

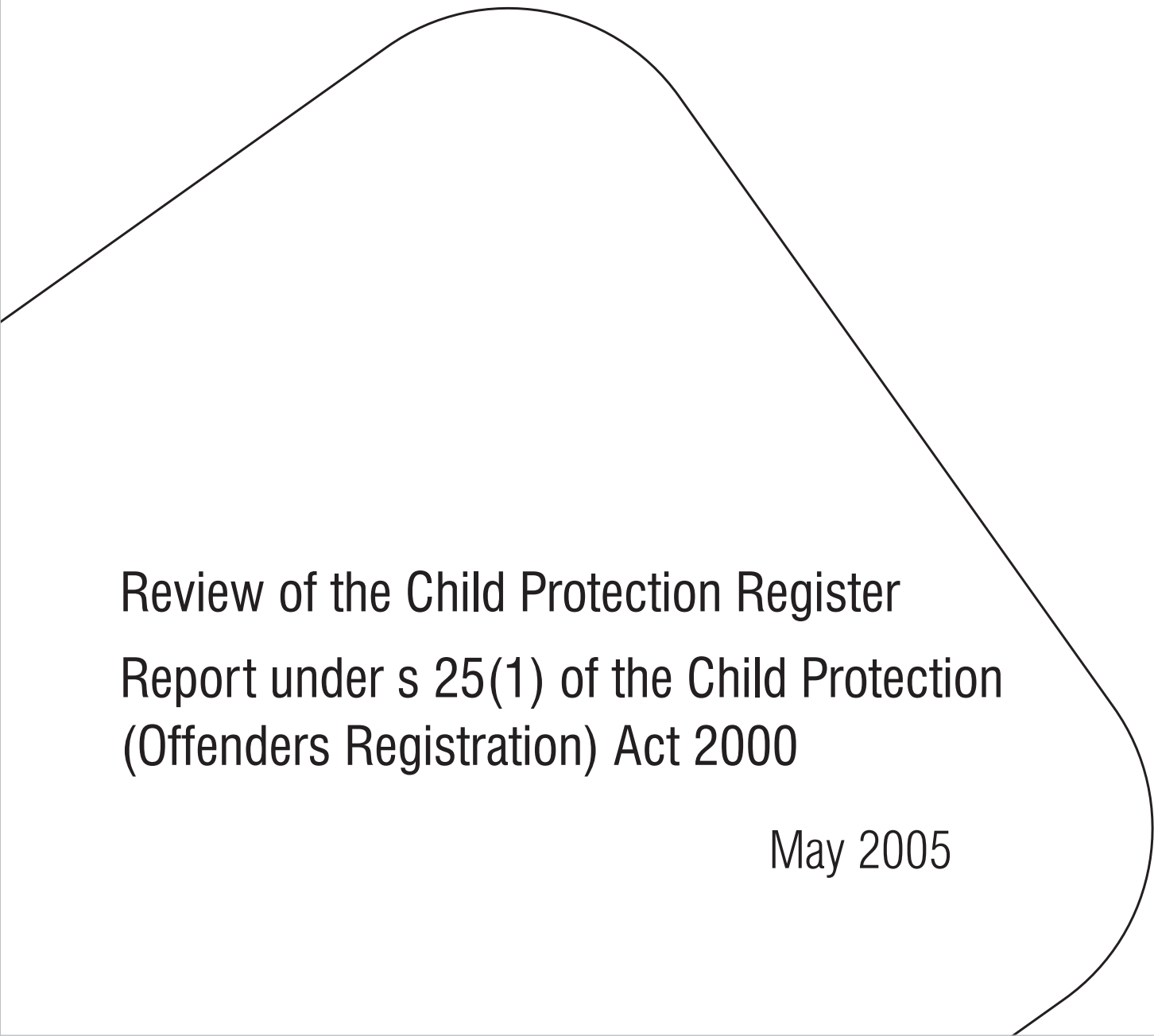


NSW Ombudsman

Review of the Child Protection Register

Report under s 25(1) of
the Child Protection (Offenders
Registration) Act 2000





Review of the Child Protection Register
Report under s 25(1) of the Child Protection
(Offenders Registration) Act 2000

May 2005

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May 2005

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The Honourable Carl Scully MP
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Dear Minister

Under section 25 of the *Child Protection (Offenders Registration) Act 2000*, I have been required to keep under scrutiny the operation of the provisions of the Act and the regulations, and report to you on the work and activities undertaken for that purpose.

I am pleased to provide you with this report. In addition to reporting on the activities undertaken to monitor the operation of the Act, I have made a number of recommendations.

I note that section 26 of the Act requires you to review the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. I also note that you are required to undertake this review as soon as possible after receipt of this report, and to table a report on the outcome of your review in each House of Parliament as soon as possible after the completion of your review. I trust that this report will assist you in conducting your own review of the Act.

Yours sincerely

Bruce Barbour
Ombudsman

Preface

My office has extensive responsibilities in monitoring those agencies with child protection responsibilities. A discrete role has been our review of the operation of the *Child Protection (Offenders Registration) Act 2000* for two years from its commencement in October 2001.

The Act established a scheme for a child protection register, requiring persons convicted of certain offences against children to register with police on their release into the community and to provide a variety of information about themselves to police.

The objectives of the Register include:

- to increase and improve the accuracy of child sex offender intelligence held by police
- to assist in the investigation and prosecution of child sex offences committed by recidivist offenders
- to provide a deterrent to re-offending
- to assist in the monitoring and management of child sex offenders in the community
- to provide child abuse victims and their families with an increased sense of security.

Our review has examined the extent to which these various objectives have been achieved in practice. Our report covers three main areas.

First, we have examined who is required to be on the Register. We have outlined the submissions and perspectives that we have received about this from various stakeholders.

Second, we have looked at the practical operation of the processes used to notify persons of their registration and reporting obligations. We have also examined the process of reporting by registered persons, and the management and prosecution of people who have failed to comply with their reporting obligations.

Third, we have examined how police have used the information on the Register, particularly to monitor the behaviour of high risk offenders.

After the end of the review period, and before the completion of our report, the NSW Parliament passed the *Child Protection (Offenders Registration) Amendment Act 2004*, which amended the original Act in a number of important respects. Many of the changes are supported by our research. We have taken the effect of the amendments into account in preparing our report.

The report makes a number of recommendations, which will improve the notification, registration and reporting processes, and increase the police use of information on the Register.

I trust that this report will provide a valuable contribution to enhancing the value of the Register, and thus to the protection of the children in the community.



Bruce Barbour
Ombudsman

Executive summary

Introduction

The Child Protection (Offenders Registration) Act 2000

The *Child Protection (Offenders Registration) Act 2000* (the Act) came into operation on 15 October 2001. The Act provided for the establishment of a Child Protection Register (the Register) within NSW Police that would contain information about people convicted of offences against children.

The aims of the Act

In his second reading speech in Parliament, the then Minister for Police said that the aims of the Act were to:

- increase and improve the accuracy of child sex offender intelligence held by police
- assist in the investigation and prosecution of child sex offences committed by recidivist offenders
- provide a deterrent to re-offending
- assist in the monitoring and management of child sex offenders in the community
- provide child abuse victims and their families with an increased sense of security.

The Ombudsman's review

The Ombudsman was required to review the operation of the Act for two years, and to provide a report to the Minister for Police as soon as practicable after the review period. Our research methods have included:

- an analysis of data from the Register
- consultation and interviews with those responsible for the implementation of the Act, including police and supervising authorities
- consultation with community and government stakeholders, including an analysis of submissions received in response to our discussion paper
- a survey of, and interviews with, people on the Register
- a review of complaints and enquiries made to the Ombudsman
- a review of charges for offences under the Act
- a review and analysis of similar legislation in other jurisdictions and of relevant literature.

The Minister's review

Following receipt of our report, the Minister for Police is required to review the Act 'to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives'. The Minister must prepare a report on the outcome of his review and table it in Parliament as soon as possible.

Amendments to the Act and other developments

It should be noted that the Act was amended after the conclusion of our review period and before the finalisation of our review report. In June 2004, the Australian Police Ministers Council agreed on model legislation for nationally consistent child protection registers in all states and territories. In New South Wales, this prompted the introduction of the *Child Protection (Offenders Registration) Amendment Act 2004*, which was assented to on 24 November 2004 but has not, at the time of writing, commenced. We have taken the amendments to the Act into account in preparing our report.

It should also be noted that there have been other relevant developments since the end of our review period. Multi-agency child protection watch teams will be introduced to 'manage' people on the Register assessed as 'high risk' and provide an 'early warning system' about inappropriate behaviours, associations, living arrangements and activities. A trial of the teams in south-west Sydney began in July 2004. In addition, the *Child Protection (Offenders Prohibition Orders) Act 2004* will permit the courts to issue orders against people convicted of offences against children, which prohibit them from visiting certain places or undertaking specific activities. This legislation was assented to on 6 July 2004 but has not, at the time of writing, commenced.

The scheme of the act

Registrable persons

The Act requires a person convicted of a 'registrable offence' against a child to be on the Register. 'Class 1' registrable offences include the murder of a child, sexual intercourse with a child, and the persistent sexual abuse of a child, while 'class 2' offences include acts of indecency against a child (if the offence is punishable by imprisonment for 12 months or more), the kidnapping of a child, the sexual servitude of a child, child prostitution, and offences relating to child pornography. The class of the offence is relevant to determining how long a person is under reporting obligations.

A person is not required to be on the Register if they are found to have committed a registrable offence but the matter is dismissed (in other words, no conviction is recorded). Other exceptions are where:

- a person is convicted of a single 'class 2' offence, but the penalty does not involve a term of imprisonment, a community service order, or a bond under which they are required to submit to strict supervision
- a child is convicted of a single offence involving an act of indecency or the possession or publication of child pornography.

In addition to the Act's scheme of 'registrable offences', the amending Act provides that, where a person is found guilty of an offence that is not a registrable offence, the court may order the person to comply with the reporting obligations of the Act if it is satisfied that the person 'poses a risk to the lives or sexual safety of one or more children, or of children generally'.

Notification and initial registration

The Act requires the court, relevant supervising authorities (such as the Department of Corrective Services, Department of Juvenile Justice or Department of Health) or NSW Police to notify the registrable person of their reporting obligations.

Registration occurs in person at the local police station. Under the Act as first enacted, a registrable person had to provide proof of their identity at initial registration, unless the police officer was satisfied as to their identity. Alternatively, the person could ask the police officer to confirm their identity by taking their fingerprints, in which case the fingerprints had to be destroyed immediately. A registrable person was also required to provide a passport size photograph of themselves and a variety of personal information, such as their residential address(es), employment, and the motor vehicle(s) they own or use.

There have been significant changes to these procedures under the amended Act. Police are now allowed to take the person's fingerprints if they are not satisfied as to the person's identity, or the fingerprints are not already held by NSW Police. Furthermore, any fingerprints taken can be retained and used for law enforcement or child protection purposes. Police can also require a person to be photographed, and the photograph may include non-intimate parts of the person's body. Police may use reasonable force to obtain fingerprints and take photographs. The information that must be provided has also been extended to include details of the names and ages of any children with whom the person generally resides or with whom they have regular contact, and details of their affiliation with any club or organisation that has child membership or child participation in its activities. In addition, the person must provide details of any tattoos or permanent distinguishing marks, including those removed.

Under the amended Act, a person who intends to leave NSW to travel elsewhere in Australia on an average of at least once a month, irrespective of the length of their absence, must advise police at their initial registration of the reason for their travel and the frequency and destination of the travel.

Further reporting obligations

A registered person is required to advise police of any changes to the information they provided at their initial registration within 14 days. Under the Act as first enacted, this generally had to be done in person at a police station. The amended Act allows police to make arrangements that a registered person does not need to report certain updated information in person in some circumstances.

The Act as first enacted did not require a registered person to report to police if there were no changes to the information provided at the initial registration. The amended Act now requires registered persons to provide their personal information annually.

A registered person must also advise police of the details of any intended travel outside NSW. Under the Act as first enacted, there was an exemption from this requirement in relation to travel elsewhere within Australia for 28 days or less. Under the amended Act, the exemption has been limited to travel of less than 14 days.

Reporting periods

A registered person's reporting obligations continue for a number of years depending on the nature and number of relevant convictions. The reporting period for an adult offender may be from eight years to the duration of the person's life. The reporting period is halved where the registrable offence was committed when the person was under the age of 18, with a reporting period of seven and a half years where a lifetime reporting period would apply to an adult offender. The Act as first enacted contained a somewhat complex process for the calculation of a particular person's reporting period. The amended Act simplifies the process and, with one exception, increases reporting periods.

Offences

It is a criminal offence for a registrable person to fail to comply with their registration and reporting requirements without reasonable excuse, or to knowingly provide police with false or misleading information. Both offences carry a maximum penalty of 100 penalty units (currently \$11,000) or two years imprisonment or both.

Exemption from reporting obligations

The only mechanism to exempt persons from their reporting obligations is a right of review to the Administrative Decisions Tribunal after 15 years for those required to comply with reporting obligations for their lifetime. The Tribunal can only make an order suspending a registered person's reporting obligations if it considers that the person 'does not pose a risk to the safety of children'.

Young people, forensic patients, and people with 'special needs'

The circumstances of young people, forensic patients, and people with 'special needs' such as those with an intellectual disability or mental illness, are recognised in the provisions of the Act and Child Protection (Offenders Registration) Regulation 2001 (the Regulations) dealing with notification and reporting.

Use and disclosure of information on the Child Protection Register

The Act contains no provisions specifically regulating how police should use information on the Register, because it was contemplated that NSW Police would formulate appropriate policies and procedures on these matters.

NSW Police have developed guidelines to assist local area commands in 'monitoring' people on the Register. The guidelines cover such issues as: which registered persons to monitor; strategies that police can use to monitor registered persons; disseminating information to general duties police; and protecting registered persons from community harassment.

NSW Police also has a policy about the disclosure of information contained in the Register. It provides that police may only disclose personal information about a registrable person for specified law enforcement and child protection purposes, with a strong presumption in favour of non-disclosure. The policy includes a set of information disclosure principles to assist police in determining whether and what information can be released.

People on the child protection register at the completion of the review

As at 15 October 2003, after two years of operation, 916 people had registered with NSW Police, with 828 of those recorded as 'currently registered'. The registration of 40 people had been suspended because they were in custody, and 44 people were absent from NSW. Four people were recorded as 'no longer registered'. A further 33 people had been notified of their obligation to register but had yet to do so. Another 35 had been identified as registrable but were yet to be notified. There were another 360 people in custody who must register when they complete their custodial sentence.

This brought the number of people in NSW identified as registrable persons in the first two years of the Act's operation to 1,344.

Of those people registered at the end of the review period, 22 were under the age of 18, with the registration of an additional 27 arising from convictions for offences committed as a young person.

Nearly 98 per cent of registered persons (809) were male. Of the 19 women on the register, seven were registrable as a result of convictions for 'non-sexual' offences against children.

As at November 2004, the number of registered persons has increased to more than 1,650.

Whether certain offenders should be included on the child protection register

No issue was raised in the review about the appropriateness of most identified offences which would result in an offender being required to register on conviction. However, for a small number of offenders and in limited circumstances, a range of views was received about whether they should be included on the Register:

- young people convicted of offences arising from consensual underage sexual activity
- people found not guilty by reason of mental illness and detained as forensic patients, especially women who killed their children as a result of post-natal depression
- people convicted of the murder or kidnapping of a child – offences which do not have, as such, a sexual element.

We have recommended that the Minister, in conducting his review of the policy objectives of the Act, consider these submissions. We have emphasised that the crucial issue is whether the offender poses a risk to the safety of children. If there is any question or doubt on this issue, the person should be included on the Register.

There are a number of people on the Register as a result of a conviction for an offence for consensual sexual activity, even though this behaviour is no longer illegal because the age of consent for homosexual activity has been reduced from 18 to 16 years. We have recommended a review mechanism to permit the removal of these people from the Register.

Notification, registration and reporting

Our review focussed on how best to ensure the persons required to register meet their reporting obligations. This requires the right balance between informing offenders about their obligations, providing appropriate processes to facilitate registration and ongoing compliance, and taking action where obligations have not been met.

Notification

The first step in making certain that the Register information is up to date and accurate is ensuring that registrable persons understand their reporting obligations. This requires that the information provided to registrable persons about their obligations and the consequences of non-compliance is clear and unambiguous.

Although the review was provided with some examples of problems with the notification procedures, these generally worked effectively. Compliance with obligations is high at between 90-95%. This is not to say that the notification process could not be improved.

We have recommended NSW Police produce simplified material to be given to all registrable persons at the time of notification and again at re-registration. In addition, we have recommended the Child Protection Registry, the agency in NSW Police with primary responsibility for the Register, take a coordinating role in the development and provision of training to the staff of supervising authorities about their notification role. We have also recommended that the courts' notification functions for registrable persons commencing supervised sentences be transferred to the probation and parole service.

A particular issue is the registration of persons with disabilities or other special needs which impact on their ability to understand and comply with their reporting obligations. There have been a number of instances where such persons have failed to meet reporting requirements. At least in part, this was due to a failure to adequately communicate reporting requirements. We have therefore made recommendations to assist better identification of persons with special needs at the outset, and to increase police awareness of those who may provide assistance to these persons.

Registration and reporting processes

The nature of the information that registered persons are required to provide to police goes to the value of the Register as a child protection tool. If police are to effectively use the Register to prevent, detect and investigate offences, the information held must be thorough, up to date and relevant to child protection issues.

Information obtained during our review suggested that the ability of police to effectively carry out their child protection role would be enhanced through increased reporting obligations and arrangements. The amended Act includes a number of provisions which reflect the types of changes that we would have recommended. On this basis, the review provides support for amendments such as:

- the obligation of a registered person to provide details of children with whom they live or with whom they have regular unsupervised contact
- the obligation of a registered person to provide details of any club or organisation with which they are affiliated that has child membership or participation
- the obligation of a registered person to provide details of tattoos or other distinguishing marks
- the obligation of a registered person to report interstate absences of over 14 days in a 12 month period, and regular short absences

- the power of police to take photographs of a registered person, including of tattoos or other distinguishing marks
- the requirement for annual re-registration
- the provision of interpreters
- the introduction of more flexible reporting arrangements, especially for registered persons in remote areas
- a simpler system for determining reporting periods.

In addition to these, there are a number of processes and requirements which would further enhance reporting processes.

Our review indicated that the current system for making an appointment with only the crime manager to complete initial registration or to update information sometimes makes it difficult for a registrable person to comply with their obligations within the required timeframe. We have recommended consideration be given to nominating an alternative contact person should the crime manager be unavailable.

There was also some evidence that local processes did not always provide appropriate privacy for new registrations. We have recommended the Standard Operating Procedures clarify how privacy should be afforded to registrable persons while they are reporting to police.

We have also suggested that NSW Police develop guidelines to manage the annual re-registration process, to avoid an increase in inadvertent breaches requiring the redirection of police resources away from managing high risk registered persons. For example, consideration might need to be given to establishing a reminder system in order to promote compliance.

Managing non-compliance with registration and reporting obligations

Where people do not meet the requirements of the Act, it is important for police to take action, including prosecuting offenders, to achieve compliance and promote future meeting of reporting obligations.

There were 60 charges for failure to comply with reporting obligations or providing false information in the first two years of operation of the Act. This covers 54 people – four people were charged with offences on more than one occasion, one being charged four times and three being charged twice.

Of the 55 charges finalised, five matters were withdrawn, 14 were dismissed, and 36 resulted in convictions. Penalties for convictions included:

- fines of between \$10 and \$2000 (21 matters)
- bonds of between six months and two years (five matters)
- imprisonment for between one and 15 months (10 matters).

Six of the people charged were under the age of 18 or were on the Register for an offence committed as a young person. Only one of these was under the age of 18 at the time of the charge. Four people charged were known to have a disability or a special need.

NSW Police have advised that the majority of offences were committed by people who originally register with police but then fail to continue to meet their reporting obligations. The requirement under the amended Act for annual re-registration should reduce this problem.

Police do not charge all people who have failed to register or failed to provide new details. In the first instance, police generally encourage and assist people to comply with their obligations rather than proceeding directly to laying charges.

A particular matter requiring consideration is that Aboriginal people make up a far greater proportion of people charged with offences under the Act than their representation on the Register. Of those charged, 10 were Aboriginal persons. This is nearly 20% of all persons charged, although Aboriginal people make up less than 4% of people on the Register. Our review indicates that one of the reasons is that some Aboriginal persons on the Register move between a number of locations. Because of the high charge rate, we have recommended that NSW Police develop specific guidelines to deal with Aboriginal registrable persons and, for this purpose, consult with appropriate stakeholders, including the Aboriginal Justice Advisory Committee. Consideration should be given to involving Aboriginal Community Liaison Officers or Youth Liaison Officers in the notification and registration processes, and management of compliance.

Management of the register to enhance child protection

The information provided to our review suggested that the Register has significant benefits in enhancing community safety. All stakeholders, including registered persons, were generally positive about the value of the Register. However, 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.

NSW Police has developed Monitoring Guidelines and Standard Operating Procedures to assist local commands in identifying and targeting high risk registered persons. While these are of some assistance, our view is that police officers require a more comprehensive framework to effectively use the Register and increase the protection of children.

Arrangements within NSW Police

Monitoring guidelines

We believe it would be appropriate for the Monitoring Guidelines and Standard Operating Procedures to establish certain minimum standards of oversight for registered people, and reinforce the focus on the high risk offenders. The involvement and responsibilities of all police, not just those assigned to specific Register duties, should be clarified. This would improve the consistency of approaches across local area commands and remove uncertainties about roles and powers, allowing police to focus on more effectively using the Register to protect children. If minimum standards are established, the actions of commands to implement them should be closely monitored, and remedial action taken where a command's response is inadequate.

Targeting high risk offenders

Information provided to our review shows that some commands are monitoring all registered persons in the same way regardless of their assessed risk. The focus of police efforts should clearly be on registered persons who pose the greatest risk to children in the community. This will ensure that persons of most concern are subjected to the highest levels of scrutiny and given little opportunity to re-offend or fail to comply with their obligations. Targeting according to risk also provides more efficient use of police time and resources.

Information provided to our review suggests that management of the Register has increased the workload of officers in some commands. Targeting interventions to those with the highest risk rating would assist with workload management.

Better targeted monitoring may also serve to reduce perceptions of unduly intrusive monitoring and allay fears of police harassment or intimidation, particularly among compliant and low risk registered persons. More significantly, a targeted approach will reduce the opportunity for non-compliance and re-offending among high risk persons.

It is important in targeting those who present the greatest risk of harm to children, that the risk rating assigned to a registered person properly reflects the level of risk. While the risk assessment instrument used by NSW Police may not be as strong a predictor of harm or recidivism as other more sophisticated tools, it requires minimal training and does not involve a lengthy assessment or interview process. However, given the fundamental significance of risk assessment to the management of the Register, we have recommended an evaluation of the effectiveness of this instrument.

Workload management and information sharing

The increased workload for local police as a result of the Register is exacerbated by the restrictions on access to the Register to a limited number of police officers. There may be justification in some commands with a large number of registered persons for involving more officers in managing registered persons.

Increasing involvement of officers within a command is one strategy to increase the effectiveness of monitoring. Sharing information between commands is also important, both to ensure high risk persons do not escape attention simply by changing location, and to circulate good ideas and practice in dealing with the Register.

Management of the Register would clearly benefit from the Child Protection Registry undertaking this coordinating role and establishing a 'whole of police' response. The Registry could assist through actions such as making available information about effective management strategies and risk assessment, and the development and provision of training to officers.

In this respect, our review found that officers who were trained about the Register were confident about their roles and responsibilities. We have recommended ongoing training:

- to equip those officers with significant responsibilities with skills to ensure compliance by registered persons or effective prosecutions where there is non-compliance, and
- to train all police in how they can assist in monitoring persons on the Register.

Inter-agency cooperation

Recent and proposed legislative and procedural changes in this area include: the establishment of child protection watch teams; the introduction of child protection prohibition orders; provisions under the amended Act to enhance information sharing between police and other agencies; changes to permit increased disclosure of information about registrable persons; and moves towards a nationally consistent registration scheme. These represent positive enhancements which should improve protection of children.

However, the role of agencies other than NSW Police in the management of registered persons needs to be clarified and formalised. Providing greater clarity is particularly important where roles are not underpinned by statutory powers or obligations, not only to ensure each agency understands its role, but also to incorporate appropriate protections. Adequate guidelines and protocols setting out how information can be shared between police and other agencies, and how this information is used to protect children, are essential. Even limited disclosure of information about a registered person to a member of the public or a non-government agency raises significant potential for further and possibly inappropriate disclosure and use of that information.

The child protection watch teams will potentially play an important role in achieving better inter-agency cooperation. The teams provide an opportunity for police and other agencies to establish protocols and guidelines for a more structured approach to the management of persons posing a threat to children. The protocols for, and evaluation of, the pilot project should incorporate these issues as well as information sharing and disclosure.

The move to a national scheme for registering offenders is of critical importance. The effectiveness of the NSW Register is clearly hampered by this state being the only jurisdiction in Australia during the review period with child offender registration laws.

Conclusion

The enactment and implementation of the Act in New South Wales has been largely successful. NSW Police, and individual police officers, have put in place systems which provide a solid basis for the development of the Register as a significant child protection tool. This has occurred generally without any demonstrable inappropriate impact on the rights of those required to register. The amending Act should increase the effectiveness of the legislation, and address many of the initial shortcomings.

Work remains to improve local and organisational practices, in order to increase the use of information on the Register to monitor and manage high risk offenders. This will be key not only to the effectiveness of NSW Police, but of all agencies cooperating to protect children.

Summary of Recommendations

	Recommendation	Report reference paragraph
1	That the Minister, in conducting his review of the policy objectives of the Act, take into account the various submissions and views set out in this report in determining whether the inclusion of certain types of offender on the Register is appropriate and whether there is scope for some offenders currently on, or liable to inclusion on, the Register either to be excluded from the Register or to seek exemption from the registration and reporting obligations imposed by the Act.	9.1
2	That there should be a provision or review mechanism which would permit the removal from the Register of those persons currently registered who were convicted of offences where the sexual activity which formed the basis for the offence is no longer illegal.	9.1
3	That the anomaly in the sentencing thresholds for adults and children where a good behaviour bond is imposed be rectified.	9.1
4	That, in respect of notification, the Minister considers formalising the probation and parole service's exercise of the courts' notification functions.	14.14
5	That, in respect of notification and registration arrangements, NSW Police considers modifications of systems to ensure enhanced compliance, including: <ul style="list-style-type: none"> • the development and provision of clearer information to registrable persons in simplified formats • working with supervising authorities to improve identification and recording of persons with special needs • the provision of ongoing training for police and agencies with responsibilities for notification • clarifying and revising guidelines in respect of certain aspects of the reporting process • the development of guidelines to assist with the management of reporting and compliance by Aboriginal registered persons • the development and provision of ongoing training for police in the management of non-compliance, particularly in relation to laying charges. 	14.14
6	That NSW Police establish and implement minimum standards for assessing monitoring and managing of registered persons. These standards should provide clear direction about the expectations of local area commands in dealing with registered persons, with a focus on the monitoring of high risk persons.	19.4

	Recommendation	Report reference paragraph
7	<p>That the present Monitoring Guidelines and Standard Operating Procedures should:</p> <ul style="list-style-type: none"> • incorporate the minimum standards • provide clear information about the responsibilities of officers and local area commands in implementing these standards, including sharing information within and between commands • include special provisions about the monitoring and management of Aboriginal registered persons. 	19.4
8	<p>That NSW Police commissions an expert evaluation of the threat assessment instrument to assess its validity as a determinant of risk, in the context of the ongoing monitoring of registered persons.</p>	19.4
9	<p>That NSW Police ensure that the protocols and evaluation criteria developed for the trial of the child protection watch teams take account of the principles and practices for disclosure and sharing of information about registered persons, as well as the resourcing and support provided by participating agencies.</p>	19.4
10	<p>That NSW Police ensure adequate training and information is available to all police officers about the Register, its use, and their role in the protection of children.</p>	19.4

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Part 1.

Background

Chapter 1. Introduction

The *Child Protection (Offenders Registration) Act 2000* (the Act) establishes a Child Protection Register (the Register) which requires persons convicted of certain offences against children to register with NSW Police on their release into the community. Although the Act primarily confers new functions on NSW Police, other authorities also have obligations under the Act.

The Act provides for the NSW Ombudsman to review the operation of the legislation. Section 25(1) states:

For the period of 2 years from the commencement of this section, the Ombudsman is to keep under scrutiny the operation of the provisions of this Act and the regulations.

The two year review period began on 15 October 2001, when the provisions of the Act commenced.

Section 25(3) of the Act states that, as soon as practicable after the review period, the Ombudsman must report to the Minister for Police on his review. This report documents the Ombudsman's findings resulting from the review.

The Act also provides for the Minister to review the Act 'to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives'.¹ The Minister's review must be undertaken as soon as possible after receipt of the Ombudsman's report², and a report on the outcome of that review must be tabled in Parliament as soon as possible after the review is completed.³ It is expected that this report will be used to inform the review undertaken by the Minister.

