form of justice that I felt that I received, because there was no custodial sentence ... it is important to listen to the victims—very, very important—and their vote does and should always carry weight and should be taken into consideration before a decision is made. I just do not think it is necessary to have them as the only deciding voice. I think there need to be multiple voices included in that.<sup>48</sup>

### 2.2.3 Suspension of reporting obligations

A court can make an order to suspend the reporting obligations under the Sex Offenders Registration Act as follows:

- An offender subject to registration for life may apply to the Supreme Court for a suspension of their reporting obligations after 15 years has passed since being released from custody for a registrable offence.<sup>49</sup>
- At any time, the Chief Commissioner may apply to the relevant court for a suspension of an offender's reporting obligations.<sup>50</sup>

A court can only suspend reporting obligations if:

- it is satisfied that the offender poses no risk or a low risk to the sexual safety of one or more persons or the community

<sup>46</sup> Ibid., pp. 36–37.

<sup>47</sup> Mr Scott McKissack, public hearing, Melbourne, 13 May 2021, *Transcript of evidence*, p. 34.

<sup>48</sup> Ms Ashleigh Cooper, *Transcript of evidence*, p. 36.

<sup>49</sup> *Sex Offenders Registration Act 2004* (Vic), s 39.

<sup>50</sup> Ibid., s 39A.

- suspending the reporting requirements is in the public interest, subject to certain criteria.<sup>51</sup>

If the Supreme Court refuses to make an order for the suspension of reporting obligations, the offender is not entitled to make another application until five years after the date of refusal.<sup>52</sup>

In addition, the Chief Commissioner of Police may, by written notice at any time, suspend an offender's reporting obligations for up to five years. The Commissioner must be satisfied (subject to certain criteria) that the offender poses no risk or a low risk to the sexual safety of one or more persons or the community.<sup>53</sup>

While a temporary suspension is capped at five years, the Commissioner may suspend the reporting obligations more than once. Practically speaking, this means a Commissioner's suspension can be extended indefinitely through the issue of a new suspension order upon expiry of an old one.

The suspension of reporting obligations was addressed by the Independent Broad-based Anti-corruption Commission (IBAC) in a 2018 report on its oversight of police compliance with pts 3 and 4 of the Sex Offenders Registration Act.<sup>54</sup> At the time of writing, this was IBAC's only public report on this matter. The report included findings of IBAC's inspection conducted in 2015 and 2016. At the time of IBAC's inspection, the provisions for suspension of reporting obligations differed slightly from the current settings. Notably:

- An application for suspension of reporting obligations made by the Chief Commissioner under s 39A was made to the Supreme Court (this has since been changed to the relevant court that imposed the registration order).
- A temporary suspension made by the Chief Commissioner under s 45A was capped at a maximum of 12 months (this has since been increased to 5 years).<sup>55</sup>

In its report, IBAC noted:

- Victoria Police had not made an application to the Supreme Court to permanently suspend an offender's reporting obligations under s 39A of the Act.
- There were instances where a delegate of the Chief Commissioner intended to suspend an offender's reporting obligations for multiple 12-month periods under s 45A. In each case the offender was suffering from serious health conditions that appeared unlikely to improve and could no longer care for themselves.

<sup>51</sup> Ibid., s 40.

<sup>52</sup> Ibid., s 43.

<sup>53</sup> Ibid., s 45A.

<sup>54</sup> Independent Broad-based Anti-corruption Commission, *Report to the Minister for Police: Pursuant to section 70N of the Sex Offenders Registration Act 2004 (Vic)*, 1 January 2015 to 31 December 2016, tabled in Parliament on 6 September 2018.

<sup>55</sup> Changes made by the *Sex Offenders Registration Amendment (Miscellaneous) Act 2017 (Vic)*.

- In circumstances involving an offender with permanent impediments to complying with their reporting obligations, it might be expected that an application to the Supreme Court would be made under s 39A for a permanent suspension of reporting obligations. However, the Registry appears to have favoured 12-month suspensions that are 'renewed' each year.
- An offender whose health has declined to the point where they can no longer care for themselves is unlikely to have the means to make their own application for suspension of reporting obligations under s 39.
- Offenders whose reporting obligations are suspended year-to-year do not have much certainty as to their ongoing obligations.
- The continued monitoring of offenders who are physically incapable of being a risk to the community may be an inefficient use of Victoria Police resources.
- There were two instances where it appeared the Registry had intended to suspend an offender's obligations for a further 12 months, but did not finalise the renewed suspension before the original expired. The Register was not updated and the offenders continued to be classed as suspended despite their obligations resuming. In both cases the offenders may have unknowingly breached their reactivated reporting obligations despite lacking capacity to comply.<sup>56</sup>

IBAC observed that these issues were largely created by a seeming reliance on the Commissioner's suspension power under s 45A, a power which is intended to be used only as a temporary measure. IBAC noted the amendment to extend a temporary suspension from a maximum of 12 months up to 5 years 'may provide more certainty' to offenders in similar circumstances. However, IBAC stated that where an offender may be suspended for multiple periods in the future, the Chief Commissioner should consider whether an application to the relevant court for a permanent suspension would be more appropriate.<sup>57</sup>

IBAC also recommended reviewing the approach of suspending offender reporting obligations to include criteria for use of temporary suspension power in s 39A and set out the circumstances for triggering an application to the court for a permanent suspension under s 45A.<sup>58</sup>

Liberty Victoria raised concerns that the ability to seek a suspension from reporting obligations was overly limited and difficult to access.

In its submission, Liberty Victoria asserted that the Chief Commissioner's power to apply to suspend reporting requirements was inadequate and that registered offenders should have access to a statutory right of review. For example, it submitted there should be set periods during which an order must be reviewed, including an entitlement for offenders to seek leave for a review. Liberty Victoria highlighted that a similar system

<sup>56</sup> Independent Broad-based Anti-corruption Commission, *Report to the Minister for Police: Pursuant to section 70N of the Sex Offenders Registration Act 2004 (Vic)*, pp. 12–13.

<sup>57</sup> *Ibid.*, p. 13.

<sup>58</sup> *Ibid.*

existed in relation to detention and supervision orders under the *Serious Offenders Act 2018* (Vic) which, it argued:

would be a much better way of ensuring that the limitation to a person's human rights is proportionate, and that the register is focused upon those who pose a real risk to the community.<sup>59</sup>

Mr Norton from Liberty Victoria stated 'there ought to be a greater capacity to make application to be taken from the register'. He argued a person registered for 15 years who offended when they were 19 is going to be very different by the time they turn 29, despite having 5 years remaining 'before that register is off their back'.<sup>60</sup>

Further, Liberty Victoria emphasised that mandatory registration must be subject to review in order to comply with fundamental human rights standards. It also considered that only allowing review of life registration in the Supreme Court after 15 years constituted a disproportionate limitation on the human rights of registered persons.<sup>61</sup>

## 2.2.4 Inclusion of deceased and deregistered offenders

The Victorian Law Reform Commission published a 2011 information paper as part of its review of the sex offenders registration scheme. In it, the Commission noted it was unclear how long a person is included on the Register, as opposed to how long they must comply with reporting obligations.<sup>62</sup>

Under the *Sex Offenders Registration Act 2004* (Vic), the Chief Commissioner must destroy certain materials obtained from a registered offender at the conclusion of their reporting period.<sup>63</sup> However, there is no obligation to destroy information held on the Register itself or to remove an offender's name from the Register when their reporting period ends.<sup>64</sup> The Committee notes this equally applies in respect of registered offenders who have died.

Assistant Commissioner Gilbert told the Committee that police do not delete any information from the Register, rather any material on it was there 'ad infinitum'.<sup>65</sup> This approach appears to be based on Victoria Police's own interpretation of the Act:

Section 70P does not explicitly say deceased have to be included in the count. It states that the [Chief Commissioner of Police] must report the total number of 'registrable offenders' and then 'registrable offenders' is defined in section 6 as a person whom at any time (whether before, on or after 1 oct 2004) has been sentenced for a registrable offence.<sup>66</sup>

<sup>59</sup> Mr Sam Norton, response to questions on notice, Attachment A, pp. 19–20.

<sup>60</sup> Mr Sam Norton, *Transcript of evidence*, p. 27.

<sup>61</sup> Mr Sam Norton, response to questions on notice, Attachment A, p. 20.

<sup>62</sup> Victorian Law Reform Commission, *Sex offenders registration: information paper*, 2011.

<sup>63</sup> *Sex Offenders Registration Act 2004* (Vic), s 30.

<sup>64</sup> Victorian Law Reform Commission, *Sex offenders registration: information paper*, p. 14.

<sup>65</sup> Assistant Commissioner Chris Gilbert, *Transcript of evidence*, p. 7.

<sup>66</sup> Assistant Commissioner Chris Gilbert, response to questions on notice, p. 1.

Victoria Police informed the Committee that information on the Register is kept in perpetuity for practical reasons. This is namely to assist in the investigation of historical matters and to provide better quality data for the purposes of research and intelligence products.<sup>67</sup>

Dr Mark Zirnsak, Senior Social Justice Advocate, Uniting Church in Australia Synod of Victoria and Tasmania, considered there was value in examining how long information should be on the Register:

a person should stay on the register as long as they pose a reasonable risk and as long as there is an assessment that there is a benefit for law enforcement agencies to have access to that information.<sup>68</sup>

Dr Zirnsak made the point that it was worth examining how long information on deceased and deregistered offenders is retained, and balancing the value of that against the risk of unauthorised information breaches.<sup>69</sup>

The Committee notes that one of the purposes of the Sex Offenders Registration Act is to facilitate the investigation and prosecution of any offences committed by registered offenders. This can include historical and ‘cold case’ investigations, potentially long after an offender has completed their reporting obligations or even died. Information obtained under the registry framework holds ongoing value from an investigative standpoint.

Dr Davis from the Australian Psychological Society emphasised this point. He told the Committee that Registers are a crucial investigative resource for police:

our understanding from talking to law enforcement is they find value in non-public sex offender registers because it actually helps them with management of offenders and helps with ensuring people comply with treatment[and] intelligence sharing ... You do want that ability. So if the law enforcement agents are saying, ‘These are useful intelligence tools that actually help us prevent crime’... I am aware, there are papers out there that talk about, you know, it is a civil liberties intrusion...but I think on that one we would lean on the side of saying we are probably persuaded that if it is a benefit in reducing crime and preventing crime, particularly if it is of a very serious nature, then it serves a very important purpose.<sup>70</sup>

However, the Committee is unclear as to why continued listing in the Register is necessary for the retention of offender information. As noted elsewhere in this Report, this information is retained across multiple police systems and forms part of a person’s permanent criminal record. The Committee questions whether it is appropriate for a person who is no longer subject to registration requirements—whether by

<sup>67</sup> Ibid.

<sup>68</sup> Dr Mark Zirnsak, Senior Social Justice Advocate, Uniting Church in Australia, Synod of Victoria and Tasmania, public hearing, Melbourne, 22 April 2021, *Transcript of evidence*, p. 30.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid., p. 28.

deregistration or death—to continue to be listed on the Register. In addition, there is no explicit requirement in the Act that requires an offender’s ongoing inclusion on the Register once the conditions for registration no longer apply.

Further, the Committee notes the inclusion of deceased and deregistered offenders may result in a skewed picture of sex offending in the community. This also runs the risk of distorting data that is used to inform policy and policing approaches. For example, the recidivism rate of registered offenders provided by Victoria Police—which included deregistered and deceased offenders in the calculations—was half that of the rate quoted by several expert stakeholders.

It is a truism that the more information is retained, the greater the risk of it falling into the wrong hands. The Committee notes that the Office of the Victorian Information Commissioner has received no notifications of incidents regarding information contained on the Sex Offenders Register during the last three years.<sup>71</sup> It is incumbent on police to ensure data is secured and personal information is protected and used for proper purposes.

The Committee considers that if it were the intention of Parliament for people to continue to be captured on the Register beyond their reporting period, or after their death, this would be explicitly stated in the Act. Further, the Committee recommends that Victoria Police reviews its current approach to ongoing retention of deceased and deregistered offender information. For example, management through implementation of a ‘legacy data’ process to capture information that has ceased to form part of active offender management.

**FINDING 5:** The ongoing inclusion of deceased and deregistered offenders on the Victorian Sex Offenders Register may result in a skewed picture of sex offending in the community and runs the risk of distorting sex offender data.

**RECOMMENDATION 1:** That Victoria Police reviews the current practice of retaining deceased and deregistered offenders on the Victorian Sex Offenders Register.

## 2.3 Information and data management, security and disclosure

### 2.3.1 Data storage and management and quality

Victoria Police applies the Public Records Office of Victoria mandatory standards and supporting specifications for the management and storage of its public records.

<sup>71</sup> Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner, Office of the Victorian Information Commissioner, public hearing, Melbourne, 22 April 2021, *Transcript of evidence*, p. 38.

Specifically, Victoria Police advised the Committee that it applies the Access Standard, Disposal Standard, Storage Standard and Strategic Management Standard.<sup>72</sup>

Management and disclosure of information on the Register is primarily governed by the Sex Offenders Registration Act. The Act provides clear direction for the management of offender information, including who can be granted access to the Register and when information can be shared. It requires that access to this information must be limited to the greatest extent possible.<sup>73</sup> Victoria Police also ensures that offender information is managed in line with the *Privacy and Data Protection Act 2014 (Vic)*.<sup>74</sup>

The Office of the Victorian Information Commissioner is the primary regulatory agency for information privacy, security and freedom of information in Victoria. The Office administers the Privacy and Data Protection Act.

In its submission, the Office of the Victorian Information Commissioner drew attention to the fact that the Register is not contained in just one list or source. Rather, it comprises information held across multiple systems and locations which, as at 2019, could not be integrated.<sup>75</sup>

The Office of the Victorian Information Commissioner submitted that data consistency across two of these systems<sup>76</sup> was relatively good due to the use of unique identifiers. However, it noted that a moderate risk of inaccurate or incomplete information persisted across the other systems being used to record information on the Register.<sup>77</sup>

In its 2019 audit, the Victorian Auditor-General's Office (VAGO) noted this issue had also been highlighted by IBAC. IBAC had previously raised the risk of operating the Register across multiple databases with Victoria Police in the course of its compliance monitoring function under the Sex Offenders Registration Act.<sup>78</sup>

At a public hearing, Assistant Commissioner Gilbert told the Committee about the progress that had been made on this issue:

there is a really important part to it and that is making sure that our registry is fit for purpose for the framework that we have and certainly for case management, and case management into the future ... We have actually gone then through the VAGO report to recommendation 5, where we have now done a significant amount of work to understand what is a fit-for-purpose case management system that supports the registry and the framework that we have.<sup>79</sup>

<sup>72</sup> Victoria Police, *Submission 83*, pp. 1–2.

<sup>73</sup> *Sex Offenders Registration Act 2004 (Vic)*, ss 63, 64.

<sup>74</sup> Victoria Police, *Submission 83*, p. 2.

<sup>75</sup> Office of the Victorian Information Commissioner, *Submission 66*, p. 4 (with sources).

<sup>76</sup> Namely, the Sex Offender Registry (SOR) database and the Law Enforcement Assistance Program (LEAP).

<sup>77</sup> Office of the Victorian Information Commissioner, *Submission 66*, p. 4 (with sources).

<sup>78</sup> Victorian Auditor-General's Office, *Managing Registered Sex Offenders*, August 2019, pp. 7–9; Assistant Commissioner Chris Gilbert, *Transcript of evidence*, p. 28.

<sup>79</sup> Assistant Commissioner Chris Gilbert, *Transcript of evidence*, p. 19

The Assistant Commissioner also told the Committee that changes implemented in response to VAGO's audit recommendations had led to improvements to the collection and presentation of data. Police had also established a fit-for-future-requirements document to better integrate offender registration and case management.<sup>80</sup>

### 2.3.2 Information security

In addition to increasing the risk to data quality, the Office of the Victorian Information Commissioner noted the security impacts resulting from different and therefore inconsistent security controls due to Victoria Police's use of multiple systems. This also increased the risk of malicious or unauthorised access to information due to the increased number of systems and access points for hostile actors to manipulate.<sup>81</sup>

The Office stated that under the Victorian Protective Data Security Framework and the Victorian Protective Data Security Standards, Victoria Police must safeguard its information assets and systems. This must be done in a way that is proportionate to threats and supportive of business outcomes, in accordance with the Framework and Standards. For example, understanding the value of offender information and how to protect it would help to ensure consistency in identifying and assessing criteria for managing that information across its lifecycle. It would also help maintain its confidentiality, integrity and availability.<sup>82</sup>

At a public hearing, Assistant Commissioner Gilbert spoke generally to some of the security architecture in place for the Register, including access controls and the broader security overlay:

That is a complex issue. So internally certainly there are restrictions on access to the database from employees. Those members who are managing registered sex offenders obviously have information to certain portions of that. It is shared for those that have a need to know at the time, so there are multifactor steps for people to get access to what they need to do their job.

In terms of the broader picture, Victoria Police does have a department which has an overlay of security towards our information management systems. There are some robust processes in place. I will not talk about what they have in terms of security and what it is, but we are quite confident that Victoria Police's overarching security overlay is quite strong, and it is certainly one that is dynamic as well in terms of emerging threats.<sup>83</sup>

<sup>80</sup> Ibid., p. 9.

<sup>81</sup> Office of the Victorian Information Commissioner, *Submission 66*, p. 5 (with sources).

<sup>82</sup> Ibid. (with sources).

<sup>83</sup> Assistant Commissioner Chris Gilbert, *Transcript of evidence*, p. 4.

### 2.3.3 Disclosure of information from the Register

Victoria Police informed the Committee that disclosure of information from the Register is only available in limited and controlled circumstances under the Sex Offenders Registration Act. The Act enables police and other law enforcement agencies, government agencies and statutory bodies to share information for community safety purposes. This is outlined previously in Chapter 1.

Victoria Police also noted that a number of proponents across the community, including victim-survivors and advocates, supported information on the Register being made publicly available.<sup>84</sup> This is discussed in Chapter 3.

Some stakeholders discussed the potential for improvements to multi-agency information sharing and greater harmonisation of disclosure across jurisdictions.

Bravehearts Foundation called for a strengthening of inter-jurisdictional and multi-agency relations to enhance monitoring of sex offenders upon their release. It argued that improving resourcing of and information sharing by police and corrections agencies was critical to ensuring effective monitoring and currency of offender information.<sup>85</sup>

The Law Institute of Victoria observed that community protection and disclosure implications could benefit from greater harmonisation across the country. The Institute submitted that storing data across multiple systems increased the risk of malicious or unauthorised access. Accordingly, it considered it was important to consolidate this information.

The Institute also expressed in principle support of a pilot of a disclosure scheme in Victoria similar to the United Kingdom (this is also discussed in Chapter 3):

The [Law Institute of Victoria] is in principle supportive of a trial/pilot of a disclosure scheme in Victoria (similar to that in the UK), as long as there are appropriate limits on disclosure, access and use of personal information. In relation to the to the Victorian [Sex Offenders Register], it may bolster federal law enforcement efforts to combat child sex offending through providing these agencies with standing access to the [Sex Offenders Register].<sup>86</sup>

The Uniting Church in Australia Synod of Victoria and Tasmania drew attention to the work of AUSTRAC<sup>87</sup> in investigating reports that flagged child sexual abuse. It recommended that AUSTRAC be provided with direct access to the Register to enhance its risk analysis capabilities and better assist the federal police in preventing and disruption child sexual abuse.<sup>88</sup>

<sup>84</sup> Victoria Police, *Submission 83*, p. 3.

<sup>85</sup> Bravehearts Foundation, *Submission 69*, p. 2.

<sup>86</sup> Law Institute of Victoria, *Submission 81*, p. 5.

<sup>87</sup> The national agency responsible for preventing, detecting and responding to criminal abuse of the financial system and to protect the community from serious organised crime.

<sup>88</sup> Uniting Church in Australia Synod of Victoria and Tasmania, *Submission 19*, p. 2.

## 2.4 Evaluation and review of the Victorian Sex Offenders Register

In 2010, the Law Council of Australia issued a policy statement on the registration and reporting obligations of child sex offenders. This included a statement of nine key principles the Council considered ought to govern the operation of sex offender registries (set out in Box 2.2 below).

