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**Our ref:** ADM/8657

27 August 2013

Ms Vicki D'Adam  
Acting Chief Executive Officer  
Ministry for Police and Emergency Services  
GPO Box 5434  
Sydney NSW 2001

By email: [cporareview@mpes.nsw.gov.au](mailto:cporareview@mpes.nsw.gov.au)

Dear Ms D'Adam,

***Review of Child Protection (Offenders Registration) Act 2000***

Thank you for your invitation to provide a submission to the abovementioned review.

The attached submission is informed by a variety of work undertaken by my office in connection with a range of functions, including:

- Our review, monitoring and inquiry responsibilities under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.
- Our work to keep under scrutiny the systems that government and certain non-government agencies in NSW have for preventing reportable conduct and handling reportable allegations and convictions involving their employees.
- Our oversight of the NSW Police Force's handling of complaints about police and our work in keeping under scrutiny their complaint handling system.
- Our handling of complaints by detainees and inmates at juvenile justice and correctional centres, and our regular visits to centres to speak with inmates, detainees and staff and inspect records.

It is also informed by our legislative review of the operations of the *Child Protection (Offenders Registration) Act 2000* for a two year period from its commencement in October 2001, and more recently, our audit of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*.

Some of the issues raised in the submission were also highlighted in our previous submission to the 2010 review of the *Child Protection (Offenders Prohibition Orders) Act 2004*.

Rather than individually address each of the questions raised in the discussion paper informing the review, we have limited our submission to those areas about which we have acquired particular knowledge through our work.

I hope our submission is useful to the review. Should you require anything further, please contact Ms Julianna Demetrius, Director Strategic Projects Division, on 9286 0920.

Yours sincerely

A handwritten signature in black ink, appearing to read "B. Barbour". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

Bruce Barbour  
**Ombudsman**

**NSW Ombudsman submission to the statutory review of the  
Child Protection (Offenders Registration) Act 2000**

## **1. Background**

The NSW Ombudsman's knowledge about the operation of the *Child Protection (Offenders Registration) Act 2000* (CPOR Act) is derived from our work across a range of functions. These include:

- Our review, monitoring and inquiry responsibilities under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.
- Our work to keep under scrutiny the systems that government and certain non-government agencies in NSW have for preventing reportable conduct and handling reportable allegations and convictions involving their employees.
- Our oversight of the NSW Police Force's handling of complaints about police and our work in keeping under scrutiny their complaint handling system.
- Our handling of complaints by detainees and inmates at juvenile justice and correctional centres, and our regular visits to centres to speak with inmates, detainees and staff and inspect records.

It is also informed by our legislative review of the operations of the *Child Protection (Offenders Registration) Act 2000* for a two year period from its commencement in October 2001 and, more recently, our audit of the implementation of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities* (Interagency Plan). We note that the review's discussion paper refers to some observations contained in the report on the Interagency Plan. Both of the above reports are available on our website.

In our 2005 report on the findings of our review of the CPOR Act, we noted that the information we had received from a range of stakeholders during the review indicated that the Child Protection Register (CPR) has significant benefits in enhancing community safety, but that "*the Register is just one aspect of a broad range of child protection measures in place in NSW, and it should not create a false sense of security or be seen as the single solution to protecting children from sex offenders*".<sup>1</sup> With the benefit of several years' observation of the operation of the CPR, we continue to hold this view.

However, we have also identified some concerns in relation to the operation of the CPR as well as other critical components of the system in NSW for protecting children from sexual harm, notably Child Protection Watch Teams (CPWTs) and Child Protection Prohibition Orders (CPPOs).

We recognise that the review of the CPOR Act is concerned with determining whether the policy objectives of the Act remain valid, and whether the terms of the Act remain appropriate for securing those objectives. In our view, it is important that in making this determination, the review has regard to issues concerning the practical implementation of the CPR and its relevant associated initiatives.

While our work would suggest that the policy objectives of the CPOR Act remain valid, whether these objectives are being achieved to the fullest extent possible is a separate

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<sup>1</sup> NSW Ombudsman, *Review of the Child Protection (Offenders Registration) Act 2001*, 2005, p.vi.

question. In our report about the implementation of the Interagency Plan, we noted that, apart from our review of the initial operation of the CPOR Act (published in 2005), there has been no comprehensive evaluation of the CPR since the registration scheme commenced in October 2001.<sup>2</sup> The current review of the CPOR Act is welcome. However, ideally it would be taking place in the context of a comprehensive evaluation of the CPR having been completed. It is unfortunate that this is not the case and we would suggest that the need for an evaluation remains.

