



Submission to the Victorian Law Reform Commission in regards to the

Sex Offender Registration Information Paper

By the Australian Community Support Organisation

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About the Australian Community Support Organisation (ACSO)

Established in 1983, ACSO is one of Victoria's leading community support organisations, with a reputation for helping some of the most marginalised members of the community; those not generally welcomed or able to be supported by other services due to their behaviour, presenting issues or offending history. Through a diverse range of programs, provided throughout Melbourne metropolitan and regional locations, ACSO strives to achieve its purpose of making a difference in the lives of disenfranchised people. ACSO delivers more than 20 programs to approximately 10,000 disadvantaged clients per annum.

Currently ACSO provides programs in the areas of; transitional services and case management support to ex-prisoners, disability support services, employment services, homelessness support programs, alcohol and other drug assessment and treatment planning and outreach support to individuals with complex mental health concerns. ACSO operates these services via four divisions:

1. Justice Services
2. Specialist Services
3. Disability Program
4. Employment Services.

Our work with sex offenders

ACSO has pioneered work with sex offenders for over 20 years. In acknowledging ACSO's long term commitment to supporting and managing sex offenders, the Sex Offender Support Program (SOSP) commenced in August 2007 as a joint initiative between ACSO and Corrections Victoria. SOSP provides transitional and outreach support for medium to high risk sex offenders exiting prison, assisting participants to locate accommodation and integrate appropriately within the community. The SOSP provides an invaluable service to sex offenders who have an increased risk of re-offending due to both the lack of mainstream supports available to them, and their lack of connection with family and the wider community.

The past 20 years of working effectively with sex offenders has not only provided ACSO with the skills necessary to manage the common risks and issues of this offender group, but also the capacity to address the wide range of complex needs and compounding factors that are often present as additional risks in relation to this group. Moreover, our experienced SOSP case managers understand and appreciate the concerns of the community in relation to sex offenders, and balance these concerns with the rights and obligations of sex offenders returning to the community.

Scope of the Submission

ACSO's submission will address all but one section of the Sex Offenders Registration Information Paper (Accountability and Review). The submission will address several of the questions posed by the Victorian Law Reform Commission within each section of the Paper.

Emphasis of the Submission

A common theme running through ACSO's response to the Victorian Law Reform Commission is the need for discretion when administering, monitoring, and reviewing the Sex Offenders Registration Act. The case examples provided in the responses below illustrate how some aspects of the Act work well to address the purposes of the Act where others do not, and how some aspects of the Act work well in relation to some groups of individuals on the Register, and yet may not work as well for other groups. Accordingly, ACSO strongly supports the need for further discretionary powers to be provided to the courts around the criteria for inclusion, duration of reporting, and reporting requirements of the Sex Offenders Registry.

Responses to Questions Posed by the VLRC

Purposes

1. To what extent does the Sex Offenders Registration Act fulfil its stated purposes?

ACSO is concerned that the Sex Offenders Registration Act is restricted in its ability to fulfil the first of its stated purposes: requiring sex offenders to keep the police informed of their whereabouts and other personal details for a period of time in order to *reduce the likelihood of re-offending*. This concern is based on the understanding that reducing re-offending is best achieved through targeted intervention with the individual, not through reporting mechanisms.

Over the past two decades, a large collection of criminological work has shown that: (1) treatment is more effective in reducing re-offending than punishment alone (Andrews & Bonta, 2010; Birgden, 2002; Birgden & McLachlan, 2004), and (2) the most effective way to reduce re-offending is to provide targeted treatment programs that address the core static and dynamic risk factors of the individual (e.g. associations, accommodation, employment and/or education, and attitudes towards offending) (Andrews & Bonta 2010). This fundamental role of intervention has been acknowledged by Corrections Victoria, Department of Justice in both its current and previous Strategic Priorities, with targeted intervention within the prison and community forming one of the key performance indicators for reducing re-offending (Corrections Victoria, 2011).

In light of the evidence, ACSO proposes that until such time that the Registration Act requires sex offenders to engage in targeted interventions and programs, it is unlikely that the Act will fulfil its stated purpose of reducing the likelihood of re-offending.

