

11 January 2019

Consultation Process
Department of Home Affairs
Australian Government

childexploitation@homeaffairs.gov.au

National Public Register of Child Sex Offenders

Thank you for inviting the Australian Catholic University's Institute of Child Protection Studies to make a submission to the consultation process.

The Institute of Child Protection Studies enhances outcomes for children, young people and families through quality research, program evaluation, training and community education, advocacy and policy development. We are nationally recognised for our expertise in child protection, and preventing and responding to the abuse and neglect of children. We promote children's participation, strengthen service systems, inform practice and support child-safe communities.

The Institute does not support the establishment of a National Public Register of Child Sex Offenders. In our view, the establishment of the Register would not *enhance community safety and protect children from sexual abuse*.

Instead the Institute encourages the Federal Government to give priority to the implementation of the strategies recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse.

In particular we recommend greater effort by the Federal Government (including the Department of Home Affairs) to support national coordination of existing efforts to share information between suitably qualified agencies at a State and Territory and Federal level in law enforcement and child safety regulation to prevent offending behaviour.

We recommend the development of a comprehensive national child safety framework as recommended by the Royal Commission that uses a public health approach and maximises prevention opportunities for both convicted offenders and those at risk of offending. In particular, we endorse a rehabilitative approach for children with harmful sexual behaviours that avoids the stigmatising impact of the publication of identifying information.

A more detailed explanation of our position is set in the attached paper. I am happy to elaborate on this paper and our recommendations for the prevention of child sexual abuse and the enhancement of community safety.

Yours sincerely



Professor Daryl Higgins, PhD, MAPS

Director, Institute of Child Protection Studies

Australian Catholic University

Institute of Child Protection Studies

Office of the Director, ICPS

Melbourne Campus
115 Victoria Pde
Fitzroy VIC 3065

T: +61 9953 3607
E: daryl.higgins@acu.edu.au
W: acu.edu.au/icps

Introduction

The Australian Government is seeking feedback on the establishment of a National Public Register of Child Sex Offenders.

The Consultation Paper provided to introduce the consultation process argues that a national approach is required for the public registration of child sex offenders. It notes that the intention of the establishment of a National Public Register is “*to enhance community safety and protect children from sexual abuse by deterring offenders, raising public awareness and enabling concerned citizens to be more vigilant about the potential risks posed by offenders in their communities*”.

The Institute’s View

With respect, the view of the Institute is that the need for public registration of child sex offenders in Australia (and the establishment of the proposed National Public Register) has not been established. There is little evidence to support the contention that the Register will achieve its intended goals and significant evidence that it will be counter-productive in preventing child sexual abuse and in enhancing community safety.

Further, there are other priority tasks for governments (including the Australian Government) that could and should be undertaken that will be more effective in enhancing community safety and protecting children from sexual abuse. Many of these tasks have been identified and recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). In their extensive list of recommendations to prevent child sexual abuse in Australia, the Royal Commission did not include any recommendations suggesting the establishment of a National Public Register of Child Sex Offenders.

Public Policy Research

The recent review by the Australian Institute of Criminology¹ provides valuable guidance for public policy in this area. It notes that public sex offender registries may have a small general deterrent effect on first time offenders but do not reduce recidivism. The review examined the international evidence, including from the United States where most schemes for sex offender registration and community notification have been introduced. Most studies found no significant decline in recidivism for sex offenders following the introduction of the various schemes.

More critically, a number of studies suggest that convicted sex offenders are more likely to reoffend when their personal and offending information is made public due to the ‘associated psychological, social, or financial costs’². Research has found that being placed on a public sex offender registry can result in exclusion from community or accommodation, job loss, anxiety and other psychological problems³, all of which are counterproductive in terms of reducing reoffending.

As a key starting point for policy development (and contrary to some public commentary) it is important to note that recidivism rates among convicted sex offenders are generally low when compared to other offenders. In particular, offenders who have targeted family members are the least likely to reoffend⁴. As a result, broader community notification offers little value in a deterrent effect. Similar patterns of offending have been observed in Australia, noting that most child sexual assault victims⁵ are assaulted by someone they know⁶.