## 2. Young offenders on the CPR

The review's discussion paper notes that, currently, young people convicted of a Class 1 or Class 2 offence are required to be registered on the CPR with limited exceptions – including where a young person has been convicted of a single offence involving an act of indecency. The paper also notes that when the CPOR Act was legislated it was intended that a young person would not become a registrable person if convicted of an offence involving a single act of producing, disseminating or possessing child abuse material – however, the specific sections of the *Crimes Act 1900* referred to at section 3A(c)(ii) of the CPOR Act have since been repealed. We support the recommendation in the discussion paper that the section be amended to refer to section 91H of the Crimes Act.

The discussion paper asks if the approach to young registrable persons under the CPOR Act is appropriate, noting that in our recent report about the implementation of the Interagency Plan, we raised as an issue the inclusion on the CPR of young people convicted of adolescent peer sex.

In our report, we observed that research on the efficacy of registration programs for juvenile sex offenders shows that such offenders generally do not go on to commit sex offences as adults, and that the registration of juvenile sex offenders fails to reduce juvenile recidivism.<sup>3</sup> When questioned about the CPR in 2010 by the Standing Committee on Law and Justice, Juvenile Justice commented that:

*“There is little evidence to support the registration of juvenile sexual offenders as an effective option for achieving either aim. Registration significantly beyond the length of a legal order may in fact delay young people's reintegration into the community...[and make] it more difficult to obtain suitable employment and access to educational and recreational opportunities.”<sup>4</sup>*

The NSW Sentencing Council has also argued that the court should have discretion to excuse the requirement for registration in less serious cases involving first-time sex offenders under the age of 18 years.<sup>5</sup>

Our report recommended that, in relation to adolescent peer sex, the Department of Attorney General and Justice consider undertaking a review of consent provisions with the introduction

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<sup>2</sup> We acknowledge that a number of amendments made following the previous statutory review of the Act in 2007 have strengthened the legislation.

<sup>3</sup> Letourneau E and Armstrong K. 'Recidivism rates for registered and nonregistered juvenile sexual offenders', *Sexual Abuse: A Journal of Research and Treatment*, Vol. 20, No.4, December 2008, pp.393-408.

<sup>4</sup> Standing Committee on Law and Justice, *Spent convictions for juvenile offenders*, Report 42, July 2010, p.104.

<sup>5</sup> NSW Sentencing Council, *Penalties Relating to Sexual Assault Offences in New South Wales*, Volume 3, May 2009, p.203.

of a 'similar age' defence in mind. If law reform in this area occurs, this will go some way towards decreasing the number of young registrants on the CPR.

More broadly, we are of the view that the evidence base in relation to the efficacy of the registration of juvenile sex offenders should be taken into account by the review, and that consideration should be given to the Sentencing Council's abovementioned recommendation.

### **3. Challenges for police in administering the Child Protection Register and monitoring registrants**

Chapter 17 of our report about the implementation of the Interagency Plan outlines our observations about the operation and effectiveness of the CPR, as well as CPWTs and CPPOs. The observations are not limited to the management of offenders who commit sexual abuse against Aboriginal children, or Aboriginal offenders themselves.

As noted in the review's discussion paper, we reported that between 2008 and 2011, there was a 27% increase in the number of registrable offenders on the CPR. The discussion paper comments that between 2011 and the end of 2012, this number increased by a further 8%. This reflects the annual 8-15% growth rate informally quoted to us by police during our audit of the Interagency Plan. Given the length of time for which offenders must be registered (some for life), and in the absence of any significant decline in the number of registrable offences for which convictions are recorded, the CPR will continue to grow in size.

The size of the CPR is a relevant issue for consideration because the powers and responsibilities bestowed by the CPOR Act on the NSW Police Force (NSWPF) are resource intensive. In addition to these powers and responsibilities – which involve administering the CPR and monitoring registrants – police are also responsible for coordinating the multi-agency CPWTs and applying for CPPOs to restrict the behaviour of CPR registrants. As well, police are frequently required to exchange information about sex offenders with justice agencies in other jurisdictions.