Endnotes

¹ Section 26(1) *Child Protection (Offenders Registration) Act 2000*

² Section 26(2) *Child Protection (Offenders Registration) Act 2000*

³ Section 26(3) *Child Protection (Offenders Registration) Act 2000*

Chapter 2. Child protection legislation

2.1. Development of the legislation in NSW

The concept of a register of persons convicted of sex offences against children first entered public debate in NSW during the Wood Royal Commission.⁴ Volume V of the Royal Commission's final report dealt with its paedophile reference and was released in August 1997. The report contained a number of recommendations to enhance child protection, particularly in relation to protecting children from sex offenders. Many of these recommendations formed the basis of the government's *Protecting Our Children* policy statement⁵, and its subsequent child protection legislation package.

Specifically, Recommendation 111 recommended that the government consider establishing a register of child sex offenders.⁶ This recommendation, and certain paedophile cases which received a high profile in the media at the time, provided the catalyst for the legislation.

The Act was introduced into Parliament on 1 June 2000 and assented to on 27 June 2000. It was subsequently amended by the *Child Protection (Offenders Registration) Amendment Act 2001* which was passed on 6 July 2001. The Act, as amended, commenced operation on 15 October 2001.

The Act allowed for regulations to be made. Parliament passed the *Child Protection (Offenders Registration) Regulation 2001* on 12 October 2001. The Regulation also commenced on 15 October 2001.

The *Child Protection Legislation Amendment Act 2002*, passed in November 2002, amended the Act, with most of the amendments being backdated to its commencement in October 2001.

2.2. Objectives of the legislation

When the Act was first introduced into Parliament, the accompanying Explanatory Note indicated the key objective of the legislation was:

to require persons who have been found guilty of certain offences against children to keep the Commissioner of Police informed as to where they live and work and as to what motor vehicles they drive.⁷

In his second reading speech, the then Minister for Police, The Hon Paul Whelan MP, expanded on this by stating that the aims of the Bill were also to:

- increase and improve the accuracy of child sex offender intelligence held by police
- assist in the investigation and prosecution of child sex offences committed by recidivist offenders
- provide a deterrent to re-offending
- assist in the monitoring and management of child sex offenders in the community
- provide child abuse victims and their families with an increased sense of security
- enable child murder and kidnapping offences to be considered for the purposes of employment screening and prohibiting child related employment.⁸

2.3. Proposed amendments to the legislation

The government had indicated it would consider introducing amendments to the Act if this were required to facilitate the passage of nationally consistent legislation in other states. On 23 June 2004, the *Child Protection (Offenders Registration) Amendment Bill 2004* (The Bill) was introduced into Parliament. The Bill, if passed, will amend the current Act, in accordance with the national model legislation which was formally agreed to by the Australasian Police Ministers' Council (APMC) on 30 June 2004.

Although any potential changes to the Act arising from the Bill are outside the period for this review, this report makes reference to the Bill, as its provisions are relevant to many of the issues raised during the course of the review.

2.4. Other related legislation, existing and proposed

The *Child Protection (Offenders Registration) Act* is part of a package of child protection legislation which has been introduced progressively in NSW in response to a number of major inquiries and reports. The most significant of these was the Wood Royal Commission, noted above, which reported on its paedophile reference in August 1997. This was followed in December 1997 by the report of the Community Welfare Legislation Review, known as the Parkinson report.⁹

In December 1998, the *Commission for Children and Young People Act 1998*, the *Child Protection (Prohibited Employment) Act 1998* and the *Children and Young Persons (Care and Protection) Act 1998* were assented to but not proclaimed to commence. The *Commission for Children and Young People Act* commenced in May 1999, except for Part 7 (Employment Screening) which commenced in July 2000 when the *Child Protection (Prohibited Employment) Act* commenced. The staged commencement of the *Children and Young Persons (Care and Protection) Act* began in April 2000.

More recently, there have been the Eastwood report in July 2002 into child sexual abuse complainants in the criminal justice system¹⁰ and the NSW Legislative Council's Standing Committee on Law and Justice report on child sexual assault prosecutions tabled on November 2002.¹¹ These have led to changes to the way in which child sexual assault matters are dealt with in the criminal justice system, such as a trial of a specialist child sexual assault court and the use of pre-recorded evidence. In addition, there have been other legislative amendments which have amended sentencing options for certain sexual offences against children.

2.4.1. Child Protection Prohibition Orders

In March 2003, during the campaign for the State election, the Premier, the Hon Bob Carr MP, announced a plan to introduce child protection prohibition orders to restrict the movement of convicted sex offenders.¹² This involves court orders to place restrictions on an offender's behaviour, such as prohibiting child sex offenders from visiting certain places or undertaking specific activities. The *Child Protection (Offenders Prohibition Orders) Act 2004* was assented to on 6 July 2004, but has yet to commence operation. This Act is modelled on legislation in the United Kingdom which provides for sex offender orders.¹³

2.4.2. Child protection watch teams

The Premier also announced in March 2003 that the government would introduce multi-agency child protection watch teams to monitor and manage offenders at a local level.¹⁴ These teams, consisting of local representatives from agencies including Police, the Department of Corrective Services (DCS) (specifically the probation and parole service), the Departments of Juvenile Justice (DJJ), Community Services and Housing, would case manage registered persons and provide an 'early warning system' for inappropriate behaviours, associations, living arrangement and activities. The child protection watch teams are based on the public protection panels established in the United Kingdom to provide a coordinated approach to the management of high risk offenders in the community.

The teams are intended to:

- provide a forum for sharing relevant information about referred offenders
- review and update risk assessments using information from the participating agencies
- develop and review case plans for referred offenders, where appropriate, which may include referral to a particular service, controlled information disclosure, or application for a Child Protection Prohibition Order.¹⁵

Cabinet has approved a trial of child protection watch teams in south western Sydney to commence in the second half of 2004.

2.4.3. Paedophiles on the internet

Another child protection reform announced by Premier Carr during the campaign for the State election, was a proposal for new laws to target paedophile activity on the internet. Legislation was proposed to prohibit the use of electronic communication devices such as the internet, emails, and SMS text messages sent by mobile phones, to entice a child into illegal sexual activity.¹⁶ A specialist taskforce has been established to develop legislation to combat the internet exploitation of children.

2.4.4. Comparable legislation in other Australian jurisdictions

NSW is the only state in Australia to have passed legislation establishing a register of child sex offenders. Victoria introduced a Sex Offenders Registration Bill into Parliament on 1 June 2004.¹⁷ A registration scheme for Queensland has also been suggested¹⁸ although no legislation to establish a register has been proposed at this stage.¹⁹ However, a limited reporting scheme has been available in Queensland since 1989 which enables a court to impose specific reporting

obligations on convicted offenders in certain situations of risk.²⁰ Western Australia is also in the developmental stages of similar legislation.

2.4.5. A national approach to child sex offender register legislation

The development of a National Child Sex Offender System (NCSOS) has been part of the Commonwealth Government's CrimTrac initiative since 1998. The CrimTrac Agency was established in 2000 to assist and support Australian police services through the provision of information and investigative tools in the areas of forensic science, information technology and communications. The NCSOS was not intended to be a national register on the NSW model, but rather an integrated database to assist police from all jurisdictions track and check sex offenders.

Nationally, the Australian Police Ministers' Council (APMC) established a working group in 2002 to discuss the introduction of consistent legislation across all jurisdictions, in light of Victoria's and Western Australia's moves in this direction. In early July 2003, the Council announced that the police ministers from all states had agreed to develop legislation to establish a register in each state, based on the NSW Act, which would be in place within a year.²¹

CrimTrac is to have the responsibility for implementing the National Child Protection Register System, with the NCSOS being renamed the Australian National Child Offender Register (ANCOR). In announcing the Council's endorsement of a national approach to the registration of details about child sex offenders and their movements, Senator Ellison stated:

*I have asked CrimTrac to convene a joint reference group representing the interests of all jurisdictions to develop the new arrangements for a system of national child protection registration. This group will determine how CrimTrac can best provide technical support and appropriate linkages between the proposed system and the National Child Sex Offender System.*²²

Furthermore, a national initiative is intended to facilitate assistance being provided to overseas agencies:

*Once a national system is implemented, the Commonwealth will also be able to negotiate agreements with other countries for the exchange of information on the movement of registered child sex offenders. ... [W]hile the Australian Federal Police currently liaise with overseas law enforcement on the movement of paedophiles, a national system would greatly enhance the effectiveness of this liaison.*²³

At the end of June 2004, the APMC announced that all police ministers had agreed on a model of legislation that would establish nationally consistent child sex offender registers in all states and territories.²⁴ It was this agreement which prompted the Child Protection (Offenders Registration) Amendment Bill 2004, and the Victorian Sex Offenders Registration Bill 2004, both recently introduced into their respective state Parliaments. Both these Bills contain differences to the agreed national model.

2.4.6. Comparable legislation in overseas jurisdictions

The NSW legislation is substantially modelled on the United Kingdom's *Sex Offenders Act 1997*. Under this legislation, introduced in 1997, certain sex offenders must notify police of certain details about themselves. This was followed in 1998 by legislation that allows police to seek an order for a person with a previous conviction for a sex offence requiring them to register with police and prohibiting certain actions or behaviours.²⁵

The United States was the first country to establish sex offender registers.²⁶ In 1994 federal legislation was passed which required all states to have sex offender registers,²⁷ followed in 1996 by legislation requiring all states to enact community notification provisions.²⁸

In Canada, Ontario was the first province to pass sex offender registration legislation in 2001²⁹ with some other provinces currently debating similar laws. The Federal Canadian government has recently passed legislation that will create a national sex offender registration scheme.³⁰ The Bill was assented to on 1 April 2004, but is not yet in force

Details of comparable legislation in other jurisdictions are set out at Appendix 1.

Endnotes

- ⁴ *Royal Commission into the NSW Police Service, Final Report, Volume V: The Paedophile Inquiry*, Hon Justice JRT Wood, August 1997.
- ⁵ *Protecting our Children*, policy statement released by the Carr Government in 1999.
- ⁶ Recommendation 111 of the Wood Royal Commission Final Report Volume V was:
Consideration be given to the introduction of a system for the compulsory registration with the Police Service of all convicted child sexual offenders, to be accompanied by requirements for:
 - the notification of changes of name and address; and for
 - verification of the register;*following consultation with the Police Service, ODPP, Corrective Services, the Privacy Committee and other interested parties.*
- ⁷ Explanatory Note on the Child Protection (Offenders Registration) Bill 2000.
- ⁸ Hansard, Legislative Assembly, 1 June 2000, The Hon Paul Whelan, MP, Minister for Police, Second Reading speech, Child Protection (Offenders Registration) Bill.
- ⁹ Report of the Community Welfare Legislation Review, headed by Associate Professor Patrick Parkinson, titled *Review of the Children (Care and Protection) Act 1987: Recommendations for Law Reform* (December 1997).
- ¹⁰ Dr Christine Eastwood and Prof Wendy Patton, *The Experiences of Child Complainants of Sexual Abuse in the Criminal Justice System*, Queensland University of Technology, July 2002.
- ¹¹ New South Wales Legislative Council's Standing Committee on Law and Justice, *Report on Child Sexual Assault Prosecutions*, November 2002.
- ¹² Attorney General, *Media Release*, 'Government questions timing of Coalition's child protection announcement', 14 March 2003; and AAP news release, 'Coalition proposes overhaul of child sex abuse cases', Friday 14 March 2003, from <<http://bulletin/prod/aap/aapwire.nsf>>
- ¹³ See Appendix 1 for details of the relevant legislation in the United Kingdom.
- ¹⁴ Child Sexual Abuse: Labor's Plan to Protect Children (NSW), March 2003.
- ¹⁵ Letter from Director-General, Ministry for Police to Dr Neil Shepherd, Chair, Human Services CEOs Group, undated copy provided to the Ombudsman on 12 July 2004.
- ¹⁶ Attorney General, 'Government questions timing of Coalition's child protection announcement', *Media Release*, 14 March 2003.
- ¹⁷ This was in response to recommendations in a report by the Parliamentary Crime Protection Committee in 1995 entitled *Combating Child Sexual Assault – An Integrated Model*. An overview of the provisions of this Bill is at Appendix 1.
- ¹⁸ Queensland Crime Commission's report *Project Axis: Child Sexual Abuse in Queensland: Responses to the Problem*, 2000.
- ¹⁹ In 1997, a private member's bill, the *Criminal Law (Sex Offenders Reporting) Bill*, was introduced but failed to capture public attention or generate the expected public response and ultimately lapsed.
- ²⁰ Through a provision of the *Criminal Law Amendment Act 1999 (Qld)*.
- ²¹ 'National list for child sex offenders' *The Australian*, 3 July 2003; 'National pedophile register approved', *The Age*, 3 July 2003
- ²² 'National Tracking of Child Sex Offenders' media release by Senator Chris Ellison, Minister for Justice and Customs (Federal) 2 July 2003.
- ²³ See footnote 19.
- ²⁴ 'Deal struck on pedophile database', *The Sydney Morning Herald*, 1 July 2004; 'States agree to pedophile listing', *The Age*, 1 July 2004;
- ²⁵ Sex Offender Orders under the *Crime and Disorder Act 1998 (U.K.)*
- ²⁶ The first sex offender registers were in California in 1944, then Arizona in 1944 and Florida in 1957.
- ²⁷ *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act 1994*
- ²⁸ Known as *Megan's Law 1996*
- ²⁹ *Christopher's Law (Sex Offender Registry) 2000 (Ontario, Canada)*
- ³⁰ *Sex Offender Information Registration Act 2004 (Canada)*.

Chapter 3. Overview of the Act and its implementation

3.1. Outline of the provisions

The *Child Protection (Offenders Registration) Act* includes provisions which relate to:

- the definition of registrable offences
- who is to notify registrable persons of the requirement to register and how this is done
- the reporting obligations of registrable persons, including the information they must provide to police and how that information must be provided
- how the reporting periods are calculated
- the role of the Administrative Decisions Tribunal (ADT) in exempting persons from lifetime reporting
- the creation of offences relating to breaches of reporting obligations
- special reporting procedures for persons in witness protection programs.³¹

The Regulations provide specific details about how the Act is to be implemented and include clauses relating to:

- the definition and role of supervising authorities
- notification of registrable persons, particularly those with special needs, including forensic patients and children
- proof of identity requirements
- the form and content of written notices and acknowledgements.

3.2. Police procedures

NSW Police use a variety of policy and procedure documents to direct and inform their management of the Act. Some of these outline NSW Police responsibilities under the Act, and provide guidance for its implementation. Other policies and procedures provide direction to officers about aspects of the operation of the Register which are not covered by the Act, such as the monitoring of registered persons and sharing of information about registered persons with other agencies. The most significant procedural documents are summarised below.

3.2.1. Standard Operating Procedures: Child Protection (Offenders Registration) Act

The first version of the Standard Operating Procedures (SOPs) was produced in August 2001. An updated second version, which is still current, was issued in October 2002. The purpose of the SOPs is to assist operational and specialist police meet their obligations under the Act. The SOPs cover a range of practical issues. Much of what is contained in the SOPs is directly related to the implementation of specific provisions of the Act. However, other sections deal with related practices that have no direct legislative basis. The various sections of the SOPs include directions in relation to: when a person is charged with a registrable offence; the creation of a child protection register 'case'; the notification process; the registration process; management of registered persons and of the Register; registrable persons who are children or have a disability or a special need; and non-compliance and offences under the Act.

3.2.2. Post Registration Monitoring of Child Sex Offenders: Guidelines For Operational Police

Draft guidelines were produced by the Child Protection Registry in October 2001, with the final version, which incorporated some significant changes, issued in September 2002. The guidelines are to assist local area commands (LACs) monitor registered persons and are for guidance only. The guidelines cover such issues as which registered persons to monitor; what constitutes monitoring; strategies that police can use to monitor registered persons; what activities are inappropriate; disseminating information to general duties police; and protecting registered persons from community harassment.

3.2.3. Registrable Persons – Child Protection Registry: Information Disclosure Policy and Procedures

This was produced in October 2002 after consultations with the relevant agencies. It provides guidance for police in relation to the release of personal information pertaining to registrable persons. It provides that police may only disclose personal information about a registrable person for specified law enforcement and child protection purposes, with a strong presumption in favour of non-disclosure. It contains a set of information disclosure principles to assist police determine whether and what information can be released. It identifies existing policy or legislation, which enables dissemination of information without commander approval, and also outlines other circumstances in which a commander can authorise the release of information.

3.2.4. Guidelines for the NSWPOL Communications Group: Child Protection (Offenders Registration) Act 2000

These guidelines were issued by the Child Protection Registry in August 2002 to assist police radio operators. The document provides an overview of the Act, explains what information is held on registrable persons, and what information is accessible to all officers on Computerised Operational Policing System (COPS). The guidelines set out what information can and should be passed on to officers conducting a routine enquiry, what can be relayed on air and how this should be done.

3.2.5. Guidelines for Completing the Child Protection Register Threat Assessment

This 'on-line' document on the NSW Police intranet provides assistance to officers completing a threat assessment for a registrable person, either initially at the time the person is charged with a registrable offence, or at any subsequent contact. It provides step-by-step advice on how to complete each of the component questions in the threat assessment matrix, including what information to use, and how to record it; and how to calculate the overall threat level.

3.2.6. Child Protection Register COPS User Guide: Charging and Registration Process

This document, produced in October 2002, provides police with detailed directions on how to enter and manage on COPS all required information for the purposes of the Register.

Further details of the content of these policy and procedure documents can be found at Appendix 2.

3.3. Child Protection Register management within NSW Police

LACs are responsible for the registration of individuals and the receipt of updated information. Although this can be done at any police station, only certain officers have authorisation to access and amend information held on the Register. The primary responsibility lies with the crime manager in each LAC who can designate other officers to undertake child protection register duties. The crime manager can allocate a case manager to each registered person. It is also the responsibility of LACs to monitor registered persons within their command and to take action in relation to persons in breach of their reporting obligations.

Operational police charging a person with a registrable offence have specific responsibilities. These include attaching certain forms³² to the brief of evidence, so the court can determine if a person is required to register following the finalisation of the matter, and the completion of a threat assessment. (The process for completing threat assessments is discussed further in Chapter 15.)

Certain centralised aspects of the Register's operation are managed by the Child Protection Registry which is part of the Child Protection Squad under the direction of the State Crime Command. The Child Protection Registry is responsible for the day-to-day management, monitoring and maintenance of the Register. This includes:

- development of policy and guidelines
- calculation of reporting periods
- coordination of intelligence
- provision of assistance, advice and ongoing training to operational police
- advising LACs of registrable persons in their command
- identifying persons who have failed to register within statutory timeframes
- management of cases transferring to or from interstate.

The Register is not a separate database but an interface of the COPS information management system. The information provided by registered persons is recorded on COPS in the same way as all other information held by NSW Police. However, access to the full range of Register information is restricted. Only officers who have specific levels of authorisation can access all the information about a particular registered person or find all the registered persons in a particular location. There is no public access to the information on the Register.

There are four levels of authorised access to the information held on the Register:

- 1) The Child Protection Registry can enquire, add and modify all 'CPR cases'.³³ The Registry can also access the Registry worklog, and download and print reports and lists of registered persons.
- 2) Crime managers and members of the crime management unit and, on average, about six senior nominated officers in each LAC can enquire, add and modify all CPR cases in their LAC.
- 3) An assisting officer, or case manager, can access and modify only the particular CPR case of a registered person allocated to them.
- 4) All police officers, when conducting a person, vehicle or location enquiry on COPS, can see if the entity is associated with a CPR case and the details of the assessed level of threat.

3.4. Implications for registrable persons

The onus of complying with registration and reporting obligations of the Act lies with the registrable person.

The primary obligation imposed by the Act is for a registrable person to register with police within 28 days of having received notification of an obligation to do so, and provide police with their personal details, as prescribed in the Act. These include details of any names they use, the addresses where they reside, any vehicles they drive, and their employment. Registrable persons are also required to provide a photograph of themselves and proof of identity. Following the initial registration, the ongoing obligations under the Act require a registered person to provide police with details of any changes to their personal details within 14 days of the change, and to advise police of any intended overseas travel, or interstate travel of more than 28 days. All reporting must be done in person at a police station. Details of the personal information that must be provided and other reporting obligations are discussed in more detail in Chapter 11.

Although the Act does not specifically provide for the monitoring of registered persons by police, the child protection objectives of the Act mean that ensuring compliance is imperative if the Register is to be an effective tool for the investigation of offences and the protection of children. Registered persons should anticipate some degree of monitoring by police following registration, to ensure they are complying with their obligations. The extent and form of this monitoring should be determined by the assessed level of risk of each registered person. However, all registered persons should anticipate some contact from police, such as visits to their home, at least annually during the period of their registration. Monitoring of registered persons by police is discussed in more detail in Chapter 15.

The Act does not limit the activities or movements of, or place any conditions on, the registered person. There is no requirement for a registered person to report to police if their personal details remain unchanged. Nor is a registered person required to inform anyone of their registrable status. However, a registered person is automatically a 'prohibited person' for the purposes of the *Child Protection (Prohibited Employment) Act* and is therefore not permitted to work in child-related employment.³⁴

Endnotes

- ³¹ The Child Protection Registry has advised our office that there were no registered persons who were participants in the Witness Protection Program during the review period. Phone conversation with Martin Wellfare, 18 August 2004.
- ³² Known as 'Form 1: Child Protection (Offenders Registration) Act 2000 Determination of registrable person status' and 'Form 2' (a cover letter for the court brief).
- ³³ All the information relating to a registrable person held on the Register is referred to as a 'CPR case' in NSW Police procedures and guidelines.
- ³⁴ Section 5(1) *Child Protection (Prohibited Employment) Act 1998*. 'Child-related employment' is defined in section 3 of this Act as 'any employment that primarily involves direct contact with children where that contact is not directly supervised'.

Chapter 4. The Ombudsman's review

4.1. Methodology

A multi-faceted research strategy was developed to review the operation of the Act. The aim was to obtain information from a range of sources and perspectives about the way the various aspects of the Register were being managed in NSW. The main research methods were:

- analysis of data from the Register
- consultation with relevant community and government stakeholders, including analysis of submissions received in response to a discussion paper
- consultation and interviews with those responsible for the Act's implementation including NSW Police and supervising authorities
- a survey of, and interviews with, persons on the Register
- a review of complaints and enquiries made to the Ombudsman
- a review of charges for breach offences under the Act
- observation and review of training conducted for NSW Police
- review and analysis of similar legislation in other jurisdictions, and of relevant literature.

A more detailed overview of the various research methods used is at Appendix 3.

4.2. The underlying principles of the Ombudsman review

As noted earlier, the Ombudsman's review is part of a two stage process of review. The Act provides for the Ombudsman to keep under scrutiny the *operation* of the provisions of the Act and the regulations, and then for the Minister to review whether the *policy objectives* of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

While this report focuses primarily on operational issues, it also includes discussion of certain policy issues. The distinction between operational and policy issues is not always straightforward. While monitoring the operation of the Act, we have needed to consider certain policy issues which have had a bearing on its implementation. In addition, during Parliamentary debate, the Parliamentary Secretary referred certain issues of concern, which are more policy-focussed than operational in nature, to the Ombudsman for consideration as part of his review.

We have also received a significant amount of information and opinion about the policy objectives which underpin the legislation. It would be remiss of us not to provide this information to the Minister, so that he has the opportunity to consider the wide range of community views when conducting his review. We understand that the findings and discussions contained in our report will be used to inform that review.

Although this report discusses and raises certain policy issues for the Minister's consideration, our recommendations only address operational issues.

4.3. The structure of this report

This report follows the structure of the Act, and discusses each of the provisions and relevant issues. Certain operational issues not covered by the Act are also addressed.

Part 2.

Who must register

The chapters in this Part address the issues of who the Act applies to and what determines if a person is registrable. As registration is mandatory following a conviction for a registrable offence, the definition of registrable offences is discussed. The effect of registration for particular groups of people is also addressed, along with the lack of any discretion in determining registration appeal provisions.

Chapter 5. Snapshot of persons on the Register

As at 15 October 2003, after two years of operation and the last day of our review period, 916 people had registered with NSW Police, with 828 of those recorded as 'currently registered'. The registration of 40 people had been suspended as they were in custody and 44 were absent from NSW (with five of those overdue to return from the date advised to police. Four are recorded as 'no longer registered' as they had successfully appealed against their conviction for a registrable offence.³⁵

A further 33 people had been notified of their obligation to register but had yet to do so. Of these, eight were still within the 28 day time limit for registration, while 25 were overdue to register. Another 35 persons had been identified as registrable but were yet to be notified.

There were another 360 persons in custody who will be required to register once their custodial sentences are completed.

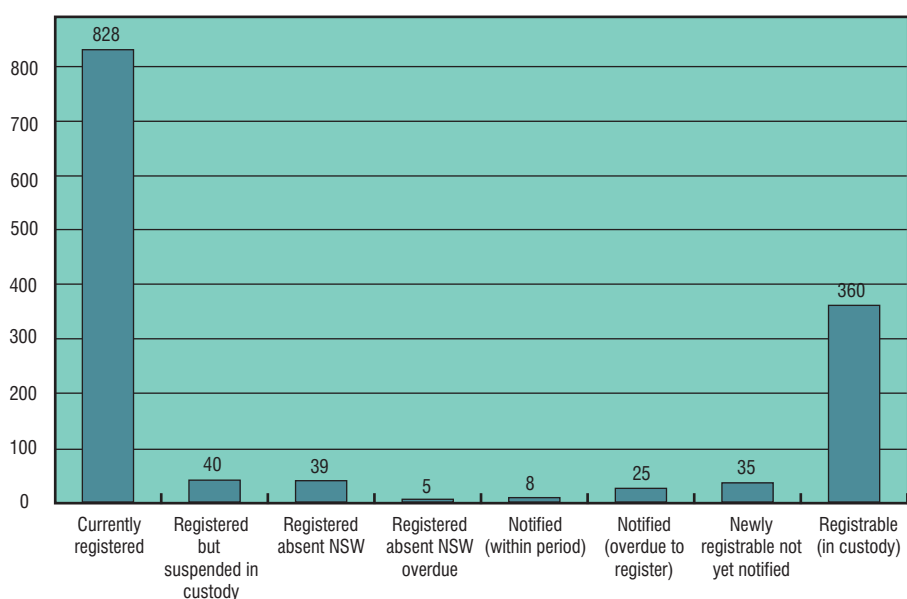
This brings the number of persons in NSW identified as registrable persons in the first two years of its operation to 1344.

As at November 2004, more than 1650 persons were registered, meaning that approximately 700 new persons were entered on the Register in the year following the review.³⁶

Of those currently registered at the end of the review period, 22 were under the age of 18 (the youngest being 13), with the registration of an additional 27 arising from convictions for offences committed as a young person.

Nearly 98 per cent of registered persons (809) were male. Of the 19 women on the register, seven were registrable as a result of convictions for non-sexual offences.³⁷

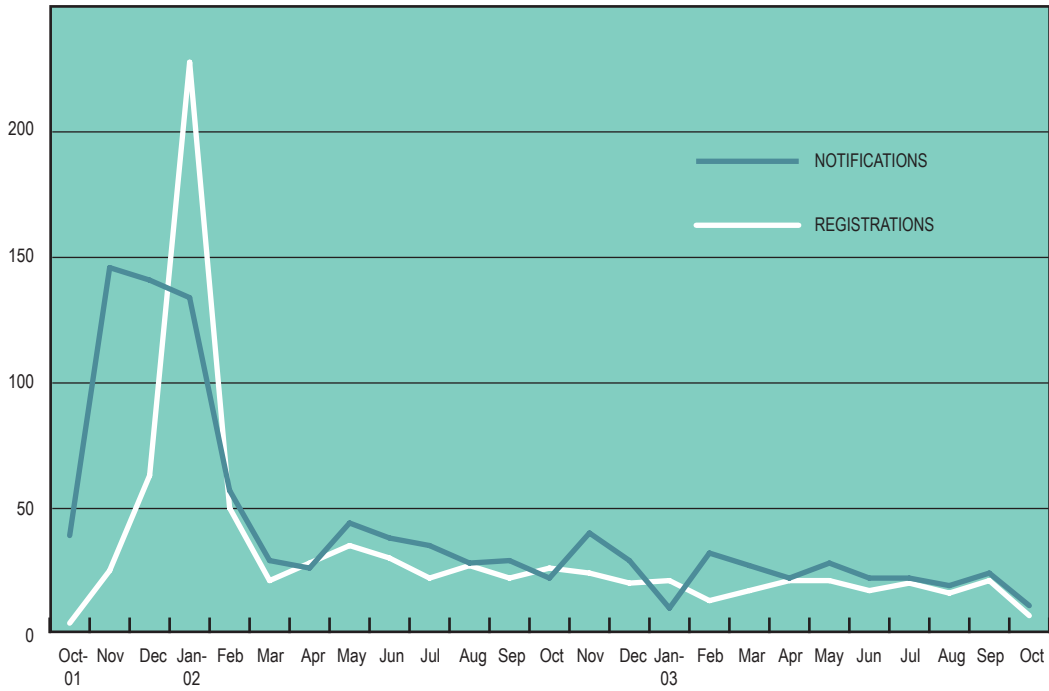
Figure 1: Registrable persons status as at 15 October 2003



Source: Data from the Register provided by NSW Police, October 2003 N=1340.