¹ Australian Institute of Criminology “What impact do public sex offender registries have on community safety” (2018) Trends & Issues in Crime and Criminal Justice, Canberra, Australia

² Prescott & Rockoff “Do sex offender registration and notification laws affect criminal behaviour?” (2011) Journal of Law & Economics Vol.54(1) 161-206

³ Lasher & McGrath “The impact of community notification on sex offender reintegration: A quantitative review of the research literature” (2012) International Journal of Offender Therapy and Comparative Criminology Vol.56(1) 6-28

⁴ Hanson & Morton-Bourgon “The characteristics of persistent sexual offenders: A meta-analysis of recidivism studies” (2005) Journal of Consulting and Clinical Studies Vol. 73(6) 1154-1163

⁵ Under 14 years of age

⁶ Australian Bureau of Statistics “Recorded Crime – Victims, Australia 2015” (2016) Canberra, Australia

The National Framework for Child Safety

At the same time, the Royal Commission has made detailed recommendations⁷ as to the development and implementation of a comprehensive national strategy to prevent child sexual abuse. This work is to be coordinated by the National Office for Child Safety and included in the National Framework for Child Safety. The national strategy is intended to build on and extend the commitments and initiatives of the COAG-endorsed National Framework for Protecting Australia's Children 2009-2020. It is also intended to coordinate with existing (and future) measures developed in implementation of the National Plan to Reduce Violence against Women and their Children 2010-2022 and the National Disability Strategy 2010–2020.

The Royal Commission has recommended that the Framework should encompass social marketing campaigns to raise general community awareness and education programs for children, parents and community members to increase knowledge and build skills around the prevention of child sexual abuse. These are to be built around information and help-seeking services for parents and community members to address concerns around adults, children and young people who may be at risk of perpetrating child sexual abuse.

This is a targeted approach similar to those used and tested in other jurisdictions such as the United Kingdom and Ireland that recognises the risks and builds preventative practice. Conspicuously it does not include the broad public sharing of identifying information about individuals who have already been detected, tried and convicted of child sex offences. It recognises that this group pose a relatively small risk of re-offending when compared with the group of individuals who will be assessed and supported through the broader (but more targeted) approach of the child safety regulatory regimes under development in each state and territory jurisdiction of Australia.

At the same time that this prevention work is in development (and will be monitored by the National Office of Child Safety), concern has already been expressed (including by law enforcement) in Australia that a public sex offender registry may distract from the public health approach endorsed by the Royal Commission. Specifically, a Register may increase superficial perceptions of safety in the community while at the same time giving a false sense of security to community members who may focus on those who have already offended rather than those who may be a greater risk of offending in the future⁸.

There is a growing awareness of the need for prevention activities to focus on the culture and practices of families, organisations and communities to create conditions of safety⁹. Publication of a register is likely to shift the focus back to the identification of particular individuals, rather than addressing risks and building prevention practice in the community more broadly (such as promoting more accurate knowledge and understanding of sexuality and personal safety; developing supervision practices, listening respectfully to children and their concerns, etc.).

Appropriate Information Sharing

It is also important to acknowledge that Australia already has a relatively comprehensive system of non-public registries and information sharing practices that enable law enforcement authorities to monitor offenders. The Australian Child Protection Offender Reporting Scheme requires convicted child sex offenders to keep police informed of their whereabouts. The Australian Criminal Intelligence Commission hosts the National Child Offender System, which is a case-management system for law enforcement agencies to record and share child sex offender information.

In its paper, the Australian Institute of Criminology noted the opportunity for greater research into the effectiveness of existing non-public registries and practices in crime prevention, protection of children and enhancing community safety. This would offer a sound basis for improving existing practice for law enforcement and government programs for community safety.

As the Consultation Paper has noted, several Australian state jurisdictions have begun to explore limited strategies for the public release of some information concerning offenders.

⁷ Royal Commission into Institutional Responses to Child Sexual Abuse "Final Report – Preface and Executive Summary" (2017) Sydney, Australia and particularly recommendations 6.1 to 6.5

⁸ Whitting, Day & Powell "Police officer perspectives on the implementation of a sex offender community notification scheme" (2016) *International Journal of Police Science and Management* Vol. 18(4) 261-272

⁹ Higgins, Kaufman & Erooga "How can child welfare and youth-serving organisations keep children safe?" (2016) *Developing Practice: The Child, Youth and Family Work Journal*, Vol. 44, 48-64

In Western Australia, this relates to offenders that have been classified as dangerous and high risk. In South Australia, the release of information is linked to efforts to reinforce the efficiency of existing self-reporting practices. In each case, these strategies should be evaluated and in the event that there is evidence that they are effective and can offer improvements in practice, there should be efforts to sharing the best practice identified nationally.