While the management of registrable information is centrally coordinated by the State Crime Command, which also directly manages very high-risk registrants, police local area commands (LACs) are responsible for maintaining their own local registries and for monitoring the majority of high-risk registrants within their boundaries. Crime managers have primary responsibility for the range of associated tasks, including notification, updating of files, threat assessments, development of case management plans, liaison with the registry staff and other affected local area commands.<sup>6</sup> While low/medium risk offenders are not actively monitored beyond their requirement to report annually, it is expected that police will have contact with high-risk offenders every 30 days.

In reporting on our review of the operation of the CPOR Act during its first two years, we noted that police had at that early stage already raised operational capacity as an issue impacting on the successful implementation of the CPR. The issue was again raised repeatedly during our more recent audit of the Interagency Plan.

During our extensive consultations across the state, crime managers advised us that the CPR is a valuable intelligence tool for recording and collating personal details, threat assessments

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<sup>6</sup> NSW Police Force, Child Protection Register – Standard Operating Procedures, Sex Crimes Squad, Version: 4.0, May 2010, p.13.

and other intelligence about registrable offenders. However, they also expressed concern about the impact of limited resources on their capacity to effectively perform their CPR responsibilities, and on the capacity of police to manage sex offenders in the community more broadly. They singled out those commands with less resources and high numbers of registered child sex offenders as facing the greatest challenges – particularly in relation to their capacity to carry out proactive surveillance work on high risk offenders, on top of the administrative activities associated with maintaining the CPR.<sup>7</sup> Most crime managers we consulted indicated they did not have sufficient resources, after meeting their frontline response and CPR administration commitments, to plan and carry out the level of proactive policing of these offenders that they think is warranted.

This is particularly significant given that when the CPOR Act was introduced in 2001, one of the objectives cited in Parliament was that the CPR would assist the police investigation and prosecution of child sex offences committed by recidivist offenders<sup>8</sup> – during the period between 2007 and 2011, 12% of registered offenders were charged with further child sex offences.<sup>9</sup>

In our report on the implementation of the Interagency Plan, we noted that in 2011 the State Crime Command received seven additional CPR staff to administer the register and to provide additional support to commands. We also noted that a business case had been submitted to the NSWPF Executive in relation to increasing resourcing for local commands to allow for more effective management of a command's CPR responsibilities. In light of the significant concerns raised during our audit by senior police and the importance of this work, we recommended that a thorough review of the current capacity of police local area commands to conduct this work should be undertaken as part of any assessment of the business case.

Given the current challenges for the NSWPF in managing the CPR, it will be important for the review to have regard to the potential impact on the resource capacity of police of any recommended changes to the CPOR Act. For example, the discussion paper asks if there should be any additions to (or deletions from) Class 1 or Class 2 registrable offences. The inclusion of additional registrable offences would further impact on the volume of the CPR and the operational capacity of police to manage it.

In this regard, we note the recommendation of the NSW Sentencing Council in 2009 that consideration should be given “*to the feasibility of extending the registration requirements for sex offenders whose offences have been committed against adults.*”<sup>10</sup> The then Government indicated that it supported such an extension, but only in relation to sex offenders who were subject to an extended supervision order (ESO) under the *Crimes (Serious Sex Offenders) Act 2006*.

The review's discussion paper does not canvas the issue and it is unclear whether the extension proposed by the Sentencing Council is still under consideration. However, in our report on the Interagency Plan we noted that while such an extension would result in only a

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<sup>7</sup> See NSW Ombudsman, *Responding to Child Sexual Assault in Aboriginal Communities*, December 2012, p232 for further information about CPR data by LAC.

<sup>8</sup> Hansard, Legislative Assembly, 1 June 2000, the Hon Paul Whelan, MP, Minister for Police, Second Reading speech, Child Protection (Offenders Registration) Bill.

<sup>9</sup> NSW Police Force, response to NSW Ombudsman Requirement for Information, 8 June 2012.

<sup>10</sup> NSW Sentencing Council, *Penalties Relating to Sexual Assault Offences in New South Wales*, Vol. 3, May 2009. (Recommendation 10).

limited number of additional registrants (as at September 2010, 27 high-risk offenders were subject to an ESO), it would still confer an additional burden on police that should be taken into account.<sup>11</sup>

The discussion paper also raises a number of questions about the reporting obligations on registrants, including whether there are additional situations or other types of personal information that should be reported. Changes to the relevant parts of the Act in this regard have the potential to similarly impact on police from a resourcing perspective.