### **BOX 2.2: Law Council of Australia's statement of principles for the operation of child sex offender registers**

In its *Policy Statement on Registration and Reporting Obligations for Child Sex Offenders* the Law Council of Australia set out the key principles it considers ought to govern the operation of sex offender registers:

- Inclusion on a child offender register should not be arbitrary or automatic.
- An offender should be required to register only where the sentencing court is satisfied that he or she poses a risk to the lives or sexual safety of one or more children, or of children generally.
- There should be a right of appeal against a sentencing court's order that a person be required to register.
- Following a specified period of time, a person should be able to apply to have his or her name removed from the register.
- Registered persons should be informed if information about them is disclosed to a person or agency, other than a law enforcement agency or officer.
- Registered persons should only be required and requested to provide police with information in accordance with the legislation.
- Registered persons must be able to provide information to police, in accordance with their reporting obligations, and police must verify that information, in a manner which does not in and of itself jeopardise the privacy of registered persons.
- Unlawful disclosure of information on the child offender register should constitute an offence.
- Unlawful disclosure offence provisions should be accompanied by a complaints-based mechanism administered by an independent body such as the Privacy Commissioner.

Source: Law Council of Australia, *Policy Statement of Registration and Reporting Obligations for Child Sex Offenders*, 2010, pp. 3–6.

The Committee notes that several stakeholders expressed concern that the Victorian Register failed to meet or operated contrary to one or more these key principles. These concerns are discussed in Chapter 3 of this report.

The Victorian Law Reform Commission's 2011 review of the Register resulted in 79 recommendations. Recommendations that have been adopted into legislation to date have provided for:

- discretion for judges to modify reporting obligations of minors placed on the Register
- the ability for the Chief Commissioner to suspend reporting obligations of individuals who have cognitive or physical impairments
- new reporting obligations relating to reportable contact with children
- prohibition orders to limit the ability of registrants to engage in certain behaviours, restrict contact with certain persons, exclude them from certain locations etc.
- expansion of compliance monitoring oversight and Chief Commissioner's reporting obligations on the operation of the registration scheme.<sup>89</sup>

Other recommendations to improve the operation of the Act consistent with the Law Council's principles have not been implemented. These include:

- Better defining purposes of the Act including an outline of how it should operate to achieve its aims.
- Refining who is captured on the Register, including the removal of mandatory registration, provision for enhanced judicial discretion, and a proposed system of individual offender assessment.
- Providing for appeal rights in relation to the imposition of registration orders.
- Better accommodation of how registrants with cognitive and/or physical impairments are dealt with under the Act.
- Provision for time on registration orders to continue to elapse during any period of suspension from reporting obligations in certain circumstances (for example, due to being in custody).
- Provision of a statutory review mechanism in the Act.
- Undertaking a research project on the effect of Australian sex offender registration schemes on recidivism.
- Establishing a Sex Offenders Registration Review Panel to oversee transition to and implement the recommended changes.<sup>90</sup>

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<sup>89</sup> Victorian Law Reform Commission, *Sex offenders registration: final report*, pp. xxii–xxx.

<sup>90</sup> *Ibid.*

Among those not taken up was a recommendation for an independent review to inform the effectiveness and ongoing improvement of the Register. In its report, the Commission wrote:

The reviews should be conducted by independent experts with the necessary skills and resources to assess the operation and effect of the legislation. As the success of the registration scheme depends on the combined efforts of the courts, the police and government agencies, the reviewers will need to understand how they interact as well as how they are separately affected. They will also need to take into account the views of practitioners, academics, members of the community who are affected by the scheme and others with direct experience of its operations.<sup>91</sup>

Dr Davis from the Australian Psychological Society told the Committee that a review of the Register is something he would support in principle. He noted:

- there are far too many low-risk people subject to registration
- many people who pose a high risk of sexual offences against adult females are not subject to registration at all
- at present it is up to registry staff to rank the order of offenders on the register in terms of risk
- entry to the register would be better if it was based on the risk posed by the offender, rather than whether they have been charged with a particular offence (which also raises issues worth exploring, such as who should assess the risk of sexual offenders).<sup>92</sup>

As discussed previously, the operation of the Victorian sex offender registration framework has been reviewed and reported on multiple times by bodies including:

- Victorian Ombudsman<sup>93</sup>
- Victorian Law Reform Commission<sup>94</sup>
- IBAC<sup>95</sup>
- VAGO.<sup>96</sup>

However, the scheme has not been subject to an evaluation of its effectiveness in improving community safety or meeting its objectives under the Act.

In her 2019 article, Dr Simmons from the Victorian Centre for Forensic Behavioural Science concluded the Victorian Register was introduced to protect the safety of the community, but its impact is unknown. She noted the broad nature of the scheme and

<sup>91</sup> Ibid., p. 149.

<sup>92</sup> Dr Michael Davis, response to questions on notice, p. 6.

<sup>93</sup> Victorian Ombudsman, *Investigation into allegations of detrimental action involving Victoria Police*, June 2012.

<sup>94</sup> Victorian Law Reform Commission, *Sex offenders registration: final report*.

<sup>95</sup> Independent Broad-based Anti-corruption Commission, *Report to the Minister for Police: Pursuant to section 70N of the Sex Offenders Registration Act 2004 (Vic)*.

<sup>96</sup> Victorian Auditor-General's Office, *Managing Registered Sex Offenders*.

overwhelming number of low- and moderate-risk offenders who are registered. This combined with a lack of empirical evidence to support its underlying assumptions, leaves considerable doubt as to whether the Register has been useful for reducing recidivism or enhancing community safety. She wrote:

the Registry has burdened the court system, which costs taxpayers money and can delay the prosecutions of more significant matters. The Registry could be improved by revising who is registered and what their conditions are. Alternatively, other legislative options may be more useful for supervising high-risk offenders, particularly if evidence guides the assessment, supervision, and interventions of these offenders.<sup>97</sup>

The Committee notes that no evaluation on the effective operation of the Sex Offenders Registration Act has occurred since it came into operation. The lack of evaluation of the effectiveness of the scheme makes it difficult to assess whether the Register is successful in achieving its stated aims and if it does so in a fair, proportionate and efficient manner.

**RECOMMENDATION 2:** That in line with recommendation 68 of the Victorian Law Reform Commission's *Sex offenders registration: final report*, the Victorian Government amends the *Sex Offenders Registration Act 2004* (Vic) to provide for an independent review of the operation and effectiveness of the Act to be conducted as soon as practicable, and every five years thereafter. The report should be tabled in Parliament.

<sup>97</sup> Melanie Simmons, 'Evaluating the legal assumptions of Victoria's Sex Offender Registration Act 2004 from a psychological perspective', accessed 15 July 2021 (with sources).



## Public access to offender information and alternative offender interventions

### At a glance

Public sex offender registers and public disclosure schemes for child sex offender information are already in operation in jurisdictions including Western Australia, the United Kingdom and the United States.

To date evaluations of existing public registers and disclosure schemes have focused on assessing community uptake and instances of vigilantism against registered sex offenders. There has been little analysis of how these schemes impact community safety, recidivism or the rehabilitation of child sex offenders.

### Key issues

- Views on the introduction of a public sex offenders register or a limited public disclosure scheme are varied amongst victim survivors of sexual abuse, advocacy groups and the wider community.
- Possible adverse impacts of the introduction of a public sex offender register are serious. Consequences may include:
  - impeding offender rehabilitation and reintegration, possibly increasing recidivism
  - encouraging vigilantism by exposing the identity of offenders
  - promoting inaccurate community perception of the risk posed by child sex offenders
  - identification and re-traumatisation of victims and their families
  - encouraging offenders to evade the attention of law enforcement by concealing their identity or location.
- Operation and impacts of limited public disclosure schemes can differ from public registers:
  - incidences of vigilante behaviour are less of a concern where stricter rules governing access to and use of offender information are in place

*(Continued)*

### Key issues (*Continued*)

- a comparatively small cohort of offenders are subject to public notification provisions
- a perception of improved compliance with reporting obligations under public notification frameworks.
- Programs aimed at rehabilitating convicted child sex offenders and reintegrating them into the community can reduce recidivism.

### Findings and recommendation

**Finding 6:** Any expansion to provisions for the disclosure of information under the *Sex Offenders Registration Act 2004* (Vic) should be informed by a robust, peer reviewed, empirical evidence base.

**Finding 7:** Programs aimed at rehabilitating convicted child sex offenders and reintegrating them into the community can reduce recidivism. As such they are an important complement to the *Sex Offenders Registration Act 2004* and other legislation and policies aimed at safeguarding the community's sexual safety.

**Recommendation 3:** That the Victorian Government refers to the Victorian Law Reform Commission (or other appropriate body) an inquiry into the circumstances in which a limited public disclosure scheme for registered sex offender information could be trialled. This inquiry should:

- Include consideration of the legal framework, including but not limited to:
  - appropriate privacy protections
  - appropriate limits on the amount and type of information disclosed
  - appropriate limits on the access and use of information disclosed
  - interaction with existing information access regimes.
- Have regard to:
  - limited disclosure schemes operating in the United Kingdom and Western Australia
  - relevant federal laws and regulations.
- Consider how a trial could best be structured to assess its capability to prevent and reduce child sexual offending.

Any recommendations for the conduct of a trial must include a framework to collect evidence from its operation and evaluate the effectiveness of the trial against its stated purposes.

### 3.1 Public Registers and Notification Schemes

A common view expressed by stakeholders who gave evidence in a personal capacity to the Committee during this Inquiry was the need for a public sex offenders register. The Committee notes that calls to develop publicly available registers based on overseas models such as ‘Megan’s Law’ in the United States have gathered significant community support and momentum over time.

Stakeholders including high-profile advocates such as the Daniel Morcombe Foundation as well as victim-survivors and other advocates argued for similar initiatives in Victoria. For example, the Committee heard that ‘Daniel’s Law’ (described in Box 3.1 below) would improve child safety outcomes and better enable parents and others to protect children from sexual harm and abuse.

#### BOX 3.1: Daniel’s Law

Daniel’s Law is named in memory of 13-year-old Daniel Morcombe who was abducted and murdered by twice convicted paedophile Brett Cowan in 2003. Daniel’s Law proposes the development of a national public sex offender register that would operate akin to Megan’s Law in the United States.

Key features of Daniel’s Law:

- a sex offenders register that is federally funded and freely accessible to the public
- offenders who would be captured on the register include:
  - all adult sex offenders convicted of a sexual crime against a child, including downloading child sexual abuse material
  - currently and previously incarcerated adult offenders with extensive history of repeat offending
- does not include any offenders aged under 18 years
- preserves the anonymity of child victims
- captures key identifying particulars of offenders, including the geographic area of residence, a current photo, and identifying features such as tattoos or unusual/unique posture, gait or stance
- has functionality to both search by area for resident offenders, and for specific individuals
- requires offenders to be registered for a minimum of 10 years after release from prison, with judicial discretion to adjust the registration period based on the level of offending
- provides for strong anti-vigilantism laws to protect the physical wellbeing and safety of people on the register.

Source: Daniel Morcombe Foundation, *Submission 74*, pp. 1-2.

Public disclosure provisions vary in operation and by degree of information that is disclosed (and to whom). Generally speaking they can be categorised as follows:

- **Broad community notification or general disclosure:** what is typically meant by a ‘public register’.
- **Limited disclosure:** meaning particular individuals who are assessed as at risk from an offender, or organisations that deal with children, are provided with specific information about a particular offender.
- **Restricted access:** where legislation allows for specific individuals or organisations to obtain information on an offender on a ‘need to know’ basis, for example law enforcement or child protection organisations.<sup>1</sup>

Common arguments made in support of public register schemes include:

- They enable people to be educated about the geographical whereabouts of high-risk offenders in the privacy of their own home (for example single mothers at risk of predation).<sup>2</sup>
- They act as a deterrent against offending.<sup>3</sup>
- They support and assist police management of offenders.<sup>4</sup>
- The public have the right to be informed and consequently better able to protect themselves and their children from sexual predators.<sup>5</sup>
- The rights of children to be protected from sexual offending are a higher priority than an offender’s right to privacy.<sup>6</sup>

### 3.1.1 Jurisdictional snapshots: United States, United Kingdom and Western Australia

In considering public notification schemes Committee looked at three jurisdictions that operate some form of public information disclosure scheme (to varying degrees) as part of their respective sex offender registry frameworks:

- **United States:** a matrix of state-based registration schemes and overarching federal legislation requiring public disclosure of offender information by all jurisdictions, commonly referred to as ‘Megan’s Law’.
- **United Kingdom:** a limited public disclosure scheme enacted at a national level and administered by local law enforcement, known as ‘Sarah’s Law’.

1 Bravehearts Foundation, ‘Community Notification of Sex Offenders’, *Position Paper*, November 2017, p. 8.

2 Daniel Morcombe Foundation, *Submission 74*, p. 1.

3 Daniel Morcombe Foundation, *Submission 74*, p. 2; Craig Horne, *Submission 35*, p. 1; Project Karma, *Submission 70*, pp. 3–4; Name withheld, *Submission 24*, p. 1.

4 Daniel Morcombe Foundation, *Submission 74*, p. 2.

5 Project Karma, *Submission 70*, p. 2; Name withheld, *Submission 24*, p. 1.

6 Project Karma, *Submission 70*, p. 10.

- **Western Australia:** a limited public disclosure scheme enabling people to apply for access to offender information, which is granted at the discretion of the police commissioner.

A summary overview of each of these schemes appears in Boxes 3.2, 3.3 and 3.4, respectively.

### **BOX 3.2: United States Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking**

#### **Megan's Law**

Sex offender registration and notification in the United States started in 1947, with several states enacting some form of registration system between 1947 and the 1980s. By 1996 all states had their own sex offender registration and notification systems in place.

Megan's Law is the federal law enacted in 1996 in response to the abduction, assault and murder of Megan Nicole Kanka in 1994. It requires authorities to make information of registered sex offenders available to the public, although the extent of available information and other legislative settings vary at a state level.

#### **Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART)**

SMART supports the implementation of the *Sex Offender Registration and Notification Act 2006* (US) (SORNA) and assists criminal justice professionals across a spectrum of sex offender management activities.

SORNA provides for minimum standards for sex offender registration and notification in the US. It aims to close potential loopholes that existed under previous laws and strengthens the nationwide network of sex offender registration and notification programs.

SMART also manages the *Dru Sjodin National Sex Offender Public Website*, established in 2005. This combines information from State, Territorial and Tribal public sex offender registers into a single, searchable website and is also available as mobile app. The website provides a search function for information on registered sex offenders who live, work or attend school in a particular area. It is funded by the United States Department of Justice and available to public users at no cost. The national website exists in addition to public registry websites provided by individual jurisdictions.

**(Continued)**

**BOX 3.2: Continued**

Before conducting a search on the website, users must agree to conditions of use, which include the rules governing acceptable and unacceptable use of the information obtained. Conditions of use vary according to the jurisdiction being searched.

The website also provides users with information about sexual abuse and how people can protect their families and themselves from potential victimisation.

Sources: Ms Stephanie Carrigg, SMART Senior Policy Adviser, public hearing, via video conference, 26 May 2021, *Transcript of evidence*, pp. 20–23; Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, *Legislative History of Federal Sex Offender Registration and Notification*, March 2020, <<https://smart.ojp.gov/sorna-archived/legislative-history-federal-sex-offender-registration-and-notification>> accessed 16 July 2021; Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, *SORNA*, (n.d.), <<https://smart.ojp.gov/sorna>> accessed 16 July 2021.

At a public hearing, representatives from SMART discussed some additional points in relation to the operation of SORNA:

- There is no federal registry in the United States. States, Territories and Tribes have their own registration and notification systems. SMART provides federal guidance to jurisdictions on creating more uniform systems and implementing federal standards under SORNA.<sup>7</sup>
- Public information and law enforcement information are distinct and separate. Public information is hosted on the *National Sex Offender Public Website* and overseen by SMART. The Federal Bureau of Investigation is responsible for the National Sex Offender Registry, which operates as a law enforcement tool and is not available to the public or SMART.<sup>8</sup>
- SORNA and individual jurisdictions prohibit the making of certain information public, including victim-identifying information.<sup>9</sup>

<sup>7</sup> Ms Stephanie Carrigg, *Transcript of evidence*, p. 23.

<sup>8</sup> Ibid.

<sup>9</sup> Ms Marnie Dollinger, SMART Senior Policy Adviser, public hearing, via video conference, 26 May 2021, *Transcript of evidence*, p. 24.

### **BOX 3.3: United Kingdom Limited Disclosure Scheme for Child Sex Offender Information (Sarah's Law)**

#### **Establishment of a pilot limited public disclosure scheme**

The United Kingdom limited public disclosure scheme for child sex offender information was first established as a pilot scheme in four areas<sup>a</sup> over a 12-month period commencing in September 2008. The scheme is commonly referred to as 'Sarah's Law' after Sarah Payne, who was abducted and murdered by a man with a previous conviction for abducting and indecently assaulting another young girl. The pilot disclosure scheme aimed to provide a process whereby public could register their child protection interest in a named individual. If that individual had convictions for child sex offences and was considered a risk, there would be a presumption that relevant information relating to that individual would be disclosed to the relevant member of the public.

#### **Who can apply for offender information and when is information released?**

The limited public disclosure scheme enables members of the public to ask the police whether an individual (e.g. a neighbour or family friend) is a convicted sex offender.

Under the scheme anyone can make an application about a person who has some form of contact with a child or children. This could include any third party such as a grandparent, neighbour or friend.

If the subject of an application has convictions for sexual offences against children, poses a risk of causing harm to the child concerned, and disclosure is necessary to protect the child, there is a presumption that this information will be disclosed. Under the scheme, disclosure will only be made to a parent, carer or guardian. Disclosure may be made to others where it is deemed that the provision of information will better enable someone to protect a child. In such cases police will disclose the information to whomever they consider appropriate. In any event disclosure may not always be to the original applicant.

#### **Review of the pilot scheme**

At the end of the pilot, the scheme was subject to an independent evaluation by De Montfort University, Leicester. A total of 585 enquiries were made during the course of the pilot. Of these, 315 proceeded as applications, leading to 21 information disclosures. A further 43 applications resulted in child safeguarding actions other than a disclosure, such as referral to social services.

Police and other criminal justice agencies saw benefits in the formalisation of processes, the provision of increased intelligence and the provision of a better route in for the public to make enquiries should they have concerns.

*(Continued)*

**BOX 3.3: Continued**

The review found that police and offender managers who were interviewed had a perception that the disclosure scheme formalised what they thought should be good practice in child protection. It was seen as providing greater clarity for staff by focusing on risk, focusing on the child, and permitting the sharing of information with members of the public. Police interviewees said the pilot had ‘sharpened up’ child protection work by tightening procedures and being explicit about what the public could expect.

The review also found the impact of the pilot scheme on registered child sex offenders to be negligible. Based on interviews conducted with a small group of offenders, the evaluation reported that initial anxiety held by offenders at the outset of the pilot decreased over time as they accepted it as an extension of existing controls. Changes in offender behaviour or compliance with registration and probation supervision were not reported or observed.

The review of the pilot scheme in both England and Scotland suggested limited and controlled disclosure of information to community members had fewer negative consequences than blanket disclosure, such as Megan’s Law in the United States.

**Expansion and permanent adoption of the pilot program**

In August 2010 the United Kingdom Government announced that the scheme would be expanded to a further 20 police force areas by October 2010. In 2014, this scheme was rolled-out across England and Wales and, shortly thereafter, Scotland introduced a similar scheme following its own pilot program.

- a. Cambridgeshire, Cleveland, Hampshire and Warwickshire.

Sources: United Kingdom Home Office, *Submission 68*; Bravehearts Foundation, *Submission 69*; United Kingdom Government, *The Child Sex Offender (CSO) Disclosure Scheme Guidance Document*, <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/184095/disclosure-scheme-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/184095/disclosure-scheme-guidance.pdf)> accessed 6 May 2021.

Mr Robert Jones, Director, Threat Leadership, United Kingdom National Crime Agency, expanded on the operation of Sarah’s Law at a public hearing:

the intent of the scheme, is to allow members of the public—so for instance in a scenario where somebody was engaging in a new relationship with somebody and they were concerned about their history or there were some signs there that raised concerns ... there is a formalised proportionate route into policing to allow a check to be made. And then if there is a disclosure made ... there is a restricted disclosure made on the basis of no further disclosure to the individual who made the inquiry. So it is a very valuable tool for people who could be getting themselves into an exploitative relationship or, most worryingly—and we see this all the time—engaging in a relationship with somebody that turns out to be a predatory paedophile who is trying to get to the children of a partner that they have just developed a relationship with. So we see it as a really good, strong tool. If disclosures are made, following the policy and procedure and practice, they

should then end up on local police intelligence systems and the police national database. So that point again around data holdings becomes relevant. If we, for instance, had a referral, we checked the police national database and we saw there had been an inquiry about an individual trying to get access to children and that had pinged on that system, that would highlight a problem to us in terms of prioritising threat, harm and risk. So we see it as positive; we see it as a good step forward. It is something that works well and it fills a need that the public were very vocal about in terms of people being able to protect themselves and create resilience in potential victims and survivors.<sup>10</sup>

The National Crime Agency also provides a public online reporting tool that operates alongside Sarah's Law, called ClickCEOP. The ClickCEOP website enables members of the public to report any concerns they may have in relation to online child sexual abuse directly to the Agency. These reports are reviewed on a daily basis by a dedicated team of qualified social workers in the Agency's Child Protection Advisor team. Team members conduct a risk assessment and respond accordingly. When cases meet a certain threshold, the team contacts the individual who made the report. There is also facility for urgent referrals to be responded to as needed.<sup>11</sup>

Mr Jones expanded on the aim and effectiveness of the ClickCEOP program:

It is primarily safeguarding. One of the outcomes from it is there may be a dividend in terms of intelligence or criminal investigation, but it starts with safeguarding, particularly because it is meant to appeal to children themselves or parents, carers or professionals. So that disclosure regime—in 2020–21 there were over 1200 children safeguarded as a result of that reporting tool. ... Our focus with this reporting tool is to give somebody who is in a really difficult situation the ability to reach out and report to get them safeguarded. It is not a crime-reporting tool; it is not out there to generate criminal intelligence. It is out there to safeguard children, and at the end of that reporting tool we have got child protection advisers who work in that multidisciplinary environment in CEOP who have got investigative insight.<sup>12</sup>

<sup>10</sup> Mr Robert Jones, Director, Threat Leadership, United Kingdom National Crime Agency, public hearing, via video conference, 26 May 2021, *Transcript of evidence*, p. 11.