3. Does the Sex Offenders Registration Act establish an effective scheme for monitoring the activities of convicted child sex offenders who are likely to re-offend?

ACSO believes that the Sex Offender Registration Act does not establish an effective scheme for monitoring the activities of convicted child sex offenders who are likely to re-offend.

ACSO staff expressed two concerns about monitoring. First, many staff were concerned that police do not verify enough of the information that is reported to them. Staff proposed that it

is easy for a registered sex offender to choose to inform the police with some of the information that they are required to report (e.g. a change of address), but to also omit certain information from their report (e.g. the occasional presence of an unsupervised child at the premises). This action would allow the offender to appear compliant with the reporting requirements of the Act, while leaving the offender at a potentially increased risk of re-offending until the information provided was verified by police.

Second, staff expressed concern that individuals with an intellectual disability who are registered sex offenders may require further information and instruction about reporting and monitoring activities in order for the scheme to be effective. Staff from ACSO's Disability Program commented on instances where registered clients with a disability have moved house but have not reported their change in address because they were unsure of the requirements of the Register. Staff indicated that clients' uncertainty about reporting was largely caused by: (1) the numerous requirements that disability clients are asked to meet as part of the multiple orders they are often under, and (2) the lack of information provided to these clients about the best ways to manage and negotiate their multiple orders. Staff suggested that some of this confusion could be alleviated if information about the requirements of the Register were further provided in the COMPIC format, which conveys information to individuals through the use of easy to understand drawings and images.

Inclusion in the Sex Offender Register

4. Should inclusion in the Sex Offenders Register be an automatic administrative consequence of a person being convicted of and sentenced for a Class 1 or Class 2 offences?

ACSO firmly believes that conviction of and sentence for a Class 1 or 2 offences should not result in an automatic inclusion in the Sex Offenders Register. ACSO believes that the decision to include a convicted and sentenced Class 1 or 2 offender should be at the discretion of the court, with an additional hearing to determine inclusion to be held after sentencing has occurred. ACSO's explanation for supporting the discretionary power of the court in making this decision is outlined in response to the next question.

5. Should the court have a discretionary power to decide whether to order that a person who is convicted of some or all of the Class 1 or Class 2 offences be placed in the Sex Offenders Register? What criteria should govern the exercise of any discretionary power?

ACSO believes that the court should have a discretionary power to decide whether to order a person convicted of some or all of the Class 1 or 2 offences be placed in the Sex Offenders Register for two key reasons:

(1) Providing the court with discretionary power may allow for greater proportionality in the reporting requirements of registered sex offenders. For example, ACSO's Specialist Mental Health Service has provided services to a 19 year-old male client who was categorised as a

Class 1 offender because he had consensual penetrative sex with his 15 year-old girlfriend. The client was remorseful for his actions, had ceased contact with his 15 year-old girlfriend upon arrest, and showed no intention to harm or engage in inappropriate behaviour with another minor. Yet, due to the client's classification as a Class 1 offender, this client was automatically subjected to the same registry requirements as offenders who had penetrative sex with one or more young children and who were at risk of further offending behaviour.

(2) Providing the court with discretionary power may increase the opportunity for sex offenders to receive important services related to their reintegration. Currently, a registered sex offender cannot gain access to ACSO's *LinkOut* program, which provides integrated transitional services for individuals returning to the community. This restriction is due to both the lack of funding provided within this program to perform e-scans on potential housing, and the provision for sex offenders to receive transitional services through the *Sex Offender Support Program* (also operated by ACSO). ACSO proposes that if the court uses its discretion to not include certain individuals on the Register (e.g. individuals who have developed both a strong understanding of their offending behaviour and the skills required to manage it), this would increase the opportunity for such individuals to benefit from the service provided in programs such as *LinkOut* while freeing up space for higher risk offenders to receive the specialist attention of the *Sex Offender Support Program*.