Note: An additional 4 people had been identified but following a successful appeal of their conviction, were no longer registrable.

Figure 2: Notifications and registrations per month from 15 October 2001 to 15 October 2003



Source: Data from the Register provided by NSW Police, October 2003 N=916

Endnotes

- ³⁵ The Child Protection Registry has advised us that the details of people who are no longer registered are subsequently removed from the Register. Email correspondence dated 5 May 2004.
- ³⁶ Letter from the Hon. John Watkins MP, Minister for Police, 2 January 2005.
- ³⁷ The registrable offence for five was murder, and for two was detain for advantage.

Chapter 6. Registrable offences

6.1. Relevant provisions of the Act

The Act provides that any person convicted of a 'registrable offence', subject to a minimum sentencing threshold, is required to register.³⁸ An offence is a 'registrable offence' only where the victim is a child, defined as a person under the age of 18 years.³⁹ The Act classifies 'registrable offences' into either 'Class 1' or 'Class 2'.⁴⁰

Class 1 offences are defined as:

- the offence of murder, where the person murdered is a child
- an offence that involves sexual intercourse with a child
- an offence against section 66EA of the *Crimes Act 1900* (offences relating to persistent sexual abuse of a child)
- an offence which has as an element an intention to commit any of the offences referred to above
- an offence of attempting, or of conspiracy or incitement, to commit any of the offences referred to above.

Class 2 offences are defined as:

- an offence that involves an act of indecency against or in respect of a child, if punishable by imprisonment for 12 months or more
- an offence under section 86 or 90A of the *Crimes Act 1900* (kidnapping offences), where the offence is committed against a child, except where the person found guilty of the offence is or has been a parent or carer of the child
- an offence under section 80D or 80E of the *Crimes Act 1900* (offences relating to sexual servitude) where the offence is committed against a child
- an offence under section 91D-91G of the *Crimes Act 1900* (offences relating to child prostitution) other than an offence committed by a child prostitute
- an offence under section 578B or 578C(2A) of the *Crimes Act 1900* (offences relating to child pornography)
- an offence that, at the time it was committed was a Class 2 offence for the purposes of the Act, or if the offence occurred before the commencement of the Act, was an offence of a kind referred to above
- an offence which has as an element an intention to commit any of the offences referred to above
- an offence of attempting, or of conspiracy or incitement, to commit any of the offences referred to above.

Any equivalent offence committed outside NSW is also a registrable offence. Anyone convicted of such an offence in any other jurisdiction is deemed a registrable person.⁴¹

The minimum sentencing threshold⁴² is not met if:

- a person is found guilty but has no conviction recorded⁴³
- a sentence for a single Class 2 offence does not include a term of imprisonment or a community service order or a bond under which the person was required to submit to strict supervision
- a conviction has been quashed or set aside
- a child is convicted of a single offence involving an act of indecency or possession or publication of child pornography.⁴⁴

Persons convicted on or after the date the legislation commenced, or serving a sentence for a registrable offence (either in custody or supervised in the community) at the date of commencement, are registrable.⁴⁵ Those serving a sentence at the commencement of the Act are referred to as 'existing controlled persons'.

6.2. Relevant provisions of the Child Protection (Offenders Registration) Amendment Bill 2004

The Child Protection (Offenders Registration) Amendment Bill 2004 increases the range of registrable offences. It provides new definitions for Class 1 and Class 2 offences, by adding various Commonwealth offences against children.⁴⁶

The new Class 1 offence would include:

- an offence against section 50BA or 50BB of the *Crimes Act 1914* of the Commonwealth (offences relating to sexual intercourse with a child outside Australia)

The new Class 2 offence would include:

- an offence against section 50BC, 50BD, 50DA or 50DB of the *Crimes Act 1914* of the Commonwealth (offences relating to acts of indecency with a child outside Australia)
- an offence against section 270.6 or 270.7 of the *Criminal Code* of the Commonwealth (offences relating to sexual servitude and deceptive recruiting for sexual services) where the person against whom the offence is committed is a child
- an offence against section 233BAB of the *Customs Act 1901* of the Commonwealth involving possession of items of child pornography or child abuse material.

The Bill also has a provision that enables regulations to be made to include, as registrable offences, offences of a foreign jurisdiction that do not have an equivalent in NSW.⁴⁷

A further provision allows for the discretionary registration of a person not convicted of a registrable offence.⁴⁸ This allows a court to order that the person comply with the reporting obligations of the Act, if an application for an order is made by the prosecution, and the court has imposed a sentence. The court must be satisfied that the person poses a risk to the lives or sexual safety of children. A person subject to such an order is deemed to have been found guilty of a Class 2 offence.

6.3. Commentary on the operation of the provisions

6.3.1. Definition of ‘registrable offence’

The definition of ‘registrable offence’ is the key to the legislation, because inclusion on the Register, and all the obligations that that entails, flow directly from a conviction for a registrable offence. The Act contains no provision for discretion or review to exclude people who might be considered to be inappropriately caught by the Act. It is therefore important that the definition of ‘registrable offence’ means that the Act applies to the types of offenders who pose a risk to children.

The definition of registrable offence primarily raises questions of policy rather than procedure. However, it should be noted that there are also operational implications for police. The broader the definition of ‘registrable offence’, the more registrable persons there will be. This directly impacts on the time and resources police must expend on initial registration and updating information. Police do have some control over the resources allocated to monitoring activities, for example, by targeting their monitoring to the extent of the risk posed by registered persons.

Our review received a wealth of input on the issue of registrable offences. We believe it is important that we report on the range of these views.

In addition, the Parliamentary Secretary specifically referred some of the questions arising from Parliamentary debate on registrable offences to the Ombudsman for consideration as part of our review.⁴⁹ Specifically, these were the application of the Act to:

- People found not guilty by reason of mental illness and detained as forensic patients, in particular women who killed their children as a result of post-natal depression.
- Young people who are convicted of registrable offences in relation to consensual underage sexual activity.

6.3.2. Observations on the types of offenders who should be included on the Register

The need to draw a distinction between some of the people on the Register and ‘paedophiles’ or ‘predators’ was raised by a number of people.

Some of the respondents to our survey of registered persons expressed a view that the definition of registrable offences was too broad. Thirty-one of the 293 respondents (over 10%) provided comments on this issue. Thirteen thought that the Act should only apply to 'repeat' or 'serial' offenders.⁵⁰ Three others argued that offences that do not involve a 'victim' or 'physical contact' with a child should not be registrable.⁵¹ Another twelve made reference to the need to consider the 'seriousness' of the crime, with comments such as: 'Discern between the real paedophile and the rest of us.'⁵² Some respondents expanded on what their understanding of a 'serious' offence was with comments such as:

*... only for serious offenders e.g. Rapists. Be much more selective, target people who HAVE raped or molested somebody.*⁵³

*Should just be for those who pray on kids.*⁵⁴

However, for some respondents, the main determination of seriousness was often one of a distinction between 'real predators'⁵⁵ and those convicted of 'minor' or 'trivial' offences.⁵⁶ Not surprisingly these respondents considered they fell into the latter category. For example, one respondent told us the Register was valuable 'for real offenders but I guess they all say this.'⁵⁷

While there is no doubt a degree of self-interest in these views from registered persons, it is worth noting that similar views have also been expressed by others, including police and community representatives. For example, the victims advocate organisation, Bravehearts, wrote:

*A registrable offence should only be one where the person or crime is motivated by a need, desire or predilection to sexually offend, in a paedophilic nature, against a child.*⁵⁸

Similar comments were made by some of the crime managers we interviewed:

*The definition of 'paedophile' is too broad, it's not common-sense and not the community definition. Case studies like in the discussion paper pop up every day.*⁵⁹

*There should be more focus on paedophiles...those people involved in consensual relationships [should not be on the Register].*⁶⁰

*Not everyone on the Register is a paedophile. There are child murderers and there are young men who have been in consensual relationships.*⁶¹

However, most of the submissions arguing for the exclusion of certain types of offender from the Register focussed on particular classes of offender, as discussed in the following sections of this chapter.

6.3.3. Young people convicted of offences arising from consensual underage sex

One of the concerns raised during Parliamentary debate by the Hon Ian Cohen was whether the legislation would (or should) apply to young persons convicted of offences relating to underage consensual sex.⁶² The Parliamentary Secretary responded that the Government's view was that it was very unlikely that young people would be charged with registrable offences in relation to consensual underage sex, or if they were, that minimum sentencing thresholds were not likely to be achieved.⁶³ Notwithstanding this position, the Parliamentary Secretary referred this matter to the Ombudsman for consideration as part of the review.

During the course of the review, this issue has been raised as a significant concern by a wide range of stakeholders.⁶⁴

Eleven of the 44 submissions received in response to the discussion paper commented on the issue of whether offences arising from consensual underage sex or youthful experimentation should be registrable.⁶⁵ A number of registered persons interviewed for this review,⁶⁶ or who responded to our survey,⁶⁷ also expressed concern about being registrable as a result of having a consensual sexual relationship with an underage person, as did some of the crime managers who participated in interviews.⁶⁸

While some discussed the issue as a matter of principle or saw it as a potential problem, others provided examples of what they believed were inappropriate registrations as the incidents giving rise to the conviction related to consensual sex.

Most submissions focused on general concerns. For example, the Shopfront Legal Service stated:

*We take issue in particular with the application of the Act to children convicted of offences arising from consensual underage sex. Young people in this category are not the predatory sex offenders at whom the legislation was aimed.*⁶⁹

The Department for Women expressed a similar view:

*... a young person under the age of 18 engaging in consensual sex with another young person between the ages of 14 and 16 should not automatically be treated as a sex offender.*⁷⁰

The Tasmanian Ombudsman raised similar concerns:

This [registration for offences with no sexual element] appears to place responsibilities on people who may be most unlikely to re-offend. A similar outcome is likely where the offences relate to consensual relationships involving young people, as they may well stigmatise someone whose development and sexual attitude and behaviour are quite normal.⁷¹

Other submissions commented that drawing a distinction between sexual abuse and sexual experimentation is not always clear cut. One youth worker noted:

There is that debate on whether they are perpetrators when they are so young or whether it is sexual experimentation, young people can actually become a victim/be labelled within this system.⁷²

One crime manager made a similar comment:

Although a 15 year old has a limited capacity to consent to sex, it is very different to an offender who offends against a stranger, or a child under the age of 10. Certainly for those proven paedophiles it is very important to have the Register.⁷³

A submission from parents with a child on the Register acknowledged that their son was guilty of a sexual offence involving unwanted touching, but noted:

We accept the need to ensure that those who are predators against children should be known to Police, BUT ... there seems to be a lack of DEGREE related to the severity of the crime. Our son was 15/16 years of age – Teachers, Doctors and Psychologists all note that at this age hormonal changes are occurring in teenage youth for both male and females, and yet our son ... [is] ... in the EXACT same category as a recently released sex offender ... convicted of rap[e]. OUR SON IS NOT A CHILD MOLESTER/PAEDOPHILE. [Original emphasis].⁷⁴

At the time our discussion paper was issued, we had heard various anecdotal reports of convictions for registrable offences involving consensual underage sex. However in most cases we were unable to verify whether these matters had actually resulted in registration. This was because either we were given insufficient detail or the matters had yet to be finalised in court. In the discussion paper, we asked that anyone who was aware of particular cases provide us with the details of the matter. We have subsequently received information about a number of cases that appear to involve convictions arising from consensual sexual relationships involving a person under the age of consent (see case study 1). However, it should be noted that not all of these cases involved a relationship where both parties were underage or of a similar age, and the information that it was a consensual relationship came from the registered person. In most of these cases, the information provided to the review was insufficient to verify the circumstances of the registrable offence.

Case study 1.

Following are several examples that illustrate the above discussion:

A 21 year old man registered at Liverpool was convicted of a sexual offence against a girl under 16. He had met her at a nightclub and thought she was older. They had a sexual relationship which was consensual. When her parents found out they reported him to the police which resulted in charges being laid. The crime manager says the man is so disturbed about being on the Register that he has gone missing, and he fears that he may harm himself.⁷⁵

Three young men aged 16 and 17 were originally charged with sexual intercourse with a girl under 16 without consent. The charges relating to 'without consent' were subsequently dropped so now the only charges relate to underage sex. One of the young men had been in an ongoing relationship with the girl. The matter is yet to be heard, but if they are convicted they will be registrable.⁷⁶

A man was in a consensual relationship with a girl in 1983 when she was not quite 16 and he was 22. No charges were laid in respect of the relationship until 1996 when, he says, she sought to have him charged to claim victims compensation, following the introduction of new legislation. The matter was not finalised until 2001.⁷⁷

'One of the registered offenders in the command was 18 at the time and he was seeing a 15-year-old girl and it was consensual. Although a 15 year old has a limited capacity to consent to sex, it is very different to an offender who offends against a stranger, or a child under the age of 10.'⁷⁸

A man in his early 20s was convicted of offences arising from a consensual relationship with an underage girl that lasted for a number of months. He says charges were laid some time later following a dispute with the girl's mother. The girl gave evidence in his favour at the trial but he was sentenced to three months imprisonment.⁷⁹

It is difficult to assess with accuracy whether certain people are becoming registrable as a result of convictions arising from consensual or experimental underage sex. However, the critical issue is whether registration is appropriate in these grey areas. The key question is whether persons convicted in these circumstances pose a child protection risk. If not, then it must be considered whether the obligations of registration create an unnecessary burden in respect of ongoing reporting obligations and potential stigmatisation as a child sex offender. There is also the issue of the time and resources of police involved in managing the registration, ongoing reporting and monitoring of these registered persons.

The benefit of registration in these cases may outweigh any negative aspects through the provision of supervision and monitoring of these persons to ensure that early or inappropriate sexual behaviour does not develop into further sexual offending. However, it may be that other agencies, such as the DJJ or community-based treatment programs, may be more effective child protection measure than inclusion on a child protection register and oversight by the police.

An assessment by the sentencing court of whether there is a potential child protection risk that would require registration, may be a useful approach. This would ensure that people who do present a child protection risk are registered. A limited discretionary system to achieve this is discussed further in the conclusion to Part 2.

6.3.4. Offences with no sexual element: murder and kidnapping

From the outset there has been concern expressed about the inclusion on the Register of persons convicted of murder and kidnap offences that have no sexual element.⁸⁰ As we understand it, the reason for the inclusion of murder and kidnapping offences within the 'registrable offences' definition was that children are often abducted or murdered in connection with attempted or actual sexual offences. Offenders may not be charged with the sexual offences, either because they were thwarted in their commission, or because the evidence is more likely to provide a conviction for murder or kidnap charges. In his second reading speech for the Bill, the Minister for Police said:

*Some child murders have an underlying sexual motivation, but there may not be conviction for a sexual offence. There is no more dangerous or despicable sex offender than one that murders his victim.*⁸¹

One example of this, which received a high profile in the media at the time, and subsequently at the offender's release, was the murder of Nicole Hanns by John Lewthwaite in 1974 (see case study 2).

Case study 2.

Eighteen year old John Lewthwaite was on parole and drunk when he broke into the Hanns family home with the intention of abducting and molesting Nicole's nine year old brother. He could not find him and when he was disturbed by five year old Nicole waking, he stabbed her 17 times. He confessed to the murder to his parole officer the next morning. He was subsequently convicted and sentenced to life imprisonment, redetermined to a fixed term of 20 years following the introduction of the Truth in Sentencing legislation. He was released in June 1999, subject to lifetime parole

It is our understanding that the inclusion of murder as a registrable offence was a direct response to the management of persons convicted of an offence such as this. While the reasoning behind this is understandable, there is also a concern that:

*The one size (or two sizes) fits all approach means that onerous reporting requirements will sometimes be imposed on people who do not represent a significant risk of re-offending.*⁸²

The issues raised by the inclusion of different categories of non-sexual offences as registrable offences are discussed separately below.

6.3.5. Women who have killed their child as a result of post-natal depression

An issue raised by the Hon Ian Cohen in Parliament was whether it was appropriate for women convicted of murdering their children as a result of post-natal depression, and detained as forensic patients, to be registrable. The Parliamentary Secretary advised Parliament that the Government's view was that forensic patients who had murdered a child potentially posed a risk to the community and that registration was therefore not unreasonable.⁸³ The Parliamentary Secretary also referred this issue to the Ombudsman for consideration as part of the review.

We understand that most women who kill their children as a result of post-natal depression are unlikely to be convicted of a registrable offence. In most cases the conviction would be for infanticide rather than murder⁸⁴ or for manslaughter⁸⁵, by reason of diminished responsibility⁸⁶, if the initial charge was murder.⁸⁷ These are not registrable offences. However, if the person is charged with murder and relies on the defence of mental illness under Part 4 of the *Mental Health (Criminal Procedure) Act 1990* and is then found not guilty by reason of mental illness under section 38, the charge cannot be reduced to manslaughter. It is only in these cases that the person is registrable. This has the potential to create an anomaly where some women who kill their children due to a disturbance of the mind in the post-natal period will be subject to registration and others will not.

An analysis of the data at the end of the review period has identified only two women on the Register as the result of being found not guilty by reason of mental illness and sentenced under the *Mental Health (Criminal Procedure) Act 1990*, after having killed their child. Both these women provided details of the circumstances of their cases to this review (see case study 3). It is noted that only one of these involves a post-natal depressive episode. While the impact of the inclusion on the Register of persons in these circumstances may not be significant in terms of the numbers, it may still constitute an unacceptable inequity.

Case study 3.

One woman told us that she experienced post-natal depression following the birth of her second child in 1996. Her condition worsened into an acute and florid psychosis during one episode of which she killed her baby. She was charged with murder. A judge found her not guilty by reason of mental illness in 1997 and ordered that she be detained, as a forensic patient, 'in strict custody until released by the due process of law'. After undergoing psychiatric treatment while in hospital she was conditionally released in 1999, no longer psychotic but suffering depression and grief. She continued with counselling. Following a hearing by the Mental Health Review Tribunal, she was unconditionally released in April 2002, and her status as a forensic patient was terminated. In releasing her unconditionally, the Tribunal determined that 'no member of the public will be seriously endangered' by her release.⁸⁸ She is required to be on the Register for 10 years, as she was still a forensic patient, although conditionally released, at the commencement of the legislation in October 2001. She has told us: 'I don't belong on this list. I was found not guilty due to mental illness of murder. There should be space to allow for an appeal of inclusions. I think I have a good case for exclusion but none are allowed as yet.'⁸⁹

Another anonymous respondent to our survey of registered persons wrote:

'I had a post-natal depression when my 2 children were born. But I got well. The third depression I experienced was when my 7 years old son being bullied in school. He always had bruises every time he come home from school. I complained to the principal and to the teacher, but they didn't respond to my complaint. I got deeply depressed leading to my killing of my son. Then I have been acquitted by the law due to mental illness. I always been a good mother and wife. I don't know why I have to be registered on the child protection register. I have suffered long enough ... So I still keep on suffering and be humiliated by being registered on the Child Protection Register. Can they not classified the dangerous person to a non-dangerous one. After all I have been acquitted by the law.'⁹⁰

The inclusion of women who kill their children due to post-natal depression has been raised by a number of parties throughout the course of the review.⁹¹ It was specifically addressed in three submissions and the views provided to this review were quite polarised.⁹²

On the one hand some parties argued persons convicted of murdering a child, regardless of the circumstances, should be registrable. For example, Barnados told the review that they:

... would have general concerns about ... women who have killed children as a result of post-natal depression not being on the Register, as this factor may occur with subsequent pregnancies. (Unless further research shows this is not an issue.) [Original emphasis].⁹³

NSW Police has also supported the ongoing inclusion of persons in this situation, stating:

*There has been some debate as to whether such persons should be subject to registration schemes. Nonetheless the mental illness suffered by these offenders may in fact make these persons a greater risk to children as they may have less control over their actions. Indeed in most cases should such offenders in some future circumstance have access to children, Police and other agencies may be obliged to report these children as being at risk of harm.'*⁹⁴

Others strongly express the view that the particular circumstances of mothers who murder their children while suffering a disturbance of the mind in the post-natal period are not the intended targets of the Register and no purpose is served

by having them registered. The Intellectual Disability Rights Service (IDRS) has noted that the offending profiles of these women are 'vastly different from those of predatory child abusers'.⁹⁵

One argument for excluding forensic patients from registration is that they are not released into the community until the Mental Health Review Tribunal determines that 'no member of the public will be seriously endangered by the person's release.'⁹⁶ However, it should also be noted that this is a somewhat different test to that which must be used by the ADT in deciding whether or not a person with lifetime reporting obligations is entitled to have those obligations suspended after 15 years, namely, 'the person does not pose a risk to the safety of children'. (The power of the ADT in this respect is discussed further in *Chapter 8: Review and Appeal Processes*.)

While it could be argued that no practical purpose is served by monitoring persons assessed as posing no serious risk, others may believe some form of monitoring might be appropriate for women who have killed their children following a disturbance of the mind. In this case, it might be anticipated that the nature and extent of monitoring and managing such women would be different, and more attuned to their particular circumstances. As noted above, most mothers who kill their children as a result of post-natal depression are not convicted of a registrable offence.

It is perhaps unreasonable to argue that inclusion on the Register and monitoring by police of only a small sub-set of this group is the most appropriate way to address concerns about the risk to subsequent children that women in this situation might pose. The development of an alternative system of monitoring *all* women who murder their children as a result of post-natal depression might be more important, if there are justifiable concerns about their ongoing threat to children.

It might be possible for a discretionary arrangement to apply in these circumstances, so that women who are assessed as a child protection risk would be registrable. A possible mechanism for determining which persons found not guilty by means of mental illness of murdering their child (while suffering from post-natal depression or psychosis or similar condition) could be included in the definition of a 'registrable person' is discussed in the conclusion to Part 2.

6.3.6. Other non-sexually motivated murder offences

We received a considerable amount of input on the question of the inclusion of other non-sexually motivated murder offences. Some circumstances where the murder of a child may not have a sexual element are where:

- a young person is murdered, often by another young person, perhaps as the result of a conflict
- a child or young person is killed either intentionally or accidentally during the commission of another offence, such as robbery or drug-related crime
- a child or young person is murdered within a domestic or family setting by a parent, step-parent or partner.

Some of the submissions we received were in favour of maintaining murder as a registrable offence. Others questioned the value of placing 'responsibilities on people who may be most unlikely to re-offend'⁹⁷ or 'where there is no discernible value in the offender being registered'.⁹⁸

One argument for maintaining murder as a registrable offence came from the Department of Education and Training:

... the inclusion of offences in addition to direct sexual offences against children and young people ensures that a comprehensive range of offending behaviours against children and young people are captured and allows for the monitoring of known offenders within the community.⁹⁹

The Commission for Children and Young People also told the review that it was in favour of murder of a child remaining a registrable offence:

I am opposed to any proposal to remove the offence of murdering a child from the list of mandatory registrable offences. While I note that some child murders may contain no underlying sexual motivation, murder in itself remains an offence of the gravest nature and, as such, should remain a registrable offence.¹⁰⁰

However, a study by the Commission for Children and Young People found that half of the teenagers who died as a result of assault were killed in altercations involving peers as perpetrators. These assaults often occurred in the context of violence committed in the course of a crime, killings committed by de factos and drug-related deaths.¹⁰¹ Of the perpetrators in this study, three were convicted of murder, and therefore would be registrable. Another Australian report found that only nine per cent of the child homicides studied were victims of a known fatal sexual assault, while the majority, 70 per cent, were killed by their parents, half of these as a consequence of a family dispute.¹⁰²

NSW Police has provided an analysis of the Register data where the primary registrable offence was murder, or attempting, conspiring or incitement to commit murder. There were 45 registered persons who met this criteria. In 16 cases (about 35 per cent), the murder was committed during the commission of a sexual offence, or in an attempt to conceal a sexual offence. Of the other 29 cases, for about 40 per cent the victim was the child, step-child or partner of the offender (18 cases), and for seven per cent, the victim was residing in close proximity to the offender, and there was no sexual motive

(three cases). NSW Police has identified the remaining eight cases (19 per cent) as 'thrill kill' murders with no obvious sexual motive.¹⁰³ NSW Police further note:

The data from the Registry indicates a significantly smaller proportion of persons convicted of intrafamilial homicides are recorded on the Register than actually occurs.¹⁰⁴ This may be explained by the lesser (non registrable) charge of manslaughter for which many of these offenders would be convicted.¹⁰⁵

Nevertheless, NSW Police has advised us that the current arrangement for murder offences is supported.¹⁰⁶

Some of the crime managers we interviewed have expressed concerns about child murderers being on the Register.¹⁰⁷ For example, one reported on a man registered in his LAC following a conviction for the murder of an eight year old child over 22 years ago:

... he is completely freaked out by the Register and simply can't get on with his own life. He creates extra unnecessary work for police who really do not need to be monitoring him or caring if he is leaving the area for a month. Yet police are bombarded with paranoid notices about what he is up to.¹⁰⁸

The review was also provided with details of two other persons who are registrable on the basis of convictions for murder of a teenager (see case study 4). While not denying the gravity of the offences, it could be argued that neither of these cases raise 'child protection' issues.

Case study 4.

A young man, who was in prison serving an 18 year sentence for murder, wrote to us about what he believed was the inappropriate application of the Act to him. He had been convicted of the murder of a 17 year old young man when was 19 years of age. The victim was killed in a premeditated attack following a dispute about the victim staying at the offender's flat. The offender told us that as he had been drinking with the victim in a hotel he had assumed that he was over 18. *'When you go to a pub you make the judgement that everyone there is above the age of 18 due to the fact that it is a adult environment and you to be 18+ to drink there... not at anytime was I to come to judgement that the deceased was to be under the age of 18 and the deceased was never at anytime to be known to me as a child of 17.'* The offender told us that he is not disputing his sentence or conviction but is concerned *'because it suggests that I am a child predator. Which I am not. And that I am a risk to children.'* He argued that the requirement that he be on the Register is *'an unintended consequence of the legislation and some amendments need to be made... because there is a big difference between harming another adult and harming a child... but how could I make that distinction when the deceased was in an adult environment drinking.'*¹⁰⁹

A woman contacted us to tell us about the circumstances of her son, a registered person, who she believes has been inappropriately caught by the provisions of the Act. Her son was convicted of murdering a 17 year old when he was 16 years of age. He served a nine year sentence in a juvenile detention centre. When he was released in August 2003 they were shocked to learn that he was required to register on the child protection register. She is concerned that anyone who knows he is on the Register, including police officers, will think that he is a paedophile. She said that when a constable came to their house to check that he was still at the same address, he told her that he did not know the details of her son's offence, just that he was on the Register. Her son is now 26 and married and trying to get on with his life. She says he is not a danger to children but she is concerned that being a registered person will seriously impede his successful reintegration into the community.¹¹⁰

The data would suggest that in a substantial number of cases of persons on the Register in respect of a murder conviction, particularly where the offender is a young person, the registered person does not pose a particular child protection risk. This raises questions as to whether the benefits of registration outweigh its negative aspects.

There will clearly be circumstances where a conviction for the murder of a child gives rise to serious child protection concerns, and where registration would offer significant benefit in terms of protection of the community. The assessment of whether registration is appropriate in such circumstances might be made by a sentencing court. This is discussed further in the conclusion to Part 2.

6.3.7. Kidnap offences

The decision to include kidnapping as a registrable offence (other than kidnapping by a parent or carer to exclude custody-related matters) was based on a concern that there was a correlation between kidnapping and sexual offences.¹¹¹ A Judicial Commission study in 1998 found that approximately 19 per cent of kidnappers had a prior conviction for a sex offence, and that sexual and indecent assaults were the most common offence committed concurrently with kidnapping.¹¹²

However, an analysis of the Register undertaken by NSW Police shows that while in some cases there is a correlation between kidnapping and sexual offending, there are also a number of persons on the Register for kidnap offences where there is no connection to a sexual offence or a history of sex offending.¹¹³ This analysis found that there were 15 persons on the Register solely as the result of a kidnapping conviction. Of these, the analysis shows that in 10 cases there was no sexual element to the offence. For nine, robbery was the primary motivation¹¹⁴ and one was in the context of a drug-related domestic situation. In five cases there was a sexual motivation to the kidnapping offence. These five registered persons were co-offenders in two separate incidents.

A further 40 registered persons had been charged with a kidnapping offence in addition to another registrable (sexual) offence for which they were convicted. These people would have been registrable regardless of the outcome of the kidnap charge. The Child Protection Registry has noted that one of the reasons for including kidnapping as a registrable offence was to ensure that persons who kidnapped children for sexual motivations did not escape registration because offences relating to that could not be proven.

Concerns about the appropriateness of persons convicted of kidnapping being registered have been raised by a number of parties.