<sup>11</sup> United Kingdom National Crime Agency, *Submission 72*, pp. 9–10.

<sup>12</sup> Mr Robert Jones, *Transcript of evidence*, p. 14.

### BOX 3.4: Western Australia Community Protection Offender Register and Public Notification Scheme

#### Community Protection Offender Register

Similar to the *Sex Offenders Registration Act 2004* (Vic), the *Community Protection (Offender Reporting) Act 2004* (WA) establishes the Western Australian sex offender registration scheme. As with the Victorian legislation, the Western Australian Act is based on the national model legislation agreed to by the Australasian Police Ministers' Council in June 2004.

A public information disclosure scheme was added to Western Australia's registration framework in 2012.

#### Publication Notification Scheme for registered sex offender information

In 2012, a new pt 5A was inserted into the Act<sup>a</sup> to provide for a limited public notification scheme for registered sex offender information. The purpose was to provide information on known sex offenders to assist in the protection and safety of children. Under the public notification scheme the Police Commissioner may publish or disclose certain registered sex offender information where the offender is aged over 18.<sup>b</sup>

The Public Notification Scheme has three components:

- **Missing Reportable Offenders Register:** a public register of information on adult registered sex offenders who are in breach of reporting obligations and whose whereabouts are unknown to police. Information is provided through the Community Protection Website and users must agree to conditions that they will not misuse the information obtained.
- **Locality Search Register:** a register that includes the photograph and locality of certain registered sex offenders considered to be high-risk or dangerous. No other identifying information is published. Discretion to include offenders on the register is vested in the Police Commissioner, who must inform and provide offenders a chance to be heard before they are listed.<sup>c</sup> People can apply via the Community Protection Website for access to information on registered offenders who reside in the same or an adjacent suburb to the applicant.
- **Disclosure Scheme:** enables a parent or guardian of a child to apply to the Police Commissioner to request confirmation of whether a particular individual who has regular, unsupervised contact with their child is a registered offender. Disclosure of any information is at the discretion of the Police Commissioner.

*(Continued)*

**BOX 3.4: Continued****Offence to misuse information obtained through the Public Notification Scheme**

The Western Australian Act establishes two offences for misusing registered sex offender information obtained through the Public Notification Scheme:

- Public conduct that is intended or likely to incite animosity or harassment of a registered sex offender whose information is released or published through the Public Notification Scheme. Likely conduct carries a penalty of 2 years imprisonment and intentional conduct is penalised with 10 years.
- Unauthorised publication, display or distribution of identifying registered sex offender information obtained through the Public Notification Scheme, penalised by two years imprisonment.

**2018 Review of the Public Notification Scheme**

In 2018, a review of the Public Notification Scheme was conducted by a Reference Group on behalf of the Minister for Police.<sup>d</sup> The Reference Group examined and identified aspects of the scheme which could be enhanced to make it a more effective tool for community protection. It found that:

- The scheme had met its identified purpose and its legislative basis had proven sound.
- The rules governing what offender information can be released are complex; additional contextual information is needed to clarify to the community which offenders are and are not covered by the scheme.
- Legislative provisions for the Locality Search Register are complex and could be simplified.
- The Community Protection Website could be used to educate the public/raise awareness of sex crime prevention and provide additional information about situational crime prevention strategies to help keep children safe.
- The operation of the Community Protection Website could be refined to provide police with more accurate usage data and information.
- The effectiveness of the disclosure scheme could be enhanced by streamlining its application process.
- It did not appear that the Public Notification Scheme had increased instances of vigilantism against, or harassment of, sex offenders. However, the lack of a reporting mechanism incorporated in the scheme made this difficult to measure.
- The Police Commissioner has appropriate discretionary powers to decide whether adult offender information should be released through the scheme.

*(Continued)*

**BOX 3.4: Continued**

The Reference Group also made 10 recommendations to improve the Public Notification Scheme. The Western Australian Government was not required to respond to the findings and recommendations.

- a. Part 5A was inserted into the principal Act by the *Community Protection (Offender Reporting) Amendment Act 2012* (WA).
- b. Information on registered sex offenders under the age of 18 is excluded from and may not be disclosed under this scheme.
- c. *Community Protection (Offender Reporting) Amendment Act 2012* (WA), s 85G.
- d. *Review of the operation and effectiveness of the Public Notification Scheme established by Part 5A Community Protection (Offender Reporting) Act 2004*.

Sources: Western Australia Police Force, *Review of the operation and effectiveness of the public notification scheme established by Part 5A Community Protection (Offender Reporting) Act 2004*, 2018; *Community Protection (Offender Reporting) Act 2004* (WA); Government of Western Australia, *Community Protection Western Australia*, <<https://www.communityprotection.wa.gov.au/About>> accessed 31 March 2021; Office of the Commissioner of Police (WA), *Submission to the WA Legislative Council Standing Committee on Environment and Public Affairs' Inquiry into the Mandatory Registration of Children and Young People on the Sex Offenders Register*, 2019, <[https://www.parliament.wa.gov.au/Parliament/commit.nsf/lulnquiryPublicSubmissions/A184B28FB4BC12CA482584110011218D/\\$file/ev.sor.021.190529.sub.WAPOL.pdf](https://www.parliament.wa.gov.au/Parliament/commit.nsf/lulnquiryPublicSubmissions/A184B28FB4BC12CA482584110011218D/$file/ev.sor.021.190529.sub.WAPOL.pdf)> accessed 1 April 2021; Law Council of Australia, *Policy Statement of Registration and Reporting Obligations for Child Sex Offenders*, 2010, p. 1.

The Committee notes the Western Australian scheme differs from the public registry and notification schemes operating in the United States and the United Kingdom. The cohort of listed offenders in Western Australia is comparatively much more limited, showing only dangerous, high-risk and recidivist offenders who reside in close proximity to the person seeking information. Additionally, safeguards against vigilante behaviour include:

- criminalisation of vigilantism and the creation of vigilante-related offences
- identity verification of persons conducting a search and identifiable watermarks on the information provided
- provision for 'extraction plans' for certain offenders in the event of vigilante attack.<sup>13</sup>

Unfortunately the Committee did not have an opportunity to speak to representatives from Western Australia about the operation and effect of its public notification scheme.

<sup>13</sup> Bravehearts Foundation, *Submission 69*, p. 7.

## 3.2 Public notification under the Victorian Sex Offenders Register Framework

As discussed in Chapter 1, the Victorian Sex Offenders Register does allow for sex offender information to be disclosed in certain circumstances.

It primarily operates as a restricted access register that allows for information to be disclosed to specific people and organisations on a ‘need to know’ basis. However, the legislation also permits disclosure of offender information to members of the public in certain, specific circumstances. In essence this means the Register does operate as a limited disclosure scheme, albeit with a very narrow scope.

An overview of information disclosures permitted under the *Sex Offenders Registration Act 2004* (Vic) is in Chapter 1.

Assistant Commissioner Chris Gilbert, Intelligence and Covert Support Command, Victoria Police, explained how and to what extent the Register operated as a public disclosure scheme:

In terms of disclosure of information to the public, Victoria has a limited disclosure scheme. In effect there is information about registrants in certain circumstances which may be shared with the public ... and that would largely be in circumstances where the whereabouts of a registered sex offender were not known. If there was a concomitant risk to the community in that absence, we would certainly then go through a rigorous process of trying to locate that registered sex offender, and when those avenues of inquiry were fairly much ended, we would then go to the public and release some information to help us locate that person. That is obviously balanced with the reasons why they are missing, how long they have been missing and a whole range of factors which are risk assessed.

...

If required, also in limited circumstances and if there was some other significant risk to community safety for whatever purpose that Victoria Police assessed, the Act also would allow us to make a disclosure based on that. So those circumstances would really be treated case by case: ‘What is the significant safety risk to the community which would cause Victoria Police to make a disclosure?’, which is a tool that goes beyond just those that are missing or whose whereabouts are unknown. Overall, the way that we store, manage and disclose information ensures that appropriate restrictions required for the management of registrants are required at all times, also allowing for information sharing and disclosure when those identified risks arise.<sup>14</sup>

Assistant Commissioner Gilbert also advised that while Victoria Police accepted that public access to offender information may sometimes be appropriate, any changes would be taken on an evidence-based approach. He cautioned that public availability

<sup>14</sup> Assistant Commissioner Chris Gilbert, Intelligence and Covert Support Command, Victoria Police, public hearing, Melbourne, 22 April 2021, *Transcript of evidence*, p. 2.

of such information was not always in the public interest. In addition, he believed it could even create a risk to community safety if not accompanied by appropriate risk mitigation:

Any framework would need to really carefully assess the individual circumstances of registrants and interested parties, consider broader community safety issues and other potential impacts and then balance the possible risks of access to this information against potential mitigation strategies—a complex environment.<sup>15</sup>

However, Assistant Commissioner Gilbert also noted that limited public disclosure schemes, such as the Western Australian model, could provide some positive outcomes if implemented in Victoria:

Look, I am aware that [Western Australia has] a disclosure scheme where there is more opportunity for disclosure under that scheme than we currently have here ... anything that would add that layer of community safety without diminishing all of the positives is certainly something we are willing to have a look at. So yes, I am aware of that, and I would be really keen to see what sort of validated research around that would be of benefit to the Victorian community.<sup>16</sup>

He also noted that any broadening of public access to information would have to be balanced against its potential to undermine other objectives of the registry. This includes:

- Preventative factors that deter people from committing crimes (e.g. strong prosocial relationships, housing and employment and access to services).
- The potential for negative behaviours or outcomes to be directed towards registrants, their families and others.<sup>17</sup>

In its submission, the Office of the Victorian Information Commissioner outlined several underlying principles that should be considered for any broadening of access to information on the Register (see Box 3.5 below).

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<sup>15</sup> Ibid., pp. 2-3.

<sup>16</sup> Ibid., p. 6.

<sup>17</sup> Ibid., p. 3.

### **BOX 3.5: Underlying considerations for broader public access to registered sex offender information**

#### **Any infringement on the right to privacy must not be arbitrary**

The extent to which an offender's or victim's identity is apparent or can be reasonably ascertained from offence details must include a presumption that at least some the information will remain confidential as it relates to offenders' and victims' privacy. The circumstances in which the details of child sex offences can be disclosed must include a specific need to make that information public. Interfering with offenders' privacy must be necessary and proportionate, for the prevention of crime, or in the interests of public safety (in particular, child safety).

#### **Appropriate limits should apply to any disclosure of personal information**

The amount of personal information to be made public is relevant in determining the necessity and proportionality of disclosure: the more personal information is disclosed, the stronger the public interest needs to be to justify the interference with privacy. Only information that is necessary to prevent harm to children should be disclosed. Further consideration should be given as to whether all or only certain categories of offenders should be subject to a public disclosure scheme.

#### **Appropriate limits should apply to the access and use of personal information**

The sensitivity and significance of the information on the Register and the purpose for which it is collected and maintained means there should be limits on who may access the information, when, and broadly how individuals may use that information. For example, a public register available on a website with no limits or conditions on access could result in individuals accessing and using the information for purposes other than ensuring child safety. Further, while offenders may only be required to report their information for a period of time, if their information is made public without limit, it could be used for longer than the reporting period. To mitigate risks to privacy, consideration should be given to limiting who may access the information and limiting how the information is used.

#### **Interaction with existing information access regimes should be clear and consistent**

Consideration should be given to how public access is provided in practice and how that would interact with other disclosure schemes, such as freedom of information (FOI) requests (from which the Register is exempt). Any development of a disclosure scheme should be administered outside the FOI Act, and clear guidance on how offender information is accessed should be provided to streamline disclosure and ensure consistency in approach.

Source: Office of the Victorian Information Commissioner, *Submission 66*, pp. 6–8.

### 3.3 Stakeholder views on the operation of public sex offender registers

The effects and operation of public sex offender registers were discussed at length by a number of stakeholders during the Inquiry. Particular issues raised were:

- deterrence and impact on recidivism, particularly that public registers had no impact on recidivism and in some cases could effect higher rates of sexual reoffending
- risk of vigilantism against registered offenders as a potential consequence of offender information being publicly available
- the false sense of security created by knowing if someone is or is not on a register obscures the reality that public registers only represent a fraction of offenders actually in the community
- the risk of driving offenders ‘underground’ to evade the attention of law enforcement and other authorities
- the risk of identification and/or retraumatisation of victims in light of the potential for an offender’s or victim’s identity to be discerned from available registry information
- a lack of empirical evaluation of the impact and effectiveness of public notification schemes and the majority of research into public registries indicating their effect is limited at best.

#### 3.3.1 Deterrence and impact on recidivism

The arguments relating to recidivism of sexual offenders discussed in Chapter 2 are equally relevant to this issue in the context of public registers. However, the Committee heard some evidence that specifically addressed this issue in the context of public registry frameworks.

Child protection organisation Bravehearts Foundation cited research from a number of studies into the effectiveness of United States sex offender registration and notification laws based on Megan’s Law. The research generally showed these measures:

- had not impacted significantly on recidivism rates of convicted offenders
- had not had a significant impact on overall sexual or general reoffending rates of sex offenders in the past two decades
- did not act as a deterrent as they had not reduced sexual offending by first-time offenders

- had been shown to have adverse impacts on offender reintegration, such as the ability to obtain housing, employment, and prosocial supports, all of which are significant risk factors for reoffending.<sup>18</sup>

Liberty Victoria, an organisation promoting human rights and civil liberties, highlighted a 2018 review of recent empirical evidence on the effect of sex offender registries conducted by the Australian Institute of Criminology. The review found that while public sex offender registries may have a small general deterrent effect on first time offenders, they did not reduce recidivism. Further, despite having strong public support, they appeared to have little effect on levels of fear in the community.<sup>19</sup>

The Committee notes the Australian Institute of Criminology's observation of a potentially small deterrent effect of public registries is in contrast to the research cited by Bravehearts Foundation, which indicated no deterrent effect. However, the Institute also observed that the majority of studies did not separate the effects of non-public registration from public notification under Megan's Law, and these two components may work in conflict with each other. It found that:

At best, the apparent negative consequences of community notification may cancel out the specific deterrent effect of sex offender registration. At worst, these consequences may lead to higher rates of sexual recidivism in some neighbourhoods.<sup>20</sup>

Liberty Victoria noted the evidence reviewed by the Institute overwhelmingly found no significant differences in recidivism between sex offenders on public registries and unregistered sex offenders. It further drew attention to several other studies that variously concluded that public registers:

- failed to reduce sexual offending rates generally
- failed to reduce recidivism of registered sex offenders
- failed to assist users in successfully predicting or anticipating the locations of sexual offending.<sup>21</sup>

In particular, Liberty Victoria urged the Committee to have regard to the findings that 'public notification may have the perverse effect of increasing recidivism':

Decades of public sex offender registration schemes in the United States have achieved little, if anything, by way of reducing the harms arising from sexual offending. Indeed, in some cases, registration can make matters worse.<sup>22</sup>

<sup>18</sup> Bravehearts Foundation, *Submission 69*, pp. 4–5 (with sources).

<sup>19</sup> Sarah Napier et al., 'What impact to public sex offender registries have on community safety?', *Australian Institute of Criminology Trends & issues in crime and criminal justice*, No. 550, May 2018, p. 1.

<sup>20</sup> *Ibid.*, p. 8.

<sup>21</sup> Mr Sam Norton, Senior Vice-President, Liberty Victoria, response to questions on notice received 4 June 2021, pp. 4–5 (with sources).

<sup>22</sup> *Ibid.*, p. 5.

### 3.3.2 Risk of vigilantism

The danger of vigilante behaviour being taken against registered offenders was raised as a potential consequence of public registry and notification schemes.

The Committee received evidence from Dr Michael Davis, Chair, Victorian Branch, and National Chair-Elect, Australia Psychological Society. He told the Committee that research undertaken in the United States indicated vigilantism was a problem in jurisdictions with broad public registers:

There is a rather large study from America looking at over 1500 sex offenders, and they found that 44 per cent of them experienced threat or harassment by their neighbours, 20 per cent experienced threat or harassment in general, for 14 per cent there was property damage and 8 per cent had physical attacks, and beyond that almost a third of them ended up losing their jobs by being identified on a public register and approximately half of them said they were experiencing stress, shame, hopelessness and a loss of social supports.<sup>23</sup>

He echoed a view consistent with several other stakeholders that the risk factors for committing sexual offences were often exacerbated by the effect of public registers.

However, the Committee contrasted this with evidence relating to the Western Australian and United Kingdom schemes. This suggested that incidences of vigilante behaviour were less of a concern where stricter rules governing access to and use of offender information were in place.

Mr Jones from the National Crime Agency stated he was not aware of any issues regarding vigilantism in the United Kingdom:

I am not aware of any issues with Sarah's law, the [Child Sex Offender Register] declaration regime, in relation to vigilantism. We are concerned around vigilantism in uncontrolled disclosures, but we do see and recognise the need to make disclosures publicly. We do not have a public register in the UK and there is a lot of debate about that<sup>24</sup>

While in relation to Western Australia's public notification scheme, Bravehearts Foundation submitted that in the first 29 months since its introduction only one person had been charged with vigilantism. It believed this indicated the safeguards implemented to minimise vigilante behaviour under that scheme have been successful.<sup>25</sup>

However Assistant Commissioner Gilbert informed the Committee that vigilantism was 'not just a concept; it can and does occur'. He told the Committee he was aware of instances of adverse actions taken against people whose status had been divulged.

<sup>23</sup> Dr Michael Davis, Chair, Victorian Branch, and National Chair-Elect, Australian Psychological Society, College of Forensic Psychologists, public hearing, Melbourne, 13 May 2021, *Transcript of evidence*, p. 9.

<sup>24</sup> Mr Robert Jones, *Transcript of evidence*, p. 11.

<sup>25</sup> Bravehearts Foundation, *Submission 69*, p. 7.

The Assistant Commissioner noted that notwithstanding the very low rates of occurrence, vigilantism remained a live issue for Victoria Police.<sup>26</sup>

### 3.3.3 Perceptions of safety

Bravehearts Foundation expressed concern that public notification schemes could engender a ‘false feeling of comfort’ as they only provide information on a small number of offenders. The Committee heard a similar view from Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner at the Office of the Victorian Information Commissioner. She pointed out that, by definition, offender information available to the public would only represent a ‘small slice’ of offenders actually in the community.<sup>27</sup>

Dr Kelly Richards, Associate Professor, School of Justice, Queensland University of Technology, expanded on the issue at a public hearing. She highlighted the prevalence of child sex offending:

one of the key messages there—and again I think this is where registers miss the mark—needs to be that there is a child sex offender in every postcode. So when I hear this weird narrative about, you know, ‘Parents need a public register so that they can see if there’s a child sex offender in a postcode’, I mean, there is a child sex offender in every postcode. We might not know who they are, but you have to remember that we only catch a small proportion of these people

Dr Richards argued that many people were unaware of the prevalence of child sexual offending, particularly given a large majority of offences go unreported. She noted that given most perpetrators in most circumstances offended against one child, by extension there were lot of perpetrators in the community. She told the Committee that the idea of just knowing ‘where this one particular person is in our postcode’ was ‘really disingenuous’ and ‘disempowers parents’.<sup>28</sup>

Mr Glen Hulley, Founder of Project Karma, an organisation that advocates for child safety and protection, submitted:

Anonymity is often how these offenders are able to hide in plain sight in our communities for years and years, it’s often how they are able to perpetuate and continue their crimes.<sup>29</sup>

However, Dr Davis noted the general perception that knowing the whereabouts of registered offenders increases community safety was not necessarily borne out:

I have this sort of conflict myself. I got asked in court one day, ‘Doctor, shouldn’t the people in Mr X’s community know that he is living there?’, and I said, ‘Your Honour, as a

<sup>26</sup> Assistant Commissioner Chris Gilbert, *Transcript of evidence*, pp. 8, 13.

