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Terms of Reference



- In order to maximise community protection, sex offender registration should (as far as is practicable) be based on an assessment of risk. The Commission's proposals in this Paper facilitate an assessment of the offender's risk during the registration process.
- The obligations imposed upon reportable offenders (over and above any sentence imposed for the offence) and the potential adverse consequences of registration cannot be overlooked when assessing the ambit of the current scheme.
- 'Consensual' underage sexual activity where there is a relatively close age between the two parties.
- Offenders aged 13 years and under engaging sexual behaviour.
- Historical offences where the offender has not reoffended.
- Behaviour that is not necessarily sexually motivated or sexually deviant, such as pinching or slapping the buttocks of a person under the age of 18 years or sending explicit photos via mobile phones or the internet.

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While the CPOR Act is designed to protect children from sexual abuse, it is important to remember that its reach extends to offenders who are themselves children. Some of the case examples referred to in this Paper involve offenders as young as 13 years and the scheme can potentially apply to children aged as young as 10 years. The issue of child sexual offending by juveniles is complicated because it is not always easy to distinguish between age-appropriate behaviour or experimentation and inappropriate or abusive sexual behaviour. Moreover, children who are themselves legally incapable of consenting to sexual activity (because they are under the age of 16 years) can be charged with committing a sexual offence against another child.

Under the CPOR Act juvenile offenders are required to comply with the same reporting obligations as adult offenders (although they are not required to report for as long). Moreover, the rules that apply to adult offenders in determining who is and who is not a reportable offender under the CPOR Act are almost identical as the rules for juvenile offenders. The limited power under the CPOR Act for the Commissioner of Police to excuse some juvenile reportable offenders from the requirement to report is, in the Commission's view, problematic: the power does not extend to all possible reportable offences; any decision lacks the transparency and accountability of court proceedings; and, even if the offender is relieved of the obligation to report, the offender remains on the register and potentially suffers the stigma of being referred to or categorised as a 'child sex offender'.

Examples where registration is arguably unnecessary

1. Offences involving

mandate

. Such examples include cases involving:

Problems for juvenile offenders

In addition, the Commission has found that

, heightening the need to ensure that the CPOR Act does not unnecessarily apply to low-risk juvenile offenders. Sex offender registration can potentially:

- impact negatively on future rehabilitation as a result of being labelled a 'sex offender';
- cause further involvement in the criminal justice system as a result of being charged with failing to comply with the reporting obligations;
- interfere with socially beneficial activities because either the offender, their family or the police misunderstand the requirements of registration;
- dissuade young people from accessing health and support services in relation to their sexual activity because of the fear of possible future registration;
- deter young people and their families from reporting inappropriate sexual behaviour to authorities; and
- encourage young people to deny their offending behaviour in court in order to avoid registration.

The Commission's Approach

In this Discussion Paper the Commission has examined different options to ensure that low-risk and low-level juvenile offenders are not automatically subject to registration. Overall,

. During consultations, the Commission received overwhelming support for a discretionary approach for juvenile offenders.

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and hence the responsibility will be on the state to provide sufficient evidence to justify its case for registration.

The Commission acknowledges that providing for court discretion will utilise additional resources (because police and other agencies will be required to provide evidence and/or information to demonstrate why registration

the Commission highlights that sex offender registration for adult offenders may:

- impact negatively on community reintegration as a result of stigma (especially for very young adults);
- disproportionately impact on those offenders who are subject to ‘overlapping’ obligations to report to different agencies, especially in circumstances where the offender suffers socio-economic disadvantages or is disadvantaged by remoteness, or where the offender has difficulty in comprehending his or her reporting obligations due to language or cultural barriers and/or intellectual disability or mental impairment; and
- cause further involvement in the criminal justice system (including the possibility of imprisonment) for failing to comply with the reporting obligations.

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The Commission has formed the view that

because not all adult offenders found guilty of a child sexual offence necessarily constitute an ongoing risk to children. This view found extensive support during consultations. However, the Commission does not consider that its proposed discretionary system for juveniles should be replicated for adults.

Therefore, the Commission proposes that adult offenders should be subject to registration unless they initiate an application to the court and they can satisfy a strict two-stage test. This test requires the offender to establish that there are exceptional circumstances *and* that the offender does not pose a risk to the lives or sexual safety of any person.

There remains the possibility that an adult offender who is unable to satisfy this strict test becomes suitable for exclusion from the registration scheme at a later time. In order to enable such offenders to have their registration status reconsidered, the Commission has proposed that there should be a right of review after half of the reporting period has expired. In addition, the Commission proposes that there should be a right of review of reporting frequency (either before a court or a senior police officer).