One registered person who is on the Register as the result of kidnapping arising from an incident when he stole a car with a child in it, expressed his attitude to the inclusion of non-sexual offences in the following way:

*For the people has molested or raped children must be controlled not me!! Don't put everybody in register if there never intended to harm a child.*¹¹⁵

A number of operational police have expressed their concerns about the appropriateness of persons convicted of kidnapping being registered, based on their experiences of persons registered in their LACs.¹¹⁶ Some of the examples they have provided are as follows:

*A female is registered who was involved in an armed robbery that involved abducting a younger boy, but this was for advantage rather than any sexual activity so she should not be on the Register either.*¹¹⁷

*One man is currently registered after committing an armed robbery and detaining a 15 year old boy in the process. Basically they just mugged this boy and then took him around the city for advantage, but there was nothing of a sexual nature in the offence at all. This just seems like an unnecessary person to have to monitor along with actual serious offenders or people of a particular risk, though of course he is still monitored in the same way as everyone else in the low risk category.*¹¹⁸

*One case involved a kidnapping in which a child was only peripheral to the incident, as the woman who was detained had a child with her. Really the child didn't have a lot to do with it but it automatically becomes a registrable offence.*¹¹⁹

The Child Protection Registry has raised concerns with our office regarding persons convicted of kidnapping where there is no sexual motivation being registrable.¹²⁰

In its formal response to our discussion paper, NSW Police provided no specific view on the appropriateness of kidnapping as a registrable offence, only commenting that it is government policy that the current mandatory registration requirements continue to apply to those convicted of kidnapping offences involving children.¹²¹ However the report of the APMC working party noted:

*NSW Police is of the view that kidnapping offenders without any apparent sexual motivation are not an appropriate target group for registration and may divert resources from managing other offenders who pose a greater risk to the sexual safety or life of children.*¹²²

The APMC working party noted that it supports this view. It has recommended that child kidnapping should not be an offence that attracts mandatory registration, but that certain offences be dealt with under a proposed discretionary registration scheme.¹²³ Kidnap offences are not included as registrable offences in the model legislation agreed to by the APMC in June 2004. However, the Child Protection (Offenders Registration) Amendment Bill 2004, which is intended to amend the current Act in line with the nationally agreed model legislation, does not remove kidnapping as a registrable offence.¹²⁴

NSW Police also reported that persons on the Register as the result of a conviction for kidnapping have a non-compliance rate of 20 per cent, which is significantly higher than for the general population of registered persons.¹²⁵ If substantial police time is being expended not only on registration and monitoring but also on the pursuit of persons in breach of their obligations, who may not pose a significant child protection risk, then this raises questions about the appropriate use of police resources.

The Commission for Children and Young People acknowledged that 'there may be some justification for removing kidnapping from the list of mandatory registrable offences.'¹²⁶ One of the main objectives for including murder and kidnap offences as registrable offences was so that they would also be relevant offences for the *Child Protection (Prohibited*

*Employment) Act 1998.*¹²⁷ The removal of kidnapping as a registrable offence would also have the effect of removing kidnapping as a relevant offence for the purposes of that Act. The Commission noted :

*If kidnapping was to be removed ... the Commission would re-examine the issue as a part of the upcoming review of the Child Protection (Prohibited Employment) Act 1998 in light of the literature about the risk of re-offending by kidnappers whose crimes do not have a sexual element.*¹²⁸

The data suggests that in a substantial number of cases involving persons on the Register in respect of a kidnap conviction, the registered person does not pose a particular child protection risk. This raises the question as to whether the benefits of registration for all persons convicted of child kidnap offences outweigh its negative aspects. In those circumstances where a conviction for the kidnap of a child gives rise to child protection concerns, registration would offer significant benefits.

The Act currently provides an exclusion for offences committed by a person who is or has been a carer or parent of the child.¹²⁹ It is therefore feasible that other kidnap offences that do not include a sexual element could also be excluded.¹³⁰ Alternatively, there could be a discretionary arrangement to deal with persons convicted of kidnap offences where there is no sexual element to the offence. This would allow a sentencing court to make an assessment of the circumstances and to make a registration order in respect of a conviction for kidnapping, or any other offence against a child, where required. This option is discussed further in the conclusion to Part 2.

6.3.8. Registration for offences which are no longer illegal

Three people have told us they are on the Register for offences which arose from behaviour that is no longer unlawful. All of these relate to consensual homosexual activity with a young male aged between 16 and 18, at a time when the age of consent for males was 18. The age has been lowered to 16.

It is not possible to determine the number of persons on the Register in respect of offences relating to consensual homosexual sexual activity with a 16 to 18 year old, as the offences for which they were convicted only relate to sex with a male 'over 10 and under 18'.

One registered person who wrote to us about his situation articulated the issue:

*I am in a position where I was convicted of an act which is less serious than current legal acts due to the lowering of the age of consent for male homosexuals. In May 2001 I was placed on the child protection register for 8 years after pleading guilty to: 'consensual mutual masturbation with a male over the age of 16 years'. I believe the act should be amended to allow similar people in my position to be removed from the child protection register ... [because] ... we are on the register for an act which is now totally legal, more serious acts are legal such as oral & anal sex with males over 16 years.*¹³¹

Two respondents to our survey of registered persons described being in a similar situation:

*My offences involved people over 16 and under 18 – what happens now with new law???*¹³²

*When I was 31/32 I had a few 'encounters' with a mate who was half my age. By the way, homosexual sex with a 17 year old male is NOT against 'THE LAW' – this month!!! [Original emphasis].*¹³³

In May 2003, NSW Parliament passed the *Crimes Amendment (Sexual Offences) Act 2003*, which amended the *Crimes Act 1900* to lower the age of consent for male homosexual sex to 16, in line with that for heterosexual and lesbian sex. The Explanatory Note to the Bill stated that one of the objects of the Bill was to provide that consensual male homosexual acts that took place prior to the amendments, where the parties were not less than 16 years of age, would cease to be unlawful, and the Bill had provisions to this effect.¹³⁴ There was considerable debate in Parliament about this aspect of the legislation, and the Act was eventually passed with these provisions excluded.¹³⁵

The *Child Protection (Offenders Registration) Act* includes within the definition of a Class 2 offence, any offence that at the time it was committed was a Class 2 offence, as defined in the Act. There is no similar provision within the definition of Class 1 offences. However, the *Child Protection (Offenders Registration) Amendment Bill 2004*, which provides new definitions of Class 1 and Class 2 offences, does include such a provision for Class 1 offences. The Explanatory Note provides no explanation of the basis for this change in the definition.

The Minister may wish to consider whether the inclusion on the Register of persons convicted of offences which arose from behaviour that is no longer illegal is consistent with the objectives of the legislation. A discretionary mechanism for determining whether persons convicted of such offences should be subject to the Act is discussed further in the conclusion to Part 2.

6.3.9. Offences not currently registrable offences

There has been some debate about the specific focus of the Register, for example, whether it should be for sexual offences only, and if so, whether it should include sexual offences against adults, or whether it should be 'child protection' broadly.

Our review did not specifically seek input on the issue of whether registration should arise from convictions for sex offences other than against children. There is some research which suggests that for many offenders there is a substantial 'crossover' between adult and child victims. Different studies have suggested that between 36 per cent and 82 per cent of sex offenders offend against both adult and child victims.¹³⁶ The crossover effect is acknowledged for the purposes of the *Child Protection (Prohibited Employment) Act 1998*. Under this Act, any person convicted of a sexual or indecency offence (subject to sentencing thresholds) is a 'prohibited person', and so prevented from working with children. However, it does not necessarily follow that such arrangements should also apply to registration.

If the Register is intended primarily and broadly for child protection purposes, by including the non-sexual offences against children of kidnap and murder, then there may be an argument for the inclusion of other offences against children, such as assault or harm offences.¹³⁷ It could be argued that a person convicted of physically assaulting a child is as much of a child protection risk as a person convicted of some Class 2 registrable offences.

There is no consistent approach in other jurisdictions, with some including all sexual offences against both children and adults, and others only including child sex offences.¹³⁸ NSW is one of the few jurisdictions which includes specified non-sexual offences as mandatory registrable offences. Kidnapping is a mandatory registrable offence in only some states in America, and not in the United Kingdom or Canada.¹³⁹ It is our understanding that no registration schemes include murder of a child as a mandatory registrable offence.

The report of the APMC working party has noted that all parties consulted expressed concern about a broad registration scheme incorporating all sex offences as this may dilute its child protection benefits and reduce community support. Moreover, the Register would increase to a potentially unmanageable size if all sex offenders were to be registered. The APMC report suggests, that on the basis of NSW court statistics, a broad sex offender registration scheme would double the number of persons required to register and report to police.¹⁴⁰ Some LACs already have over 30 registered persons, and as most will be reporting for between eight and 15 years, the number of registered persons in some LACs will increase significantly over the next five to ten years, even without any extension of the offences leading to registration. The workload impacts of the Register are discussed further at *Chapter 8: Review and Appeal Processes*.

6.3.10. Retrospectivity

The Act has a limited degree of retrospectivity in that persons convicted of registrable offences prior to its commencement are required to register if they were serving a sentence at 15 October 2001, when the Act commenced. This includes persons in custody and those completing a supervised sentence in the community. These persons are known as 'existing controlled persons'. The effect of this is that not all persons convicted of what is now defined as a 'registrable offence' are required to register, depending on their circumstances at a specific date.

Various parties have expressed concerns about whether the requirement to report for a period after completion of sentence and supervision constitutes 'additional punishment'. There is a concern that creating an obligation in respect of a past offence, which did not exist at the time of the conviction, goes against the general principle that changes in the law should not take effect retrospectively. However, it can also be argued that this principle may be rebutted and in exceptional circumstances retrospective application may be acceptable.¹⁴¹

Persons convicted of registrable offences prior to the legislation being passed would not have been aware of the consequences of a conviction at that time. Some have suggested that if registered persons had known at the time of their hearing about the possibility of registration as an outcome of the matter, this may have influenced their plea.

The legality and constitutionality of the retrospectivity in sex offender register and notification legislation has also been the subject of much debate and various legal challenges in the United States.¹⁴² While some of the community notification provisions have been found to be unlawful in some US and international courts, the registration requirements have not.¹⁴³

No similar legal challenges have yet been mounted in NSW, although concerns have been raised by some people that it is unreasonable to impose registration requirements on persons who were convicted prior to the legislation. The NSW Parliamentary Counsel's Office has advised that it is unaware of any NSW or Commonwealth law that would prevent registration legislation applying to persons convicted prior to the legislation's commencement.¹⁴⁴ In 1998 NSW introduced three fully retrospective items of child protection legislation that imposed restrictions (in relation to prohibited employment) on child sex offenders and certain other offenders after their release into the community.¹⁴⁵ Unlike some bail reporting requirements, the Register legislation places no restriction on a registered person's freedom of movement, and therefore is argued not to amount to 'quasi-custody' or a form of additional punishment.¹⁴⁶

The issue of retrospectivity was raised by at least 23 (8%) respondents to our survey of registered persons, although there was no specific question seeking their views on this issue.¹⁴⁷ They expressed anger, unhappiness or disquiet about being included in a system which did not exist at the time of their conviction, and which imposed obligations on them that they could not have been aware of at the time. Many made simple comments such as 'crime already paid for'¹⁴⁸, 'I have paid my debt! It is double jeopardy'¹⁴⁹ and 'done my time'¹⁵⁰ while others provided more details about their concerns:

*Double jeopardy- sentencing judge had no opportunity to take this extra sentence into account when he sentenced. Blatant discrimination- needs to be challenged in High Court.*¹⁵¹

*It is utterly ridiculous you do your time and you still have years to do outside after your sentence is up.*¹⁵²

*When I was sentenced there was no mention of me being given an additional sentence of 13+ year sentence after my release hence this is a breach of the law saying a person cant be punished twice for the same crime and no double talk will convince me this is not an additional punishment.*¹⁵³

*I've done my bond but the goal posts get moved.*¹⁵⁴

*I was shocked to learn of its existence, it appears the legislature is adding to the sentence imposed by the judiciary. No notification until sentence was almost completed.*¹⁵⁵

At least one person who provided information to the review has contended that had he known about the possibility of registration at the time of his trial it would have influenced his decision to plead guilty (see case study 5).¹⁵⁶

Case study 5.

In 1996 a man, now aged 43, was charged with an offence in relation to various incidents which occurred in 1983, involving sexual intercourse with a girl under the age of 16 years. He was 22 years of age at the time and claimed it was a consensual relationship. The matter went to trial in 1997 and he was convicted and sentenced to a term of imprisonment. He appealed and the appeal was allowed in 2000 and he was released after having served 10½ months. A new trial was ordered.

The man says he was convinced to plead guilty at the retrial in return for accepting a bond, which would 'end the matter once and for all'. He agreed to plead guilty and received a three year bond. At the time of the trial the child protection register legislation had not been passed, and he was not aware that there was any possibility that he would have to register or that there would be any ongoing implications or responsibilities arising from the conviction beyond the term of the bond. As the bond was still in effect when the Act commenced in October 2001 he became an 'existing controlled person'. He was notified of an obligation to register and report for 15 years.

The man claims that had the judge not erred at the 1997 trial he would not have been subject to the Act, and that had he known about the Register at the time of the retrial in 2000 he would not have pleaded guilty.

Many of the registered persons who raised their concerns about retrospective coverage of the Act expressed anger at the whole system. Some of the comments they made raise concerns about their willingness to comply with their obligations and cooperate with police. However, even if they do pose particular problems for police in terms of compliance and monitoring, it must be noted that existing controlled persons are a finite group, and any negative effects of their inclusion on the Register are likely to diminish over time.

On the other side of the argument, some have suggested that the legislation should be more retrospective. There are concerns that convicted sex offenders not under supervision at the time the legislation commenced and who are therefore not required to register, may still be a potential threat to community safety. Advice to the government at the development stage was that full retrospectivity would be unworkable.¹⁵⁷ It would be extremely difficult to inform all offenders who had been convicted many years prior to the commencement of the legislation of their obligation to register. It has been suggested that full retrospectivity would vastly increase the cost of the program and potentially overload the system in the initial stages.

Endnotes

- ³⁸ Section 3(1) Child Protection (Offenders Registration) Act, see definition of 'registrable person'.
- ³⁹ Section 3(1) Child Protection (Offenders Registration) Act, see definition of 'child'.
- ⁴⁰ Section 3 Child Protection (Offenders Registration) Act, see definitions of 'registrable offence', 'Class 1 offence' and 'Class 2 offence'.
- ⁴¹ Section 3(1) Child Protection (Offenders Registration) Act, see definitions of 'Class 1 offence' and 'Class 2 offence'.
- ⁴² Section 3(1) Child Protection (Offenders Registration) Act, see definition of 'registrable person'.
- ⁴³ Under section 10 of the *Crimes (Sentencing Procedure) Act 1999* or section 33(1)(a) of the *Children (Criminal Proceedings) Act 1987*.
- ⁴⁴ Under section 578B or 578C (2A) of the *Crimes Act 1900*
- ⁴⁵ Section 3(1) *Child Protection (Offenders Registration) Act*, see definition of 'existing controlled person'.
- ⁴⁶ Child Protection (Offenders Registration) Amendment Bill 2004, Section 3(1), definition of 'Class 1 offence' and 'Class 2 offence'.
- ⁴⁷ Child Protection (Offenders Registration) Amendment Bill 2004, Section 3(1), definition of 'Class 1 offence' and 'Class 2 offence' and in Explanatory Note to the Bill.
- ⁴⁸ Section 3D Child Protection (Offenders Registration) Amendment Bill 2004.
- ⁴⁹ Hansard, Legislative Council, 4 July 2001, The Hon Ian MacDonald, Parliamentary Secretary, second reading speech, Child Protection (Offenders Registration) Amendment Bill
- ⁵⁰ Survey nos 17, 29, 40, 51, 130, 144, 169, 181, 204, 212, 230, 257, 258. A full list of submissions can be found at Appendix 4.
- ⁵¹ Survey nos 37, 179 and 212. From the nature of the information provided it can be assumed that these respondents were referring to pornography-related offences.
- ⁵² Survey no 194.
- ⁵³ Survey no 212.
- ⁵⁴ Survey no 37.
- ⁵⁵ Survey no 214.
- ⁵⁶ Survey nos 121, 124.
- ⁵⁷ Survey no 230.
- ⁵⁸ Submission no 27, from Bravehearts, 31 October 2003.
- ⁵⁹ Oral submission no 2 from a crime manager, 1 October 2003, LAC in Greater Metro Region.
- ⁶⁰ Crime manager interviews, February 2004, LAC 1 Greater Metro Region.
- ⁶¹ Crime manager interviews, February 2004, LAC 10 Inner Metro Region.
- ⁶² Hansard, Legislative Council, 4 July 2001, The Hon Ian Cohen, The Greens, second reading speech, Child Protection (Offenders Registration) Amendment Bill
- ⁶³ Hansard, Legislative Council, 4 July 2001, The Hon Ian MacDonald, Parliamentary Secretary, second reading speech, Child Protection (Offenders Registration) Amendment Bill
- ⁶⁴ For example, in correspondence or submissions from the Law Society, NSW Young Lawyers, Shopfront Legal Centre, Department for Women, Barnados, Bravehearts, Southern Youth and Family Services Association, and from survey responses and interviews with registered persons, and interviews with crime managers.
- ⁶⁵ Submissions 2, 9, 10, 12, 21, 22, 24, 27, 28, 32, 43. no 2 See Appendix 4 for a full list of submissions.
- ⁶⁶ For example, phone conversation with registered persons RP10, 2 June 2003; and RP11, 27 October 2003; and letter from RP16, 12 March 2004. See Appendix 5 for an anonymised details of registered persons interviewed for the review.
- ⁶⁷ Survey nos 35, 45, 84, 121, 214, 291.
- ⁶⁸ Interviews with crime managers in December 2001, LAC 10 Inner Metro Region; May 2002, LAC 8 Greater Metro Region, LAC 29 Southern Region; and February 2004, LAC 1 Greater Metro Region, LAC 2 Greater Metro Region, LAC 10 Inner Metro Region, LAC 35 Western Region, LAC 22 Northern Region.
- ⁶⁹ Submission no 9 from Shopfront Legal Service, 17 October 2003.
- ⁷⁰ Submission no 21 from Department for Women, 22 October 2003.
- ⁷¹ Submission from Tasmanian Ombudsman, 20 October 2003.
- ⁷² Submission no 28 from Southern Youth and Family Services, 10 November 2003.
- ⁷³ Interviews with crime managers, February 2004, LAC 2 Greater Metro Region.
- ⁷⁴ Anonymous submission no 10, 19 October 2003.
- ⁷⁵ Oral submission, no 2 from crime manager, 1 October 2003, LAC in Greater Metro. In a later phone conversation on 25 August 2004, the registered person's mother advised that a report is being prepared for the Coroner.
- ⁷⁶ Submission no 43 from Legal Aid solicitor, 21 January 2004.
- ⁷⁷ Interview with registered person RP11, 27 October 2003. Anonymised details of registered persons interviewed for the review can be found at Appendix 5.
- ⁷⁸ Interviews with crime managers, February 2004, LAC 2 Greater Metro Region.
- ⁷⁹ Interview with registered person RP10, 27 October 2003. Anonymised details of registered persons interviewed for the review can be found at Appendix 5.
- ⁸⁰ This issue has been raised by various people including the Law Society, the IDRS, the Child Protection Registry coordinators, various crime managers and some probation and parole officers.
- ⁸¹ Hansard, Legislative Assembly, 1 June 2000, The Hon Paul Whelan, Minister for Police, second reading speech, Child Protection (Offenders Registration) Bill
- ⁸² Submission no 32 from Privacy NSW, 19 November 2003.
- ⁸³ Hansard, Legislative Council, 4 July 2001, The Hon Ian MacDonald, Parliamentary Secretary, second reading speech, Child Protection (Offenders Registration) Amendment Bill
- ⁸⁴ Section 22A of *Crimes Act 1900*
- ⁸⁵ Section 18(1)(b) *Crimes Act 1900*
- ⁸⁶ Section 23A *Crimes Act 1900*
- ⁸⁷ Advice from David Hunt, Ministry for Police, at a meeting 18 April 2002 and from Jennifer Hickey, Crime Prevention Division, Attorney-General's Department, at a meeting 10 October 2001.

- ⁸⁸ Section 81(2)(b) *Mental Health Act 1990*. The issue of persons discharged from forensic status having been determined to not be a danger is discussed further in the chapter 'Application to certain groups'.
- ⁸⁹ Correspondence from registered person RP8, 17 December 2002 and subsequent phone interview, 3 February 2003 and further phone conversations. Survey no 40. Anonymised details of registered persons interviewed for the review can be found at Appendix 5.
- ⁹⁰ Survey no 208.
- ⁹¹ For example, Michael Giuffrida, Director Forensic Psychiatry Westmead and Cumberland Hospital, personal communication 17 December 2002; Law Society, correspondence 12 November 2002; IDRS, Briefing Paper June 2001; and submissions nos 22, 23, 25, 26, 32, 42 (see Appendix 4 for details of submissions received), some crime managers, some registrable persons interviewed or surveyed.
- ⁹² Two were in response to the discussion paper, from NSW Police, 22 January 2004, and Barnados, 23 October 2003 and one was in earlier correspondence from the IDRS, June 2001.
- ⁹³ Submission no 22 from Barnados, 23 October 2003.
- ⁹⁴ Submission no 42 from NSW Police, 22 January 2004
- ⁹⁵ Briefing Paper from IDRS in respect of proposed amendments to the Child Protection (Offenders Registration) Bill, June 2001.
- ⁹⁶ Section 81(2)(b) *Mental Health Act 1990*.
- ⁹⁷ Submission no 24 from Tasmanian Ombudsman, 20 October 2004.
- ⁹⁸ Submission no 32 from Privacy NSW, 19 November 2003.
- ⁹⁹ Submission no 26 from NSW Department of Education and Training, 30 October 2003.
- ¹⁰⁰ Submission no 25 from NSW Commission for Children and Young People, 14 October 2003.
- ¹⁰¹ NSW Commission for Children and Young People, *Fatal Assault of Children and Young People*, Report written for the NSW Child Death Review Team, 2002. This studied the 60 deaths due to assault of children over a 3½ year period to July 1999. One third of these were of teenagers.
- ¹⁰² Heather Strang, *Children as Victims of Homicide*, Australian Institute of Criminology, 1996. This paper reports on an analysis of the 108 child homicide incidents that occurred between July 1989 and December 1993 (some with multiple victims).
- ¹⁰³ Submission no 42 from NSW Police, 22 January 2004.
- ¹⁰⁴ Based on the data from the 1996 Strang study quoted above.
- ¹⁰⁵ Submission no 42 from NSW Police, 22 January 2004.
- ¹⁰⁶ Submission no 42 from NSW Police, 22 January 2004.
- ¹⁰⁷ Interviews with crime managers, May 2002 and February 2004.
- ¹⁰⁸ Interviews with crime managers, February 2004, LAC 10 Inner Metro Region.
- ¹⁰⁹ Letter from registered person RP13, undated, received 221 August 2003. See Appendix 5 for anonymised details of registered persons interviewed for the review.
- ¹¹⁰ Phone conversation with mother of registered person RP15, 21 January 2004. See Appendix 5 for anonymised details of registered persons interviewed for the review.
- ¹¹¹ Hansard, Legislative Assembly, 1 June 2000, The Hon Paul Whelan, MLA, Minister for Police, Second Reading speech, Child Protection (Offenders Registration) Bill., Hansard, Legislative Council, 26 June 2000, the Hon Carmel Tebbutt, MP Second Reading speech debate, Child Protection (Offenders Registration) Bill.)
- ¹¹² Judicial Commission of NSW, *Kidnapping – Section 90A Crimes Act 1900 (NSW)*, Sentencing Trends, no. 17, July 1998.
- ¹¹³ Communication from Kim McKay, Commander, NSW Police Child Protection and Sex Crime Squad, 6 August 2003. Also in Inter-jurisdictional working party Report to the APMC, June 2003.
- ¹¹⁴ Three offenders were stealing a car at the time of the offence, two detained victims in drug-related crime, two detained victims during break and enters or home invasions, and two detained victims in gang-related crimes.
- ¹¹⁵ Survey no 115.
- ¹¹⁶ One crime manager raised this issue in the interviews held in December 2001, another in May 2002 interviews and two in the interviews held in February 2004.
- ¹¹⁷ Crime manager interviews, February 2004, LAC 1 Greater Metro Region.
- ¹¹⁸ Crime manager interviews, February 2003, LAC 5 Greater Metro Region.
- ¹¹⁹ Crime manager interviews, December 2001, LAC 12 Inner Metro Region.
- ¹²⁰ Communication from Kim McKay, Commander, NSW Police Child Protection and Sex Crime Squad, 6 August 2003; Meetings with the Child Protection Registry, 13 November 2001, 12 May 2002 and 22 July 2003.
- ¹²¹ Submission no 42 from NSW Police, 22 January 2004.
- ¹²² Inter-jurisdictional working party Report to the Australasian Police Ministers' Council, *Child Protection Offender Registration with Police: A National Approach*, June 2003.
- ¹²³ Inter-jurisdictional Working Party Report to the APMC, June 2003.
- ¹²⁴ Section 3(1) of the Child Protection (Offenders Registration) Amendment Bill 2004, which defines 'Class 2 offences' includes at (c): 'an offence under section 86 of the *Crimes Act 1990*, where the person against whom the offence is committed is a child, except where the person found guilty of the offence was, when the offence was committed or at some earlier time, a parent or carer of the child'.
- ¹²⁵ Report of the APMC working party, June 2003, also raised in meetings with the Child Protection Registry, 22 July 2003, and in communication from Kim McKay, Commander, NSW Police Child Protection and Sex Crime Squad, 6 August 2003.
- ¹²⁶ Submission no 25 from NSW Commission for Children and Young People, 14 October 2003.
- ¹²⁷ Hansard, Legislative Assembly, 1 June 2000, The Hon Paul Whelan, MLA, Minister for Police, Second Reading speech, Child Protection (Offenders Registration) Bill.
- ¹²⁸ Submission no 25, from Commission for Children and Young People, 14 October 2003
- ¹²⁹ Section 3 *Child Protection (Offenders Registration) Act*, see definition of 'Class 2 offence' which states that an offence under section 86 or 90A of the *Crimes Act 1900* (kidnapping offences) is not a registrable offence 'where the person found guilty of the offence was, when the offence was committed or at some earlier time, a parent or carer of the child'.
- ¹³⁰ Offences of Kidnapping and Child Abduction under section 86 or 90A of the *Crimes Act 1900*.
- ¹³¹ Submission no 19 from a registered person, 15 October 2003.
- ¹³² Survey no 84.
- ¹³³ Survey no 214.
- ¹³⁴ Explanatory note, Crimes Amendment (Sexual Offences) Bill 2003.
- ¹³⁵ See for example, Hansard, Legislative Council 27 and 28 May 2003 and Legislative Assembly 20 May 2003.

- ¹³⁶ Study conducted by Kim English in 1998 for the Colorado Department of Corrections found that 36% of sex offenders had offended against both adults and children. In 1999, Sean Ahlmeyer found in another study for the Colorado Department of Corrections, that 82% of sex offenders officially recorded as only having child victims later admitted to also having adult victims, while 50% of those officially recorded as only having adult victims admitted to also having child victims. Gene Abels, in 1987, found that nearly 50% of sex offenders in his study engaged in age crossover offending behaviour. All reported in: P. Heil, S. Ahlmeyer & D. Sims, 'Crossover Sexual Offenses' *Sexual Abuse: A Journal of Research and Treatment, Vol 15, Issues 4*, October 2003.
- ¹³⁷ For example, sections 32 to 545 and 6 to 61 of the *Crimes Act*.
- ¹³⁸ See appendix 1 for details of the arrangements in other jurisdictions.
- ¹³⁹ By way of example, Vermont and Pennsylvania include kidnapping of a minor as a mandatory registrable offence. In California, kidnapping with intent to commit a sexual offence is a registrable offence, and South Carolina includes kidnapping as a registrable offence unless a court makes a finding that the offence did not include a sexual element.
- ¹⁴⁰ Inter-jurisdictional Working Party Report to the APMC, June 2003, p.55.
- ¹⁴¹ These issues are canvassed in *Registration of paedophiles*, a paper prepared by Marie Swain for the NSW Parliamentary Library Research Service, July 1997.
- ¹⁴² Scott Matson & Roxanne Lieb in *Sex Offender Registration: A Review of State Laws*, Washington State Institute for Public Policy, Washington, July 1996 note that sex offender registration laws have been subject to legal challenges in at least 12 US states.
- ¹⁴³ The U.S. Supreme Court found that New Jersey's registration and notification laws could not be considered additional punishment, but the Louisiana Supreme Court struck out community notification provisions on the grounds that they constituted additional punishment. In Connecticut, a judge ruled that a sex offender website was unconstitutional, but this was recently overturned on appeal. The US Supreme Court also upheld the register and notification laws of Alaska.
- ¹⁴⁴ Report of the Child Sex Offender Registration Working Party, 'Registration with Police of child sex offenders and other serious offenders who pose a risk to child safety and Government Agency use of information concerning such offenders', November 1999.
- ¹⁴⁵ The *Child Protection (Prohibited Employment) Act 1998*; the *Commission for Children and Young People Act 1998*; and section 11G of the *Summary Offences Act 1998*.
- ¹⁴⁶ David Hunt (October 2001) 'Child Protection through Offender Registration' *Judicial Officers' Bulletin Vol 13(9) pp 65-68*.
- ¹⁴⁷ Survey nos 42, 62, 77, 78, 97, 109, 125, 144, 163, 164, 186, 201, 203, 207, 214, 215, 216, 217, 219, 227, 230, 272, 291. A copy of the survey questionnaire is at appendix 7.
- ¹⁴⁸ Survey no 109
- ¹⁴⁹ Survey no 186.
- ¹⁵⁰ Survey nos 62 and 163.
- ¹⁵¹ Survey no 42.
- ¹⁵² Survey no 135.
- ¹⁵³ Survey no 215.
- ¹⁵⁴ Survey no 230.
- ¹⁵⁵ Survey no 272.
- ¹⁵⁶ Interview with registered person RP10, 2 June 2003. See Appendix 5 for anonymised details of registered persons interviewed for the review.
- ¹⁵⁷ Report of the Child Sex Offender Registration Working Party, 'Registration with Police of child sex offenders and other serious offenders who pose a risk to child safety and Government Agency use of information concerning such offenders', November 1999.