<sup>27</sup> Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner, Office of the Victorian Information Commissioner, public hearing, Melbourne, 22 April 2021, *Transcript of evidence*, p. 33.

<sup>28</sup> Dr Kelly Richards, Associate Professor, School of Justice, Queensland University of Technology, public hearing, Melbourne, 22 April 2021, *Transcript of evidence*, p. 51.

<sup>29</sup> Project Karma, *Submission 70*, p. 4.

citizen I think I would like to know, but as a forensic psychologist I know I am probably better off not knowing'. I think that is probably the best way of looking at it here. I think knowing that information is not really going to help.<sup>30</sup>

### 3.3.4 Risk of driving offenders underground or into 'offender communities'

Another criticism of public registers was the claim that they may encourage sex offenders to evade the attention of law enforcement. This may include changing their identity or concealing their whereabouts. This makes it difficult for authorities to keep track of offenders, or to ensure they are within reach of treatment and rehabilitative services. It is also argued that offenders may seek to go underground to enable them to more easily reoffend.

The Committee did not receive much evidence relating to this argument. However, the Bravehearts Foundation observed in relation to the Western Australian scheme that this concern appeared not to have come to fruition:

A key concern reported by Whitting et al. (2016) was that the introduction of the scheme would lead to offenders going underground. This concern does not appear to have come to fruition. On the contrary, there was a perception among those interviewed that the introduction of the scheme had improved compliance, at least among some offenders. A few offenders who had failed to report and whose whereabouts were unknown reportedly 'surrendered' themselves to police upon being published on the missing offenders register.<sup>31</sup>

### 3.3.5 Identification and re-traumatisation of victims

Public sex-offender registries run the risk of inadvertently disclosing the identity of victims. This is particularly true in cases of intra-familial sex offenders, who constitute the majority of registered offenders. Inadvertent or unintentional victim identification is a violation of privacy and may compound a victim's trauma.

Ms Ashleigh Cooper, a victim survivor and sexual abuse advocate, told the Committee she was opposed to a public registry. She expressed concern for the impact it could have on a victim's right to privacy and broader effects on family members:

I do not want a wide open public registry. I can be swayed on this, however. If we look at the data that we do have through the ABS and the personal safety survey, the 2016 and 2018 ones, we know that much sexual offending occurs within families and people very closely linked with families. So if we have it public, open for anybody to just drop it into Google and see, I very much wonder about a victim's right to privacy and outing the family, also remembering it is not just the victim, it is the people very closely connected to them. If it is somebody's dad that is on the registry, you are also outing the mum,

<sup>30</sup> Dr Michael Davis, *Transcript of evidence*, p. 13.

<sup>31</sup> Bravehearts Foundation, *Submission 69*, p. 8.

you are also outing all the siblings and the extended family, and I worry about what that means for those people as they move through the community and different stages of life.<sup>32</sup>

The Office of the Victorian Information Commissioner noted the importance that Parliament had placed on the right to privacy in law. It highlighted the rights of individual privacy under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the *Privacy and Data Protection Act 2014* (Vic). It also emphasised the need to consider whether any interference with these rights is justified.<sup>33</sup>

Mr Jones from the National Crime Agency told the Committee the potential for victim identification posed an ongoing challenge for the United Kingdom in considering whether or how to expand the existing controlled disclosure framework to a public register.<sup>34</sup>

Bravehearts Foundation noted that in order to protect victim identities, familial offenders were typically omitted from public registers. This ultimately resulted in a miniscule number of registered offenders being subject to public notification. Bravehearts highlighted that this had been the experience in Western Australia:

Whitting, Day & Powell's 2016(b) evaluation of the Western Australian Scheme emphasises how few offenders will be subjected to registration. Out of a total of 2,052 sex offenders, there were 125 subjected to notification (Tier 1: 39; Tier 2: 86), and there were 1,927 offenders who were not subjected to notification. **Only 6% of convicted sex offenders were able to be included in the Scheme** [emphasis in original].<sup>35</sup>

### 3.3.6 Lack of evaluation and empirical evidence

Despite a large body of research about sexual offending risk and recidivism rates, and the effectiveness of offender registration laws, there has been limited empirical evaluation of the before and after effects of individual registration frameworks. The majority of research provided to the Committee generally indicated the effect of public registries on offending rates is negligible, and potentially detrimental to prospects for offender rehabilitation.<sup>36</sup>

The Law Institute of Victoria argued the introduction of a public sex offender register was not supported by evidence as the majority of research had found:

- the effectiveness of a public register was inconclusive
- a public register lacked the requisite evidence base for introduction

<sup>32</sup> Ms Ashleigh Cooper, public hearing, Melbourne, 13 May 2021, *Transcript of evidence*, p. 35.

<sup>33</sup> Office of the Victorian Information Commissioner, *Submission 66*, p. 6.

<sup>34</sup> Mr Robert Jones, *Transcript of evidence*, p. 12.

<sup>35</sup> Bravehearts Foundation, *Submission 69*, p. 4.

<sup>36</sup> Bravehearts Foundation, *Submission 69*, p. 5; Mr Sam Norton, response to questions on notice, pp. 4–5; Dr Mark Zirnsak, *Submission 19*, pp. 3–4.

- a public register was counter-rehabilitative and could increase the risk of recidivism.<sup>37</sup>

However, as covered in Chapter 2, the Committee notes the Institute did express in principle support for a pilot of a disclosure scheme in Victoria, similar to the United Kingdom, subject to appropriate limits on disclosure, access and use of personal information.<sup>38</sup>

The effect of narrower limited disclosure models such as those operating in Western Australia and the United Kingdom have not been subject to detailed or conclusive evaluation. The effects of Sarah's Law in the United Kingdom are currently difficult to measure because data on the use of the disclosure scheme is held by individual police stations.<sup>39</sup>

A 2016 limited evaluation<sup>40</sup> of perspectives of 21 specialist police officers responsible for coordinating ongoing management of sex offenders in Western Australia provides some insight. However this is of limited use in evaluating the before and after effect of sexual offending and reoffending rates in that State. Similarly, the 2018 review of the legislation<sup>41</sup> found that, in operation, the scheme had met its clearly identified purpose as a tool to make information available to the community. However, that Review also did not include an evaluation of the scheme's effect on rates of sexual offending and recidivism.<sup>42</sup>

Addressing whether there was value in extending Victoria's registry to allow for public disclosure, Dr Davis highlighted the community risks associated with this:

[it] is not something I would support from the perspective of risk and community safety. The evidence that I have outlined ... indicates clearly that this will not provide the results that proponents believe it will. If the rationale for a public register was simply to continue punishing sexual offenders after they had served their sentences that would be a valid argument that I assume many in the community would support with little hesitation. But there is no evidence that such a change would enhance community safety so this cannot be the rationale. The available evidence indicates that it may actually make things worse for all concerned.<sup>43</sup>

Evaluation of the Victorian Sex Offenders Register is discussed previously in Chapter 2.

<sup>37</sup> Law Institute of Victoria, *Submission 81*, pp. 9–10.

<sup>38</sup> *Ibid.*, p. 5.

<sup>39</sup> Ms Jennifer Pollock, Legal Department, National Crime Agency, Management of Child Sex Offender Information hearing, response to questions on notice received 15 June 2021, p. 1.

<sup>40</sup> Laura Whitting et al., 'Police officer perspectives on the implementation of a sex offender community notification scheme', *International Journal of Police Science & Management*, vol. 18, no. 4, 2016, pp. 261–272, doi:10.1177/1461355716668539.

<sup>41</sup> In accordance with the *Community Protection (Offender Reporting) Act 2004* (WA), s 115(2A).

<sup>42</sup> Western Australia Police Force, *Review of the operation and effectiveness of the public notification scheme established by Part 5A Community Protection (Offender Reporting) Act 2004*, 2018, pp. 3, 11–12.

<sup>43</sup> Dr Michael Davis, Chair of the Victorian Branch, and Chair-Elect of the National College of Forensic Psychologists, Australian Psychological Society, Management of Child Sex Offender Information hearings, response to questions on notice received 11 June 2021, p. 6.

The Committee acknowledges there is a significant amount of research indicating limited, and in some cases detrimental, outcomes resulting from the publication of sex offender information. Given this, it is paramount that any proposal to change information disclosure provisions in the Victorian sex offender registration framework is:

- proportionate
- guided by evidence
- done for the primary purpose of protecting a person, particularly a child, from becoming the victim of a sexual crime.

This point was reiterated in evidence provided by Ms Carol Ronken, Director of Research, Bravehearts Foundation:

the need for any approach to preventing offending or preventing reoffending to be set in terms of what the evidence shows us works. It is easy to take on policies and legislation that seem to be good on the surface, and community notification laws and public registers are a prime example of this. I mean, who would not want to know if they had a convicted child sex offender living next door to themselves and their children? But we need to make sure that we are not providing a false sense of security to our communities. We need to make sure that whatever policies, programs, legislation we support and put in place will work, that there is evidence to back them up.<sup>44</sup>

**FINDING 6:** Any expansion to provisions for the disclosure of information under the *Sex Offenders Registration Act 2004* (Vic) should be informed by a robust, peer reviewed, empirical evidence base.

<sup>44</sup> Ms Carol Ronken, Director of Research, Bravehearts Foundation, public hearing, via video conference, 26 May 2021, *Transcript of evidence*, p. 2.

**RECOMMENDATION 3:** That the Victorian Government refers to the Victorian Law Reform Commission (or other appropriate body) an inquiry into the circumstances in which a limited public disclosure scheme for registered sex offender information could be trialled. This inquiry should:

- Include consideration of the legal framework, including but not limited to:
  - appropriate privacy protections
  - appropriate limits on the amount and type of information disclosed
  - appropriate limits on the access and use of information disclosed
  - interaction with existing information access regimes.
- Have regard to:
  - limited disclosure schemes operating in the United Kingdom and Western Australia
  - relevant federal laws and regulations.
- Consider how a trial could best be structured to assess its capability to prevent and reduce child sexual offending.

Any recommendations for the conduct of a trial must include a framework to collect evidence from its operation and evaluate the effectiveness of the trial against its stated purposes.

### 3.4 Complementary programs aimed at reducing recidivism

Several stakeholders suggested that most child sex offenders can be successfully rehabilitated and reintegrated into the community with minimal risk of recidivism.<sup>45</sup> They argued that offender rehabilitation and reintegration programs offered greater potential for reducing recidivism rates than public registers or limited disclosure schemes.<sup>46</sup>

The Committee also heard that offender rehabilitation and reintegration programs could complement the operation of the Victorian Register as it is currently configured.<sup>47</sup> Stakeholders pointed out that the current Register seeks to reduce recidivism by aiding Victoria Police to monitor offenders. They argued that the risk to the community posed

<sup>45</sup> Karen Gelb Consulting, *Submission 77*, p. 4; Dr Michael Davis, *Transcript of evidence*, p. 15.

<sup>46</sup> Dr Kelly Richards, *Submission 64*, p. 2; Dr Kelly Richards, *Transcript of evidence*, pp. 44–45, 47; Bravehearts Foundation, *Submission 69*, pp. 2–3; Ms Tania Wolff, President, Law Institute of Victoria, public hearing, Melbourne, 13 May 2021, *Transcript of evidence*, p. 2.

<sup>47</sup> Ms Carol Ronken, *Transcript of evidence*, p. 6; Mr Sam Norton, Senior Vice-President, Liberty Victoria, public hearing, Melbourne, 13 May 2021, *Transcript of evidence*, pp. 24–25.

by some offenders could be better mitigated through offender rehabilitation and community reintegration programs.<sup>48</sup>

### 3.4.1 Support for offender rehabilitation and reintegration programs

The Committee received evidence that many child sex offenders have good prospects for rehabilitation. Stakeholders suggested that most offenders may be successfully reintegrated into the community with low ongoing risk to the public's sexual safety.

Criminologist Dr Karen Gelb of Karen Gelb Consulting submitted that contrary to popular perception of child sex offenders as irredeemable monsters who 'will inevitably reoffend', many are quite treatable:

Linked with the belief that sex offenders will inevitably reoffend is the myth that they are 'irredeemable' and 'monstrous' – that they can never be successfully treated and therefore remain a danger to the public. Due to this danger, people need to be able to protect themselves by knowing who the sex offenders in their community are.

In reality, though, treatment for sex offenders – especially treatment in a community setting – has proven effective in reducing sexual reoffending and assisting sex offenders to reintegrate into the community.<sup>49</sup>

Dr Michael Davis of the Australian Psychological Society presented evidence at a public hearing. Dr Davis explained that most sex offenders are not 'particularly antisocial' and do have the capacity to empathise with other people. He suggested that well-targeted treatment addressing the 'cognitive distortions' by which offenders justify their behaviour, can reduce recidivism by up to 20%:

it is quite shocking for some people to hear this, but the vast majority of people with a sexual interest in children are not particularly antisocial, by which I mean they do not go out and commit lots of other types of offences ... So if you are not particularly antisocial or not particularly psychopathic and you have a capacity to empathise with other people and you have a sexual interest in children or any other non-consensual sexual activity, you have to convince yourself that you are not causing any harm to people...

If treatment can target those thinking errors and get people to acknowledge that, 'Okay, these are all just justifications for you engaging in something you know you shouldn't', I think that can have quite a beneficial effect. The literature does show you can reduce recidivism through appropriate treatment by up to 20 per cent, which may not sound like a great deal, but we are already dealing with a group that are reoffending at roughly around 20 per cent to start with, so we can reduce that even further down. I am not going to suggest that anyone is ever going to be no risk through any of this, but we can manage people to be lower risk than when they committed their offences.<sup>50</sup>

<sup>48</sup> Ms Tania Wolff, President, Law Institute Victoria, Management of Child Sex Offender Information hearing, response to questions on notice received 2 June 2021, p. 6.

<sup>49</sup> Karen Gelb Consulting, *Submission 77*, p. 4.

<sup>50</sup> Dr Michael Davis, *Transcript of evidence*, p. 15.

The Committee heard firsthand the impact that rehabilitation can have on a child sex offender's life from one stakeholder, who is a registered offender. He described how access to a rehabilitation program helped him to understand his behaviour and avoid future offending:

After I had been released to parole I had been out for a couple of months and my case manager suggested that I should go down to [the Sex Offender Assessment and Treatment Service] ... and it was really good. It was about nine months. It was a group session. No holds were barred; you had to sort of bare your soul to the other blokes in the group. But it basically just went through sort of your behavioural triggers and thought processes and what you found important in your life—you know, the various life goods which were important to everybody but different in importance from person to person and how for your important needs that were not being met positively, you would then find negative ways to meet those needs. So I wanted to be a social person. I had no social life and I had no real emotional connection with my wife at the time, and so my victims became sort of surrogates to fill that hole—you know, that sort of stuff. As I said, it was a nine-month course, it was very long and complicated and the facilitators were absolutely brilliant. So I sort of figured out what my triggers are, what I am interested in pursuing in my life, what I am not interested in pursuing and developing those sorts of prosocial activities to meet those needs in a positive way rather than negatively.<sup>51</sup>

However, the Committee heard that access to rehabilitation and reintegration programs is currently quite limited. Mr Sam Norton, Senior Vice-President of Liberty Victoria, discussed this at a public hearing. He suggested that unless they had the resources to access a private psychologist, a court order was currently required to get a child sex offender into a rehabilitation program:

Education and rehabilitation are the key. What is telling at the moment in Victoria in our criminal justice system is that outside of a court order I can engage my client in any number of safe driving courses, in any number of anger management courses, drug and alcohol rehabilitation courses—you name it—but I cannot get them involved in a proper sex behaviour education program outside of a court order. The only way that is done at the moment is when it is done through private psychologists and psychiatrists. You cannot do those sorts of programs at present unless they are part of a community correction order or indeed part of a prison sentence ... We want to be in a position where we can avoid crimes occurring by educating people.<sup>52</sup>

Stakeholders advocated for rehabilitation and reintegration programs to be expanded and made available to a broader range of child sex offenders. Bravehearts Foundation asserted that 'there is a need for improved access to rehabilitation programs, both within and outside of custodial settings'. It noted that offenders are at the highest risk of reoffending in the period immediately following their release from prison. Bravehearts Foundation also argued that 'sex offenders who receive support during this time are less likely to reoffend'.<sup>53</sup>

<sup>51</sup> Mr John Campbell, closed hearing, via video conference, 26 May 2021, *Transcript of evidence*, pp. 5–6.

<sup>52</sup> Mr Sam Norton, *Transcript of evidence*, pp. 24–25.

<sup>53</sup> Bravehearts Foundation, *Submission 69*, p. 2.

Ms Carol Ronken, Director of Research at the Foundation felt that Victoria could do 'a lot more' to support child sex offenders to resist reoffending after their release from prison.<sup>54</sup>

Dr Kelly Richards made a similar point. She described the period immediately following an offender's release from prison as a 'time of heightened risk' for the community. Dr Richards argued that it is important to think about how that risk can be minimised. She urged the Committee to consider expanding reintegrative initiatives instead of public registers of child sex offenders, highlighting Circles of Support and Accountability programs as an example. She considered that funding rehabilitation and reintegration programs would be a more effective use of public resources:

Look, if there is going to be \$5 million or \$10 million or however many millions of dollars spent on trying to reduce child sex offending, that money would be much better spent on [Circles of Support and Accountability], which has got a very high rate of effectiveness and a very strong, proven track record, than it would on a [public] sex offender register, which has almost no evidence of efficacy whatsoever.<sup>55</sup>

Ms Tania Wolf, President of the Law Institute of Victoria, urged the Committee to take a 'wider view' of managing the risk presented by child sex offenders in the community. She urged the Committee to support programs aimed at rehabilitating child sex offenders to prevent further offences.<sup>56</sup> The Institute submitted that it 'promotes and encourages' its practitioners to refer their clients to the rehabilitation programs which are available.<sup>57</sup>

Evidence presented to the Committee also suggested that victim survivors of child sexual abuse are generally supportive of programs aimed at rehabilitating offenders after their release back into the community. Dr Richards outlined her research in relation to this matter. She suggested that the victim survivors she spoke to were supportive because rehabilitation programs can reduce reoffending:

We interviewed 33 self-identified victim-survivors and their views were incredibly diverse, and I think that is an important point to understand because I think we are often, all of us, guilty of assuming that all victim-survivors want and need the same thing, but that simply is not the case and certainly was not the case in this particular study.

Survivors had a whole host of views about what they wanted and needed, but they were unanimous on one point, and that point is that they did not want the person who had harmed them to harm anybody else. That was the bottom line. But importantly, their views were not uniformly or even primarily particularly vengeful or sort of backwards looking. Their views were not usually about sort of ongoing shaming or extremely punitive measures. Rather, they were very, very pragmatic, so they were very

<sup>54</sup> Ms Carol Ronken, *Transcript of evidence*, p. 6.

<sup>55</sup> Dr Kelly Richards, *Submission 64*, p. 2; Dr Kelly Richards, *Transcript of evidence*, pp. 44–45, 47.

<sup>56</sup> Ms Tania Wolff, *Transcript of evidence*, pp. 2, 5.

<sup>57</sup> Ms Tania Wolff, response to questions on notice, p. 6.

sort of future oriented and very focused around efficacy. Survivors want things in place that will be effective in making sure a person who has previously perpetrated sexual harm does not do that again.<sup>58</sup>

It is clear to the Committee that there is support amongst stakeholders who engaged with the Inquiry for expanding the rehabilitation and reintegration programs available to child sex offenders.

The Committee recognises the potential of these programs to complement the operation of the *Sex Offenders Registration Act 2004* (Vic) and help safeguard the community's sexual safety.

Moreover, the Committee received evidence that several successful programs are already in operation and have achieved promising results. These programs are outlined in Section 3.4.2 below.

### 3.4.2 Rehabilitation and reintegration programs already in operation

Stakeholders described the operation and benefits of several programs aimed at rehabilitating child sex offenders and reintegrating them into the community, including:

- Circles of Support and Accountability
- the Coping with Child Exploitation Material Use Pilot Program (CEM-COPE)<sup>59</sup>
- the Male Adolescent Program for Positive Sexuality
- Stop It Now!.

These programs are discussed below.

#### Circles of Support and Accountability

Bravehearts Foundation, the Law Institute of Victoria, and Dr Richards highlighted Circles of Support and Accountability as an example of best practice in child sex offender rehabilitation and reintegration.<sup>60</sup>

Circles of Support and Accountability has been operating in international jurisdictions, such as Canada and the United Kingdom since the mid-1990s, and in South Australia since 2015.<sup>61</sup> These programs aim to prevent reoffending by reintegrating child sex offenders back into the community following a period of imprisonment. Groups of

<sup>58</sup> Dr Kelly Richards, *Transcript of evidence*, p. 46.