ACSO proposes that the discretionary power of the court should be governed by the following criteria:

1. *Likelihood of re-offending*. The use of discretionary power should be based on the results of risk assessment, with the court to consider the exclusion of low risk offenders.
2. *History of Sex Offences*. Discretionary power should be restricted to consideration of first time sex offenders.
3. *Seriousness*. Discretionary power should take into account the seriousness of the offence.

6. Should an order placing a person in the Sex Offenders Register be a matter that the court can take into account when sentencing a person for a Class 1 or Class 2 offence?

ACSO believes that the court should take into account the placement of a person in the Sex Offenders Register when sentencing a person for Class 1 or 2 offences. In particular, ACSO believes that the court should take into account both the ongoing restriction of freedom of movement and association that registration will provide for the individual, as well as the ongoing reporting requirements that the individual will need to fulfil as part of their registration.

7. Should it continue to be possible for a court to order that a person convicted of any offence be placed in the Sex Offenders Register if the court is satisfied that the offender poses a risk to the sexual safety of any other person?

ACSO supports the continued possibility for a court to order that a person convicted of any offence be placed on the Sex Offenders Register if the offender poses a risk to the sexual safety of any other person. ACSO encourages the court to use this possibility where a person has committed a Class 1 or 2 offence, but due to additional and more serious concurrent offences with which they are being charged, these registrable offence charges are dropped.

Duration of Reporting Obligations

8. Should the duration of a registered sex offender's reporting obligations continue to be automatically determined by a legislative classification of offences?

ACSO believes that the duration of a registered sex offender's reporting obligations should not continue to be automatically determined by a legislative classification of offences. As indicated in response to Question 5 above, the legislative classification, Class 1 has the potential to be used to categorise both individuals who have non-consensual penetrative sex with young children and individuals who have consensual penetrative sex with an individual who is only a few years younger. As there is the potential for these two Class 1 individuals to pose different levels of risk of re-offending (due to the nature of their offending behaviour), ACSO does not believe that individuals who have committed a sex offence should automatically be subjected to the same duration for reporting.

9. Should the court have a discretionary power to determine the length of the reporting period? What criteria should govern the exercise of any discretionary power?

ACSO believes that the court should have a discretionary power to determine the length of the reporting period. However, ACSO further supports the use of a minimum reporting period for any registered sex offender (regardless of their legislative classification). ACSO therefore proposes that all registered sex offenders be required to meet reporting requirements for a minimum of three years, with a review process held by the court at the three year period to determine if any further reporting requirements are necessary, and the duration for such requirements. In cases where further reporting requirements are necessary, the court should reconvene at three year periods for review.

ACSO proposes the following criteria to govern the exercise of any discretionary power at the point(s) of review:

1. *Participation and success in a treatment program.* The court should consider if an individual is participating in a treatment program, the nature of their participation (voluntary or mandatory), and their progress in treatment.
2. *Employment status.* The court should consider the individual's employment status, and the capacity of the individual to obtain and maintain stable employment.

3. *Offender status.* The court should consider the individual's offender status. The court should provide further reporting requirements for individuals who have committed further offences.
4. *Housing status.* The court should consider if the individual has secured housing and the status of the housing (crisis, short-term, stable, and so on).
5. *Score of a risk assessment.* The court should reassess the individual's risk using a risk assessment tool.

ACSO believes that such a review process may enhance the reducing re-offending purpose of the Register, as it would provide incentive for individuals to engage in treatment post-release.

Content of Reports

12. Should all registered sex offenders continue to have the same reporting obligations that are automatically determined by legislation?

ACSO believes that all sex offenders should be required to meet a minimum set of reporting obligations. The minimum set should be similar to those of parole, whereby all sex offenders should have no contact with the victim, inform police of any changes in their employment or place of residence and so on.

In addition to the minimum set of reporting obligations, ACSO proposes that the court be provided with discretionary power to impose a further set of reporting obligations that are offence or offender specific. This discretionary power of the court should be governed by the same criteria used to decide whether to order that a person who is convicted of some or all of the Class 1 or Class 2 offences be placed in the Sex Offenders Register:

1. *Likelihood of re-offending.* The use of discretionary power should be based on the results of risk assessment, with the court to consider the exclusion of low risk offenders.
2. *History of Sex Offences.* Discretionary power should be restricted to consideration of first time sex offenders.
3. *Seriousness.* Discretionary power should take into account the seriousness of the offence.