Chapter 7. Applications to certain groups

7.1. Relevant provisions of the Act and Regulations

The Act and Regulations contain special provisions for certain groups of people, including young people, forensic patients, and those considered to have 'special needs'. 'Special needs' is defined in the Regulations.¹⁵⁸ These provisions relate to the notification process¹⁵⁹, some aspects of the registration process¹⁶⁰, breach provisions for people failing to comply with reporting obligations¹⁶¹, and, for young people, sentencing thresholds and reporting periods.¹⁶²

The particular circumstances of young people have been recognised. Section 3 of the *Child Protection (Offenders Registration) Act* provides that a child convicted of a single offence involving an act of indecency or possession or publication of child pornography is below the sentencing threshold, but an adult convicted of a similar offence is not. Section 14(6) provides that reporting periods for young people are halved with a maximum period of 7½ years.

The notification provisions in the draft Bill were amended following concerns raised during Parliamentary debate that people with disabilities might be breached at a greater rate due to inadvertent failures to comply.¹⁶³ The Act and Regulation were consequently amended to include additional requirements in relation to the giving of notices to registrable persons who are children or who have special needs.¹⁶⁴

The special provisions provide for additional forms of notification for young people and people with special needs, where they are 'incapable of understanding a statutory notice'.¹⁶⁵ The Regulation provides that the notifying agency 'must take such measures as are reasonably practicable' to assist the person understand their obligations and the consequences of not complying.¹⁶⁶ The Act also provides for the information about registration obligations to be given to a support person if the person is a child or has a disability and is incapable of understanding.¹⁶⁷

In respect of the registration process, the Act provides that a parent, carer, guardian or another person nominated by the registered person can give information on behalf of the registered person, if they are a child or have a disability that 'renders it impracticable or the information to be given in person'.¹⁶⁸ The Act also provides that the registered person must attend the police station to provide relevant personal information unless their disability renders it impracticable for them to accompany their parent, carer, guardian or other nominee.¹⁶⁹

The Act also provides for the court to take account of a person's age or whether the person has a disability that affects their ability to understand, or to comply with, their obligations in determining whether they had a reasonable excuse for failing to comply with reporting obligations.¹⁷⁰

The Act applies to forensic patients. These are persons found to be 'not guilty by reason of mental illness' and who are detained under orders pursuant to the *Mental Health (Criminal Procedure) Act 1990*.¹⁷¹ These orders are not sentences. The Act was amended to define such orders as 'sentences' for the purposes of the Act, to ensure that its provisions apply to forensic patients.¹⁷² In addition to the provisions recognising the special needs of forensic patients and other persons with special needs, the Regulation also includes some specific provisions for the notification of forensic patients.¹⁷³

7.2. Relevant provisions of the Child Protection (Offenders Registration) Amendment Bill 2004

The Child Protection (Offenders Registration) Amendment Bill 2004 contains one new provision which is explicitly directed at registrable persons with special needs, specifically those with a limited competence in English. It includes a provision to allow police to arrange for an interpreter to be present when a person is registering or reporting information.¹⁷⁴ It also provides that the interpreter must sign an undertaking that they will not disclose any information obtained while the person is registering or reporting, without statutory authority.¹⁷⁵

Snapshot of young people and persons with special needs on the Register

Young people

At 15 October 2003, there were 22 young people under the age of 18 on the Register, with an additional four registrable persons under 18 not yet registered. All of these are male. The youngest person on the Register is 13 years old and there are five people aged 15, nine aged 16 and seven aged 17 years. Of those already registered, eight have a reporting period of 7½ years, five have a reporting period of 6 years, seven have a reporting period of 5 years and two have reporting period of four years. The racial appearance of 17 is recorded as Caucasian, one as Latin American and for four, there is no racial appearance recorded.

There are also 65 people aged 19 to 24 on the Register (three of whom are female). Of these, 27 are registered in respect of offences committed as a young person (two females). Of the 19-24 year olds, the racial appearance of more than two thirds is recorded as Caucasian and four as Aboriginal (including one woman). Three are recorded as East Asian, two each as Pacific Islander, Middle Eastern and Latin American, and one each as Eurasian, Mediterranean and South East Asian, with the racial appearance of two not recorded. Their ages are spread fairly evenly, ranging from nine aged 24 to 13 aged 23.

Forensic patients

Our analysis of the Register data has identified nine registrable persons found not guilty by reason of mental illness (under section 38 of the *Mental Health (Criminal Procedure) Act 1990*) and detained as forensic patients, six men and three women. Their ages range from 20 to 49. Six of the nine were detained in respect of a murder charge only, one was detained in respect of murder and sexual intercourse offences, one for attempted murder, and one for kidnap. Five of the nine forensic patients have no other convictions, or minor traffic convictions only. All of these are detained in respect of murder or attempted murder only. Two detained on a murder charge (one man and one woman) also have numerous assault and drug convictions, as does the one detained on murder and sexual intercourse charges and the person detained for kidnap. Only two of the forensic patients are currently registered (both women who killed their children as a result of post-natal depression). The rest are still detained, and not yet notified of their obligations to register under the Act. Two have a reporting period of 15 years, one has a reporting period of eight years, and the remaining six have a reporting period of 10 years.

Registered persons with a parent, carer, guardians or other person nominated to assist

At the end of the two year review period, 42 registered persons had a parent, carer, guardian or other person nominated to assist with their registration and reporting obligations (about 5% of all registered persons). Of these, 10 were under the age of 18. This is about half of all young people under 18 on the Register. Nine of those with guardians were aged 19 to 24. Young people under the age of 25 comprise 45% of all those with guardians. There are two women with guardians (one a forensic patient) and only three are recorded as not being Caucasian (one Latin American, one South East Asian and one Mediterranean). Three of the registered persons with guardians were in custody at the end of the review period and two were absent from NSW.

7.3. Commentary on the operation of the provisions

Some of the debate about the special circumstances of young people and other persons with special needs has been covered in *Chapter 6: Registrable offences*. For young people, this relates to registration in respect of convictions arising from consensual sexual relationships or for offences which do not have an underlying sexual motivation. There is also discussion in that chapter on the application of the Act to women who kill their children as a result of post-natal depression and are detained as forensic patients.

Many stakeholders raised with us issues about the application of the Act to certain groups. While these issues are primarily matters of policy rather than procedure, there are certain operational implications for police.¹⁷⁶ This section of the report presents the broad range of issues raised and opinions expressed to better inform the Minister's review of the policy objectives of the Act. In addition, the Parliamentary Secretary specifically referred some of the questions arising from parliamentary debate on the application of the Act to young people and forensic patients to the Ombudsman for consideration as part of this review.¹⁷⁷

The following discussion primarily deals with the general principles underlying the application of the Act to certain groups and the effect of specific provisions of the Act. For young people, this includes the reduced reporting periods and higher sentencing threshold, and for forensic patients, the Act's application by way of defining orders pursuant to the *Mental*

Health (Criminal Procedure) Act 1990 as a sentence for the purpose of this Act. The specific implications of the Act for people with an intellectual disability or a mental illness are addressed briefly, but are principally dealt with in the various chapters outlined below.

Matters relating to the special notification provisions for young people and people with special needs are dealt with in *Chapter 10: Notification of the obligation to register* while *Chapter 11* deals with the registration processes and reporting obligations. *Chapter 13: Failure to comply* and *Chapter 15: Monitoring of registered persons* address the particular concerns raised about the difficulties some young people or people with special needs may face in complying with their reporting obligations.

7.3.1. Young people

The question of whether the Act should apply to young people was the subject of considerable discussion, including in Parliament, at the time the legislation was being developed.¹⁷⁸ Some of the arguments about whether the Act should apply to young people have also been provided in submissions to our review. Most of the input we have received addresses the various views on how specific provisions of the Act should or should not apply to young people.

Thirteen of the 44 submissions we received in response to our discussion paper (30%) commented on the Act's application to young people. This issue was also raised by other parties during the course of our review, and by some of the crime managers interviewed.¹⁷⁹ Seven responses to our survey of registered persons were from people who indicated they were under 18. Although this is only 2.4% of all responses, it represents almost one third of young people under the age of 18 on the Register at the time. A further 12 responses were received from those in the 19 to 24 age group (18% of that age group on the Register). However, most of these respondents did not comment specifically on the Act's application to young people, as the survey did not contain a question on this issue.¹⁸⁰

7.3.1.1. Whether the Act should apply to young people

Registration applies to young people in most other jurisdictions with similar legislation, though often with different standards applying.¹⁸¹ While some research shows that many child sex offenders commenced their offending behaviours while they were children, other studies suggest that although the sex offending of many adult offenders can be traced to their adolescence, only a minority of adolescent sex offenders continue to sexually offend as adults.¹⁸² This same research shows that adolescent offenders are responsible for up to one third of all sex crime. Although many of these offend against children, this is generally because the age of their victims is similar to their own rather than due to a particular sexual interest in children.¹⁸³

Other research shows that young offenders are also more responsive to treatment and have lower rates of recidivism than adult offenders.¹⁸⁴ However, in NSW, access to the DJJ's Sex Offender Program is only possible after a conviction is recorded, which would make the young person registrable. NSW Police expressed concern about the scarcity of specialist community-based treatment programs for sex offenders, especially outside the metropolitan area, noting that 'such programs may assist in rehabilitation and promoting compliance with the Act.'¹⁸⁵

In our discussion paper we raised some of these issues and sought the views of stakeholders. While a number of the submissions we received discussed issues about the Act's application to young people, none directly argued that young people should not be subject to the Act in any circumstances. However, this was the view expressed by one of the respondents to our survey of registered persons, who stated:

*A boy of 15 should not be on list/register ever. No children should ever have to endure this terrible process. It is good for repeat offenders who are adults but terrible for minors. It should be only in existence for adults. For a child to be on it is very bad but adults it may be ok.*¹⁸⁶

Another respondent had similar concerns about the application of the Act to young people, although his comments seem to suggest more of a problem with the operation of the provisions than with the principles in general:

*It dosent work for U18's even the forms don't compinsate for age. For older people yes but you need to look at the juvenile side. Its not set up properly for U18's.*¹⁸⁷

NSW Police has told the review that the application of the Act to young people is 'critical to NSW Police's ability to identify and respond to repeat sex offenders.'¹⁸⁸

A number of submissions suggested that there should not be a blanket application of the Act to young people. Some, such as Southern Youth and Family Services Association, raised concerns about whether a conviction for a sex offence as a juvenile may be as a result of experimentation rather than being an indication of adult offending.¹⁸⁹ There is a concern that registration may then stigmatise young people as sex offenders and interfere with their rehabilitative prospects, particularly if registration arises from 'relatively minor offences.'¹⁹⁰ The aim of a higher sentencing threshold for young people is to prevent

registration in these circumstances. In general, the review found that most stakeholders supported reduced reporting periods and other special provisions for young people.¹⁹¹

7.3.1.2. Where a conviction is not recorded

A number of parties have told the review that they are greatly concerned that the Act provides for a young person to be registrable even in circumstances where the court has ordered that a conviction not be recorded.¹⁹² NSW Young Lawyers has set out in some detail the underlying principles of these concerns:

Section 14 CCPA [Children (Criminal Proceedings) Act 1987] states that a Children's Court cannot record a conviction against a child who is under 16 years old, no matter what the offence, and a Children's Court has the discretion to refuse to record a conviction for a child above the age of 16 years.

The Act creates an irregularity because it attributes 'registrable person status' to child offenders in circumstances where the Children's Court either does not have the power to record a conviction against a child or determines it inappropriate to record a conviction.

This discrepancy between the operation of the Act and s 14 CCPA is incongruous and seemingly has no justification.

The operation of the Act highlights a further incongruity when compared to the spirit of s 15 CCPA. This section excludes the admission in an adult court of prior offences committed by children where no conviction was recorded in the Children's Court and where the child has not been punished for any further offences for two years.

This limited two year period that prior offences can be admissible against children is to be contrasted with the sometimes lengthy period of the reporting obligation that attaches to registrable persons, as well as to the notion that registrable person status (albeit without the reporting obligation) attaches to a child for an indefinite period.¹⁹³

The case study below provides an account of these concerns from a personal perspective.

Case study 6.

'Our son was placed on a 12 month good behaviour bond with a "non-recordable offence" noted against the charges. ... Our son at the time of the 1st offence was 15 years and 11 months, at the time of the 2nd offence he was 16 years and 1 week old – the girl was in the same class and year as our son. ... We thought this would be the end of, for us as a family, **11 months of HELL**, unfortunately this was not to be the case, after the Court Hearing was concluded we were told that our son would be placed onto the 'Sex Offenders Register' and that he would be bound to the requirements of this register for 6 YEARS and 344 DAYS. ... He may have a NON RECORDABLE CONVICTION noted and a 12 month bond but he and we will be persecuted for the next 6 years and 344 days. We can see that when he marries and moves out of our home within a short period, his new bride will also be subjected to the indignity of a Police visit to confirm his residential status.' [Original emphasis].¹⁹⁴

The Shopfront Youth Legal Service has also raised similar issues. In its submission it notes that although the Children's Court has the power to impose any sentencing option without recording a conviction, it is only where a matter is dismissed under section 31(1)(a) of the *Children (Criminal Proceedings) Act 1987*¹⁹⁵ that the young person is exempt from registration requirements. Shopfront notes, "the non-recording of a conviction will usually reflect the court's view about the objective seriousness of the offence," and quotes a former Senior Children's Court Magistrate to support its view that registration is inappropriate where a conviction has not been recorded:

Children's Courts have recognised in recent years that the damage to a child's future wrought by conviction for a youthful misdemeanour may be heavily out of proportion to the offence itself and to any other order the court may make in consequence of the offence.¹⁹⁶

Shopfront has recommended that the registration obligations of the Act only apply to children where a conviction has been recorded or, alternatively, that the sentencing court have a discretion to order that an offender be exempted from registration.¹⁹⁷

This latter option has also been suggested by NSW Young Lawyers, who have also put forward a further alternative proposition that there be:

... an onus on the prosecuting authority to satisfy the sentencing court, on the balance of probabilities, that it is in the interests of justice that a child should have registrable person status for the purpose of the Act.¹⁹⁸

NSW Young Lawyers note that the legislation and case law relating to sentencing children clearly emphasise individualised considerations and treatment and on this basis argue that the judiciary should be given the discretion to determine whether it is in the interests of the child and community for a child to be registrable.¹⁹⁹ The Law Society has advised us that its Criminal Law Committee endorses the position of NSW Young Lawyers.²⁰⁰

The Minister may wish to consider whether there is an inconsistency between the principles and provisions of the *Children (Criminal Proceedings) Act 1987* which provides for the non-recording of convictions for young people and the *Child Protection (Offenders Registration) Act 2000* which provides for a young person with a conviction for a registrable offence, subject to sentencing thresholds being met, to be registrable, even when the conviction is not recorded.

Most of the submissions to the review on this issue supported a discretionary system of registration for young people to ensure that young people who pose a risk are included in the scheme while others can be exempted in some circumstances.²⁰¹ For example, the Juvenile Justice Advisory Council stated:

*The Council is of the view that there should be a process available for applications for exemption from registration where special circumstances exist.*²⁰²

The Department of Women suggested that any exemption should relate to a specific type of offence, recommending that:

*... where a young person under 18 years is convicted of an offence under the Crimes Act 1900, Section 66C(3): Sexual intercourse – child between 14 and 16, and where the intercourse was with consent, the presiding judicial officer should have a discretion to recommend that the Act not apply.*²⁰³

Most stakeholders commenting on this issue generally expressed a similar view to the Law Society that this be achieved through courts having 'discretion to exempt children from reporting obligations under the Act.'²⁰⁴

The Minister may wish to consider whether there should be provision for a discretionary application of the Act in relation to young people. If it is determined that discretion is appropriate in making a determination about whether a young person should be registrable, the court could have regard to a range of factors, including the nature of the offence and whether a conviction had been recorded. The primary consideration must be whether the young person poses a risk to the safety of children. The benefits to the community arising from registration should prevail over the particular needs of the young person if there is any doubt about the question of risk. The issue of a limited discretionary system is discussed further in the conclusion to Part 2.

7.3.1.3 Sentencing thresholds

NSW Police noted that the higher sentencing threshold for young people is designed to 'filter out technical findings of guilt and the most minor offences' and that consequently a child found guilty of a single act of indecency (such as exposing themselves or touching another child) is not subject to registration.²⁰⁵

NSW Police has told the review that it is aware of at least one Children's Court Magistrate who is currently exercising legal discretion so as to ensure that juvenile offenders sentenced for registrable offences fall below the sentencing threshold of the Act.²⁰⁶ Officers from the DJJ also advised us, early in the review period, that more than one Children's Court Magistrate was making sentencing decisions to specifically avoid the young person being subject to the Act. This included making orders that were not legally possible, such as that the young person complete a sex offenders program prior to sentencing and if successful then the matter would be dismissed under section 33(1)(a), or that the young person not be subject to the Act.²⁰⁷ This is despite the clear intention of Parliament that there be no judicial discretion in determining whether a person is registrable. This position was also reiterated in legal advice provided to judicial officers by a Judicial Commission article on this issue.²⁰⁸

We have subsequently been advised that this was only a problem in the early stages of the implementation of the Act, and is not an ongoing problem.²⁰⁹ However, some stakeholders have told the review that they believe that courts should be permitted to have regard to registration obligations when determining sentence. These issues are discussed further in *Chapter 8: Review and Appeal Processes* and in the conclusion to Part 2.

In contrast, some Sex Offender Program counsellors from the DJJ have told the review that they were concerned that the sentencing threshold was too high in some instances, so that young people in their supervision are not on the Register, despite the seriousness of the incident.²¹⁰ Some young people may be charged with a less serious offence than the incident giving rise to the charge might otherwise suggest, with a conviction for the lesser offence not resulting in registration.²¹¹ The counsellors put the argument that, in some instances, the nature of the offence should be sufficient to incur registration, without reference to the sentence. In the United Kingdom, there are different sentencing thresholds for juveniles, with some offences attracting registration only for adults while others are registrable offences for all offenders, regardless of their age.²¹²

The different sentencing thresholds for young people are intended to benefit young people. However, one submission we received from a solicitor with Legal Aid argued that there is an anomaly in the provisions that disadvantages young

people.²¹³ The apparent anomaly lies in the different sentencing thresholds provided for adults and young people in the definition of 'registrable person'.²¹⁴ This provides for persons convicted of a registrable offence not to be subject to the Act where a matter has been dismissed, either under section 10 of the *Crimes (Sentencing Procedure) Act 1999* for adults or under section 33(1)(a) of the *Children (Criminal Proceedings) Act 1987* for young people. A judicial officer has the option to impose a bond on an adult, and dismiss the matter under section 10.²¹⁵ However, if a Magistrate wishes to impose a bond on a young person, there is no provision to dismiss the matter. An order providing supervision for a young person must be made under section 33(1)(b) and dismissal is only possible under section 33(1)(a).²¹⁶ Any order for supervision for a young person would result in registration (having regard to the usual sentencing thresholds provisions of the Act) whereas an order providing supervision for an adult under section 10 would allow the matter to be dismissed with no obligation to register. The consequence of this is that young people may be subject to the Act in circumstances where adults are not.

The Minister may wish to consider whether the anomaly discussed above disadvantages young people in comparison to adults, in that fewer sentencing options are available for them when a matter is dismissed. If it is determined that this is contrary to the spirit of the legislation and not in accordance with Parliament's intentions, the Minister may wish to consider whether the Act should be amended to remove the anomaly.

It should be noted that a discretionary scheme to determine the application of the Act to young people, as discussed in the conclusion to Part 2, could be a means of addressing this issue, as well as other concerns raised about the registration of young people.

7.3.2. Forensic patients

Our analysis of the forensic patients who are registrable, that is, people found not guilty of a registrable offence by reason of mental illness, showed that they clearly have a different profile to other registrable persons. Thirty per cent of this group are women (compared to just over two per cent for registrable persons as a whole). The registrable offence of the vast majority (eight of the nine) is murder (compared to less than four per cent for registrable persons as a whole), with only one person also having convictions for sexual offences, although another three also have convictions for violence offences.

There was considerable debate in Parliament about the appropriateness of the Act's application to forensic patients, and how the provisions might impact on them.²¹⁷ The Hon Ian Cohen raised this issue in Parliament.

The IDRS has questioned the application of the Act to forensic patients. It argues that as persons with qualified findings of guilt (found not guilty by reason of mental illness or who are unfit to be tried) are not guilty of any offence, it is unjustifiable in principle to impose the onerous obligations of registration on persons who bear no culpability for their acts.²¹⁸

IDRS has also put the position that registration for forensic patients who have been unconditionally discharged is unnecessary in practice.²¹⁹ A forensic patient can only be released following a decision by the Mental Health Review Tribunal that 'no member of the public will be seriously endangered by the person's release', so no practical purpose is served by monitoring persons assessed as posing no serious risk.²²⁰ Only two of the registrable forensic patients are in the community and are currently registered. The majority are still in custody, and will remain so until the Mental Health Review Tribunal assesses them as ready to be returned to the community.

One respondent to our survey of registered persons told us: 'I don't belong on this list. I was found not guilty due to mental illness.'²²¹ Another respondent made a similar comment and added: 'After all I have been acquitted by the law'. [Original emphasis].²²²

NSW Police has told the review that it supports the manner in which forensic patients are dealt with as registrable persons.²²³ Although Parliament made it clear that forensic patients should be registered, it also recognised the particular difficulties they may have in understanding and complying with their registration obligations. Seven registrable persons who are still detained as forensic patients have not yet been notified of their obligations under the Act. The Regulation provides for an additional notice to be given to forensic patients when they are assessed as capable of understanding the notice, if it is determined that they are not capable of understanding their obligations at the time of sentencing.²²⁴ It seems somewhat academic to explore whether forensic patients understand their reporting obligation while they are in custody. The real issue is whether they understand their obligations when notified at the time of their release. The review has received no information to suggest that forensic patients released into the community have any ongoing problems understanding or complying with their obligations.

The specific provisions for the notification of forensic patients are discussed in more detail in *Chapter 10: Notification of the obligation to register*. The impact on police resources arising from the registration and monitoring of people assessed as not being a risk is discussed further in *Chapter 15: Monitoring of Registered Persons*.

The data shows that forensic patients become registrable primarily due to killing a child, rather than the commission of a sexual offence. The issues about the inclusion of offences where there is no sexual element, as registrable offences, discussed in *Chapter 6: Registrable offences*, are relevant here. If it can be shown that a forensic patient is not a child protection risk, it could be questioned as to what practical purpose is served by the registration and monitoring of such persons.

The application of a discretionary system in respect of forensic patients is discussed further in the conclusion to Part 2.

7.3.3. Persons with an intellectual disability or mental illness

During the development of the legislation, certain groups expressed concern that people with an intellectual disability or mental illness that impaired their capacity to understand or comply with their reporting obligations would be disadvantaged by the provisions of the legislation. For example, the IDRS argued that people with disabilities have increased exposure to being breached.²²⁵ It was these sort of concerns that prompted the amendments to the notification provisions and to the Regulation including additional requirements in relation to the giving of notices to registrable persons who are children or who have special needs.²²⁶

There was substantial debate in Parliament about the impact on people with disabilities, with representatives of various parties backing additional support and provisions for them.²²⁷ The Parliamentary Secretary stated that:

*Whether or not the offending behaviour is caused by mental illness, those offenders pose a real risk to child safety and should be required to register ... Intellectual Disability Rights Service Inc. states that it is unjust to punish offenders with mental illnesses. The Act and the bill are not about punishment. People are not required to report to police for the purpose of the police punishing them; they are required to report to police for child protection purposes.*²²⁸

There is no specific information held on the Register which identifies people with a mental illness or an intellectual disability. An analysis of sentences received by registrable persons provides some indications of the extent of the inclusion of these people on the Register, but does not provide any definitive data. This analysis shows that 127 of all registrable persons had received a sentence, at some time, indicative of them having a psychiatric or intellectual disability.²²⁹ This includes 12 who have had matters dismissed under section 32 of the *Mental Health (Criminal Procedure) Act 1990*²³⁰, and nine found not guilty by reason of mental illness under section 38 of that Act. The others have received sentences which required them to undergo psychological or psychiatric assessment, treatment or care, or to attend a developmental or remedial program. This group represents over nine per cent of registrable persons. However, it is likely that the actual proportion of registered persons with a psychiatric or intellectual disability would be higher, as not all persons with a psychiatric or intellectual disability would have received a sentence that directly related to their condition.

Generally, input to the review supported the registration of people with mental illness or intellectual disability in principle, although a number of parties expressed concerns about how well those people may be able to comply.²³¹ These issues are dealt with in more detail in the chapters on notification, registration, monitoring and breaches.

The working party advising the APMC on nationally consistent child sex offender register legislation strongly recommended that people with an intellectual disability or mental illness not be exempt from registration requirements.²³² The Tasmanian Ombudsman, in a submission to our discussion paper, presented a similar argument for not excluding such people:

*It is imperative for this legislation to include persons with intellectual disability and mental illness or those who are forensic patients. It is my understanding that these groups represent a significant proportion of sex offenders. It is also appropriate that their management be subject to different conditions. To omit them would make the legislation ineffective.*²³³

The Department of Ageing, Disability and Home Care had considerable input into the development of the legislation in respect of its application to people with a disability. The Department acknowledges that many people with disability in its care continued to exhibit child sex offending behaviour and that these people may pose a significant risk to child safety.²³⁴ While the Department has not opposed the registration of people with a disability, it has commented in its submission to our review that:

*... there is always a risk that some people with an intellectual disability will not have the capacity to understand and fulfill registration and reporting obligations.*²³⁵

In its submission to our review, IDRS did not argue that the Act should not apply to people with a disability, but rather that:

*... the legislation must balance the need to protect children in the community with the need to minimise the risk of exposure of vulnerable people to the criminal justice system as a result of an inability to understand the administrative obligations placed upon them by the Act.*²³⁶

IDRS has expressed a concern that, although the Act does provide special provisions in respect of people with a disability, they may not be identified as a person with special needs at the outset:

*... it may not be apparent that a person is a vulnerable person or has an intellectual disability until they are in breach of their obligations ... [and] ... this may disproportionately expose people with an intellectual disability to further legal processes and ... the possibility of further criminal sanction on the basis of the manifestation of their disability.*²³⁷

In its submission to our review, NSW Police raised a number of issues about the ongoing management of registrable persons with a mental illness, and some operational police also provided information about their experiences.²³⁸ NSW Police recommends formalising the roles and responsibilities of agencies managing registered persons with disabilities, but notes that not all have support persons or networks.²³⁹

The review supports the ongoing application of the Act to people with a mental illness or intellectual disability. The ability of these people to comply with their registration obligations, and their management by police, are discussed further in *Chapter 11: Registration processes and reporting obligations*, *Chapter 13: Failure to comply*, and *Chapter 15: Monitoring of registered persons*.

Endnotes

¹⁵⁸ Clause 3 *Child Protection (Offenders Registration) Regulation* defines a registrable person as having a special need if:

(a) the person has impaired intellectual functioning, that is, the person has:

- (i) total or partial loss of the person's mental functions, or
- (ii) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction, or
- (iii) a disorder, illness or disease that affects the person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour, or

(b) the person is subject to a guardianship order (within the meaning of the Guardianship Act 1987), or

(c) the person is illiterate, or is not literate in the English language, or

(d) the person is visually impaired to the extent that the person is unable to read a written notice, or

(e) the person is subject to some other condition that may prevent the person from being able to understand a written notice.

¹⁵⁹ Clause 9, 12 and 13 *Child Protection (Offenders Registration) Regulation*

¹⁶⁰ Section 12(5) and (6) *Child Protection (Offenders Registration) Act*

¹⁶¹ Section 17(2) *Child Protection (Offenders Registration) Act*

¹⁶² Section 3 and 14(6) *Child Protection (Offenders Registration) Act*

¹⁶³ See, for example, Hansard, Legislative Council, 4 July 2001, second reading speech, *Child Protection (Offenders Registration) Amendment Bill*

¹⁶⁴ The amendments were contained in the *Child Protection (Offenders Registration) Amendment Act* passed in July 2001.

¹⁶⁵ Clause 12(1)(b) *Child Protection (Offenders Registration) Regulation*

¹⁶⁶ Clause 12 *Child Protection (Offenders Registration) Regulation*

¹⁶⁷ Clause 13 *Child Protection (Offenders Registration) Regulation*. The support person can be a person nominated by the registered person, or if no such person is nominated, a parent, guardian or carer, or a public authority that provides support, or supervises the provision of support.