<sup>59</sup> Coping with Child Exploitation Material Use.

<sup>60</sup> Dr Kelly Richards, *Transcript of evidence*, pp. 44–45; Bravehearts Foundation, *Submission 69*, pp. 2–3; Law Institute of Victoria, *Submission 81*, p. 8.

<sup>61</sup> Dr Kelly Richards, 'Is it Time for Australia to adopt Circles of Support and Accountability (COSA)?', *Current Issues in Criminal Justice*, Volume 22, Issue No. 3., p. 483–490; Australia's National Research Organisation for Women's Safety, *Community-based approaches to sexual offender reintegration: Research Report Issue 7*, report prepared by Kelly Richards, Jodi Death and Kieran McCartan, March 2020, p. 8, <<https://www.anrows.org.au/project/community-based-approaches-to-sexual-offender-reintegration>> accessed 24 June 2021; Dr Kelly Richards, *Transcript of evidence*, p. 45.

approximately five to seven trained and supported volunteers work with a convicted child sex offender for a period following their release from prison. Volunteers provide practical support and accountability to offenders, which assists them to adopt a pro-social identity and life outside of prison.<sup>62</sup>

Offender participation in Circles of Support and Accountability is typically voluntary and commences just prior to, or immediately after release from prison.<sup>63</sup> According to Dr Richards, the program is not suitable for all offenders and the best candidates are child sex offenders with a medium to high risk of reoffending and few social supports:

So usually the person has to be convicted of a sexual offence. There is one COSA model in Vermont in the US in which any perpetrator can participate; they do not have to have perpetrated sexual violence. But for the most part it is that they have perpetrated sexual violence, that they have high needs and are a medium to high risk of reoffending. That might sound a bit counterintuitive, ...but what the research clearly shows is that the impact is greatest at that higher level, so where we do have a perpetrator who is quite risky and does have a lot of needs and has no social supports, no family support et cetera in the community. So being sort of at that higher level of need and risk is one of the eligibility criteria.

Look, the other thing is that this program is voluntary ... the person has to want the support, and they have to be willing to show up and willing to sign that documentation and adhere to those expectations on their behaviour, and they have to be aware that if they stop doing those things and if they go AWOL, disappear, do not turn up for meetings, stop responding to the volunteers and so on, their behaviour will be drawn to the attention of authorities.<sup>64</sup>

A diverse range of community volunteers participate in Circles of Support and Accountability. In the past these have included victim survivors of sexual violence, law enforcement officers, individuals from religious groups, psychologists, medical practitioners and community advocates. Volunteers are screened for suitability, provided with training and support from professionals, and engage in a one-year commitment.<sup>65</sup>

Dr Richards told the Committee that the first task undertaken by a volunteer is to work with their offender to establish agreed expectations and behaviours for the program:

So that is predominantly about expectations for the behaviour of the perpetrators—so, you know, we expect you to turn up to meetings, we expect you to return our phone calls, we expect you to see your parole officer, all of those things. But that document also speaks to the expectations of the behaviour of the volunteers, and confidentiality, as you have identified, is very central to that. So everybody agrees and signs documentation that protects the privacy of the perpetrator.<sup>66</sup>

<sup>62</sup> Australia's National Research Organisation for Women's Safety, *Community-based approaches to sexual offender reintegration: Research Report Issue 7*, p. 8.

<sup>63</sup> Dr Kelly Richards, *Transcript of evidence*, p. 49.

<sup>64</sup> *Ibid.*, pp. 48, 49.

<sup>65</sup> Law Institute of Victoria, *Submission 81*, p. 8; Dr Kelly Richards, *Transcript of evidence*, p. 46.

<sup>66</sup> Dr Kelly Richards, *Transcript of evidence*, p. 48.

Volunteers then work with offenders to help them to reintegrate back into the community and ensure they remain accountable for their behaviour. Dr Richards described the responsibilities of volunteers and their positive impact on the offender:

what these volunteers do with people convicted of sexual offences is kind of two things. On one hand they offer practical support to that person. That can be things around assisting with accommodation and housing, it can be around getting finances in order, it can be around building a supportive community and network to sort of smooth that transition back into the community and therefore to reduce any risk that that person might pose to community safety. The other really important role of this group of volunteers, who meet regularly with the perpetrator, is representing the community and holding the perpetrator to account. So they sort of have a monitoring role, if you like. They know what that person is supposed to be doing; they know when they are supposed to be meeting with their parole officer, for example. Do they have medical appointments? Are they doing the things that they should be doing to build and lead a law-abiding life in the community?

...

[volunteers] are representing the community by addressing any excuses or minimisations that the perpetrator might have about their offending. For example, the perpetrator might say, 'Well, it wasn't a very big deal', 'I was drunk at the time' or come up with some other type of excuse. A key role of those volunteers is to represent the community and say, 'Actually, that's not okay. That's not in line with community thinking around this topic. It's not in line with community standards'. So it is about doing some of that really important sort of accountability-type work.

We also know that volunteers can reduce the stress that is faced by anybody who is leaving prison and re-entering the community, and that is really important because we know that stress is one of the things that can lead to reoffending. So we are really supporting that offender to make strong networks and to get on their feet to reduce the risks that they might pose.<sup>67</sup>

Dr Richards contended that this type of offender support is invaluable as convicted child sex offenders are often subject to intense and difficult-to-navigate supervision and mandatory therapy:

These sorts of perpetrators are often released with a bunch of restrictions on their movements. They are often subject to very intensive parole supervision, therapeutic intervention, possibly even electronic monitoring—all of these sorts of things. That can be difficult to navigate, and one of the really important things that these types of programs do is really assist these perpetrators to see the value for them in sticking to their requirements of release and being a good citizen essentially.<sup>68</sup>

<sup>67</sup> Ibid., p. 45.

<sup>68</sup> Ibid., p. 46.

She also pointed out that volunteers can report an offender for breaching a behavioural agreement, or if they are concerned an offender is at risk of reoffending:

if volunteers are concerned about the behaviour of that person they will seek advice from the COSA program, and in some cases that means speaking with their parole officer and in some cases core members have breached. Their volunteers have actually alerted authorities, 'Hey, this person is exhibiting some pretty problematic behaviours. They're not doing what they are supposed to be doing', and on occasion a core member has been returned to prison as a result of that. That is obviously not what we would hope for in a COSA program, but it is really important, right? If someone is not doing what they are supposed to be doing and is exhibiting risky behaviours in the community, then perhaps it is not time for that person to be back in the community.<sup>69</sup>

The Committee received evidence highlighting that evaluations of Circles of Support and Accountability had demonstrated the program's effectiveness. The Victorian Law Institute noted that an evaluation of the original Canadian pilot program found that it significantly reduced recidivism:

CoSA [Circles of Support and Accountability] is a Pilot project in South-Central Ontario, which between 1994 and 2009 assisted almost 200 high-risk sexual offenders who were released at the end of their sentences without any community supervision ... An evaluation of the program found that offenders in CoSA had an 83% reduction in sexual recidivism, 73% reduction in all types of violent recidivism, and an overall reduction of 71% in all types of recidivism when compared to offenders not involved in CoSA.<sup>70</sup>

Dr Richards told the Committee that evaluations of the programs in countries have also demonstrated that the program is 'very effective in terms of reducing sexual reoffending'. She noted that a randomised trial of a program in Minnesota in the United States conducted over 10 years found that there was 88% less recidivism amongst offenders who accessed the program.<sup>71</sup> Furthermore, Dr Richards claimed that her research indicates that victim survivors of sexual violence are generally supportive of the program:

in our study survivors' views on this were pretty heterogeneous, fairly diverse, but in general terms they tended to be quite supportive of the idea of [Circles of Accountability and Support]. They really liked the monitoring aspect of COSA, so they liked the fact that the perpetrator would have a weekly meeting with their volunteers, have regular contact with their volunteers—you know, that there is a group of five or six people who know where that person is supposed to be and can be on the lookout for trigger behaviours, be on the lookout for that person lapsing into old habits and behaviours. But more generally, victim-survivors in our study saw COSA as supporting perpetrators to not reoffend, and that is their bottom line. They do not want that person to reoffend. So on those grounds they were cautiously supportive of the idea of COSA.<sup>72</sup>

69 Ibid., pp. 48–49.

70 Law Institute of Victoria, *Submission 81*, p. 8.

71 Dr Kelly Richards, *Transcript of evidence*, pp. 45–50.

72 Ibid., p. 46.

Dr Richards also suggested that Circles of Support and Accountability could possibly be used in a more preventative capacity for individuals at risk of offending, but with no prior convictions. She noted that the program has been used in this way before, but only on an ad hoc basis:

People often ask me, 'Can we use COSA in a more preventative way?', and I think that is an excellent question. That has not been done in a formalised capacity anywhere in the world, but it does happen on a bit of an ad hoc basis. In my recent research that I undertook in California and in Canada looking at COSA over there, in one of those programs one of the core members actually had never been convicted of a sexual offence. He had come to the attention of criminal justice authorities for totally unrelated offending, but as part of being convicted for this other offence he had to seek therapeutic intervention, and he knew that his problems really stemmed from his paedophilia, and that is how he described himself—he had an enduring, innate attraction to prepubescent children. This particular man had a COSA that was working in a preventative capacity, and actually there is no reason that we could not be using them in that way as well.<sup>73</sup>

### **Coping with Child Exploitation Material Use Pilot Program (CEM-COPE)**

The Law Institute of Victoria recommended that the Committee consider CEM-COPE. It is currently being piloted through the Problem Behaviour Program of the Victorian Institute of Forensic Mental Health (Forensicare) in Melbourne.<sup>74</sup>

CEM-COPE is designed to rehabilitate and reduce the recidivism risk of offenders who have a history of accessing, possessing and distributing child sexual abuse material. It does not treat offenders with a known history of direct contact as they typically require more intensive treatment.

The program comprises 10 closed group, two-hour sessions aimed at supporting offenders to:

- understand why they offended and identify the skills and interventions necessary to prevent further offences
- develop self-management plans
- identify ongoing psychological treatment needs.

Session topics include:

- emotional awareness and regulation skills
- problematic internet usage and sexual regulation

<sup>73</sup> Ibid., p. 50.

<sup>74</sup> Law Institute of Victoria, *Submission 81*, p. 6; Marie Henshaw et al., 'Enhancing evidence-based treatment of child sexual abuse material offenders: The development of the CEM-COPE Program', *Trends and issues in crime and criminal justice*, No. 607, October 2021, p. 8, <[https://www.aic.gov.au/sites/default/files/2020-10/ti607\\_enhancing\\_evidence-based\\_treatment\\_of\\_CSAM\\_offenders.pdf](https://www.aic.gov.au/sites/default/files/2020-10/ti607_enhancing_evidence-based_treatment_of_CSAM_offenders.pdf)>; Victorian Institute of Forensic Mental Health and Centre for Forensic Behavioural Science, Swinburne University of Technology, *Annual Research Report: 1 July 2019 – 30 June 2020*, p. 23.

- self-management and relapse-prevention planning
- relationship and communication skills.

CEM-COPE is based on concepts and techniques from evidence-based psychological therapies. This includes commitment therapy, dialectical behavioural therapy and cognitive behavioural therapy.<sup>75</sup>

While not speaking specifically in relation to CEM-COPE, Dr Davis described how treatment for individuals convicted of accessing child pornography can be effective:

... I think the big thing that you find when you talk to these men is that they have a particular thinking error that they have wilfully engaged with, that, 'This is better than me molesting a child, because I'm not hurting anybody'. And the big thing that I always recommend is that treatment really focus on the fact that a child was molested and abused for you to be able to watch this, and ... you do not absolve yourself of the blame by doing that. And some of them will say, 'I never really thought of that', and I think it is a wilful cognitive distortion. Because they have this interest, they want to engage in it in some way, but they do not actually want to abuse a child, so they convince themselves child exploitation material is not harmful. And that is usually my first recommendation: the treatment needs to work on getting them to acknowledge and understand that.<sup>76</sup>

### Male Adolescent Program for Positive Sexuality

The Law Institute of Victoria provided evidence on the Male Adolescent Program for Positive Sexuality. The program has been operating in Victoria since 1993 and is accessible to male sexual offenders aged between 10 and 21 years through youth justice orders.

The program aims to support young male offenders to develop the knowledge, skills and attitudes to manage life without further offending. It requires participants to:

- take full responsibility for their sexually abusive behaviour
- acknowledge the full extent of their abuse and the impact it has had on victims and their families
- take responsibility for ceasing abusive behaviours and developing a healthy, pro-social life.

Program content includes controlling fantasies, relapse prevention, victim awareness and empathy, social skills training, sex education and learning to cope with change.

The program is based on a cognitive-behavioural model that combines treatment and monitoring in custody, followed by support and supervision when an offender re-enters the community. The program supports an offender's family and caregivers to be involved in the offender's treatment.

<sup>75</sup> Law Institute of Victoria, *Submission 81*, p. 6; Marie Henshaw et al., 'Enhancing evidence-based treatment of child sexual abuse material offenders: The development of the CEM-COPE Program', p. 8.

<sup>76</sup> Dr Michael Davis, *Transcript of evidence*, p. 14.

In 1998 the Victorian Department of Human Services evaluated the first 4.5 years of the program. It found that during this period, the program had a 95% success rate, with only 5% of the 138 clients committing further sex offences. Moreover, of the youths who reoffended, most had not completed the entire program.<sup>77</sup>

### Stop It Now!

Bravehearts Foundation drew the Committee's attention to the Stop It Now! program, which, at the time of writing, is being run as a pilot program in Queensland. The program has operated in the United Kingdom since 2002, the United States since 1992 and the Netherlands since 2012.<sup>78</sup>

Stop It Now! provides a phone helpline for adults who are worried about their sexual thoughts and behaviours. It also provides a point of call for parents, family members, and professionals who have identified instances of child sexual abuse. The helpline allows most callers to remain anonymous. However, if they provide information indicating that a child has been abused or is at risk of abuse, that information is passed-on to the appropriate authorities.<sup>79</sup>

Calls are managed by 'experienced advisors' who:

- assist callers to clarify their concerns
- explore any immediate child protection considerations
- provide information to and support for callers to think about the next steps involved in addressing their concerns
- outline available support options, including referrals to other agencies and follow-up services
- encourage callers to agree to take protective actions.<sup>80</sup>

Stop It Now! also incorporates a website that provides advice, self-help materials and additional information about child sexual abuse aimed at raising awareness. It provides links to and describes adjacent support services that may be of assistance to callers.<sup>81</sup>

Assessments of Stop It Now! programs in the United Kingdom and the Netherlands have demonstrated their wide reach and impact. For example, a 10-year evaluation of the United Kingdom program conducted in 2012 found that during that period, the helpline

77 Law Institute of Victoria, *Submission 81*, pp. 7–8; Victorian Department of Human Services, *Evaluation Report Male Adolescent Program for Positive Sexuality*, 1998, pp. vii, 1, 7, 11, 27, <<https://www.childabuseroyalcommission.gov.au/sites/default/files/DHS.3001.012.0046.pdf>> accessed 24 June 2021.

78 Bravehearts Foundation, *Submission 69*, p. 3; Stop It Now! UK, *Our Impact*, <<https://www.stopitnow.org.uk/our-impact>> accessed 30 June 2021; Maria Eisenberg et al., *Stop It Now! Helpline Netherlands: A study of its use and effects - English summary*, report for the European Commission, 2014, p. 1, <[https://ec.europa.eu/justice/grants/results/daphne-toolkit/sites/default/files/projects/documents/helpline\\_nl\\_-\\_use\\_study.pdf](https://ec.europa.eu/justice/grants/results/daphne-toolkit/sites/default/files/projects/documents/helpline_nl_-_use_study.pdf)>.

79 Jesuit Social Services, *Stop It Now!: Preventing child sexual abuse*, <[https://jss.org.au/wp-content/uploads/2019/08/Stop\\_It\\_Now\\_Preventing\\_child\\_sexual\\_abuse\\_web.pdf](https://jss.org.au/wp-content/uploads/2019/08/Stop_It_Now_Preventing_child_sexual_abuse_web.pdf)> accessed 30 June 2021.

80 Stop It Now! UK, *The Stop It Now! UK and Ireland helpline*, <<https://www.stopitnow.org.uk/helpline>> accessed 30 June 2021.

81 Jesuit Social Services, *Stop It Now!: Preventing child sexual abuse*, accessed 30 June 2021.

had taken over 30,000 calls from 14,500 people. Of those callers, 38% were concerned about their own behaviour and 27% were callers concerned about another adult's behaviour. Parents or carers concerned about a child or young person's behaviour comprised 6% of callers and 5% were adults concerned that children may have been abused. Professionals asking for advice comprised 13% of callers.<sup>82</sup>

In 2014, the European Commission funded an independent evaluation of Stop It Now! UK and Ireland and Stop It Now! Netherlands. It found that callers who accessed the helpline in the United Kingdom and Ireland reported being better able to recognise problematic behaviour and acknowledge that viewing child exploitation images is harmful and an offence. Callers also reported that the helpline assisted them to understand that behaviour is dynamic and can be modified, and to implement techniques to change their behaviours. Similarly, callers to the Netherlands helpline reported 'feeling more in control of their feelings and behaviour'.<sup>83</sup>

### 3.4.3 Committee view

It is apparent to the Committee that child sex offender rehabilitation and reintegration programs can successfully mitigate the risk some child sex offenders pose to the community's sexual safety.

However, this Inquiry focused on examining issues surrounding the operation of the sex offenders register and the circumstances in which the public release of offender information could prevent further instances of child sexual abuse.

The Committee did not undertake a comprehensive review of all child sex offender rehabilitation and reintegration programs or investigate how access to these programs can best be expanded. The Committee is therefore not in a position to recommend support for particular programs. Rather, the Committee acknowledges that rehabilitation and reintegration programs are effective and an important component of a wholistic public policy response to managing the risk posed by child sex offenders.

**FINDING 7:** Programs aimed at rehabilitating convicted child sex offenders and reintegrating them into the community can reduce recidivism. As such they are an important complement to the *Sex Offenders Registration Act 2004* (Vic) and other legislation and policies aimed at safeguarding the community's sexual safety.

<sup>82</sup> Deborah Denis & Hannah Whitehead, *Stop It Now! UK & Ireland: Helpline and Campaign Report 2002–2012*, report for Stop It Now! UK, 2002, p. 6, <[https://www.stopitnow.org.uk/wp-content/uploads/2020/01/stop\\_it\\_now\\_helpline\\_campaign\\_10\\_year\\_report\\_2013-1.pdf](https://www.stopitnow.org.uk/wp-content/uploads/2020/01/stop_it_now_helpline_campaign_10_year_report_2013-1.pdf)>.

<sup>83</sup> NatCen Social Research, *A public health approach to tackling child sexual abuse: Research on Stop It Now! UK and Ireland and Stop It Now! Netherlands*, report for the European Commission, 2014, p. 3, <[https://www.stopitnow.org.uk/wp-content/uploads/2020/01/overview-of-study\\_complete-web.pdf](https://www.stopitnow.org.uk/wp-content/uploads/2020/01/overview-of-study_complete-web.pdf)>.



# 4

## Preventative education and awareness

### At a glance

The broader use of education and public awareness campaigns can prevent sexual offending. Submitters noted that the 2013 Royal Commission into Institutional Responses to Child Sexual Abuse found that preventative education and awareness programs can complement initiatives aimed at reducing instances of child sexual abuse. Moreover, stakeholders asserted that awareness campaigns and preventative education can:

- empower children and increase their resilience, reducing their vulnerability to child sexual abuse
- dispel the myth that sexual abuse is mostly perpetrated by strangers and equip parents, carers and teachers with the knowledge to identify inappropriate interactions and intervene
- support children and the adults in their lives to engage in online environments in a safer manner and reduce instances of technologically facilitated child sexual abuse
- increase the identification, disclosure and reporting of instances of child sexual abuse
- address problematic sexual behaviours being exhibited by children and young people.

It is difficult to assess the degree to which education programs are successful in preventing instances of child sexual abuse. However, some organisations argued that the positive impact of programs is demonstratable using other metrics.

### Key issues

- Program evaluations and anecdotal evidence indicates that preventative education can empower parents and carers to identify grooming behaviours. These programs may also help parents and carers to intervene to protect their children, even in instances where the potential abuser is a trusted adult.
- Education can equip children with the knowledge, skills and language to assert their bodily autonomy and protect themselves from sexual violence. Preventative education can encourage and support children to come forward and disclose instances of child sexual abuse.