Management, use and disclosure of information in the Register

18. Should registered offenders continue to be required to report ‘unsupervised contact’ with a child? If so, should the legislation contain guidance about what is meant by this term? Should registered sex offenders be required to report ‘unsupervised contact’ with a child before it occurs rather than after it has occurred? If reporting were required in advance of contact, should it be before the first contact, a subsequent contact, or at any other point in time?

ACSO believes that sex offenders should continue to be required to report ‘unsupervised contact’ with a child, but that there should be further guidance provided to offenders as to what is meant by this term and requirement.

An ACSO client was recently placed in a difficult situation where an unaccompanied child fell from their bike at the front of the client’s property. The child was not injured seriously, but was distressed by the incident. The client was also distressed as they wanted to assist the child but were concerned that this act may constitute ‘unsupervised contact’ and therefore remained within their property.

In addition to illustrating the current lack of clarity around the term ‘unsupervised contact’, this example further demonstrates the potential limitations of requiring sex offenders to report contact prior to its occurrence, whereby not all contact will be planned or initiated by the offender.

Protection for registered sex offenders

19. Are there adequate protections for registered sex offenders in the Act?

ACSO believes that there are adequate protections for registered sex offenders provided in the Act. However, enforcement of and compliance with these protections is less certain. The following examples illustrate three circumstances where the protections afforded to registered sex offenders by the Act have been compromised or brought into question:

1. *Sharing Information.* ACSO’s Specialist Mental Health Services (SMHS) was recently assigned two new clients who had a history of offending behaviour. In an effort to support these clients to abide by the regulation of the Sex Offenders Registration Act, the case worker from SMHS contacted the clients’ local police station to determine if each client was included on the Register. The case manager, having only indicated verbally their employment at ACSO (and not provided any proof of service to the clients), was provided with confirmation of the clients’ inclusion on the Register.
2. *Police Presence.* A client of ACSO’s *Sex Offender Support Program* recently moved into a housing estate which had been secured by ACSO’s program staff and was subject to an e-scan. The client abided by the reporting requirements of the Act, and informed police of their change in address. Shortly after notification, four uniformed and armed police officers arrived in two unmarked cars at the housing estate to assess both the client’s residence and the estate in general. This incident left the client exposed to numerous

questions from other residents of the estate about his involvement with the police, and threatened the security of his accommodation.

3. *Competing protections.* Several clients of ACSO's Disability Program are subject to both the Sex Offenders Registration Act and the Disability Act. Under the Disability Act (Part 8) service providers are required to report any level of detention that their clients are subjected to. Accordingly, in circumstances where Disability Program clients are subjected to a level of detention or restriction as part of their inclusion on the Sex Offenders Registry and/or involvement in an Extended Supervision Order, it is the responsibility of the service provider to share this information with the Department of Human Services, potentially breaching the privacy of the individual.

Management of other information about registered offenders

21. Should other government agencies be required or permitted by legislation to give the Chief Commissioner of Police information about a registered sex offender for inclusion in the Sex Offenders Register? If so, what type of information?

ACSO believes that government and non-government agencies who provide services to individuals on the sex offender registry should be permitted by legislation to give the Chief Commissioner of Police information for inclusion in the Register. In particular, ACSO believes that the Register would benefit from the inclusion of information about individual's participation in community based treatment and their treatment outcomes.

In the past, ACSO's Disability Program has engaged in this information sharing process informally and with a positive effect. For example, a client of the Disability Program who was known by police to be on the Register was regularly picked up by police for anti-social behaviour. As a result of this interaction, the client had formed a negative perception of police which was compromising their capacity to fulfil reporting requirements. Disability Program staff attempted to alleviate this situation by informally sharing with local police the client's treatment plan and level of success in treatment. After this information was shared, the client reported less negative interactions with police officers.

References

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