¹⁶⁸ Section 12(5) *Child Protection (Offenders Registration) Act*

¹⁶⁹ Section 12(6) *Child Protection (Offenders Registration) Act*

¹⁷⁰ Section 17(2) *Child Protection (Offenders Registration) Act*

¹⁷¹ Section 38.

¹⁷² Amendments to section 3(1) of *Child Protection (Offenders Registration) Act*, contained in *Child Protection (Offenders Registration) Amendment Act 2001*.

¹⁷³ Clause 9 *Child Protection (Offenders Registration) Regulation*.

¹⁷⁴ Clause 12B(2) *Child Protection (Offenders Registration) Amendment Bill 2004*.

¹⁷⁵ Clause 12B(3) *Child Protection (Offenders Registration) Amendment Bill 2004*.

¹⁷⁶ These operational issues are discussed in the relevant chapters, as outlined at the beginning of this chapter.

¹⁷⁷ Hansard, Legislative Council, 4 July 2001, The Hon Ian MacDonald, Parliamentary Secretary, second reading speech, *Child Protection (Offenders Registration) Amendment Bill*

¹⁷⁸ See, for example, Hansard, Legislative Council, 4 July 2001, second reading speech, *Child Protection (Offenders Registration) Amendment Bill* and Report of the Child Sex Offender Registration working party, 'Registration with Police of child sex offenders and other serious offenders who pose a risk to child safety and Government Agency use of information concerning such offenders', November 1999.

¹⁷⁹ For example, in correspondence from the Law Society, dated 12 November 2002, NSW Young Lawyers, 15 May 2003, and the Children's Legal Issues Committee, in an email dated 19 June 2003. Interviews with crime managers in May 2002 and February 2004.

¹⁸⁰ A copy of the survey questionnaire is at Appendix 7.

¹⁸¹ See Appendix 1 for an overview of similar legislation in other jurisdictions. Registration does not apply to young people in all states of America, though it does in the UK and Ontario, Canada and in the proposed national legislation in New Zealand and Canada.

¹⁸² Grubin, D. *Sex offending against Children: Understanding the risk*, Police Research Series, Paper 99, Home Office, UK; Centre for Sex Offender Management *An Overview of Sex Offender Management*, July 2002; Pennell, A. *Young People Who Sexually Abuse*, paper prepared for the Youth Justice Board (UK), undated.

¹⁸³ Grubin, as above.

¹⁸⁴ Hunter, J.A. (2000) *Understanding juvenile sex offenders: research findings & guidelines for effective management & treatment*. *Juvenile Justice*

- Fact Sheet*. Charlottesville, VA: Institute of Law, Psychiatry, & Public Policy, University of Virginia, and The Association for the Treatment of Sexual Abusers' position paper on 'The Effective Legal Management of Juvenile Sexual Offenders', March 2000, quoting Barbaree, H.E., Marshall, W.L. & Hudson, S.M. (eds) *The Juvenile Sex Offender*, New York: Guildford.
- ¹⁸⁵ Submission from NSW Police, 22 January 2004
- ¹⁸⁶ Survey no 17, from a male under the age of 18.
- ¹⁸⁷ Survey no 171, from a male under the age of 18.
- ¹⁸⁸ Submission from NSW Police, 22 January 2004
- ¹⁸⁹ For example, submission from Southern Youth and Family Services, 10/11/03.
- ¹⁹⁰ Submission from Juvenile Justice Advisory Council, 24/12/03. Also discussed in *Consultation Paper on the review of Part 1 of the Sex Offenders Act 1997*, Home Office, UK, July 2001.
- ¹⁹¹ See submissions nos 26, 42, 44. (See Appendix 4 for details of all submissions received.) Also raised at a meeting with the Commission for Children and Young People, 28 August 2001; and with the DJJ, 18 December 2001.
- ¹⁹² Submissions nos 9, 10, 12, 43. (See Appendix 4 for details of all submissions received.); and correspondence from: Law Society of NSW, 11 June 2003, Young Lawyers, 15 May 2003, and Children's Legal Issues Committee, 19 June 2003.
- ¹⁹³ Submission no 13 from NSW Young Lawyers, 16 October 2003.
- ¹⁹⁴ Anonymous submission no 10, 19 October 2003.
- ¹⁹⁵ Section 33(1)(a) of the *Children (Criminal Proceedings) Act 1987* states:
 "If the Children's Court finds a person guilty of an offence to which this Division applies, it shall do one of the following things:
 (a) it may make an order dismissing the charge, or it may make an order dismissing the charge and may administer a caution to the person".
- ¹⁹⁶ Submission no 9 from Shopfront, 17 October 2003, quoting p.60, Rod Blackmore, *The Children's Court & Community Welfare in NSW*, 1989.
- ¹⁹⁷ Submission no 9 from Shopfront Youth Legal Centre, 17 October 2003.
- ¹⁹⁸ Letter from NSW Young Lawyers to The Hon Bob Debus, Attorney-General for NSW, dated 18 September 2002, provided to the NSW Ombudsman as an attachment to a letter dated 15 May 2003.
- ¹⁹⁹ NSW Young Lawyers refers to the sentencing principles application to children set out in section 6 of the *Children (Criminal Proceedings) Act 1987* and *R v Smith* [1964] Crim LR70; Wilcox (Unreported) Supreme Court of NSW, 15 August 1979; CS&T (Unreported) NSW Criminal Court of Appeal, 12 October 1989; and *R v GDP* (1991) 53 A Crim R 112. (Submission no 12).
- ²⁰⁰ Letter from Law Society to NSW Ombudsman, 11 June 2003.
- ²⁰¹ Submissions nos 9, 12, 20, 21, 41. See Appendix 4 for details of all submissions received.
- ²⁰² Submission no 41 from Juvenile Justice Advisory Committee, 24 December 2003.
- ²⁰³ Submission no 21 from Department for Women, 22 October 2003.
- ²⁰⁴ Submission no 20 from the Law Society, 20 October 2003.
- ²⁰⁵ Submission no 42 from NSW Police, 22 January 2004.
- ²⁰⁶ Submission no 42 from NSW Police, 22 January 2004.
- ²⁰⁷ Meeting with DJJ Sex Offender Program counsellors, 23 May 2002, and subsequent phone conversations.
- ²⁰⁸ Hunt, David (October 2001) 'Child Protection through Offender Registration' *Judicial Officers' Bulletin Vol 13 (9) pp.65-68*.
- ²⁰⁹ Meeting with Child Protection Registry, 20 July 2003 and in phone conversations with DJJ Sex Offender Program counsellors.
- ²¹⁰ Meeting with DJJ Sex Offender Program counsellors, 23 May 2002.
- ²¹¹ Meeting with Marjorie Anderson and Graham Scaysbrook, Juvenile Justice, 18 December 2001.
- ²¹² Clause 2(a) of Schedule 1 of *Sex Offenders Act 1997 (UK)* provides for certain offences to be registrable only where the offender is over the age of 20.
- ²¹³ Oral submission, no 43 from Michelle Swift, Legal Aid, 21 January 2004, and additional written information provided 10 March 2004.
- ²¹⁴ Section 3 *Child Protection (Offenders Registration) Act*, see definition of 'registrable person'.
- ²¹⁵ Section 10(1) of the *Crimes (Sentencing Procedure) Act 1999* states:
 'Without proceeding to conviction, a court that finds a person guilty of an offence may make any one of the following orders:
 (a) an order directing that the relevant charge be dismissed,
 (b) an order discharging the person on condition that the person enter into a good behaviour bond for a term not exceeding 2 years,
 (c) an order discharging the person on condition that the person enter into an agreement to participate in an intervention program and to comply with any intervention plan arising out of the program.'
- ²¹⁶ Section 33(1)(a) – (b) of the *Children (Criminal Proceedings) Act 1987*. states:
 'If the Children's Court finds a person guilty of an offence to which this Division applies, it shall do one of the following things:
 (a) it may make an order dismissing the charge, or it may make an order dismissing the charge and may administer a caution to the person,
 (b) it may make an order releasing the person on condition that the person enters into a good behaviour bond for such period of time, not exceeding 2 years, as it thinks fit,
 (c) it may make an order imposing on the person a fine, not exceeding:
 (i) the maximum fine prescribed by law in respect of the offence, or
 (ii) 10 penalty units,
 whichever is the lesser.'
- ²¹⁷ See, for example, Hansard, Legislative Council, 4 July 2001, second reading speech, Child Protection (Offenders Registration) Amendment Bill.
- ²¹⁸ Briefing Paper prepared by the IDRS, June 2001, included as an attachment to a letter from the Law Society of NSW to the Minister for Police, dated 12 November 2002. Copy provided to the NSW Ombudsman in a letter from the Law Society, dated 11 June 2003. in respect of proposed amendments to the Child Protection (Offenders Registration) Bill, June 2001.
- ²¹⁹ IDRS Briefing paper as above.
- ²²⁰ Section 81(2)(b) *Mental Health Act 1990*.
- ²²¹ Survey no 40.
- ²²² Survey no 240.
- ²²³ Submission no 42 from NSW Police, 22 January 2004.
- ²²⁴ Clause 9 *Child Protection (Offenders Registration) Regulation*.
- ²²⁵ Briefing Paper prepared by the IDRS, June 2001, included as an attachment to a letter from the Law Society of NSW to the Minister for Police, dated 12 November 2002. Copy provided to the NSW Ombudsman in a letter from the Law Society, dated 11 June 2003.
- ²²⁶ Contained in the *Child Protection (Offenders Registration) Amendment Act* passed in July 2001.
- ²²⁷ See, for example, Hansard, Legislative Council, 4 July 2001, second reading speech, Child Protection (Offenders Registration) Amendment Bill
- ²²⁸ Hansard, Legislative Council, 4 July 2001, The Hon Ian MacDonald, Parliamentary Secretary, second reading speech, Child Protection (Offenders Registration) Amendment Bill

- ²²⁹ Data from Register. This refers to sentences received by registrable persons for all offences, and not specifically registrable offences.
- ²³⁰ Section 32 provides that if it appears to the Magistrate that the defendant is developmentally disabled or is suffering from mental illness the Magistrate may dismiss the charge and discharge the defendant either with conditions or unconditionally.
- ²³¹ For example, submissions from Privacy NSW, 19 November 2003; Department of Ageing, Disability and Home Care, 20 November 2003; Department of Education and Training, 30 October 2003.
- ²³² Report of the working party of the Australasian Police Ministers' Council, June 2003.
- ²³³ Submission no 24 from the Tasmanian Ombudsman, 20 October 2003.
- ²³⁴ Report of the working party of the Australasian Police Ministers' Council, June 2003.
- ²³⁵ Submission no 33 from DADAHC, 20 November 2003.
- ²³⁶ Submission no 23 from IDRS, 23 October 2004.
- ²³⁷ Submission no 23 from IDRS, 23 October 2004.
- ²³⁸ Submission no 42 from NSW Police, 22 January 2004; interviews with crime managers, February 2004, LAC 8 Greater Metro Region, LAC 30 Southern Region, LAC 21 Northern Region, LAC 29 Southern Region, LAC 32 Western Region, LAC 25 Southern Region; and meetings with the Child Protection Registry, 21 May 2002, 16 October 2002 and 22 July 2003.
- ²³⁹ Submission no 42 from NSW Police, 22 January 2004.

Chapter 8. Review and appeal processes

8.1. Relevant provisions of the Act

The sole 'appeal' provision in the Act applies to registrable persons with a lifetime reporting period. After 15 years they can apply to the ADT for an order suspending further reporting obligations.²⁴⁰

The ADT can only make such an order if it considers that the person does not pose a risk to the safety of children. In making its decision the ADT must take into account a range of factors including:

- the seriousness of the offences as a result of which the person is a registrable person
- the period of time since those offences were committed
- the age of the registrable person, the age of the victims of the offences and the difference in age between the registrable person and the victims of the offences, as at the time the offences were committed
- the registrable person's present age
- the registrable person's total criminal record
- any other matter the ADT considers appropriate.²⁴¹

The Commission for Children and Young People is to be a party to any proceedings and may make submissions in opposition to, or in support of, the making of an order.²⁴²

If the ADT refuses to make an order suspending the registered person's reporting obligations, the registered person is not entitled to make a further application to the ADT until five years have elapsed from the date of the refusal, unless the ADT otherwise orders.²⁴³

A party to the ADT proceedings may appeal to the Supreme Court, on a question of law, from any decision of the ADT.²⁴⁴

There are no other provisions for any exercise of discretion, either judicial or administrative, in respect of determining the requirement to register or the reporting period.

8.2. Relevant provisions of the Child Protection (Offenders Registration) Amendment Bill 2004

The Child Protection (Offenders Registration) Amendment Bill 2004 does not provide any additional provisions for review or appeal in respect of determination of a registration requirement. However, it does make amendments to the existing provisions which allow a person with a lifetime reporting obligation to seek an exemption after 15 years. The Bill removes the ADT's right to suspend a person's reporting obligations pending a determination of an application for exemption.²⁴⁵ It also inserts a provision that an exemption order would cease if the person is found guilty of a registrable offence or is made subject to a child protection registration order.²⁴⁶ The Bill also provides for the ADT to notify the Commission for Children and Young People of any application for an exemption.²⁴⁷

8.3. Commentary on the operation of the provisions

As the Register has only been in operation for just over two years, there have been no applications to the ADT for the suspension of reporting obligations.

Many stakeholders raised with us issues about the lack of provisions for discretion, review or appeal in relation to the requirement to register and the length of the reporting period. These issues have been conveyed to our review through submissions and inquiries we received, various consultations with relevant agencies, the interviews we conducted with operational police, and the responses to our surveys of registered persons. This section of the report presents the broad range of issues raised and opinions expressed to better inform the Minister's review of the policy objectives of the Act.

In our discussion paper, we invited submissions on the operation of the Act in relation to review and appeal provisions. Of the 44 submissions we received, 12 commented on this issue.²⁴⁸ The majority of these submissions argued in favour of the introduction of review and appeal provisions.²⁴⁹ However, others, including those by NSW Police and the Commission for Children and Young People, were satisfied with the existing provisions. Some of the crime managers interviewed throughout

the review period raised issues about the lack of review or appeal provisions, as did 40 of the 283 registered persons who responded to our survey.

8.3.1. Arguments for and against discretion or review and appeal mechanisms

The desirability of a review mechanism was generally raised either in relation to whether registration is appropriate for some persons, such as young people or forensic patients, or in relation to people convicted of certain registrable offences, such as those where there is not necessarily a sexual element or which involve consensual underage sexual activity. Some of these concerns have been explored in *Chapter 6: Registrable Offences*, in relation to which offences should be registrable, and in *Chapter 7: Application to certain groups*, in respect of the appropriateness of certain types of persons being subject to the Act. Some people also raised issues about the need for a review mechanism in relation to determining the length of the reporting period. This question is discussed in *Chapter 12: Reporting periods*.

NSW Police has told the review that it is opposed to introducing appeal or review arrangements in respect of registration arising from convictions for registrable offences, beyond those measures currently in place for persons subject to lifetime registration. NSW Police notes that currently only persons whose conviction or finding of guilt for a registrable offence is quashed or set aside by a court can be removed from the Register. To date, approximately 25 persons have been removed from the Register following a successful appeal outcome. NSW Police has argued that introducing any new appeal arrangements:

*... would expose children to unacceptable risks, create additional uncertainty for victims and their families, result in issues demanding registration being argued in court in the first instance, and impose significant resource implications for police and other justice agencies.*²⁵⁰

NSW Police commented that it had received numerous requests from registered persons seeking to have their case reviewed on compassionate grounds, but noted that it has no discretion to remove persons from the Register. NSW Police supports the mandatory system currently in place, arguing that operational police are unable to determine the likelihood of registered persons re-offending.

However, it is interesting to note the terms of some correspondence from the Child Protection Registry to certain registered persons who sought a review of their registration requirement. For example, the Registry wrote to one person: 'Looking at the sentencing judges comments and your previous correspondence I appreciate your concerns at the length of your reporting period.'²⁵¹ And to another: 'The information you supplied in your application to be removed from the Register was certainly compelling.'²⁵² The Registry suggested both these persons contact our office to provide input into this review, noting in one instance that 'your comments are important and may enable future amendments to the Act.'²⁵³

The NSW Commission for Children and Young People noted the very limited provisions for a person to appeal or seek review of their registrable status, but commented that it 'considers that strong justification would need to be established before introducing any such appeal or review process'. While the Commission did not reject the inclusion of an appeal or review provision in respect of establishing the registration requirement, it did state that, in its view, there is no evidence 'to suggest a need to establish a review mechanism for determining the length of reporting periods.'²⁵⁴

In its submission to our review Privacy NSW was critical of the lack of a broader appeal or review mechanism to determine liability to register and commented that 'the one size (or two size) fits all approach that was eventually adopted means that onerous reporting requirements will sometimes be imposed on people who do not represent a significant risk of re-offending.' While acknowledging the potential demand on time and resources that could arise from unmeritorious applications for review, Privacy NSW argued that a review or appeal mechanism would 'introduce some flexibility into an inflexible process'. It noted that 'discretionary powers can represent a fair and cost effective form of oversight by setting standards for the way such discretion is exercised in the future.' However, NSW Privacy also commented that flexibility might be achieved by other means, such as giving police some discretion.²⁵⁵

A victim of sexual assault argued against registered persons being afforded the right to have their requirement to register reviewed. She wrote about her fear and insecurity and the long-term impact of abuse, noting that victims 'cannot appeal against that damage that interferes with their lives'.²⁵⁶

The APMC working party does not support the inclusion of any appeal process in nationally consistent legislation.²⁵⁷ However, it does recognise some of the concerns raised by a scheme where registration is mandatory following conviction for a registrable offence not necessarily containing a sexual element, for example, kidnapping.²⁵⁸ Consequently the APMC has recommended that registration be discretionary in certain cases. This is discussed further in *Chapter 6: Registrable offences*.

Six people on the Register attempted to have their cases reviewed by our office, because they believed, for various reasons, that they should not be obliged to register. When advised that there are no mechanisms for review, these people expressed concern about what they saw as a limitation of the legislation and were strongly of the view that this should be addressed.²⁵⁹

Forty respondents to our survey of registered persons commented on the need for some form of review or appeal. Some of the comments made by registered persons suggested that there needed to be greater flexibility in the system:

*There should be a review after a period of time. It is too rigid.*²⁶⁰

*There should be space to allow for an appeal of inclusion. I think I have a good case for exclusion but none are allowed as yet.*²⁶¹

[Needs] *some type of review process to allow for individual situations.*²⁶²

The suggestion that there should be provision for an individual assessment of each case was also raised in the surveys. This individual assessment, it was claimed, would provide a better way of determining who should remain on the Register. For example:

*I think the period that a person has to be required to be registered for should be reviewed in each persons case based on their special/individual behaviour/compliance.*²⁶³

*Some type of review process [is needed] to allow for individual situations. [We are] not treated as individual – personal 'risk' not assessed.*²⁶⁴

Similar views were echoed by some of the crime managers we interviewed. One expressed a concern that some people were inappropriately registered and suggested:

*This could mainly be improved by looking not only at the conviction, but also more at the surrounding circumstances of each case to determine whether it would be really worthwhile to have various people registered.*²⁶⁵

Another, specifically referring to a person on the Register as the result of a conviction for a kidnap offence, suggested that:

*The way that people are identified to register should be approached on a case-by-case, individualized way rather than the current offence based process.*²⁶⁶

8.3.1.1. Young people

Various people have raised concerns about the application of the legislation to young people (see *Chapter 6: Registrable offences* and *Chapter 7: Application to certain groups*). A number of submissions suggested that young people may be particularly disadvantaged by the lack of discretion in determining registration and argued for limited review or appeal mechanisms to apply to young people in certain circumstances.

The Shopfront Youth Legal Centre stated that the registration and reporting requirements are likely to have 'an unjust and disproportionate impact on some of the most disadvantaged people in our community, particularly young people, homeless people, and those with intellectual disabilities.' Shopfront expressed its concern about young people being registrable where a conviction has not been recorded, noting that: 'The non-recording of a conviction will usually reflect the court's view about the objective seriousness of the offence'. As discussed in *Chapter 7: Application to certain groups*, it recommended that registration should not apply to young people where a conviction has not been recorded. Furthermore, Shopfront recommended that the Act should provide for an application to be made to the ADT for removal from the Register or exemptions from reporting where special circumstances exist, such as where a young person has been convicted of an offence arising from consensual sex with a person of similar age.²⁶⁷

Similarly, the Law Society of NSW and NSW Young Lawyers were particularly concerned about the application of the Act to young people, or people who committed offences as children. The Law Society commented that, while it believed that all registrable persons should be able to seek review, this was particularly important for people who committed registrable offences as children.²⁶⁸ NSW Young Lawyers noted that the absence of judicial discretion in determining whether a young person should be registrable 'is inconsistent with the principles and purposes relating to the sentencing of children'. NSW Young Lawyers also suggested the Act be amended to allow an application to the ADT for the removal of young people from the Register.²⁶⁹ The Juvenile Justice Advisory Committee expressed their view that, where special circumstances exist, there should be a provision for application for exemption from registration.²⁷⁰

Although the Act allows no judicial discretion in determining the requirement to register, anecdotal evidence suggests that in some cases, especially in relation to young people, judges and magistrates are attempting to adjust sentencing outcomes to avoid registration requirements for certain offenders. This is also discussed in *Chapter 7: Application to certain groups*.

Counsellors from the Sex Offender Program of the DJJ provided information to the review about cases where solicitors, magistrates and judges have tried to find ways to avoid registration obligations, such as encouraging changes of plea from guilty or attempting to get registrable charges dropped.²⁷¹ For example, the counsellors referred to one matter which was adjourned so the magistrate could find a way to avoid registration for the young person. An argument was put forward that the young person would attend voluntary counselling with the DJJ Sex Offender Program if he did not have to be registered, despite this being impossible as acceptance into the program flows from conviction. Ultimately the matter was dismissed

with a caution, which not only meant that registration was not required but that there was no treatment intervention. Another example given was of a matter at the District Court that was adjourned so that a psychological assessment could be obtained. This report addressed the impact of registration and recommended that the young person not be subject to the *Child Protection (Offenders Registration) Act*, although there is no provision for discretion in this respect.

NSW Police has reported that at least one Children's Court magistrate has deliberately sentenced young persons in a way that places them below the sentencing threshold for registration.²⁷² This is contrary to advice provided to judicial officers through the Judicial Commission Bulletin that it is inappropriate for registration to be considered in determining sentence.²⁷³ The Ministry for Police has informed the review of a case where a magistrate attempted to make an order that a young person not be required to register, although he had no authority to do so.²⁷⁴ The Young Lawyers Committee of the Law Society of NSW also provided anecdotal evidence of cases where solicitors have requested magistrates to require participation in the Sex Offender Program as a precursor to dismissing the matter without penalty.²⁷⁵

We have subsequently been advised that this was only a problem in the early stages of the implementation of the Act, and is not an ongoing problem.²⁷⁶ However, it does highlight that the question of the appropriateness of registration for young people convicted of registrable offences, even with the higher sentencing thresholds, has caused concerns within judicial circles.

8.3.1.2. Certain other offences, including non-sexual offences

The need for a review or appeal mechanism was also raised in relation to persons convicted of registrable offences that did not necessarily have a sexual element, such as murder or kidnapping. Discussion about these registrable offences can be found in *Chapter 6: Registrable offences*.

For example, one crime manager we interviewed told us about a case where a person was on the Register as a result of a kidnapping conviction and he considered there should have been a way to review the person's registrable status:

*Basically they just mugged this boy and then took him around the city for advantage, but there was nothing of a sexual nature in the offence at all. This just seems like an unnecessary person to have to monitor along with actual serious offenders or people of a particular risk.*²⁷⁷

The mother of a registered person contacted our office about the possibility of review for her son's case. She was concerned not only because he committed his offence as a young person, but also because of the nature of his offence. As a 16 year old he had murdered a 17 year old. There was no sexual element to the crime. His mother felt very strongly that the Act should contain some review or appeal provisions so that cases like her son's, which did not involve a 'child protection' offence, could be assessed to determine if registration was appropriate.²⁷⁸

The two women who are on the Register as a result of killing a child due to post-natal depression and are detained as forensic patients have expressed their concern about a lack of a review or appeal provision to allow them to apply for exemption from registration on the basis that they had been assessed as not being a danger to the community. Their cases are outlined at in *Chapter 6: Registrable offences*. One stated, 'If I'm acquitted by the law and I'm not dangerous to the children I should not be registered.'²⁷⁹ The other wrote to the Child Protection Registry seeking removal of her name from the Register on the basis that she was no longer a forensic patient, having been unconditionally released some six months previously.²⁸⁰ This woman was very concerned that she would be required to be on the Register for 10 years although the Mental Health Review Tribunal had found that 'no member of the public will be seriously endangered' by her release.²⁸¹

Some other submissions have been made about the need for provisions to allow for some registered persons to be absolved of registration obligations in particular circumstances. For example, one registered person argued that people in his situation should not be on the Register. This man was convicted of an offence resulting from behaviour that is no longer illegal, namely, homosexual activity with a young male aged between 16 and 18. He told us the he believes there should be provision for him and other people in similar circumstances to apply for exemption from registration obligations.²⁸²

A crime manager submitted that the special circumstances of individuals need to be considered through an appeal system that examines the merits of individual cases.²⁸³ By way of example, she referred to a registered person in her command who she believed was not 'a danger to society'. This man had been convicted of an offence arising from 'a one off situation with a particular girl', which the crime manager described as a long-standing consensual relationship, notwithstanding that it commenced some years prior to the girl reaching the age of consent.

Similarly, one registered person told us that he felt there should be some option for discretion in respect of registration requirements in cases such as his. He was convicted of registrable offences arising from a consensual relationship with a 15 year old when he was 21, which occurred nearly 20 years before the charges were laid. He referred to the judge's comments that he is not 'a paedophile or a person who could be described as having paedophilic tendencies ... [and] ... that he presents no risk to the community'. He stated: 'I genuinely believe there should be some discretionary powers available ... How ridiculous it just does not make sense ... I feel very strongly about my situation.'²⁸⁴

8.3.2. Possible options for appeal and review provisions

The review understands that appeal provisions were not included in the legislation to simplify the process and avoid the delays and costs likely to arise if it were open to all potential registrable persons to appeal against their obligations.²⁸⁵ However, there was some support among submissions to our review for some form of discretion, review or appeal in determining a registration obligation in certain circumstances.

A number of options for a review mechanism or discretionary registration have been suggested to the review. These include:

- a broad review role for a body such as the ADT, similar to that under the *Child Protection (Prohibited Employment) Act* ²⁸⁶
- an appeal to the ADT for exemption from registration 'where special circumstances exist', for example where a young person is convicted of an offence arising from consensual sex ²⁸⁷
- judicial appeal to a court, such as the Children's Court ²⁸⁸
- an appeal to a specially constituted body ²⁸⁹
- limited discretion by the sentencing judicial officer, particularly for kidnapping and murder offences, to determine whether there was a sexual element and if a registration requirement should apply ²⁹⁰
- a form of internal review by the Child Protection Registry in certain limited cases.²⁹¹

Some parties who have recommended that there be some form of appeal against the requirement to register for persons convicted of non-sexual offences have not suggested a specific mechanism.

While the APMC working party has not supported the inclusion of any review or appeal mechanism in nationally consistent registration legislation, it has recommended that kidnapping not be a registrable offence except when ordered by a court under a proposed discretionary registration scheme.

We are of the view that the inclusion of a broad appeal provision in the Act could make the system unmanageably complex with unacceptable delays and costs. However, the Minister may wish to consider whether there is scope for a limited discretionary system in certain narrow circumstances, where it can be established that the person does not pose a risk to the safety of children.

Endnotes

²⁴⁰ Section 16 *Child Protection (Offenders Registration) Act*. Section 16(1) provides that the section applies to a registrable person whose reporting obligations have continued for the prescribed period, and will continue for the rest of the person's life unless an order is made under this section. Section 16(11) provides that the 'prescribed period' is 15 years from the date on which reporting obligations commenced.

²⁴¹ Section 16(4) *Child Protection (Offenders Registration) Act*.

²⁴² Section 16(6) *Child Protection (Offenders Registration) Act*.

²⁴³ Section 16(10) *Child Protection (Offenders Registration) Act*.

²⁴⁴ Section 16(9) *Child Protection (Offenders Registration) Act*.

²⁴⁵ Section 16(5) *Child Protection (Offenders Registration) Act 2000* is removed from the new Section 16 in the Amendment Bill.

²⁴⁶ Section 16A *Child Protection (Offenders Registration) Amendment Bill 2004*.

²⁴⁷ Section 16(7) *Child Protection (Offenders Registration) Amendment Bill 2004*.

²⁴⁸ Submission numbers 5, 6, 9, 12, 13, 19, 20, 21, 25, 26, 32, 41. See Appendix 4 for details of submissions.

²⁴⁹ Submission numbers 5, 9, 12, 19, 20, 21, 32, 41. See Appendix 4 for details of submissions.

²⁵⁰ Submission no 42 from NSW Police, 22 January 2004.