*(Continued)*

**Key issues (Continued)**

- Early access to appropriate education programs can reduce the likelihood of children who exhibit problematic sexual behaviours continuing this behaviour into adulthood.

**Finding and recommendations**

**Finding 8:** High quality preventative education is an important element of a wholistic public policy response to child sexual abuse. It must be available to all children and their carers at a minimum, and tailored to meet the needs of children with specialised accessibility requirements.

**Recommendation 4:** That the Victorian Government provides education providers—including early learning centres, primary schools, secondary schools and organisations providing specialised services to vulnerable children—with annual funding to access preventative education.

**Recommendation 5:** That the Department of Education and Training develops best practice guidelines for the provision of education aimed at preventing child sexual abuse in all its forms, including online grooming.

## 4.1 Support for awareness campaigns and preventative education programs

A range of Inquiry stakeholders expressed support for awareness campaigns and community education aimed at preventing child sexual abuse. This included law enforcement agencies, victim advocacy groups and not-for-profit organisations.<sup>1</sup>

The Committee received evidence from Bravehearts Foundation, a not-for-profit organisation which aims to prevent child sexual abuse and exploitation. It suggested that preventative education can empower children and reduce their vulnerability to inappropriate interactions:

Increased public awareness of safety and protective skills, specifically programs that build resiliency and empower children with the knowledge to keep safe. Evidence-based, developmentally-appropriate personal safety programs, such as Bravehearts' Ditto's Keep Safe Adventure, are proven to play a key role in providing children and young people with knowledge and skills that reduce vulnerability to offenders.<sup>2</sup>

1 Bravehearts Foundation, *Submission 69*, p.2; Dr Kelly Richards, Associate Professor, School of Justice, Queensland University of Technology, public hearing, Melbourne, 22 April 2021, *Transcript of evidence*, p. 5; United Kingdom National Crime Agency, *Submission 72*, p. 9; Assistant Commissioner Chris Gilbert, Intelligence and Covert Support Command, Victoria Police, public hearing, Melbourne, 22 April 2021, *Transcript of evidence*, p. 20; Mr Bruce Morcombe OAM, Founder, Daniel Morcombe Foundation, public hearing, Melbourne, 13 May 2021, *Transcript of evidence*, pp. 52–53; Body Safety Australia, *Submission 83*, p. 1; Victorian Aboriginal Child Care Agency, *Submission 79*, p. 5; Dr Mark Zirnsak, Senior Social Justice Advocate, Uniting Church in Australia, Synod of Victoria and Tasmania, public hearing, Melbourne, 22 April 2021, *Transcript of evidence*, p. 28.

2 Bravehearts Foundation, *Submission 69*, p.2.

The Foundation contended that awareness campaigns and preventative education programs aimed at adults can address misconceptions about the perpetrators of child sexual abuse:

Broader campaigns and programs aimed at adults (focussed on the myths and facts of child sexual assault, including who offenders are, dispelling the prevalent ‘stranger danger’ myth, and providing knowledge around the dynamics of offending), provide information that supports them in protecting children.<sup>3</sup>

At a public hearing, Ms Carol Ronken, Director of Research at the Foundation suggested that awareness campaigns, preventative education and mental health support may be better at preventing some types of child sexual abuse than legislative reform:

there are a number of reasons why offenders offend, and I think that is one of the things I would love to see an awareness campaign talk about ... Paedophiles are a very specific subset ... they are preferential offenders and they have a specific sexual interest in children. And then I guess at the other end of the continuum ... there are what are called opportunistic or situational sex offenders, and they can offend for a whole raft of reasons. It could be around things like lack of social supports, it could be self-esteem issues or it could be mental health issues, so a lot of that needs a lot more unpacking when we are talking about how we address offending in our communities. I think that often we like to try and find legislation and policies that do seem on the surface to address this type of crime, but they do not, because they do not really consider the very intricate dynamics of offending and the different types of offenders and factors that lead to offending.<sup>4</sup>

The Foundation pointed out that only around 10% of survivors disclose instances of sexual abuse and only between 5% and 13% of cases are reported to police. As a result, unconvicted perpetrators of child sexual abuse remain in the community.<sup>5</sup> Ms Ronken argued that preventative education affords better community protection than a public sex offenders register which can only identify convicted offenders:

As I have mentioned, only a very small percentage of offenders ever come to the attention of the authorities. So prevention programs need to be—they do not need to scare children, and the Ditto program certainly does not do that, but it just needs to say, ‘Look, if anyone ever makes you feel unsafe or uncomfortable, you need to tell someone that you trust. You have the right to say no’. All of those really broad personal safety messages will help protect our kids more than knowing that there is a sex offender that lives in our suburb.<sup>6</sup>

<sup>3</sup> Ibid.

<sup>4</sup> Ms Carol Ronken, Director of Research, Bravehearts Foundation, public hearing, via video conference, 26 May 2021, *Transcript of evidence*, p. 7.

<sup>5</sup> Bravehearts Foundation, *Submission 69*, pp. 3–4; Ms Carol Ronken, *Transcript of evidence*, p. 5.

<sup>6</sup> Ms Carol Ronken, *Transcript of evidence*, p. 5.

Ms Deanne Carson, Chief Executive Officer of Body Safety Australia, an organisation that promotes child safety through preventative education, made a related observation. She noted that approximately 45% of sexual abuse is perpetrated by adolescents.<sup>7</sup> She submitted that early education can better address problematic sexual behaviours than more punitive measures:

the most robust research suggests about half the offenders against children are adolescents ... This is a confronting concept, but we believe we believe the most effective remedy is educative, not punitive. Child offenders may lack the capacity to understand their motivations and actions.<sup>8</sup>

Dr Kelly Richards, a criminologist and Associate Professor with the School of Justice at the Queensland University of Technology presented evidence that child sexual abuse occurs throughout the community. She advocated for better awareness-raising to ensure parents, teachers and the broader community understand the risk:

there is a real resistance to particular facts about child sex offending, so I think as a community we need to do a better job of getting the information out there in a way that parents and teachers and others can adopt and take on board

...

I mean, there is a child sex offender in every postcode. We might not know who they are, but you have to remember that we only catch a small proportion of these people ... Parents need to understand the facts of this: that it is common, it is ubiquitous and simply knowing that Joe Bloggs down the street has a conviction will not actually equip them in any way to better protect their children.<sup>9</sup>

The National Crime Agency of the United Kingdom also believed that preventative education can help children protect themselves from the risk of child sexual abuse, particularly in the online environment. It submitted that parents, carers and other adults who interact with children should have access to preventative education programs.<sup>10</sup>

At a public hearing, Mr Robert Jones, Director of Threat Leadership at the Agency spoke about the threat of child sexual abuse. He stated it is of such a scale that the community typically finds it difficult to acknowledge and engage with. He argued that education is 'really important' in this context because an informed and alert community can make it more difficult for perpetrators to commit offences:

To summarise, this needs to be mainstream education; it is now in the UK. Initiatives like ours need really to be pushed very, very hard to increase people's awareness, because parents do not like talking about child abuse. We do lots of media, we do lots of education work, and this is not something that people hold onto and process. They do not want to hear about it, they do not want to talk about it at dinner parties, they do not

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7 Ms Deanne Carson, Chief Executive Officer, Body Safety Australia, public hearing, Melbourne, 13 May 2021, *Transcript of evidence*, p. 60.

8 Body Safety Australia, *Submission 83*, p 3.

9 Dr Kelly Richards, *Transcript of evidence*, p. 51.

10 United Kingdom National Crime Agency, *Submission 72*, p. 9.

want to hear it at the end of a busy day at work, but this is here and now and it is at an industrial scale. These education products are key to making it harder for offenders to offend, so they are really, really important to us.<sup>11</sup>

Mr Jones also observed that parents and carers who do not understand how child sexual abuse is perpetrated may inadvertently expose their children by sharing images of them online. Mr Jones explained that the Agency offers education aimed at addressing this behaviour:

What we try and do with our education is get people to think twice around what they are posting, and this is really, really difficult. But sexualised images of children—you know, an innocent parent will not necessarily see what we would see in some of that imagery ... And if we were trying to classify it in an investigation, we would actually probably say it was indicative material—and that is really unhelpful.<sup>12</sup>

Victoria Police suggested that improving community understanding of how child sexual abuse occurs, and likely indicators, can prevent abuse from occurring and increase reporting of offences. Assistant Commissioner Chris Gilbert, Intelligence and Covert Support Command, Victoria Police said education can be ‘incredibly powerful’:

issues around consent, issues around how it occurs, what are the signs, [and] balancing that being alert rather than alarmed. It is incredibly powerful. The more the community knows, I think the better opportunities there are for prevention<sup>13</sup>

Victoria Police also submitted that awareness campaigns can be used to notify the public of changing risk profiles to children’s sexual safety. For example, it undertook a ‘proactive media effort’ to warn parents of a surge in online sharing of child exploitation materials during the June 2021 COVID-19 lockdown.<sup>14</sup>

Dr Mark Zirnsak, a Senior Social Justice Advocate with the Uniting Church in Australia’s Synod of Victoria and Tasmania also supported education, suggesting that it ‘can play a beneficial role’ in preventing child sexual abuse. However, he observed that it is not a panacea and must be well-designed if it is going to be effective:

the reality is, in your working life you might only ever encounter one person who is engaged in grooming or some sort of child sex offence stuff, and because of that—it is not something that is happening regularly for you—the gap between when you were trained and when you might actually encounter that person could be quite long. And there are a whole lot of issues there. That person will normally have built a relationship with you, so you are suddenly having to report a suspicion on a colleague. That carries a lot of, you know, anxiousness about that, because if I get it wrong, if I actually say this person is doing something, I have destroyed my working relationship with them.

11 Mr Robert Jones, Director, Threat Leadership, United Kingdom National Crime Agency, public hearing, via video conference, 26 May 2021, *Transcript of evidence*, p. 15.

12 *Ibid.*, p. 17.

13 Assistant Commissioner Chris Gilbert, *Transcript of evidence*, p. 20.

14 Victoria Police, *Submission 84*, p. 5.

... I absolutely think there is a role for education. I actually think it does play a beneficial role. But I think we have also got to be able to recognise it has got limitations and we also need to be really focused on the research that actually is going to show us how to make that educative effort as effective as it possibly could be.<sup>15</sup>

The Committee acknowledges the broad support for preventative education and awareness campaigns amongst stakeholders to the Inquiry. Furthermore, it notes that this support aligns with the findings of the 2013 Royal Commission into Institutional Responses to Child Sexual Abuse which are outlined in Section 4.1.1 below.

## 4.1.1 Royal Commission into Institutional Responses to Child Sexual Abuse

Education and awareness programs as a complementary tool to reduce instances of child sexual abuse was well documented by the 2013 Royal Commission into Institutional Responses to Child Sexual Abuse. The Royal Commission found that Australian communities do not have a good understanding of how sexual abuse occurs. It also highlighted that common attitudes, misconceptions and beliefs may enable abusers and discourage reporting:

Our work has shown that there are misperceptions, attitudes, beliefs and behaviour in all Australian communities that can enable, encourage or normalise sexually abusive behaviour towards children. Such attitudes and misunderstandings can discourage victims from disclosing abuse or seeking help.<sup>16</sup>

It determined that a well informed and proactive community can help foster an environment that is hostile to child sexual abuse:

This could make it harder for people to groom and abuse children, increasing the likelihood of grooming behaviour and abuse being identified and reported, and making it easier for victims to disclose abuse. Such communities could increase pressure on institutions to create environments for children that are safe.<sup>17</sup>

The Royal Commission called for community-based initiatives, such as awareness and preventative education programs, to be delivered alongside policy and legislation reform aimed at preventing child sexual abuse.<sup>18</sup> It recommended a national strategy encompassing awareness campaigns and education programs to foster the community's understanding of this issue, and skills to prevent and identify instances of abuse:

Our recommended national strategy should encompass a number of complementary initiatives that could contribute to change in communities (see Recommendation 6.2), including:

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<sup>15</sup> Dr Mark Zirnsak, *Transcript of evidence*, p. 28.

<sup>16</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report - Volume 6, Making Institutions child safe*, 2017, p. 9.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*, p. 10.

- social marketing campaigns for all communities
- prevention education through early childhood centres, schools and other institutional settings for children and parents
- online safety education for children and young people, and their parents and carers
- prevention education for tertiary students intending to work in child-related occupations
- help-seeking services for potential perpetrators
- information and help-seeking services for bystanders (family members and other community members) who are concerned that an adult they know may perpetrate child sexual abuse or that a child may be at risk of harmful sexual behaviours.<sup>19</sup>

The Royal Commission also recommended that this national strategy address issues surrounding children and young people who are exhibiting problematic sexual behaviour, including:

primary prevention strategies to educate family, community members, carers and professionals (including mandatory reporters) about preventing harmful sexual behaviours<sup>20</sup>

In July 2018, the Victorian Government released its response to the findings of the Royal Commission. It noted the recommendation for a national strategy encompassing awareness campaigns and education programs. It gave in-principle support to the recommendation that the national strategy address issues surrounding children and young people who are exhibiting problematic sexual behaviour.<sup>21</sup>

The Victorian Government publishes annual reports on the implementation of these recommendations. In its most recent report, the Government acknowledged that it ‘continues to work closely with the Australian Government and other states and territories on the development of a National Strategy to Prevent Child Sexual Abuse’ as recommended by the Royal Commission.<sup>22</sup>

## 4.2 Existing preventative education programs

Awareness campaigns and education programs aimed at preventing child sexual abuse already exist and are available in Victoria. The Committee examined several examples, which are summarised in Box 4.1 below.

<sup>19</sup> Ibid., p. 11.

<sup>20</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report - Volume 10 Children with harmful sexual behaviours*, 2017, p. 18; Bravehearts Foundation, *Submission 69*, p. 3.

<sup>21</sup> Victorian Government, *Victorian Government Response to the Royal Commission into Institutional Responses to Child Sexual Abuse*, 2018, pp. 1, 16, <[https://www.vic.gov.au/sites/default/files/2020-03/Royal\\_Commission\\_Victorian\\_Government\\_response\\_table.pdf](https://www.vic.gov.au/sites/default/files/2020-03/Royal_Commission_Victorian_Government_response_table.pdf)> accessed 1 July 2021.

<sup>22</sup> Victorian Government, *Annual Report 2020 - Royal Commission into Institutional Responses to Child Sexual Abuse*, 2020, p. 9.

**BOX 4.1: Australian child sexual abuse awareness campaigns**

**Australian Federal Police's ThinkUKnow Australia** engages 'influencers in a young person's life' such as parents, carers and educators. It focuses on providing education aimed at preventing self-generated child sexual exploitation material, online grooming, image-based abuse, and sexual extortion. It provides information and teaching resources tailored to children from under the age of 5 up to 18 years, and facilitates ThinkUKnow presentations by police and other volunteers to children.

**Body Safety Australia's Body Safety Superstars!** seeks to empower children in early learning centres and primary schools to 'understand and communicate their right to bodily autonomy'. The program is provided by Body Safety Australia educators and encompasses learning objectives such as assertively communicating bodily autonomy. This includes identifying 'tricky' behaviour in adults and older children, identifying safe adults, and recognising when something 'doesn't feel right'. The scope of the program is scaled to children's ages and every class is accompanied by a two-hour workshop for parents and the option of professional development for educators.

**Kids First's Stand Up!** aims to empower children aged between 13 and 15 years to 'critically reflect on navigating and standing up to sexual exploitation'. It is provided in secondary schools over three to four sessions by the Kids First Sexual Abuse Counselling and Prevention Program. The program encompasses learning objectives such as identifying risk scenarios in healthy and unhealthy relationships, understanding and responding to grooming, and overcoming barriers to seeking support. The program incorporates a teacher and parent information session.

**Bravehearts Foundation's Ditto's Keep Safe Adventure Show** aims to equip children aged 3 to 8 years with personal safety knowledge and skills. It is delivered by Ditto (a lion mascot) and an educator through early learning centres and primary schools. The program has six principles of personal safety and teaches children three rules:

- we have the right to feel safe with people
- it's okay to say no if you feel unsafe or unsure
- nothing is so yucky that you can't tell someone about it.

**Daniel Morecombe Foundation's Day for Daniel** is Australia's largest child safety education and awareness campaign. It is held annually on the last Friday of October and raises money for the Foundation. Parents, carers, educators, and children aged from 3 to 18 years are encouraged to wear red and conduct personal safety lessons. The Foundation's resources and lesson plans aim to equip children to recognise, react and report when they feel unsafe.

*(Continued)*

**BOX 4.1: Continued**

**Gatehouse Centre's Refocus Program** is an intervention program for adolescents under 15 years of age who exhibit problematic sexual behaviour or who are sexually abusive. Participation is either voluntary (family directed), under a Therapeutic Treatment Order (court directed) or on the basis of a Therapeutic Treatment Referral (from Victoria Police or child protection services). The program combines cognitive behavioural therapy and family therapy to identify and address the underlying causes of problematic behaviours. It is provided by a multi-disciplinary team of psychologists, social workers and psychotherapists.

Sources: Victorian Government, *Annual Report 2020 – Royal Commission into Institutional Responses to Child Sexual Abuse*, 2020, p. 9; Australian Federal Police, ThinkUKnow, (n.d.), <<https://www.thinkuknow.org.au>> accessed 8 June 2021; Body Safety Australia, *Body Safety Superstars!*, (n.d.), <<https://www.bodysafetyaustralia.com.au/body-safety-superstars>> accessed 10 June 2021; Ms Ashford, *Transcript of evidence*, p. 41; Kids First, *Stand Up!*, (n.d.), <<https://www.kidsfirstaustralia.org.au/page/Stand-Up!>> accessed 10 June 2021; Bravehearts Foundation, *Ditto's Keep Safe Adventure Show*, <<https://bravehearts.org.au/keepsafe>> accessed 10 June 2021; Daniel Morcombe Foundation, *Day for Daniel*, (n.d.), <<https://danielmorcombe.com.au/day-for-daniel>> accessed 10 June 2021; The Royal Children's Hospital Melbourne, *Gatehouse Centre, Refocus Program: Information for parents and carers*, (n.d.), <[https://www.rch.org.au/uploadedFiles/Main/Content/gatehouse/160020%20Gatehouse%20DL\\_REFOCUS%20Parents\\_WEB.pdf](https://www.rch.org.au/uploadedFiles/Main/Content/gatehouse/160020%20Gatehouse%20DL_REFOCUS%20Parents_WEB.pdf)> accessed 30 June 2021; Law Institute of Victoria, *Submission 81*, pp. 6–7; Victorian Aboriginal Child Care Agency, *Submission 79*, p. 5; Dr Mark Zirnsak, *Transcript of evidence*, p. 24; Ms Carol Ronken, *Transcript of evidence*, p. 6.

### 4.3 Characteristics of effective preventative education

Inquiry stakeholders outlined the elements critical to effective preventative education, including programs that:

- are evidence based<sup>23</sup> and informed by best practice guidelines<sup>24</sup>
- engage as much of the community as possible, particularly parents, carers, school staff and children<sup>25</sup>
- are tailored to meet the needs of more vulnerable populations and provide children of all ages, genders, abilities, backgrounds with the opportunity to participate<sup>26</sup>

<sup>23</sup> Victorian Aboriginal Child Care Agency, *Submission 79*, p. 5; Dr Mark Zirnsak, *Transcript of evidence*, p. 24; Ms Carol Ronken, *Transcript of evidence*, p. 6

<sup>24</sup> Body Safety Australia, *Submission 83*, pp. 2–3.

<sup>25</sup> Ms Aileen Ashford, Chief Executive Officer, Kids First, public hearing, Melbourne, 13 May 2021, *Transcript of evidence*, p. 42; Body Safety Australia, *Submission 83*, pp. 1–2, 4.

<sup>26</sup> Ms Deanne Carson, *Transcript of evidence*, 13 May 2021, Melbourne, pp. 57, 60; Mr Robert Jones, *Transcript of evidence*, p. 15; Victorian Aboriginal Child Care Agency, *Submission 79*, p. 6.

- are primarily delivered by skilled external practitioners<sup>27</sup> through education services such as early childhood centres and schools<sup>28</sup> and made available to vulnerable children through specialised support services.<sup>29</sup>

### 4.3.1 Effective preventative education is evidence based

The potential for education to empower children and the adults in their lives to prevent child sexual abuse was broadly recognised by many stakeholders. However, they also acknowledged that education is unlikely to be effective unless it is informed by evidence and of a consistently high quality. Dr Mark Zirnsak from the Uniting Church in Australia warned that general or poorly designed education would not improve community safety:

information needs to be well targeted and there needs to be an understanding of both how those who perpetrate offences operate and also who are the people most likely to be vulnerable or to be their targets.