The sharing of information about possible offenders is a critical issue that was given careful attention by the Royal Commission. It is also an area where the development of a national consistent approach should be pursued. However the guidance of the Royal Commission should be the key driver for public policy development. Its recommendations did not include the establishment of a National Public Register.

Reportable Conduct Schemes

We note that the Royal Commission recommended the development of broader schemes to monitor the activities of those identified as at risk of engaging in abusive behaviours towards children. These schemes are to be administered by responsible child protection and/or regulatory statutory authorities with existing relationships with service systems and community networks. These schemes will work in an integrated manner with community education programs. Generally these are described as “reportable conduct” schemes. Existing schemes have already been established in New South Wales, Victoria and the Australian Capital Territory.

Again these schemes should be evaluated and best practice shared nationally as a priority over the introduction of a national public register scheme that may undermine and distract from the key objectives of building community capacity and support for the prevention of child sexual abuse.

Prevention Strategies

Our opposition to the establishment of a National Public Register is also based on the fact that the Register may undermine more effective prevention strategies that work with convicted offenders (as well as those at risk of offending). There is evidence that an individualised approach to risk management and registration is a more productive approach¹⁰. These approaches are based on the individually-assessed likelihood of reoffending and prospects for rehabilitation. Measures that support rather than exclude offenders have been examined internationally with impressive outcomes¹¹ and are now being tested locally as well¹². Although there is evidence that these inclusive strategies are successful, the available evidence raises considerable concerns that a public register in Australia would undermine rehabilitation and contribute to re-offending¹³.

The Institute supports the development of a nationally consistent approach to the prevention of child sexual abuse but does not consider a National Public Register is a logical element of such an approach.

Supporting Parents, Families and Communities

A key element of the National Framework for Child Safety will be to ensure a more comprehensive and more effective approach than a National Public Register to supporting parents, families and communities in protecting children from sexual abuse.

Law enforcement already monitors convicted child sex offenders through the Australian Child Protection Offender Reporting Scheme and the National Child Offender System. Working with Children Checks, Reportable Conduct schemes and the introduction of Child Safe Standards in schools, centres and organisations working with children are increasing the focus on raising awareness and sharing information to address risk and build prevention practice.

The public health approach recommended by the Royal Commission and to be coordinated by the National Office of Child Safety will provide parents and families with more accurate knowledge and understanding of personal safety, appropriate supervision and monitoring practices and how to support children and young people to identify and report risks and concerns and keep them safe.

¹⁰ Day, Carson, Newton & Hobbs “The management of sex offenders in the community: from policy to practice” (2014) Australian Journal of Social Issues Vol 49(3) 249-394

¹¹ Vincent, “Managing child sex offenders in the community” (2016) The Monthly, Schwartz Media, Australia

¹² Conducted by OARS Community Transitions in South Australia for the Department of Correctional Services (SA)

¹³ Australian Institute of Criminology “What impact do public sex offender registries have on community safety” (2018) Trends & Issues in Crime and Criminal Justice, Canberra, Australia

Supporting Rehabilitation

The case against the establishment of a National Public Register is compelling when considering its application to those offenders whose interaction with the justice system is not as a result of an established or ongoing pattern of criminal or deviant behaviour. There is considerable research to suggest that many if not most child sex offenders fit this description¹⁴. It represents a persistent misperception about child sex offenders. For these people, the restrictive and stigmatising impacts of a public register are unjust as well as undermining prospects for rehabilitation.

This is particularly so for those offenders who are themselves children or young people who have the prospects of happy and successful lives ahead of them. Again for children who are offenders, the research evidence indicates that use of a public register does not support a reduction in recidivism¹⁵.

In addition, there is considerable concern that current definitions of sexual offences against children take insufficient account of the development of online behaviours (such as “sexting”) particularly amongst young people. Recent surveys suggest that sexting is a common occurrence amongst teenage young people¹⁶.

Whilst it is undoubtedly important to understand and investigate the use of the internet and social media as a tool for exploitative sexual activity, the prevalence and the nature of this particular activity (as often consensual and without coercion) calls for a more careful approach that avoids criminalisation and the shaming effect of the publication of criminal status.