#### **4. Interagency cooperation to protect children from sexual harm**

The primary agencies with responsibilities for managing child sex offenders in the community in NSW are Corrective Services and the NSWPF. However, Community Services must work closely with both agencies to ensure that critical information holdings are exchanged when child sex offenders form new relationships which present potential significant risks to children. Housing and Health also play crucial roles in providing the services that are needed to contribute to offenders having a more stable life, such as secure housing, access to drug and alcohol programs, and counselling.

In our 2010 submission to the review of the CPPO Act, we observed that the effectiveness of the NSW system for protecting children from sexual harm has been undermined due to the lack, or ineffective operation, of the interagency arrangements needed to properly implement the various components of the system. In particular, we referred to an investigation arising from circumstances in which a child was subjected to sexual abuse as a result of key agencies failing to understand their respective and collective responsibilities in relation to risk assessment and protective interventions.

The investigation underscored that the effectiveness of legislation aimed at protecting children will in many instances depend substantially on the degree to which there is a coherent interagency approach to identifying and managing risk. It is essential for agencies to have a clear understanding of their respective roles and responsibilities in such a critical area and how they can escalate their concerns when they do not believe that adequate action has been taken to protect children.

Following on from our 2010 investigation, in 2011 we convened a roundtable discussion with Community Services, the NSWPF and Corrective Services to discuss ways to strengthen interagency cooperation in relation to responding to child protection concerns involving registered offenders. As a result of the roundtable, the three agencies agreed to a range of initiatives that were aimed at improving information exchange between them about registered child sex offenders.

For example, since September 2011, Community Services has been actively seeking information from the NSWPF's Child Protection Register Unit on the same day that a 'risk of significant harm' report involving a registrable person is received.<sup>12</sup> The information is then

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<sup>11</sup> NSW Department of Attorney General and Justice, *Review of the Crimes (Serious Sex Offenders) Act 2006*, November 2010, p76.

<sup>12</sup> The information is sought and provided under section 248 of the *Children and Young Persons (Care and Protection) Act 1998*.

forwarded to the relevant Community Service Centre which is provided with immediate confirmation – this is an important practical step forward.<sup>13</sup>

#### ***4.1 Child Protection Watch Teams***

Child Protection Watch Teams (CPWTs) are intended to provide a structured approach to the interagency monitoring and risk management of high-risk sexual and violent offenders on the CPR. The core participating agencies are the NSWPF, Corrective Services and Community Services. Non-core agencies, including Housing, Justice Health, Ageing Disability and Home Care and TAFE, participate as required. The NSWPF has lead responsibility for CPWTs – eight of which have been operating across the state since March 2010.

CPWTs provide a forum for agencies to jointly identify and assess any early signs of risk, as well as to collaborate on risk management strategies in relation to an individual's behaviours, associations, living arrangements and activities. They also enable agencies to exchange critical information related to the ongoing management of the offender and to assist with the provision of appropriate support and services. In this regard, it was envisaged that CPWTs would be instrumental in bringing together information from a range of agencies that would enable police to apply for CPPOs – court orders that restrict the activities of certain registrants.<sup>14</sup>

Since the initial CPWT trial in 2004, there has been strong growth in the number of referrals made to the teams state-wide. Police have advised us that the majority of registrants accepted for CPWT management generally have 'high needs', including 'static' risk factors such as chronic mental illness and/or intellectual disability. There are considerable challenges involved in effectively meeting and managing these needs and risks. Our audit of the Interagency Plan demonstrated that this is particularly so when offenders wish to return to live in remote communities, where access to appropriate accommodation, programs and services is often limited and fragmented. The absence of mechanisms to compel agencies to provide particular services to registered persons as part of the implementation of a risk management case plan was also raised during our audit.

CPWTs are guided by a Memorandum of Understanding. Although their role directly relates to the management of sex offenders on the CPR, it is not specified in the CPOR Act or Regulation. We note that while the review's discussion paper provides some background information about CPWTs, it does not pose any specific questions about their role or operation. Nor does it canvas the issue of interagency cooperation in relation to the effectiveness of the CPR more broadly and whether/how the CPOR Act might be amended to strengthen this.