... there have been education schemes telling young people, 'Don't share naked photographs', and they have found they are really ineffective because what you actually need to help young people is to say, 'When an intimate partner asks you for a naked image, these are the things you can respond with'—rather than just 'Don't send it', actually give them tools and information about what to say instead and how to manage it. That is why I am sort of saying sometimes we jump to education and sort of say we will just do broadbrush education, but I think this is definitely an area where you need the research to back up where best to target the education—who does it need to be targeted to and what are the ways that are going to be best to deliver that and an evaluation of those things, because it is going to be a bit of a trial and error around that.<sup>30</sup>

The Victorian Aboriginal Child Care Agency is an organisation which provides programs aimed at facilitating 'culturally strong, safe and thriving Aboriginal communities'.<sup>31</sup> In its submission, it highlighted the importance of well-designed education. It recommended that programs aimed at preventing child sexual abuse are 'evidence-based and informed by consultation with experts in the field and young people'. The agency also recommended programs cover topics such as consent, respectful relationships, rights and responsibilities, and digital safety.<sup>32</sup>

Mr Jones of the National Crime Agency in the United Kingdom suggested there was value in involving law enforcement agencies in the development of preventative

<sup>27</sup> Body Safety Australia, *Submission 83*, p. 2; Ms Aileen Ashford *Transcript of evidence*, p. 41.

<sup>28</sup> Body Safety Australia, *Submission 83*, p. 3; Mr Bruce Morcombe OAM, *Transcript of evidence*, p. 52; Ms Aileen Ashford, *Transcript of evidence*, p. 41.

<sup>29</sup> Victorian Aboriginal Child Care Agency, *Submission 79*, pp. 5, 6.

<sup>30</sup> Dr Mark Zirnsak, *Transcript of evidence*, p. 24.

<sup>31</sup> Victorian Aboriginal Child Care Agency, *Our services*, <<https://www.vacca.org/page/services>> accessed 1 June 2021.

<sup>32</sup> Victorian Aboriginal Child Care Agency, *Submission 79*, p. 5.

education programs. He argued that law enforcement agencies can provide operational insight into the vulnerabilities targeted and exploited by perpetrators of child sexual abuse:

Some might think, ‘Law enforcement—why do you do education?’. It is because we really understand the bad guys. Developing an education product with operational insight from investigations gives you a really good tool to target the areas of vulnerability that offenders will target.<sup>33</sup>

Body Safety Australia advocated for development of best practice guidelines to provide high quality, effective education programs to all children:

We believe one of the most important factors in successful prevention of child sexual abuse through education is a nationally consistent program based on identifying best practice standards and ensuring all programs meet this as a minimum. This would ensure content and delivery of effective education programs to all children, in all locations.<sup>34</sup>

Body Safety Australia suggested that best practice guidelines could help to ensure that education programs are tailored to address the needs of vulnerable children, who are overrepresented in child sexual abuse statistics. For example, Aboriginal and Torres Strait Islander children, children with disabilities, and culturally and linguistically diverse children.<sup>35</sup>

Body Safety Australia also noted that best practice education should be ‘designed to reach adolescents at risk of offending and divert them towards psychological, social and family assistance that can prevent them offending against other[s]’.<sup>36</sup>

A similar sentiment was expressed by Ms Ronken of the Bravehearts Foundation. She said that it is critical that education aimed at addressing problematic sexualised behaviours in children and young people is evidence based to ‘stop the offending cycle from continuing’.<sup>37</sup>

The Victorian Aboriginal Child Care Agency also noted that education programs aimed at preventing child sexual abuse must be culturally appropriate.<sup>38</sup>

### 4.3.2 Preventative education engages the whole community

Evidence to the Inquiry indicated that preventative education is more likely to be effective if it engages the broader community. Body Safety Australia explained that while whole of community preventative education is a relevantly new concept, it was

<sup>33</sup> Mr Robert Jones, *Transcript of evidence*, p. 15.

<sup>34</sup> Body Safety Australia, *Submission 83*, p. 2.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*, p. 3.

<sup>37</sup> Ms Carol Ronken, *Transcript of evidence*, p. 6.

<sup>38</sup> Victorian Aboriginal Child Care Agency, *Submission 79*, p. 8.

endorsed by the Royal Commission into Institutional Responses to Child Sexual Abuse.<sup>39</sup> Body Safety Australia also noted this forms part of its own approach:

We believe education for children is most effective when delivering in conjunction with information sessions for parents and teachers. Preventive education for parents, teachers and children facilitates discussion between children and the adults in their lives. While schools can and must provide some measure of protection, it is essential that parents and families continue to be the main providers of safety and assistance for children.<sup>40</sup>

The Committee received evidence from Ms Aileen Ashford, Chief Executive Officer of Kids First, a child and family services provider in Melbourne. Ms Ashford noted that children of all socioeconomic backgrounds across Australia may experience child sexual abuse. She argued that this necessitates preventative education which equips children and adults from across the community to recognise and address potential signs of abuse:

Sexual abuse does not discriminate by income, family composition or postcode. By increasing community discussion of this issue we can create a wider societal and cultural shift. As we discussed, schools are a perfect starting point. Beginning with teachers, students and their parents, we can create a ripple effect of knowledge, shared language and understanding. It should not stop there, though—sporting clubs, employers and so on. Being able to recognise potential signs of abuse and feeling equipped to respond proactively and knowing who to turn to for help is vital, and community partnerships are crucial to this approach. If we can reach victims as well as children who display harmful sexual behaviours early, then we have the best chance of preventing a trajectory of further trauma and harm.<sup>41</sup>

Body Safety Australia pointed out that ‘most child sexual abuse occurs in private homes and is perpetrated by someone known to the child and their family’. This makes it difficult for parents to identify and for children to disclose. Body Safety Australia argued it is imperative that preventative education goes ‘beyond the necessary task of educating children’ to assist parents and schools to recognise and address harmful behaviours:

We believe most parents are deeply motivated to protect their children from harm but may not always have the tools or knowledge to recognise or act on harmful behaviours. Cohesive education programs that include parents, schools, and children should be the standard in any educative efforts to prevent and detect child sexual abuse ...

Our research has shown that after providing body safety awareness workshops to teachers, parents and children, all three groups report their ability to identify harmful behaviours and respond appropriately has more than doubled. Our work with parents has also shown that providing detailed informative parent workshops prior to

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<sup>39</sup> Body Safety Australia, *Submission 83*, pp. 2–3; Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report – Volume 6, Making institutions child safe*, p. 11.

<sup>40</sup> Body Safety Australia, *Submission 83*, pp. 1–2.

<sup>41</sup> Ms Aileen Ashford, *Transcript of evidence*, p. 42.

child-focussed programs results in a much higher level of engagement and support from parents.<sup>42</sup>

Body Safety Australia contended that it is particularly important to engage parents and carers because technology-facilitated abuse at home is becoming more common in Australia. Children can be groomed via technology to self-generate exploitation material without their parents or carers being aware. Body Safety Australia submitted that ‘education for parents and children on the risks and indications of this form of abuse is crucial to its prevention’.<sup>43</sup>

However, Dr Zirnsak cautioned that parental education will not solve technology-facilitated child sexual abuse because the online environment is inherently unsafe for children. He suggested that preventative education works best when it is complemented by regulation aimed at increasing the safety of the online environment for children:

allowing your kid onto a device at the age of 12 is like taking your kid to the middle of New York City and sort of dropping them off in the street and expecting them to fend for themselves ... there is a real limit to putting a whole lot of obligation back on parents. They have a role, but ... If you have got a program where you can send an image that deletes itself within 5 seconds of having been viewed—right?—these are products that are not designed to help parents. If the idea was parents should be the ones doing greater oversight of their children’s use of devices, they are not really great spaces for that to happen.

So I think the shorter answer to your question is, yes, education has a role, but it needs to be backed up, particularly in the online world, with a whole lot of other safeguards, regulations, change both in corporate behaviour but also governments being willing to step in where corporates are not willing to create safe environments.<sup>44</sup>

### 4.3.3 Preventative education is accessible to all children

Inquiry stakeholders highlighted the importance of ensuring that preventative education is provided to all children. This includes being tailored to meet the needs of children of different ages, gender, abilities, socioeconomic background and cultural heritage.

Ms Deanne Carson from Body Safety Australia noted that children may experience harmful behaviour or abuse at any age. She asserted that this makes it ‘crucial’ that preventative education is delivered to children in early childhood through to adulthood:

Sexual abuse of children can start in infancy, which makes it crucial we are delivering age-appropriate education for children in early childhood settings and continuing this

<sup>42</sup> Body Safety Australia, *Submission 83*, p. 4.

<sup>43</sup> Ibid.

<sup>44</sup> Dr Mark Zirnsak, *Transcript of evidence*, pp. 24–25.

right through to adulthood. Children must have the language to recognise and describe harmful or grooming behaviours by offenders ...<sup>45</sup>

However, Ms Carson did note that the most appropriate age to deliver education aimed at addressing problematic sexual behaviours in young people is from 10 to 14 years old.<sup>46</sup>

Mr Jones of the National Crime Agency believed that preventative education should be provided to children as young as 4 years old, through to adulthood. He noted that his agency provides education aimed at preventing technologically facilitated abuse which is tailored to different age groups in recognition children are accessing the internet at a younger age. The National Crime Agency's education programs target:

- children aged 4 to 7 years
- children aged 8 to 10 years
- children aged 11 to 13 years
- children aged 14 years and older.<sup>47</sup>

In comparison, Kids First's preventative education program Stand Up! is aimed at children experiencing the onset of puberty. Ms Nicole Artico, Chief Operating Officer of Kids First said research indicates that children around 13 years of age are receptive to preventative education and discussion around what constitutes a healthy relationship:

our research has found that for that 13-year-old, year 8, cohort it is the most influential and most of timely—it is also around puberty then as well. So it is the whole year level, not individuals, and generally, depending on the size of the school, the class comes in together and engages in the program ... Partnering that with healthy relationships and understanding what sexual exploitation is and how to protect yourself from that and engage in healthy and safe relationships is really something we believe that needs to complement, as children age, sexual education.<sup>48</sup>

However, Ms Artico also acknowledged that Kids First is beginning to look at how preventative education could be delivered in early childhood settings, but more focused on teachers, parents and carers:

we are also beginning to look at educating educators and lead teachers within kinders what signs to look for and triggers to look for with those small children and also how to educate parents in a safe way in that setting for them to also be aware of what to look for as well. So our extremely strong focus on community development and education through a preventative lens is, over the course of the years, to build a greater awareness and a greater confidence to engage in conversation and reduce that stigma and a greater perception of what is behaviour that does not equate to sexual exploitation.<sup>49</sup>

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45 Ms Deanne Carson *Transcript of evidence*, p. 57.

46 *Ibid.*, p. 60.

47 Mr Robert Jones, *Transcript of evidence*, p. 15.

48 Ms Nicole Artico, Chief Operating Officer, Kids First, public hearing, Melbourne, 13 May 2021, *Transcript of evidence*, p. 45.

49 *Ibid.*, p. 44.

The Committee heard that preventative education must be tailored to meet the needs of children who may be more vulnerable to child sexual abuse due to a range of factors. Body Safety Australia submitted that strategies are needed to support the safety of children with disabilities, neurodiverse children and children from culturally diverse backgrounds. Ms Carson explained how preventative education and educational resources can be adapted to support students with different accessibility needs:

We already have resources that are accessible for vision-impaired people—so resources that have been brailled or are tactile—that they can use, we have developed what are known as ‘social stories’ for children on the autism spectrum, we have worked with schools for children with intellectual disabilities and developed programs particularly for those children, and we have worked with parents of children with physical disabilities, who by the nature of the disability have a particular vulnerability because they will need lifelong care for intimate caring, which leaves them vulnerable to that being exploited.<sup>50</sup>

The Victorian Aboriginal Child Care Agency also noted that preventative education should be tailored to ‘support Aboriginal children and young people who identify as part of the [LGBTQI+] community’.<sup>51</sup>

#### 4.3.4 Preventative education is delivered by skilled external practitioners through education services

Inquiry stakeholders highlighted that education institutions—such as early childhood education centres and schools—could facilitate equitable community access to preventative education. However, they considered that programs should be delivered by skilled external practitioners.

Body Safety Australia argued that ‘schools are the only environment that allows for equitable access to prevention education for all children’. Moreover, it noted that just over a third of all reports of child sexual abuse to the Royal Commission were identified as having occurred in schools.<sup>52</sup>

However, Body Safety Australia submitted that preventative education should be delivered by a skilled practitioner external to school communities. It asserted that its research indicated over 70% of teachers prefer that education aimed at preventing child sexual abuse is delivered by an external provider. Reasons for this include teachers feeling underequipped to communicate ‘confronting content’ and not wanting to damage relationships with their students and parents:

The main reasons cited by teachers were that they don’t feel equipped to deliver the programs, they believe it is easier for children to talk to someone who is not a teacher they see every day, and they don’t risk damaging relationships with parents by delivering confronting content.<sup>53</sup>

<sup>50</sup> Ms Deanne Carson, *Transcript of evidence*, p. 60.

<sup>51</sup> Victorian Aboriginal Child Care Agency, *Submission 79*, p. 6.

<sup>52</sup> Body Safety Australia, *Submission 83*, p. 3; Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 2, Nature and cause*, 2017, p. 114.

<sup>53</sup> Body Safety Australia, *Submission 83*, p. 2.

Body Safety Australia also noted that requiring teachers to teach child sexual abuse prevention education 'presents a risk of retraumatising survivors'. This referred to 2016 data from the Australian Bureau of Statistics that as many as 1 in 4 adult Australian women had experienced sexual violence.<sup>54</sup> Moreover, it argued that child sexual abuse prevention education is highly specialised and teachers are not trained or resourced to provide these programs:

Providers need specialised skills in delivering age-appropriate education and an expert understanding of child safe standards and principles, the nature and effects of grooming and abuse, the ability to detect at-risk behaviours and the confidence to act on those identifications. This specialised work is beyond the scope of work delivered by already overloaded teachers. We also note the increased risk of harm to children where education providers lack expertise.<sup>55</sup>

Mr Bruce Morcombe OAM, Founder of the Daniel Morcombe Foundation, suggested that education to prevent sexual abuse should be provided through schools. He noted that the Daniel Morcombe Foundation is working with the Queensland Department of Education, the Australian Centre to Counter Child Exploitation, and other stakeholders, to develop a child safety education package called the Daniel Morcombe Child Safety Curriculum. Mr Morcombe said he would like to see it implemented nationally.<sup>56</sup>

Ms Ashford from Kids First also considered that preventative education should be provided in schools, particularly programs focused on children exhibiting problematic sexual behaviours:

A public health approach considers schools as having a crucial role in prevention. As research highlights, programs can be delivered universally at moderate costs without stigmatising those at high risk. Teachers who see children regularly can observe changes in a young person's behaviour, appearance or health. School staff who are knowledgeable about those indicators and how to respond offer a protective community support for those young people.<sup>57</sup>

Ms Ashford noted that education programs aimed at addressing problematic sexual behaviours need to be delivered by a specialist, qualified to address underlying causes:

Firstly, young people who have engaged in harmful sexual behaviours need early, specialist support ...The cause of the behaviour can be complex and a result of any range of factors, including past trauma, feelings of anger, confusion, anxiety, poor impulse control, exposure to pornography and family violence... Kids First believes a targeted and specialist service approach is essential for young people who display harmful sexual behaviours.<sup>58</sup>

<sup>54</sup> Ibid.

<sup>55</sup> Ibid., p. 3.

<sup>56</sup> Mr Bruce Morcombe OAM, *Transcript of evidence*, p. 52.

<sup>57</sup> Ms Aileen Ashford, *Transcript of evidence*, p. 41.

<sup>58</sup> Ibid.

However, the Victorian Aboriginal Child Care Agency pointed out that some of Victoria's more vulnerable children and young people may be disengaged from school. It suggested that specialist organisations, including itself, may be better equipped to provide appropriately tailored, preventative education to vulnerable children:

There is a need for culturally appropriate education programs to be developed and delivered by VACCA on preventing and responding to harmful sexual behaviours in children. While some education programs are delivered at school, we know that some children and young people are disengaged from school, so they may be missing out on this critical resource.<sup>59</sup>

The Committee received evidence that well designed, best practice preventative education and community awareness campaigns can empower children and adults to prevent child sexual abuse. This evidence is discussed in Section 4.4 below.

## 4.4 Efficacy of preventative education

It is difficult to measure to what extent awareness campaigns and education programs prevent instances of child sexual abuse. However, the Committee was directed to research which demonstrated that education can support children to:

- increase their protective behaviour skills
- expand their understanding of how to prevent sexual abuse.

Moreover, well-designed preventative education was found to achieve these results in a manner which did not appear to increase anxiety in children.<sup>60</sup>

Body Safety Australia submitted that the positive impact of education programs can be evaluated using certain metrics. This included teachers' confidence to engage with the issue of child sexual abuse and children's understanding of appropriate behaviours:

We can and do, however, measure the efficacy of such programs in increasing teacher's confidence in detecting and addressing suspected abuse, parent's confidence in discussing safety issues or secret keeping, and their ability to disrupt grooming behaviour.

Most importantly, education assists children's understanding of safe and unsafe behaviours and their ability to access help when they feel unsafe.<sup>61</sup>

<sup>59</sup> Victorian Aboriginal Child Care Agency, *Submission 79*, pp. 5, 6.

<sup>60</sup> Body Safety Australia, *Submission 83*, p. 1; Kerryann Walsh et al., 'School-based education programmes for the prevention of child sexual abuse (Review)', *The Cochrane Library*, 2015, Issue 4, <[https://www.researchgate.net/publication/275054331\\_School-based\\_education\\_programs\\_for\\_the\\_prevention\\_of\\_child\\_sexual\\_abuse](https://www.researchgate.net/publication/275054331_School-based_education_programs_for_the_prevention_of_child_sexual_abuse)> accessed 26 June 2021.

<sup>61</sup> Body Safety Australia, *Submission 83*, p. 2.

Ms Deanne Carson noted that parents and carers who participated in Body Safety Australia programs reported feeling more confident in identifying grooming behaviours and intervening to protect their children, even in instances where the potential abuser is a trusted adult:

What we find is a particular vulnerability is that parents can identify grooming behaviour, but when that grooming behaviour is coming from somebody that they know they feel a lack of confidence in intercepting and addressing that grooming behaviour. One of the strongest things that comes out of our post research is their confidence in intercepting grooming behaviour. I know that we have spoken a lot about disclosures, but obviously what we want to be able to do is prevent abuse, not just have children reach out for help once they have been abused, and the parents being able to intercept and address grooming behaviours is an essential part of that.<sup>62</sup>

Ms Carson said her organisation had also received anecdotal feedback demonstrating that education can support children to assert their bodily autonomy and protect themselves from sexual violence:

Anecdotally we have had many, many students, via their parents or teachers, come back to us and say that students who were fairly quiet and compliant actually found themselves in a situation where they were vulnerable, where an older student was behaving sexually violently towards them, and they were able to be assertive in their communication—say ‘Stop’ and immediately help-seek from a teacher in the school. It is quite extraordinary to hear those kinds of feedback.<sup>63</sup>

The Committee heard that education programs can support children who had experienced sexual abuse to come forward and report it. Body Safety Australia, Bravehearts Foundation, and the Daniel Morcombe Foundation noted that children regularly disclosed instances of sexual abuse as a result of participation in their programs.<sup>64</sup>

Ms Carson estimated that 1 in 5 Body Safety Australia programs delivered in the early childhood setting (children aged 3 to 5 years) resulted in a disclosure of sexual abuse, and disclosures were made in every program delivered to children in secondary school:

At the moment, working with teenagers, we are receiving disclosures every single session.

...

And most of that is image-based abuse. We only do small-group work, so we do not work with any more than 30 students at a time, because that is a trauma-informed approach, and in every single classroom from year 7 to year 12 we will receive a disclosure.<sup>65</sup>

<sup>62</sup> Ms Deanne Carson, *Transcript of evidence*, p. 61.

<sup>63</sup> Ibid.

<sup>64</sup> Ms Deanne Carson, *Transcript of evidence*, p. 59; Ms Carol Ronken, *Transcript of evidence*, p. 5; Mr Bruce Morcombe OAM, *Transcript of evidence*, pp. 52–53.

<sup>65</sup> Ms Deanne Carson, *Transcript of evidence*, p. 59.