At the same time the Royal Commission did hear evidence of instances of abusive and exploitative behavior that was perpetrated by a child or young person upon another child. It concluded that this area called for careful assessment on the individual circumstances of each case. In the event that a child is engaging in harmful sexual behaviors, a therapeutic response addressing their particular needs, background and situation is more likely to lead to the behaviours stopping and harm being prevented.

For this reason (and according to the internationally recognised principles of youth justice) children are less likely to require a criminal justice intervention and are entitled to a rehabilitative approach. In the limited circumstances where a criminal justice intervention is required, the use of sentencing options that do not increase the risk of stigmatisation are critically important.

For these reasons the publication or the later publication of personal information¹⁷ on a National Public Register because of an offence committed as a child or a young person is an unacceptable outcome.

Response to Consultation Paper

As discussed above, the Institute does not support the public registration of registered child sex offenders.

It is our view that there is insufficient evidence in support of such a development.

Instead, the Australian Government should support greater coordination between state, territory and federal agencies to build better cooperation in law enforcement and prevention practices to enhance community safety and prevent child sexual abuse. The monitoring of the implementation of the recommendation of the Royal Commission provides the most appropriate time framework for work in this area of public policy.

¹⁴ Australian Institute of Criminology “Misperceptions about child sex offenders” (2011) Canberra, Australia

¹⁵ Letourneau, Bandyopadhyay, Armstrong & Sinha “Do sex offender registration and notification requirements deter juvenile sex crimes?” (2010) *Criminal Justice and Behavior*, Vol 37(5), 553-569

¹⁶ Australian Institute of Criminology “Sexting among young people: Perceptions and practices” (2015) *Trends & Issues in Crime and Criminal Justice*, Canberra, Australia. This research indicates that 38% of 13-15 year olds and 50% of 16-18 year olds in Australia report that they have sent a sexually explicit picture or video, while 62% and 70% have received them.

¹⁷ After a child turns 18 years of age as appears to be contemplated in the Consultation Paper

References

- Australian Bureau of Statistics "Recorded Crime – Victims, Australia 2015" (2016) Canberra, Australia
- Australian Institute of Criminology "Misperceptions about child sex offenders" (2011) Canberra, Australia
- Australian Institute of Criminology "Sexting among young people: Perceptions and practices" (2015) Canberra, Australia
- Australian Institute of Criminology "What impact do public sex offender registries have on community safety" (2018) Canberra, Australia
- Day, Carson, Newton & Hobbs "The management of sex offenders in the community: from policy to practice" (2014) *Australian Journal of Social Issues* Vol 49(3) 249-394
- Hanson & Morton-Bourgon "The characteristics of persistent sexual offenders: A meta-analysis of recidivism studies" (2005) *Journal of Consulting and Clinical Studies* Vol. 73(6) 1154-1163
- Higgins, Kaufman & Erooga "How can child welfare and youth-serving organisations keep children safe?" (2016) *Developing Practice: The Child, Youth and Family Work Journal*, Vol. 44 48-64
- Lasher & McGrath "The impact of community notification on sex offender reintegration: A quantitative review of the research literature" (2012) *International Journal of Offender Therapy and Comparative Criminology* Vol. 56(1) 6-28
- Letourneau et al "Do sex offender registration and notification requirements deter juvenile sex crimes?" (2010) *Criminal Justice and Behavior*, Vol 37(5), 553-569
- Australian Government, National Disability Strategy 2010–2020.
- Australian Government, National Framework for Protecting Australia's Children 2009-2020
- Australian Government, National Plan to Reduce Violence against Women and their Children 2010-2022
- Prescott & Rockoff "Do sex offender registration and notification laws affect criminal behaviour?" (2011) *Journal of Law & Economics* Vol.54(1) 161-206
- Royal Commission into Institutional Responses to Child Sexual Abuse "Final Report – Preface and Executive Summary" (2017) Sydney, Australia and particularly recommendations 6.1 to 6.5
- Vincent, "Managing child sex offenders in the community" (2016) *The Monthly*, Schwartz Media, Australia
- Whitting, Day & Powell "Police officer perspectives on the implementation of a sex offender community notification scheme" (2016) *International Journal of Police Science and Management* Vol. 18(4) 261-272