²⁵¹ Letter from Child Protection Registry to registered person RP16, 20 November 2003. Copy provided to this office on 12 March 2004. See Appendix 5 for anonymised details of registered persons interviewed during the review.

²⁵² Letter from Child Protection Registry to registered person RP8, 26 November 2002. Copy provided to this office on 17 December 2002.

²⁵³ Letter from Child Protection Registry to registered person RP8, 26 November 2002

²⁵⁴ Submission no 25, from NSW Commission for Children and Young People, 14 October 2003

²⁵⁵ Submission no 32 from Privacy NSW, 19 November 2003.

²⁵⁶ Submission no 13 from Patricia Wagstaff, 12 October 2003.

²⁵⁷ Inter-jurisdictional Working Party Report to the APMC, June 2003., p87.

²⁵⁸ Inter-jurisdictional Working Party Report to the APMC, June 2003.

- ²⁵⁹ Four enquiries were made to our office by registered persons: RP8 in a letter 17 December 2002 and subsequent phone conversations, RP9 in an interview on 26 February 2003, RP15 in a phone conversation 21 January 2004; RP13 letter received 22 August 2003, RP16 in a letter dated 12 March 2004; and in submission no 19 from a registered person, 15 October 2003. See Appendix 5 for anonymised details of registered persons interviewed during the review.
- ²⁶⁰ Survey no 52.
- ²⁶¹ Survey no 40.
- ²⁶² Survey no 84.
- ²⁶³ Survey no 167.
- ²⁶⁴ Survey no 84.
- ²⁶⁵ Interviews with crime managers, March 2004, LAC 21 Northern Region.
- ²⁶⁶ Interviews with crime managers, March 2004, LAC 5 Greater Metro Region.
- ²⁶⁷ Submission number 9, Shopfront Youth Legal Centre, 17 October 2003.
- ²⁶⁸ Submission number 20, NSW Law Society, 20 October 2003.
- ²⁶⁹ Submission number 12, NSW Young Lawyers, 16 October 2003.
- ²⁷⁰ Submission number 41, Juvenile Justice Advisory Council of NSW, 24 December 2003.
- ²⁷¹ Meeting with Sex Offender Program counsellors, DJJ, 23 May 2002.
- ²⁷² Submission from NSW Police, 22 January 2004.
- ²⁷³ Hunt, David (October 2001) 'Child Protection through Offender Registration' *Judicial Officers' Bulletin Vol 13 (9) pp65-68*.
- ²⁷⁴ Meeting with David Hunt, Ministry for Police, 18 April 2002.
- ²⁷⁵ Letter from NSW Young Lawyers Criminal Law Committee to the Attorney General, dated 18 September 2002, copy sent to the Ombudsman by the Law Society of NSW on 12 November 2002.
- ²⁷⁶ Meeting with Child Protection Registry, 20 July 2003 and in phone conversations with DJJ Sex Offender Program counsellors.
- ²⁷⁷ Interviews with crime managers, February 2004, LAC 5 Greater Metro Region.
- ²⁷⁸ Interview with mother of registered person RP15, 21 January 2004. See Appendix 5 for anonymised details of registered persons interviewed during the review.
- ²⁷⁹ Survey no 208.
- ²⁸⁰ Letter to Child Protection Registry dated 15 November 2002, copy provided to this office on 17 December 2002 by the registered person RP8. See Appendix 5 for anonymised details of registered persons interviewed during the review.
- ²⁸¹ The Mental Health Review Tribunal must make this assessment under section 82 of the *Mental Health Act 1990* in order to unconditionally release a person from forensic status.
- ²⁸² Submission number 19 from a registered person, 15 October 2003.
- ²⁸³ Submission number 5 from crime manager, Waratah LAC, 16 October 2003.
- ²⁸⁴ Letter from registered person RP16, 12 March 2004. See Appendix 5 for anonymised details of registered persons interviewed during the review.
- ²⁸⁵ Report of the Child Sex Offender Registration Working Party, 'Registration with Police of child sex offenders and other serious offenders who pose a risk to child safety and Government Agency use of information concerning such offenders', November 1999.
- ²⁸⁶ Hansard, Legislative Council, 4 July 2001, The Hon Ian Cohen, The Greens, second reading speech, Child Protection (Offenders Registration) Amendment Bill. This possibility, in respect of young people only, was also raised by Shopfront Youth Legal Centre in its submission dated 17 October 2003, and in the submission from NSW Young Lawyers, 16 October 2003.
- ²⁸⁷ Submission from Shopfront Youth Legal Centre, 17 October 2003
- ²⁸⁸ The Hon Ian Cohen, Greens, has suggested that the Children's Court could be given jurisdiction to review an individual's reporting requirements where the offence was committed by a child. See Hansard, Legislative Council, 4 July 2001. The IDRS has also put forward this option, in its Briefing Paper, June 2001, as has the Law Society in its submission dated 20 October 2003.
- ²⁸⁹ The Crime Prevention Committee of the Victorian Parliament recommended the establishment of Sex Offender Registry Review Panel to review the registration status of adolescent sexual offenders. Victorian Parliament Crime Prevention Committee, *Combating Child Sexual Assault: An Integrated Model: First Report upon the Inquiry into Sexual Offences Against Children and Adults*, 1995. Cited in NSW Parliamentary Library Research Service, 'Megan's Law' and other forms of sex-offender registration, Rachel Simpson, Briefing Paper No 22/99, 2001. P 15. A similar option was also raised by a number of respondents to our survey of registered persons.
- ²⁹⁰ Submission from Department for Women, 22 October 2003, and submission no 19 from a registered person, 15 October 2003, and letter from registered person RP16, 12 March 2004. See Appendix 5 for anonymised details of registered persons interviewed for the review.
- ²⁹¹ Raised in meetings with the Child Protection Registry, 13 November 2001 and 23 July 2002. Also in submission no 32 from Privacy NSW, 19 November 2003.

Chapter 9. Conclusions and recommendations

The Act provides for the Register to cover particular types of offenders, with the requirement for registration being an automatic consequence of a conviction for a 'registrable offence', subject to specified sentencing thresholds. There is currently no discretion or mechanism for review to exempt people who would otherwise be registrable from their reporting obligations, other than a right of review to the ADT after 15 years for offenders required to comply with reporting obligations for their lifetime. Significantly, the ADT can only make an order suspending an applicant's reporting obligations if it considers that 'the person does not pose a risk to the safety of children'.

An important issue which has arisen in the course of our review is whether the inclusion of certain types of offender on the Register is appropriate. We have received a variety of submissions and views on this issue, which have been set out in detail in the proceeding chapters of this report. The submissions and views provide a range of perspectives on whether certain types of offender should be included on the Register.

We recommend that the Minister, in conducting his review of the policy objectives of the Act, take these perspectives into account in determining whether the inclusion of certain types of offender on the Register is appropriate and whether there is scope for some offenders currently on, or liable to inclusion on, the Register either to be excluded from the Register or to seek exemption from the registration and reporting obligations imposed by the Act. In making this recommendation, we emphasise that the issue of whether it is appropriate for any offenders to be excluded from the Register must depend on whether the offender can properly be considered not to pose a risk to the safety of children. If there is any question or doubt as to whether a person poses a risk to the safety of children, the person should be included on the Register and subject to the reporting obligations imposed by the Act.

There are a number of people on the Register as the result of a conviction for an offence where the sexual activity involved is no longer illegal. This is essentially as a result of legislation lowering the age of consent for homosexual activity from 18 to 16 years. The objection to the inclusion of these people on the Register is that it is anomalous that they should be on the Register, and continue to be subject to reporting obligations, when they could not now be convicted of any offence at all in respect of the behaviour in question and therefore would not be subject to inclusion on the Register. We consider that this is a legitimate objection. However, the Act in its present form includes within the definition of a Class 2 offence any offence that 'at the time it was committed' was a Class 2 offence, and the proposed amendments to the Act include the extension of this concept to Class 1 offences.

We therefore recommend that the Minister introduce a provision or review mechanism which would permit the removal from the Register of those persons currently registered who were convicted of offences where the sexual activity which formed the basis for the offence is no longer illegal.

There does appear to be one clear anomaly in the sentencing thresholds for adults and young persons giving rise to inclusion on the Register. A person convicted of a registrable offence is not subject to the Act where the matter has been dismissed under section 10 of the *Crimes (Sentencing Procedure) Act 1999* or section 33(1)(a) of the *Children (Criminal Proceedings) Act 1987*. The former Act is applicable to adults, the latter to children. Under section 10 of the *Crimes (Sentencing Procedure) Act*, a judicial officer can impose a good behaviour bond on an adult and then dismiss the matter – meaning the person is not liable to inclusion on the Register. However, if a judicial officer wishes to impose a good behaviour bond on a child, this cannot be done by way of a dismissal under section 33(1)(a) of the *Children (Criminal Proceedings) Act 1987* – it can only be done under section 33(1)(b) of that Act. This means that, unlike an adult offender, a child given a good behaviour bond is liable to inclusion on the Register.

We recommend that this anomaly in the sentencing thresholds for adults and children be rectified.

9.1. Recommendations

RECOMMENDATION 1: That the Minister, in conducting his review of the policy objectives of the Act, take into account the various submissions and views set out in this report in determining whether the inclusion of certain types of offender on the Register is appropriate and whether there is scope for some offenders currently on, or liable to inclusion on, the Register either to be excluded from the Register or to seek exemption from the registration and reporting obligations imposed by the Act.

RECOMMENDATION 2: That there should be a provision or review mechanism which would permit the removal from the Register of those persons currently registered who were convicted of offences where the sexual activity which formed the basis for the offence is no longer illegal.

RECOMMENDATION 3: That the anomaly in the sentencing thresholds for adults and children where a good behaviour bond is imposed be rectified.

In response to the consultation draft of this report provided to NSW Police, the former Minister for Police provided comments on these recommendations.²⁹²

In relation to recommendation 1, the former Minister has stated that he will take into account the submissions and views set out in this report when conducting his review of the policy objectives of the Act. However, he also advised that he did not intend to recommend any exclusions or exemptions from the Register. The former Minister also provided additional data and information concerning the risk of re-offending for certain types of offenders.

In relation to recommendation 2, the former Minister stated that he did not support the introduction of a review mechanism to permit removal from the Register. However, he advised that he would consider whether there should be a provision to permit removal from the Register of any persons currently registered who were convicted of offences where the activity that formed the basis for the offence is no longer illegal.

In relation to recommendation 3, the former Minister noted that some submissions to this review have highlighted a disparity between sentencing thresholds for adults and children where a good behaviour bond is imposed. He noted that this anomaly related to Class 2 offences where special provision is already made for juveniles. He commented that, under the *Child Protection (Offenders Registration) Act 2000* a juvenile must have committed two Class 2 offences to qualify as registrable, whereas an adult will qualify to register having committed only one Class 2 offence, and suggested that this may serve to adequately address the sentencing anomaly highlighted by this review.

We note these recommendations will be further considered in the Minister's review of the Act.

Endnotes

²⁹² Letter from the Hon. John Watkins MP, Minister for Police, 2 January 2005.

Part 3.

Registration requirements

The chapters in this Part focus on the registration and reporting requirements of the Act. Specifically, these chapters deal with how registrable persons find out about their registration obligations and what those obligations entail. This includes what information registered persons are required to report to police, the procedures for registration and reporting, and how long reporting obligations continue. This Part also discusses the consequences for registered persons not complying with their obligations under the Act, and addresses specific issues for people with special needs.

We note that many of the issues and matters of concern discussed in the following chapters are already being addressed through the provisions of the Child Protection (Offenders Registration) Amendment Bill 2004 which is currently before Parliament. We have included information about the proposals in that Bill.

Chapter 10. Notification of the obligation to register

10.1. Relevant provisions of the Act and Regulations

The Act provides that a registrable person must be given written notice of their reporting obligations, and the consequences of failing to comply with those obligations, as soon as practicable after being sentenced.²⁹³ Although the Act requires that the sentencing court do this, the Regulations provide for 'supervising authorities' to exercise this function in certain cases.²⁹⁴ For example, the Act and Regulations provide for NSW Police or the supervising authority to notify registrable persons serving community-based sentences of their reporting obligations at the start of their supervised sentence.²⁹⁵ The Act also provides for the supervising authority to notify registrable persons prior to release for those serving a custodial sentence.²⁹⁶

Supervising authorities are agencies that supervise registered persons after sentencing and are defined in the Regulations.²⁹⁷ They are:

- the DCS, for offenders in custody or serving a sentence supervised by the probation and parole service
- the DJJ, for young offenders in detention or serving a community-based sentence
- the Pre-Trial Diversion of Offenders Program, for participants in that program
- the Department of Health, for forensic patients.

The Act also requires the sentencing court to inform NSW Police of notices given to registered persons under the Act.²⁹⁸ Supervising authorities must also advise NSW Police when a community-based or custodial sentence for a registered person ends.²⁹⁹ The Act also provides for NSW Police to notify a person of their reporting obligations, if this has not been done by another authority.³⁰⁰

An outline of courts' and supervising authorities' policies and procedures for how they determine whether they must notify a registrable person of their registration obligations, and how that is done, is set out in Appendix 6.

There are also additional provisions in the Regulations for the notification of forensic patients and registrable persons who are children or who have special needs.³⁰¹ The notifying body must 'take such measures as are reasonably practicable' to assist a registrable person who is a child or a person who has a special need, and is incapable of understanding a statutory notice.³⁰²

The Regulations outline some of those measures, while making it clear that possible measures should not be limited to the options provided. The measures include:

- an oral, video or audio recording
- a simplified written version of the notice
- use of an interpreter or another person to explain the notice
- having the assistance of a support person.³⁰³

Where a child or a person with a disability is incapable of understanding their registration obligations, notification may be given to that person's nominee, or parent, guardian or carer.³⁰⁴

10.2. Relevant provisions of the Child Protection (Offenders Registration) Amendment Bill 2004

The most significant aspect of the Child Protection (Offenders Registration) Amendment Bill 2004 in respect of notification is the provision of a new power for police to detain a person where there are reasonable grounds to suspect the person is a registrable person who has not been notified of their obligations.³⁰⁵ The provisions allow for the detention only to be for the purposes of determining whether the person is a registrable person who has not been notified, and for the person to be given notice of their obligations, if required. The person must be released immediately these purposes have been fulfilled.

The amendment Bill also includes some minor amendments to clarify the responsibilities of supervising authorities in terms of notifying NSW Police of when a registrable person leaves custody.³⁰⁶

Snapshot of notifications³⁰⁷

In the first two years of the Register's operation, to 15 October 2003, 970 notices were issued under the Act, advising of an obligation to register.

The majority of these notices (527) were issued to persons already subject to supervision at the commencement of the Act, or at the start of a sentence (under section 5 of the Act). For the most part these were issued by the probation and parole service and the DJJ. A small number were issued by the Pre-Trial Diversion of Offenders Program and the Department of Health.

A further 306 persons were notified at the end of a custodial sentence. In most instances these were issued by DCS, with a few issued by the DJJ.

Court officers issued notices to 50 registrable persons.

NSW Police notified a further 87 registrable persons.

Almost all registrable persons (923) signed their notices as an acknowledgement that it had been issued, with only 16 people actively refusing to sign. A further 31 notices were unsigned. Of the notices where the registrable person refused to sign:

- twelve were issued at the start of a supervised sentence, the majority (10) by the probation and parole service
- three were issued on release from custody, by DCS
- one was issued by a Local Court.

10.3. Commentary on the operation of the provisions

10.3.1. How current practice differs from legislative requirements

The Regulations provide for the sentencing courts' notification functions to be exercised by DCS and the DJJ in respect of persons serving custodial sentences, but not community-based sentences. Technically, registered persons serving community-based sentences should be notified by the sentencing court at the time of sentencing and then again by police when they register at their local police station, or if they have not been notified by the courts, by the probation and parole service or DJJ at the start of the supervised sentence. We are aware that in practice, the sentencing courts are often not notifying these persons, and only retaining the responsibility for the notification of registered persons sentenced to non-supervised community sentences. While it appears that notification for registrable persons is not occurring in strict accordance with the Act, this does not seem to result in any failures in registered persons being notified of their obligations.

Strict adherence to the Act would mean that registrable persons serving supervised sentences would be notified twice within a short timeframe. This would appear to serve no useful purpose. In our view it would be more appropriate for the Regulations to be amended to authorise DCS and DJJ to exercise the sentencing courts' notification functions for all registrable persons for whom they have responsibility. Changes to the notification provisions are discussed further in the conclusion to Part 3.

10.3.2. Notification problems for supervising authorities

NSW Police, the DCS, courts, registered persons and some community stakeholders have provided the review with details about some notification problems.

10.3.2.1. Courts

There have been some suggestions that the greatest number of problems with notification appear to be occurring where notification has remained the responsibility of the courts.³⁰⁸ A review of the Sex Offender Register in the United Kingdom also found problems with the provision of registration information by the courts, both to registrable persons and to the police.³⁰⁹

In its submission, Local Courts acknowledged this, and set out the difficulties faced by the courts in notifying registered persons of their obligations:

While registry staff have made genuine attempts to discharge the requirements under section 4 of the Act it is apparent from feedback provided by the NSW Police Child Protection Registry that there is a high incidence of written notification not being provided to registrable persons at the time that a relevant sentence is imposed. This is due to a number of factors.

Clause 11 of the *Child Protection (Offenders Registration) Regulation 2001* requires written notice to be personally handed to the registrable person. In respect of non custodial sentences, registry staff have a limited opportunity to effect service of the notice at the time the registrable person attends the registry office to collect a copy of the sentencing order. Unless identification of the offender as a registrable person is immediately completed the opportunity of the sentencing court to effect service in accordance with section 4 will be lost.

The capacity of registry staff to immediately identify an offender as a registrable person is made more difficult by the complex criterion applying to registrable persons. Staff must have regard to a variety of factors including the nature of the offence, the age of the victim, the existence of previous relevant convictions and the nature of the sentence imposed. The complexity of the interplay of these factors precludes any automatic electronic flag being created on case management systems to identify offenders as registrable persons. As a result registry staff are required to undertake a manual check of these matters. In order to assist staff identifying these matters agreement has been reached with NSW Police that requires the officer in charge of the case to submit a Form 1 with the charges containing information relevant to the process of identification. This form is filed with the court papers in a plain sealed manila envelope marked to the court officer's attention.³¹⁰ The use of a plain manila envelope without distinctive markings has resulted in instances of staff overlooking the requirement to provide notification. In addition, instances have occurred where the Form 1 has not been filed to alert registry staff that the offender is a potentially registrable person.³¹¹

10.3.2.2. Department of Corrective Services

The DCS has a major notification role. DCS is advised by the Child Protection Registry of persons sentenced in respect of registrable offences. Each correctional centre creates a weekly report to identify inmates who must be issued with a notice at commencement of sentence. The notification is undertaken by the case management team. Registrable persons are also notified on discharge from custody. As part of the discharge process, it is determined if an inmate is a registrable person and requires notification. An officer then issues the notice as part of the discharge interview. A weekly report is also created to determine which newly sentenced periodic detainees must be notified. The manager of the Periodic Detention Centre issues the notice to the detainee at the first opportunity.

No weekly report is produced in respect of registrable persons who require notification, who are under the responsibility of the probation and parole service. Instead the DCS computer system flags registrable persons when details of the court order are entered into the system as part of standard procedure. After conferring with the Child Protection Registry, the registrable person's probation and parole officer issues a notice, if required. Once the notice has been issued, the system is updated with the details which are then transmitted electronically to the Child Protection Registry.³¹²

While DCS has indicated that on the whole the system operates effectively for inmates, it notes there is often a delay between the time the person is sentenced and when DCS becomes aware that the person is a registrable person who needs to be notified. DCS also reported that there have been a few instances where notices have not been served, often due to problems with the computer system.³¹³ One instance is described in case study 7.

Case study 7.

The electronic list provided to DCS by the Child Protection Registry indicated that a particular inmate was a registrable person and he was properly notified of his obligation to register on his reception into custody under section 4. However, due to a computer glitch, the system was no longer showing that he was a registrable person at the time of his discharge from custody. He was therefore not issued with a notice by DCS under section 6 on discharge, as required by the Act.

DCS also told the review that in three instances it was unable to notify registrable persons sentenced to periodic detention as they had never reported to a centre. However, in all these instances, DCS informed the Registry of the failure to notify and the Registry arranged for police to issue the notice, which is illustrative of the system working rather than of failure.

As the data indicates, the probation and parole officers have been, and continue to be involved in notifications of registrable persons who have received a community-based sentence. In part, this is due to a number of offenders serving these orders at the commencement of the Act. In addition, in many circumstances sentencing courts are not undertaking the initial notification of registrable persons sentenced to a supervised sentence. Where this occurs, the probation and parole service processes identify these persons and notify them of their registrable requirements.

There was only limited training for the probation and parole officers, through the issue of a memo advising of procedural arrangements, based on the understanding that they would have only a secondary role in the notification process.³¹⁴

Although the Act and Regulations requires registrable persons to be notified by police, DCS or DJJ as soon as practicable after the commencement of their supervised sentence, under a strict interpretation of the Act they should have already been notified by the sentencing court. Some of the probation and parole officers have told the review that, when the Register first commenced, they felt they did not have a sufficient understanding of the legislative requirements to fully respond to clients' queries about their registration obligations.³¹⁵

10.3.2.3. NSW Police

If the Child Protection Registry advises a LAC that a registrable person in the LAC has not been notified by another authority, or if an officer intercepts a registrable person with a 'notification required' warning on COPS, then police are responsible for issuing that person with a notice under section 7. The SOPs outline how this is to be done. After generating a 'Form 3' from COPS, police issue this in person, informing the registrable person that it is an offence not to register within the 28 day time limit noted on the form. If the time limit has expired, the officer is required to make an appointment for the registrable person to see the crime manager within five working days, informing them that they will not be charged if they attend a police station and register within that time. The officer then sends the signed Form 3 to the Registry, which updates the Register.³¹⁶ There are separate procedures for the notification of a registrable person who is a child or has a disability, which are discussed further later.³¹⁷

In discussions with this office, the Child Protection Registry raised concerns about the ability of police to notify a person of their requirement to register, if a person refuses to remain with police while their obligations are explained to them. If the person leaves, there is a possibility that police may not be able to easily locate them again.³¹⁸ However, NSW Police did not raise the issue in its submission to the review and we have not received any information on the extent of the problem.

The report of the APMC working party discussed this issue and recommended that nationally consistent legislation should contain a provision to allow for police to detain a registrable person for the purpose of notification.³¹⁹ The national model legislation contains a provision to this effect, as does the Child Protection (Offenders Registration) Amendment Bill 2004, as outlined above.³²⁰

It is unusual for there to be the power to detain a person in the absence of an offence being committed.³²¹ As we are not aware of the extent of the problem, it is difficult to ascertain whether this may be an instance where it is warranted and an amendment to the Act required. This issue is discussed further in the conclusion to Part 3.

10.3.2.4. Other supervising authorities

The DJJ has produced a detailed document setting out the management of its responsibilities under the Act.³²² It has informed this review that it has not encountered any major problems in meeting its obligations under the Act.³²³

The Pre-Trial Diversion of Offenders (PTDO) program informs potential participants of their Register obligations at the time of referral for assessment by way of a letter. At the time of sentencing the formal notification is provided through the issue of a Form 3 by the PTDO program officers.³²⁴ The PTDO program then advises the Child Protection Registry of the details of the registrable person. The Registry then calculates the reporting period and advises the program, which in turn informs the participant.³²⁵ The PTDO program has not identified any significant problems to the review, other than to indicate that the notification process would be enhanced if the reporting period was calculated at the time of sentencing rather than subsequently.³²⁶

The Department of Health has provided verbal advice to the review about its obligation to notify forensic patients.³²⁷ DCS reports there has been some confusion over the responsibilities of notifying forensic patients.³²⁸ We understand that the arrangements for the notification of forensic patients were in a state of flux during the review period, due to internal structural changes within the Department of Health. The Forensic Executive Support Unit of the Department currently has the responsibility for all aspects of the management of forensic patients. It receives advice when a forensic patient who is registrable is due to be released, and advises the Child Protection Registry. Staff of the unit issue the Form 3 notification to the forensic patient. The unit is newly set up, and has not yet developed written guidelines for this process. We are advised that the number of forensic patients requiring notification is very small, with only two new notifications in the previous year. Issues relating to the notification of forensic patients are discussed further below, under the heading 'Notification for Persons with Special Needs'.

It may be useful for the Child Protection Registry to take a coordinating role in the development and provision of training to the staff of supervising authorities in undertaking the notification role, and to work with them to review their procedures. This is discussed further in the conclusion to Part 3.

10.3.3. Notification problems for registrable persons

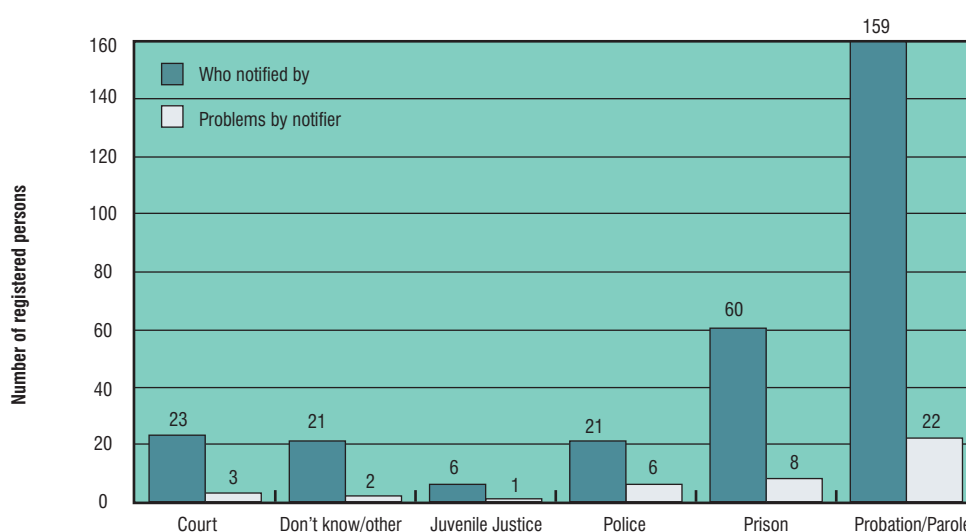
Overall, very few registered persons indicated to the review that they had experienced any problems with the notification process. Of the 293 that responded to our survey, only 38 (13%) indicated there were some problems with the way they

were notified. The majority of these (60%) had been notified more than a year after they were sentenced.³²⁹ Generally, these would have been 'existing controlled persons' who could not have known at the time of sentencing that they might have registration obligations. Consequently, nearly half of the notification problems reported were actually concerns expressed about the application of the legislation to convictions occurring prior to commencement, and the distress of finding out at the end of a sentence that they had continuing obligations.

It could be argued that the distance in time from sentencing to notification does appear to impact on at least some registered persons' experience of learning of their registration obligations. However, this effect should reduce over time, once the majority of existing controlled persons are notified and complete the registration process. Further discussion on the issue of the retrospective aspect of the Act can be found in *Chapter 6: Registrable offences*.

The remaining concerns were generally about being given insufficient, incorrect or incomplete information, or the manner or approach of the notifying officer. In most cases these concerns were similar regardless of which supervising authority was responsible for the notification.

Figure 3: Survey of Registered Persons: notifying agencies and any associated problems



Source: Responses to Ombudsman survey of registered persons, January 2004 N=293

As Figure 3 above indicates, about half of our respondents who said they had a problem with notification had been notified by their probation and parole officer. However, as the proportion of persons notified at the start of a community sentence is about 55 per cent (from both the Register data and of our survey respondents) this is not indicative of any particular problem with the notification procedures or processes of the probation and parole service.

Some of the problems reported by persons notified by the probation and parole officers were:

*Originally, nobody told me it was compulsory. Then after I was given the pamphlet, I was told to see the police and get on the register or I could be in more trouble.*³³⁰

*Parole officer] didn't know much about it. Even the police officer wasn't shore of the time I would be registered. I asked, and was told 'Only untill you finish your sentence.' Apparently 'they' changed the law after I saw the officer.*³³¹

*Was not explained that I had to notify of change of address to current officer before moving, nor is it in the documentation.*³³²

*I was nearly told too late. I ended up going in about 7pm one night. The next day would have been too late.*³³³

Only two of the registered persons who responded to our survey who said they had a problem with notification, were notified by a court officer. These respondents reported that:

*Basically I had to ask the prosecuting officers [what registration entailed].*³³⁴

*A public servant from the court house rang me at home and told me they forgot to get me to sign some papers.*³³⁵

The only respondent notified by the DJJ who reported having a problem with the way he was notified, advised:

*Wrong forms were given and no explanation why I had to register. It doesn't work for U18's even the forms don't compensate for age.*³³⁶

One person notified by a prison officer commented:

*My rights were not explained I did not receive a brochure as other inmates did.*³³⁷

A lack of privacy during the notification process was reported by one person who was notified by police:

*Uniformed officer and wagon to my house would not come inside. Full view of neighbours.*³³⁸

Registered persons we interviewed who were participants in the Pre-Trial Diversion Program did not report any difficulties with notification, providing comments such as: 'it was all thoroughly explained'; 'detailed explanation' and 'nothing left out.'³³⁹

There have been a few instances where information about reporting periods has been inconsistent, unclear or absent.³⁴⁰ The reporting period is not included in the Form 3 but rather is calculated by the Child Protection Registry after notification and verified at a later time or at registration.³⁴¹ The issue of the complexity of calculating reporting periods, and how this impacts on understanding and complying with reporting obligations, is discussed further in Chapter 12.