Ms Ronken said Bravehearts Foundation does not track disclosures made as a result of its education program because it was not the purpose of the program. However, Bravehearts regularly received feedback from schools that students had come forward to report sexual abuse after participating in a program:

Yes, look, we see them [disclosures] quite regularly, that we will get feedback from the school saying that a child has disclosed. I guess we do not really capture it or keep it on file because it is not one of the purposes of the program. I think that it would be interesting to know the exact figure but it would also be misleading because we do not specifically ask schools to report that back to us, and certainly the schools themselves may never know. The child may go home and tell their parent that someone is hurting them or that they feel unsafe with their neighbour, so it is really important that yes, those programs do have that benefit, but that should not be the focus of prevention programs.<sup>66</sup>

Mr Morcombe told the Committee that thousands of schools participate in Day for Daniel each year. On average, 6% or 7% reported a disclosure of child sexual abuse in the post-event survey. Mr Morcombe noted that by disclosing their experiences, children can gain access to support services and perpetrators can be identified:

Our three keywords are 'recognise, react, report', and the key word out of those three is to report ... I believe it is somewhere between 250 and 300 students that on or thereabouts on Day for Daniel disclose nationally because of the word 'report'. We make it comfortable and the right thing to do for youngsters to come forward. They do not feel ashamed. They just say, 'This has happened to me. It's not my fault'. These are the messages we present to them: it is never their fault; it is always the adult's fault. And certainly the most alarming thing is that 300 kids have come forward in a short space of time to disclose. Now, while that is alarming, it is also great because those kids are in a healthier position. They are being cared for, they are being looked after and hopefully quite a number of adults are being spoken to about what has been disclosed by those youngsters.<sup>67</sup>

The Committee heard there was also some evidence to support the efficacy of education programs aimed at addressing problematic sexual behaviour in children and young people. Ms Jackie Bateman, General Manager at Kids First said that there has been little evaluation of Australia programs of this nature. However, she noted that an evaluation of a similar program in the United Kingdom found that participants had not gone-on to commit child sexual abuse 10 years after completing the program.<sup>68</sup>

The Committee acknowledges the importance of ensuring that all communities have access to high quality preventative education. It believes that facilitating a stronger understanding of child sexual abuse among the community can help reduce instances of abuse. The Committee also considers that more empowered children are more likely to identify inappropriate interactions and report child sexual abuse.

<sup>66</sup> Ms Carol Ronken, *Transcript of evidence*, p. 5.

<sup>67</sup> Mr Bruce Morcombe OAM, *Transcript of evidence*, pp. 52–53.

<sup>68</sup> Ms Jackie Bateman, General Manager, Evidence-Informed Practice, Kids First, public hearing, Melbourne, 13 May 2021, *Transcript of evidence*, p. 43.

**FINDING 8:** High quality preventative education is an important element of a holistic public policy response to child sexual abuse. It must be available to all children and their carers at a minimum, and tailored to meet the needs of children with specialised accessibility requirements.

**RECOMMENDATION 4:** That the Victorian Government provides education providers—including early learning centres, primary schools, secondary schools and organisations providing specialised services to vulnerable children—with annual funding to access preventative education.

**RECOMMENDATION 5:** That the Department of Education and Training develops best practice guidelines for the provision of education aimed at preventing child sexual abuse in all its forms, including online grooming.

**Adopted by the Legislative Council Legal and Social Issues Committee,  
Parliament of Victoria, East Melbourne,  
18 August 2021**

# Appendix A

## About the Inquiry

### A.1 The Inquiry process

This Appendix provides an overview of the evidence gathering process undertaken for this Inquiry. It includes the Inquiry's Terms of Reference and an overview of the evidence received by the Committee, which consisted of submissions and public hearings.

#### Terms of Reference

On 28 August 2019, the Legislative Council agreed to the following motion:

That this House requires the Legal and Social Issues Committee to inquire into, consider and report, by no later than 30 June 2020, into the best means to—

- a. store data and information regarding convicted child sex offenders;
- b. prevent sexual offences from occurring through improved public awareness;
- c. investigate the circumstances in which the details of convicted child sex offences can be made public;

and any other matters the Committee determines to be relevant.

The Legislative Council agreed to extend the reporting date to 30 August 2021.

#### Submissions

The Committee advertised the Inquiry and called for submissions through its News Alert service, the Parliament of Victoria website, and print, online and social media. The Committee contacted over 50 stakeholders inviting them to make a submission to the Inquiry. These included:

- government departments
- sexual abuse victim advocacy organisations
- justice stakeholders
- preventative education practitioners
- policy advisers
- religious agencies
- academics
- interstate and international stakeholders
- community members.

The Committee requested that submissions be received via an online submission portal.

The Committee received and accepted a total of 83 submissions, with 10 submissions granted confidentiality by the Committee. Confidential submissions inform the Committee's understanding but are not used substantively in this report.

The Committee also resolved to grant 'name withheld' status to certain submissions in which the submitter discussed their personal experiences of child abuse, or the experiences of someone close to them. Submitters' names were redacted to protect their identity and to ensure their privacy.

All submissions, except for those accepted as confidential, were published on the Committee's website at <https://www.parliament.vic.gov.au/lsc-lc/article/4582>.

A list of submissions is included in Section A.2 of this Appendix.

### **Public hearings**

The Committee held a mix of videoconference and in-person hearings in metropolitan Melbourne.

A total of 15 public hearings were held over 3 days as follows:

- Thursday, 22 April 2021
- Thursday, 13 May 2021
- Wednesday, 26 May 2021.

The list of witnesses who attended public hearings can be found in Section A.3 of this Appendix.

Transcripts of evidence from public hearings were published on the Committee's website: <https://www.parliament.vic.gov.au/lsc-lc/article/4325>.

## A.2 Submissions

1	Name Withheld	36	Lora Wynn
2	Sharon Main	37	Linda Bonner
3	Skye McKitterick	38	Debbie Beattie
4	Name Withheld	39	Name Withheld
5	Kelly Nisbet	40	Andrea Bennett
6	Confidential	41	Name Withheld
7	Janet Donaldson	42	Name Withheld
8	Kristie Cook	43	Name Withheld
9	Terry Bray	44	Name Withheld
10	Name Withheld	45	Confidential
11	Name Withheld	46	Name Withheld
12	Name Withheld	47	Name Withheld
13	Lara Cachia	48	Jillian Smith
14	Debbie Wallace	49	Edwina Ewart
15	Name Withheld	50	Giulia Green
16	Brenda Barone	51	Name Withheld
17	Confidential	52	Barbara Morgan
18	Brett Pendlebury	53	Name Withheld
19	Uniting Church in Australia Synod of Victoria and Tasmania	54	Marian Boler
20	Name Withheld	55	Name Withheld
21	Peta Burns	56	Name Withheld
22	Karen Smith	57	Name Withheld
23	Confidential	58	M Cummins
24	Name Withheld	59	Name Withheld
25	Lisa Seno	60	Courtney Yates
26	Confidential	61	Jodie Bennett
27	Simone Clarke	62	Name Withheld
28	Hayley Link	63	Confidential
29	Name Withheld	64	Dr Kelly Richards
30	Name Withheld	65	Confidential
31	Name Withheld	66	Office of the Victorian Information Commissioner (OVIC)
32	Confidential	67	Name Withheld
33	Confidential	68	United Kingdom Home Office – Sex Offender Management
34	Name Withheld	69	Bravehearts Foundation
35	Craig Horne	70	Project Karma

71	Name Withheld	78	Office of Public Prosecutions Victoria
72	National Crime Agency UK	79	Victorian Aboriginal Child Care Agency
73	Name Withheld	80	Derryn Hinch's Justice Party (Victoria)
74	Daniel Morcombe Foundation	81	Law Institute of Victoria
75	Australian Lawyers Alliance	82	Confidential
76	Name Withheld	83	Body Safety Australia
77	Karen Gelb Consulting		

## A.3 Public Hearings

### Thursday, 22 April 2021

Meeting Rooms G1 & G2, 55 St Andrews Place, East Melbourne (and via Zoom)

Name	Title	Organisation
Chris Gilbert	Assistant Commissioner, Intelligence and Covert Support Command	Victoria Police
Stephanie Zarb	Advisor	Victoria Police
Dr Mark Zirnsak	Senior Social Justice Advocate	Uniting Church in Australia, Synod of Victoria and Tasmania
Sven Blummel	Victorian Information Commissioner	Office of the Victorian Information Commissioner
Rachel Dixon	Privacy and Data Protection Deputy Commissioner	Office of the Victorian Information Commissioner
Dr Kelly Richards	Associate Professor	School of Justice, Queensland University of Technology

### Thursday, 13 May 2021

Meeting Rooms G1 & G2, 55 St Andrews Place, East Melbourne (and via Zoom)

Name	Title	Organisation
Tania Wolff	President	Law Institute of Victoria
Gemma Hazmi	General Manager, Legal Policy	Law Institute of Victoria
Dr Michael Davis	Chair of the Victorian Branch, and Chair-elect of the National College of Forensic Psychologists	Australian Psychological Society
Dr Craig Horne		Personal capacity
Sam Norton	Senior Vice President	Liberty Victoria

Name	Title	Organisation
Ashleigh Cooper		Personal capacity
Scott McKissack		Personal capacity
Aileen Ashford	Chief Executive Officer	Kids First Australia
Nicole Artico	Chief Operating Officer	Kids First Australia
Jackie Bateman	General Manager, Evidence Informed Practice	Kids First Australia
Bruce Morcombe OAM	Founder	Daniel Morcombe Foundation
Deanne Carson	Chief Executive Officer	Body Safety Australia

## Wednesday, 26 May 2021

Via Zoom

Name	Title	Organisation
Carol Ronken	Director of Research	Bravehearts Foundation
Robert Jones	Director Threat Leadership	United Kingdom National Crime Agency
Stephanie Carrigg	SMART Senior Policy Advisor	United States Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART)
Marnie Dollinger	SMART Senior Policy Advisor	United States Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART)
Joel Dowling	SMART Senior Policy Advisor	United States Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART)
Scott Matson	SMART Associate Director for Policy	United States Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART)
Ms Sarah Blazucki	SMART Communications Coordinator	United States Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART)
Michelle Sicat-Morales	Congressional and Intergovernmental Affairs, Department of Justice	United States Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART)



# Appendix B

## Offence classes under the *Sex Offender Registration Act 2004 (Vic)*

### Class 1 and 2 offences

The *Sex Offenders Registration Act 2004 (Vic)* automatically applies to all adults sentenced for committing Class 1 or Class 2 sexual offences against a child.

Class 1 offences are listed in schedule 1 and Class 2 offences are listed in schedule 2 of the *Sex Offenders Registration Act 2004 (Vic)*. Schedules 1 and 2 refer to offences listed in various other acts, including the *Crimes Act 1958 (Vic)*, the *Sentencing Act 1991 (Vic)*, the *Sex Work Act 1994 (Vic)*, and the Criminal Code of the Commonwealth.

Offences	Example of content of offences
Class 1 offences	<ul style="list-style-type: none"> <li>• Rape, sexual assault and associated sexual offences, such as abduction or detention for a sexual purpose.</li> <li>• Sexual offences against children, such as penetration and sexual assault.</li> <li>• Incest.</li> <li>• Producing, distributing, accessing or possessing child abuse material.</li> <li>• Sexual offences against persons with a cognitive impairment or mental illness.</li> <li>• Sexual servitude or aggravated sexual servitude.</li> <li>• Other sexual offences, such as bestiality.</li> <li>• Persistent sexual abuse of a child under the age of 16 years.</li> <li>• Facilitating a sexual offence against a child.</li> <li>• Sexual intercourse or other sexual activity with a child or young person outside of Australia.</li> <li>• Grooming or procuring a child to engage in a sexual activity outside of Australia.</li> </ul>
Class 2 offences	<ul style="list-style-type: none"> <li>• Sexual assault or compelling sexual touching against a child, such as touching themselves or someone else sexually.</li> <li>• Assault with the intent to commit a sexual offence against a child.</li> <li>• Procuring a sexual act by threat or fraud from a child.</li> <li>• Administration of an intoxicating substance for a sexual purpose against a child.</li> <li>• Abduction or detention of a child for a sexual purpose.</li> <li>• Sexual activity directed at a child.</li> <li>• Sexual assault of a child under the age of 16 or sexual activity in their presence.</li> <li>• Sexual assault of, or sexual activity in the presence of, a child aged 16 or 17 under care, supervision or authority.</li> <li>• Causing a child to be present during a sexual activity or encouraging them to become involved in a sexual activity.</li> </ul> <p>(Continued)</p>

Offences	Example of content of offences
Class 2 offences (Continued)	<ul style="list-style-type: none"> <li>• Loitering near a school, a children’s service centre or an education and care service premises by a convicted sexual offender.</li> <li>• Causing, allowing, inviting or offering a sexual performance involving a child.</li> <li>• Administering or encouraging the use of a website used to deal with child abuse material.</li> <li>• Causing, inducing or obtaining payment for a child to take part in sex work.</li> <li>• Possessing, controlling, producing, distributing or obtaining child pornography material outside Australia.</li> <li>• Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage or postage service.</li> </ul>

### Class 3 and 4 offences

Class 3 and Class 4 offences are sexual offences, such as those described above committed by a serious sexual offender against an adult. A person is deemed to be a serious sexual offender if he or she has at any time been sentenced by a court for two or more offences listed in a schedule to the *Sex Offenders Registration Act 2004 (Vic)*.<sup>1</sup>

<sup>1</sup> *Sex Offenders Registration Act 2004 (Vic)*, pt 2, div 1, s 8.

# Minority report



**LEGISLATIVE COUNCIL  
LEGAL AND SOCIAL ISSUES COMMITTEE**

**INQUIRY INTO MANAGEMENT OF CHILD SEX  
OFFENDER INFORMATION**

**MINORITY REPORT**

**AUGUST 2021**

*On 28 August 2019, the Legislative Council agreed to the following motion:*

*That this house requires the Legal and Social Issues Committee to inquire into, consider and report, by no later than 30 June 2020, into the best means to -*

- (a) store data and information regarding convicted child sex offenders;*
  - (b) prevent sexual offences from occurring through improved public awareness;*
  - (c) investigate the circumstances in which the details of convicted child sex offences can be made public;*
- and any other matters the committee determines to be relevant.*

*The Legislative Council subsequently agreed to extend the reporting date to 30 August 2021.*

We the undersigned members of the Legal and Social Issues Committee (LSIC) submit this following minority report pursuant to Standing Order 23.28 for the consideration of the House.

We wish to thank all those who made submissions and provided evidence to the Committee, particularly victim-survivors and the families and loved ones of victim-survivors and those of deceased victims.

The tireless work of victim-survivors, their families and loved ones, who devote so much of themselves in the prevention of further heinous crimes, is recognised and commended.

We especially wish to acknowledge and thank Bruce Morcombe OAM, of the Morcombe Foundation, for his time and evidence to the Committee. The dedication of Bruce and Denise Morcombe in pursuing justice for victims, in the memory of their son Daniel, is extraordinary.

At the outset, we believe that the Committee's majority findings and recommendations as proposed, could go further to promote the important objectives of community safety, transparency and tackling recidivism.

We are particularly disappointed that the Committee was not able to engage with and take direct witness evidence from representatives of the Western Australian government and agencies, particularly Western Australia Police, relating to the Western Australia legislated Community Protection Disclosure Scheme that has successfully operated since 2012.

We believe that this failure to obtain direct contemporaneous witness evidence on Western Australia's sex offenders public disclosure scheme has adversely impacted on the Committee's ability to obtain the most appropriate Australian jurisdictional comment and timely data to best inform the Inquiry.

We agree with the majority report, Chapter 3, 'Finding 1' that,

*“any expansion to provisions for the disclosure of information under the Sex Offenders Registrations Act 2004 (Vic) should be informed by a strong, empirical evidence base.”*

To provide such a “*strong, empirical evidence base*”, we strongly support and recommend the urgent need for Victoria to introduce and undertake a pilot limited sex offenders public disclosure scheme, modelled on Western Australia’s tiered limited sex offender public disclosure scheme.

While we acknowledge the excellent work done by the Victorian Law Reform Commission in finding solutions to difficult public policy questions, we are concerned that the Chapter 3, Recommendation 2, which states, “*That the Victorian Government refers to the Victorian Law Reform Commission (or other appropriate body) an inquiry into the circumstances in which a limited public disclosure scheme for registered sex offender information could be trialled*”, could delay action on this important issue for years.

We believe that a pilot program for Victoria would provide the basis for further detailed assessment and the evaluation necessary to inform any decision to introduce a permanent ongoing legislated scheme.

We note that the Western Australia tiered limited sex offender public disclosure scheme has successfully operated since its introduction in 2012, without the excesses (and associated risks) of US style ‘Megan’s Law’ open public sex offender register schemes.

We also note that there is little if any public evidence of the Western Australian scheme leading to vigilantism against sex offenders on the register, or their families. The significant criminal penalties of up to ten years jail in Western Australia for vigilante activity or other unacceptable legislative breaches, may have provided the necessary deterrence.

In addition to the Western Australia limited sex offender public disclosure scheme model, we note the report’s evidence of the benefits of the child sex offender limited public disclosure scheme, known as ‘Sarah’s Law’, first piloted in the UK 2008 and in 2014 rolled out across England, Wales and Scotland.

The Committee’s public hearing evidence of Mr Robert Jones, Director, Threat Leadership, UK National Crime Agency, is persuasive. He stated:

*“So, we see it as a really, good, strong tool. If disclosures are made, following the policy and procedures and practice, they should then end up on local police intelligence databases and the police national database... we see it as positive; we see it as a good step forward. It is something that works well, and it fills a need that the public were very vocal about in terms of people being able to protect themselves and create resilience in potential victims and survivors.”* Chapter 3.

We further note the continuing work at the Commonwealth level regarding a proposed a National Public Register of Child Sex Offenders.

However, we acknowledge that such a Register will need the agreement of the states and territories, which is not anticipated in the near future. In the absence of such agreement, Victoria should introduce a pilot limited disclosure scheme.

We do recognise that the majority report details evidence that places doubt on the ability of registry schemes to mitigate the risk of sexual recidivism while citing a UK study that *“violent offenders were twice as likely to have a new conviction for any offence compared to sexual offenders.”*

However, we believe that this evidence should be assessed against the increased awareness of enormous levels of under-reporting of sexual offending in the Victorian community and an even lower level of eventual prosecution and conviction rates of sex offenders. The majority report notes:

*“... it is estimated that only 20% of those who commit sexual offences are detected and only 1% receive convictions”, and “of those who are convicted of sexual offences, approximately 5-20% are detected for reoffending.”*  
Chapter 2.

Considering this evidence and cognisant that the under-reporting of sexual offending is an issue that is beyond the remit of this Inquiry and one which needs to be separately addressed, we contend that the true level of sexual offender recidivism in Victoria is not known with any certainty.

It is highly probable that the rate of sexual reoffending is far higher than is currently acknowledged, a substantive reason for the need for a pilot Victorian sex offender’s public disclosure scheme to build and strengthen the localised empirical evidential base regarding recidivism.

The change in risk of reoffending for convicted sex offenders is dynamic, complex and can change quickly, and the resource implications of constantly assessing this risk must also be addressed.

The majority report, beyond the inquiry’s terms of reference, points to the significance of schemes to rehabilitate sex offenders and the importance of this work.

We acknowledge, that whilst the research and the programs in this most critical area of community safety are very important, a limited sex offenders public disclosure scheme and programs to address offender recidivism should not be seen as mutually exclusive, rather they should be part of a broader complementary policy framework to tackle these most heinous crimes.

We support the Committee’s majority report finding that the State Government should increase investment in improved sex offender rehabilitation programs. We also acknowledge the very many professionals working within Corrections Victoria and elsewhere who work tirelessly to address the causes of this egregious offending. Both the personal trauma and

financial cost inflicted on the community by this offending demand that these professionals are given the resources they require.

We note the majority report's Chapter 2, Recommendation 1, *"that Victoria Police reviews the current practice of retaining deceased and deregistered offenders on the Victorian Sex Offenders Register"* and highlight the evidence provided by Victoria Police Assistant Commissioner Gilbert that, *"information on the Register is kept in perpetuity for practical reasons"*. This is a particularly important point in the context of significant historical reporting of institutional sexual abuse of children and vulnerable persons over recent years, especially resulting from the Royal Commission into Institutional Responses to Child Sexual Abuse (2013-2017).

In conclusion, a limited sex offender public disclosure scheme provides the benefit of greater transparency and empowering concerned citizens, while limiting the risk associated with a US style full disclosure scheme.

This minority report supports a pilot limited sex offender public disclosure scheme modelled on the successful Western Australia scheme.

In the context of a wider national discussion and the introduction of Western Australia's limited public disclosure scheme in 2012, Victoria has been discussing the issue of public sex offender registers and disclosure schemes for a decade or more.

We believe that the majority report recommendation to make a referral to the Victorian Law Reform Commission for further review does not go far enough and a pilot scheme should be established as a high priority for adoption by the Victorian Government.

It is time that Victoria now undertake its own pilot evaluation program.

If the opportunity is not seized now, the issue will be 'kicked down the road' again and another decade could pass, at the expense of improved community safety, particularly for our young and vulnerable Victorians.

Mr Edward O'Donohue MLC

Mr Craig O'Donohue MLC

Date: 23 August 2021