In our report about the audit of the Interagency Plan, we observed that it was difficult to fully evaluate the effectiveness of CPWTs. The CPWTs are required to provide an annual report to the Justice and Human Services Chief Executive Officers. Although the performance measures developed for reporting are sound and the quantitative data included in the reports is useful for indicating the levels of activity of CPWTs, there appears to be scope for more qualitative analysis about, for example, trends and issues related to agency collaboration; the

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<sup>13</sup> For further information about other outcomes of the roundtable see NSW Ombudsman, *Responding to Child Sexual Assault in Aboriginal Communities*, December 2012, pp238-239.

<sup>14</sup> Mr John Watkins, Minister for Police, response to question without notice from Mrs Barbara Perry, NSW Parliament Legislative Assembly, 1 June 2004.



availability of services, treatment and accommodation for offenders; details of caseload capacity, the costs and resources required to manage the CPWTs; and recurring issues arising in the management of high risk offenders.

In light of this, we recommended that the Justice and Human Services Chief Executive Officers require the provision of more comprehensive data and information against the CPWT performance measures to enable a more meaningful assessment of the effectiveness of the program.

CPWTs are an extremely important mechanism for maximising the effectiveness of the CPR. It is important that their role is well understood by all partner agencies, that these agencies demonstrate a tangible commitment to the goals of the CPWT, and that their performance is adequately monitored and reported. While our report about the implementation of the Interagency Plan did not recommend that the role of the CPWTs (or the reporting and monitoring requirements they are subject to) should be prescribed in legislation, there may be merit in considering the potential benefits of doing so – particularly if the more robust reporting that we have recommended demonstrates that there is a need for a stronger accountability framework. If this course of action was taken, it would make sense to amend the CPOR Act for this purpose.

#### ***4.2 Child Protection Prohibition Orders***

As noted in the review's discussion paper, CPPOs are court orders that prohibit a registered person from engaging in specified conduct. As such they are an important mechanism for regulating the activities of child sex offenders living in the community.

We note the discussion paper's advice that the *Child Protection (Offenders Prohibition Orders) Act 2004* (CPOPO Act) is subject to a separate statutory review. We made a submission to this review in October 2010. To our knowledge, the review is yet to be completed. The discussion paper for the current review notes that the CPOPO Act is an important component of the broader framework of legislation and initiatives complementing the CPR. For this reason, and because we have carried out further relevant work since making our October 2010 submission to the review of the CPOPO Act, we have included our observations about CPPOs in this current submission.

A complete discussion can be found in our report about the implementation of the Interagency Plan.<sup>15</sup> However, in short, our audit indicated that the use of CPPOs is extremely low, consistent with the reasonably low level of awareness of CPPOs on the part of police and other agencies, such as Community Services, whose staff would be most likely to identify the need for such orders to be sought. There was also evidence of a degree of confusion among police and community services staff about the circumstances surrounding when applications for CPPOs should be made.

To address this lack of awareness, Community Services undertook during our audit (as a result of the roundtable referred to earlier) to prepare a document setting out the respective roles, responsibilities, powers and limitations relating to information exchange and collaboration when a child may be at risk of significant harm due to contact with a person on the CPR. Among other guidance, it was intended that the document would clarify escalation

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<sup>15</sup> NSW Ombudsman, *Responding to Child Sexual Assault in Aboriginal Communities*, December 2012, pp238-237.

procedures for dealing with situations where local agency staff can't reach an agreement about whether a CPPO should be applied for.

Unfortunately, more than two years after it committed to do so, Community Services still has not finalised the document. We have raised concerns with Community Services on a number of occasions about the length of time it has taken for this document to be completed and it has acknowledged that this important work should have been progressed more quickly. We are continuing to press for the completion of the document.

We note that a further outcome of the roundtable we facilitated in 2011 is that Community Services and the NSWPF are now working together to routinely exchange information to support an application for a CPPO, if the risks posed to a child when a registered person is released into the community are considered to be unacceptable.

As we commented in our report about the Interagency Plan, it will be important to closely monitor the awareness and use of CPPOs into the future as part of the broader suite of options available to agencies for managing sex offenders in the community.

A handwritten signature in black ink, appearing to read 'B. A. Barbour', written in a cursive style.

Bruce Barbour  
**Ombudsman**