10.3.4. Responsibility for notification

A range of views about who should be responsible for notification has been put to the review. As this is a policy rather than operational issue, we provide details of these for the purposes of advising the Minister.

Various parties have expressed the view that notification of registration obligations should be provided at the time of sentencing, possibly by the sentencing judicial officer.³⁴² However, this is clearly at odds with the intention of the Government when it determined that judicial officers should have no role in any aspect of the registration process. The Law Society is concerned that the Regulations, for the most part, remove notification from the courts and instead make it the responsibility of the supervising authorities.³⁴³

On the other hand, the Local Courts question the benefit of requiring sentencing courts to have a notification requirement at all.³⁴⁴ The Director, Local Courts argues that there is an 'inherent incongruity' in a situation that removes judicial officers from involvement in advising of registration obligations, but that retains the requirement for sentencing courts. He argues that this, combined with the complexity of the assessment process, creates an unreasonable burden for Registry staff.³⁴⁵

Court officers may be assisted in their role if they only had responsibility for a simplified level of notification: that is, they were only required to advise a person that they are registrable and must attend a police station within 28 days to register or they are committing an offence, and not have to provide details of all the reporting obligations. However, this would not address the difficulties courts face in identifying which persons are registrable. The notification issues for courts are discussed further at the conclusion to Part 3.

10.3.5. Notification issues for persons with special needs

Most of the concerns about the notification provisions expressed prior to the commencement of the legislation, and during the course of the review, relate to the specific needs of people with an intellectual disability, literacy difficulties or other communication problems. Generally, the concerns have been that these people may have difficulty understanding their reporting obligations and would be at greater risk of being charged with a breach offence than other registrable persons. Specifically, various parties have raised with this review their concerns about notification in respect of young people³⁴⁶, people with intellectual disabilities³⁴⁷ and Aboriginal people.³⁴⁸

However, despite these expressed concerns about potential difficulties, the review only received a few examples of actual problems with the notification process for people with special needs. While these do not appear to indicate serious or widespread problems, it is clear that for some individuals there have been particular problems.

The IDRS reported a casework experience where a reporting period was incorrectly calculated and there was difficulty in ascertaining the relevant reporting period, because of the various factors that are taken into account in determining the correct period. The issue of complexity in the determination of reporting periods is discussed further at Chapter 12. The problem was only resolved after lengthy research, interpretation of the legislation, freedom of information requests culminating in IDRS obtaining the client's criminal records in relation to the offences, and several exchanges of correspondence. IDRS noted:

*...where a person with an intellectual disability does not have the direct benefit of a legal representative, advocate or guardian they are unaware that the reporting period is incorrect. ... It would be difficult for a person with an intellectual disability to query a reporting period without the assistance from other persons or agencies.*³⁴⁹

A small number of the survey responses from registered persons indicated they had experienced problems with the notification process because of their disability or communication difficulties:

*It is difficult for an illiterate person. I told my difficulty with poor memory and uneducation. It is difficult and hard for me being mentally ill and I got recharged.*³⁵⁰

*Says he did not understand what they said due to his disability.*³⁵¹

One LAC has informed the review that in some instances, persons attending a police station to register have a very limited understanding of their obligations because although they had been given the Form 3, it had not been fully explained.³⁵² The commander suggested that in some cases it would have been helpful if the notifying agency had explained the Form 3 to the parent or guardian and not just the registrable person. The Regulations do allow for notification of a support person in situations where it is determined that a registrable person is incapable of understanding their obligations.³⁵³

Case study 8.

One LAC reported that when a person from a non-English background came in to register it was apparent that he had a very limited understanding of his reporting obligations. The police used an officer who spoke his language as an interpreter so that the registration could be completed. The registered person told police that the Form 3 had not been explained to him in his own language at the time of notification.³⁵⁴

DCS advised the review that in the two year review period there were no registrable persons received into custody who were defined as a person with a special need.³⁵⁵ This is somewhat surprising as a high proportion of inmates have mental health problems or an intellectual disability. In December 2003, the NSW Minister for Justice the Hon John Hatzistergos reported that, prior to coming into custody, 13 per cent of inmates had an intellectual disability, 75 per cent had an alcohol or other drug problem, 60 per cent were not functionally literate and 40 per cent met the diagnosis of personality disorder.³⁵⁶ It would be reasonable to expect that a proportion of these inmates would be registrable persons who might be considered to have a 'special need'.

The Regulations provide that supervising authorities should use additional measures to assist registrable persons with special needs understand their obligations, for example through the production and use of audio or video recordings or a simplified notice of obligations.³⁵⁷ Our understanding is that although there was an intention for NSW Police to produce some material to assist supervising authorities, none was developed.³⁵⁸ An English language only version of an information pamphlet was produced by NSW Police in June 2001. Copies of this were provided to supervising authorities and local area commands to give to registrable persons, at the time of notification or registration. Our understanding is that this was only distributed at the commencement of the Register, and is not currently provided to registrable persons.

It may be useful for NSW Police to reissue a pamphlet setting out reporting obligations in plain English, to be made available to all registrable persons at the time of notification or registration. Means of ensuring that registration and reporting obligations, and the consequences of not complying, are properly explained to registrable persons are discussed further in the conclusion to Part 3.

DCS advised the review that it had understood that it would receive some additional material from police, such as multilingual pamphlets, a video or a simplified notice, prior to the commencement of the Register to assist with the notification of persons with special needs. Although this was not forthcoming, DCS told us it did not believe this would cause any problems for staff issuing notices to inmates, as they were generally very experienced. DCS told us that it expected alternative forms of notification, apart from the Form 3, to be limited to providing an oral explanation, or the use of interpreters or bilingual staff, or specialist staff, such as a welfare officer or psychologist familiar with the inmate, to ensure their comprehension.³⁵⁹

The advice from NSW Police that it has received three special needs notifications from DCS, though none from any other agencies, is inconsistent with the information provided by DCS.³⁶⁰ NSW Police notes in its submission: 'There are obviously more special needs clients than these figures would suggest.'³⁶¹ It may be relevant that DCS' administrative procedures for the identification and notification of registrable persons contain no reference to assessing whether a registrable person has a special need that may warrant additional forms of notification, as required by the Regulations. See Appendix 6 for an overview of DCS notification procedures.

NSW Police noted that some officers have observed, at registration, that a registrable person may have some degree of impairment but feel they are not in a position to clinically determine whether the test of being able 'to understand a statutory notice' or 'understand their reporting obligations and the consequences of non-compliance' can be met.³⁶² This

is something that supervising authorities, with a better opportunity of having a greater knowledge of the person, should be assessing at the time of notification.

DCS reports that there is some confusion over the responsibility of notifying forensic patients, who come into custody, of their reporting obligations, namely, whether it is the responsibility of DCS or the Mental Health Review Tribunal.³⁶³ The Regulations state that the Department of Health is responsible for notifying a forensic patient while DCS is responsible for notifying an inmate.³⁶⁴ There is no clarification as to who is responsible for notifying a forensic patient who is also an inmate. We understand that status of forensic patients within the correctional system is somewhat ambiguous. Women who are found not guilty by reason of mental illness are generally held at the Bunya Unit at Cumberland Hospital, which is managed by the Department of Health. However, men found not guilty by reason of mental illness are generally held at Long Bay Hospital, within Long Bay Correctional Centre, and are under the authority of DCS.³⁶⁵

As noted above, there is now a clearer arrangement for the notification of forensic patients, following the internal restructure within the Department of Health. However, as this is only newly in place, its effectiveness may need to be monitored. The ongoing review of notification practices is discussed further in the conclusion to Part 3.

Although the Regulations provide that the Register must be in a form that enables a record to be made as to whether a registrable person is a child or has a special need or disability³⁶⁶, the necessary functionality modifications to COPS and the Register to allow this data to be entered or retrieved had not been completed by the end of the two year review period. Therefore, the review has not had access to any data on registrable persons with special needs, preventing any assessment of whether supervising authorities and/or police are appropriately determining who might have a special need and adjusting notification procedures accordingly. This is an issue that needs to be further monitored. This is discussed at the conclusion to Part 3.

Although the review was provided with some examples of problems with the notification procedures, there was no substantive issue which would suggest that any major changes to the process are required. However, this does not mean that the procedures could not be improved, particularly in relation to the identification of persons with special needs. The consequences for registered persons, particularly those with special needs, not fully understanding their obligations is discussed further in *Chapter 13: Failure to comply*. Means of addressing any concerns raised in these chapters are discussed in the conclusion to Part 3.

Endnotes

²⁹³ *Child Protection (Offenders Registration) Act* section 4(1).

²⁹⁴ *Child Protection (Offenders Registration) Regulation*, clause 6.

²⁹⁵ *Child Protection (Offenders Registration) Act* section 5(1). *Child Protection (Offenders Registration) Regulation*, clause 8.

²⁹⁶ *Child Protection (Offenders Registration) Act* section 6(2).

²⁹⁷ *Child Protection (Offenders Registration) Regulation*, clause 5.

²⁹⁸ *Child Protection (Offenders Registration) Act* section 4(2).

²⁹⁹ *Child Protection (Offenders Registration) Act* section 6(1).

³⁰⁰ *Child Protection (Offenders Registration) Act* section 7(1).

³⁰¹ *Child Protection (Offenders Registration) Regulation*, clause 12. Clause 9 also provides for an additional written notice to be given to a forensic patient once they become capable of understanding a statutory notice.

³⁰² *Child Protection (Offenders Registration) Regulation*, clause 12(1) and (2).

³⁰³ *Child Protection (Offenders Registration) Regulation*, clause 12(3).

³⁰⁴ *Child Protection (Offenders Registration) Regulation*, clause 13.

³⁰⁵ Clause 7C *Child Protection (Offenders Registration) Amendment Bill 2004*.

³⁰⁶ Schedule 1 [17] to [19] of the *Child Protection (Offenders Registration) Amendment Bill 2004* amends sections 5(1) and 6(2) of the *Child Protection (Offenders Registration) Act 2000*.

³⁰⁷ Data from the Register provided by NSW Police, October 2003. The data provided by NSW Police does not identify which agency issued the notice however it does provide information about where each notice was issued (for example Albury Local Court, the Burwood Probation and Parole Service Dee Why Police Station, Kirkconnell Correctional Centre). This has been used to make best estimates of which agency issued the notice. DCS has advised that 448 persons notified by the probation and parole service were already under supervision of the Court at the commencement of the Act. In 2003-2004, the probation and parole service notes only 50 offenders on community based orders were not issued notices by courts.

³⁰⁸ Raised in: meetings with Child Protection Registry, 26 February 2002 and 16 March 2004; submissions nos 6, 30 and 34; Inter-jurisdictional

- working party Report to the APMC, June 2003; and in a phone conversation with Rosemary Caruana, Manager Policy, Programs and Training, probation and parole service, 21 February 2002.
- ³⁰⁹ Plotnikoff, J and Woolfson, R, *Where Are They Now?: An evaluation of the sex offender registration in England and Wales*, Police Research Series Paper 126, 2000, Home Office, London.
- ³¹⁰ The 'Determination of Registrable Person Status' form completed by the charging officer. An explanation of the notification process is at Appendix 6
- ³¹¹ Submission no 24 from Local Courts, NSW Attorney General's Department, 25 November 2003.
- ³¹² Information about notification procedures taken from a memorandum from the Assistant Commissioner Inmate and Custodial Services: *2001/059 Administrative Procedures for the Child Protection (Offender Registration) Act 2000*, 12 October 2001, and in emails and phone conversations with officers of Sentence Administration Branch, DCS, 15, 23 January, 2 and 3 February 2004. See Appendix 6 for more detail on the procedures.
- ³¹³ Submission from DCS, 10 November 2003.
- ³¹⁴ Meeting with Rosemary Caruana, Manager Policy, Programs and Training, probation and parole service, 10 December 2001.
- ³¹⁵ Meetings with probation and parole officers at Fairfield, 30 January 2003, and at Penrith, 20 February, 2003.
- ³¹⁶ Section 3.2, SOPs.
- ³¹⁷ Sections 7.3, 7.4, 8.2 and 8.3, SOPs.
- ³¹⁸ Meeting with Teresa Brennan, Coordinator, Child Protection Registry, 23 July 2002
- ³¹⁹ Inter-jurisdictional Working Party Report to the APMC, June 2003.
- ³²⁰ Section 7C Child Protection (Offenders Registration) Amendment Bill 2004.
- ³²¹ An analogous power exists for police to inform persons of the conditions of apprehended violence orders, through the issue of a warrant for arrest even though a crime has not been committed. See sections 562AF, 562AJ and 562H of the *Crimes Act 1900*.
- ³²² *Registrable Offenders: Policy and Procedures*, DJJ, December 2003. See Appendix 6 for an overview of the notification procedures of the Department.
- ³²³ Submission from DJJ, 10 November 2003.
- ³²⁴ Participants in the Program enter an undertaking at the District Court after pleading guilty, in lieu of being sentenced.
- ³²⁵ Information contained in *Child Protection Register (Sex Offender Register) Cedar Cottage Procedure*, and in emails on 15 and 16 January 2004. See Appendix 6 for more details on the notification procedures of the program.
- ³²⁶ Email communication from Dale Tolliday 5 February 2004.
- ³²⁷ Phone conversation with Rosemary Pendlebury, Manager, Forensic Executive Support Unit, Department of Health, 16 August 2004.
- ³²⁸ Submission no 30 from DCS, 10 November 2003.
- ³²⁹ 35 of the 38 who said they had a problem with notification answered the question about when they were notified in relation to sentencing. Of these 35, 21 (60%) had been notified more than a year after being sentenced, with a further eight (23%) being notified within a year after they were sentenced.
- ³³⁰ Survey no 96.
- ³³¹ Survey no 214.
- ³³² Survey no 144.
- ³³³ Survey no 243.
- ³³⁴ Survey no 18.
- ³³⁵ Survey no 50.
- ³³⁶ Survey no 171.
- ³³⁷ Survey no 281.
- ³³⁸ Survey no 48.
- ³³⁹ Interviews with registered persons who are participants in the Pre-Trial Diversion of Offenders program 18, 20, 25 and 27 November 2002. See Appendix 5 for the anonymised details of persons interviewed during the review.
- ³⁴⁰ Of the 293 registered persons who responded to our survey, seven indicated that they had had some difficulty in relation to either being informed of or understanding their reporting period. Further details of these matters are in Chapter 11 on reporting periods.
- ³⁴¹ For example, the reporting period is not included in the Form 3 issued by Courts. Participants in the Pre-Trial Diversion of Offenders Program are sent a letter by the Director of the Program in advance of formal notification, advising that they will be registrable (on conviction and acceptance into the program) and that their reporting period will be between 8 and 15 years and will be confirmed later.
- ³⁴² Submission from Bravehearts, 31 October 2003; submission from individual, 13 October 2003.
- ³⁴³ Submission from Law Society of NSW, 20 October 2003
- ³⁴⁴ Submission from Local Courts, NSW Attorney General's Department, 25 November 2003.
- ³⁴⁵ Submission from Local Courts, NSW Attorney General's Department, 25 November 2003.
- ³⁴⁶ Submission from NSW Young Lawyers, 16 October 2003; submission from Sydney Regional Corporations Aboriginal Legal Services (Redfern) October 2003;
- ³⁴⁷ Briefing Paper prepared by IDRS, June 2001; submission from Law Society of NSW, 20 October 2003; submission from IDRS, 23 October 2003; submission from Privacy NSW, 19 November 2003; submission from Department of Ageing, Disability and Home Care, 20 November 2003.
- ³⁴⁸ Submission from Sydney Regional Corporations Aboriginal Legal Services (Redfern), October 2003.
- ³⁴⁹ Submission from IDRS, 23 October 2003.
- ³⁵⁰ Survey no 170
- ³⁵¹ Survey no 162. An annotation on this questionnaire states: 'I helped the person fill this out as he is illiterate.'
- ³⁵² Submission from Penrith LAC, 7 October 2003.
- ³⁵³ *Child Protection (Offenders Registration) Regulation*, Clause 13.
- ³⁵⁴ Submission from Penrith LAC, 7 October 2003. Subsequent inquiries with Penrith LAC showed although he was under the supervision of the probation and parole service he was notified at Penrith Police station.
- ³⁵⁵ Submission from DCS, 10 November 2003.
- ³⁵⁶ The Hon John Hatzistergos, Minister for Justice (NSW), Media Release 'Response to Auditor-General's Report', 4 December 2003. These figures may be conservative. In the 2001 NSW Inmate Health Survey, 18% of women and 27% of men of the sample assessed scored below the pass rate on the intellectual disability screener and 82% of women and 41% of men had had some sort of psychiatric treatment or assessment with 25% of these women and 34% of these men having been admitted to a psychiatric hospital or unit. (Corrections Health Service, 2003)
- ³⁵⁷ Clause 12(3) *Child Protection (Offenders Registration) Regulation*.

³⁵⁸ This was discussed at the Implementation Committee meetings on 7 March, 11 April and 25 July 2001, and in a meeting with David Hunt, Police Ministry on 18 April 2002.

³⁵⁹ Meeting with Paul Byrnes, Manager Operations, and Paul Cruikshank, Manager Policy and Procedure, DCS, 26 November 2001.

³⁶⁰ Submission no 42 from NSW Police, 22 January 2004.

³⁶¹ Submission no 42 from NSW Police, 22 January 2004.

³⁶² Submission no 42 from NSW Police, 22 January 2004.

³⁶³ Submission no 30 from DCS, 10 November 2003.

³⁶⁴ Clauses 6(b) and (c), *Child Protection (Offenders Registration) Regulation*.

³⁶⁵ Information provided in a personal communication with Michael Giuffrida, Director Forensic Psychiatry, Cumberland Hospital, 2 August 2004.

³⁶⁶ Clause 18, *Child Protection (Offenders Registration) Regulation*.

Chapter 11. Registration processes and reporting obligations

11.1. Relevant provisions of the Act and Regulations

There are a number of provisions in the Act setting out the details of the information registrable persons must provide to police, the timeframes for doing so and the manner in which it must be given. The Regulations include clauses relating to proof of identity and the forms of acknowledgement for the information provided.

11.1.1. Information that must be provided

The Act requires that registrable persons tell police certain 'relevant personal information'.³⁶⁷ Relevant personal information is defined in the Act as details of:

- all names the registered person is, or has been, known by
- date of birth
- their principal address and any address at which they generally reside. If the person does not have a regular place of residence, then they must provide police with details of the localities where they can generally be found
- if employed, the nature of their employment, the name of their employer and the address of each of the premises at which they are generally employed or the localities in which they are generally employed
- the make, model, colour and registration number of any motor vehicle owned by, or generally driven by, the person
- the details of their registrable offence(s), including at which court(s) and on what date(s) they were found guilty.

A person is taken to 'generally' reside or be employed at a particular place, or drive a vehicle, if they do so for more than 14 days (not necessarily consecutively) in any 12 month period.³⁶⁸

A registered person must also notify the police of any absences from NSW regardless of the length of absence if they are going overseas, and of more than 28 days if they remain within Australia. They must provide police with details of where they intend to travel and when they intend to return.³⁶⁹

The Act does not require that the registrable person provide any evidence to verify the information they give to police.

11.1.2. Proof of identity and photographs

The Regulations require registrable persons to give police a passport sized photograph of themselves, and to provide proof of their identity.³⁷⁰ This is done using a scheme similar to the '100 points' system needed to open a bank account. Alternatively, a registrable person can ask the registering police officer to confirm their identity by taking their fingerprints. If fingerprints are taken to establish identity, they can be used for this purpose only and must be destroyed immediately after the process is completed.³⁷¹ A police officer can also waive the need for a person to provide proof if they are satisfied as to the person's identity.³⁷² A parent, carer or nominee providing information to police on behalf of a registrable person who is incapable of understanding their reporting obligations or the consequences of failing to comply with them, must also provide proof of identity.³⁷³ Support persons are not required to do so.

11.1.3. Timeframes for reporting

The Act sets down various timeframes for registrable persons to give their personal details to police.³⁷⁴ These are:

- for initial registration, within 28 days of commencing a community sentence order or being released from custody³⁷⁵
- where there are any changes to these details, within 14 days of the change occurring
- following an absence from NSW of more than 28 days, advice of the person's return to NSW, within 14 days of the date of return.³⁷⁶

11.1.4. Manner in which information is to be provided

The Act provides that all personal information, including updated details, must be provided to police in person at a police station in the locality in which the person resides.³⁷⁷ Registered persons are entitled to report information in a part of the police station where no members of the public are present.³⁷⁸ An amendment which commenced in February 2003 also allows relevant information to be provided at 'some other place' approved by the Commissioner of Police'.³⁷⁹

Police must give the person written acknowledgement of the information provided.³⁸⁰

11.1.5. Other persons providing assistance with registration and reporting obligations

Any registrable person can have a support person with them while they report.³⁸¹ The Act also allows a parent, carer, guardian or other nominated person to report on behalf of a child or a person with a disability which makes it impracticable for them to provide the information in person.³⁸² The registrable person is to attend the police station as well, where possible.³⁸³ The Act does not impose any legal obligations or responsibilities on a person assisting with registration, other than that they not provide false information.³⁸⁴

11.2. Relevant provisions of the Child Protection (Offenders Registration) Amendment Bill 2004

The Child Protection (Offenders Registration) Amendment Bill contains a number of provisions which would substantially amend the Act in respect of what information registered persons must provide to police, and how that information is to be provided.

11.2.1 Information that must be provided

In addition to the current personal information required, the amendments would require registered persons to provide details of:

- the names and ages of any children who they generally reside with or have regular unsupervised contact with
- their affiliation with any club or organisation that has child membership or child participation in its activities
- any tattoos or permanent distinguishing marks (including those removed).³⁸⁵

Registered persons would no longer be required to provide details of their offences.

11.2.2. Proof of identity and photographs

The amendments would also change the provisions in relation to identification and photographs. The provisions in relation to proof of identity which are currently in the Regulations would form part of the Act, in a slightly amended form.³⁸⁶

The provisions would also allow police to take the fingerprints of a registrable person if they are not reasonably satisfied as to the identity of the person after examining all the documentation provided, or if their fingerprints are not held by NSW Police.³⁸⁷ The amendment Bill removes the requirement for fingerprints taken for the purpose of identification to be destroyed. It permits them to be retained and used for identification, law enforcement or child protection purposes.³⁸⁸

The amendment Bill would also give police the power to require a registrable person to be photographed, including any non-intimate parts of the body.³⁸⁹ The Bill allows reasonable force to be used to obtain fingerprints or to take photographs.³⁹⁰

11.2.3. Absences from NSW

The amendment Bill expands some of the requirements about when and what information registrable persons must tell police when leaving or returning to NSW.³⁹¹ It also includes a provision which would require a person to inform police of frequent absences from NSW, that is 'an average of at least once a month (irrespective of the length of any such absence)'.³⁹²

11.2.4. Timeframes for reporting

The Bill includes a provision that would reduce the timeframe for a registrable person entering NSW to report to police, from 28 to 14 days.³⁹³

It also provides for an annual reporting requirement, whereby a registered person would have to report to police by the end of the month in which the anniversary of their registration falls, even if their personal information has not changed.³⁹⁴

11.2.5. Manner in which information is to be provided

The amendment Bill includes provisions that would allow certain reporting not to be done in person.³⁹⁵ These arrangements could either apply generally or in a particular case, by way of Regulation or on the authority of the Commissioner of Police.

The Bill also includes provisions for more flexible reporting arrangements for registered persons who live more than 100 kilometres from the nearest police station.³⁹⁶ These provisions would allow a person to report outside the usual timeframes, or to provide information at another place, if the person has contacted police within the timeframe, or to report by telephone or some other means, by agreement with police. Under these provisions, the police must ensure that all such agreements are recorded, and all ensuing reports are recorded and identified by a unique reference number, which must be provided to the person.

There is also a provision in the Bill that would allow police to arrange for an interpreter to be present when a person is registering or reporting information.³⁹⁷

11.3 Relevant police procedures

While the Act defines the relevant personal information that a registered person *must* provide to police, the SOPs direct the registering officer to try to obtain further information.³⁹⁸ The attempt to obtain this additional information is referred to as 'Stage Two Registration'. For this purpose police are directed to request details of:

- any children, relatives or friends under the age of 18 years with whom they have contact, or who reside in or frequent their residence
- current use of alcohol or drugs (prescribed or illegal)
- membership of a church, sporting association or other club where children are present
- details of their current marital/relationship status
- any current treatment or therapy
- other specific details about their employment or residential arrangements.

Information obtained from Stage Two Registration is to facilitate the ongoing monitoring of an registrable person, by 'assessing the offender's current living and working conditions and behavioural patterns'.³⁹⁹ The SOPs advise police officers that this information must only be obtained after the formal registration process has been completed and after having given the registrable person a warning that the law does not require that further questions be answered.⁴⁰⁰

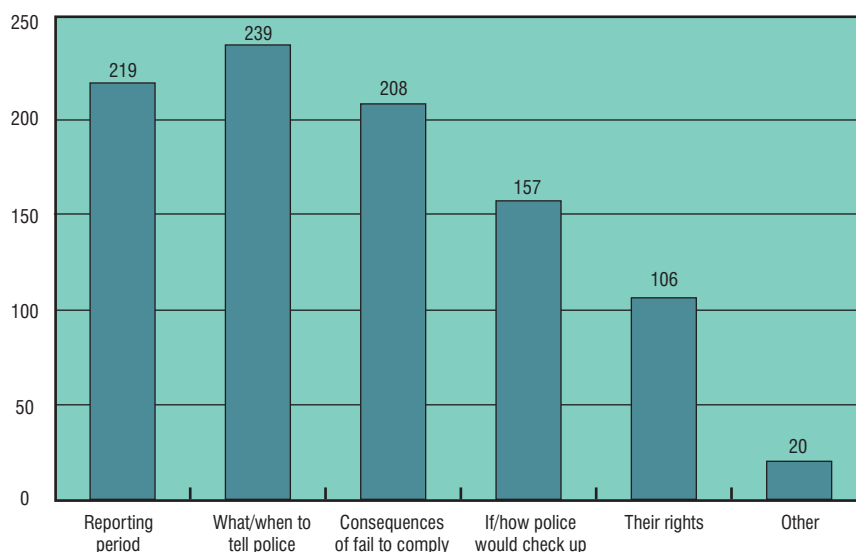
The SOPs also contain directions for police in relation to the procedures for initial registration and reporting. This includes making an appointment with the crime manager, ascertaining identification, provision of photographs, recording of relevant personal information, and issuing a receipt.⁴⁰¹ The SOPs also include directions in respect of the registration of children and persons with a disability or a special need.⁴⁰²

11.4. Commentary on the operation of the provisions

11.4.1. Information that must be provided

Most of the input to the review in respect of this issue related to whether the 'relevant personal information' that registered persons must provide to police is appropriate to ensure the Register is a useful tool for child protection purposes. While much of this debate deals with issues of policy, there are also operational implications for police. The extent and type of information police have about registered persons will impact on their ability to effectively monitor registered persons and investigate offences. It is also important that we report on the range of views we received on these issues to inform the Minister's review of the Act in relation to its policy objectives.

Figure 4: What survey respondents said they were told about their reporting obligations at their registration interview



Source: Responses to Ombudsman survey of registered persons, January 2004, N=293. Numbers per category are greater than number of respondents as more than one response was possible.

11.4.2 Contact with children

Some concerns have been raised that the information required by the legislation is insufficient for police to adequately undertake their child protection role. A specific concern is that registered persons are not required to inform police of any contact they have with children.⁴⁰³ The working party for the APMC on nationally consistent legislation, recommended that the additional information currently sought voluntarily to be required information. The APMC recommended that registered persons should be required to keep police apprised of:

... the names and ages of children who generally reside at the premises at which they generally reside, or whom they have regular unsupervised contact with [and] details of their affiliations with clubs or organisations with child memberships.⁴⁰⁴

The working party report provided the following arguments in support of this position:

Some serial offenders enter into sexual relationships, or establish friendships with people who have children. This is often part of their offending modus operandi ... Intra-familial offenders will frequently rejoin their family.

Information about offender access to, and relationships with children, is considered critical in assessing an offender's risk of re-offending. Police will have every reason to be concerned if an offender with a modus operandi of entering into relationships with vulnerable single mothers enters into another such relationship after his release from prison.⁴⁰⁵

NSW Police has told us that they strongly support the model put forward by the APMC working party.⁴⁰⁶ As outlined above, the Child Protection (Offenders Registration) Amendment Bill 2004 aims to amend the definition of 'relevant personal information' to include details of children the registered person has contact with, and affiliation with any club or organisation that involves children.⁴⁰⁷

Both the Commission for Children and Young People and Department of Community Services (DOCS) also support this position, and the recommendation that information about registered persons' contact with children should be included in the relevant personal information that must be provided to police.⁴⁰⁸ DOCS expanded on the arguments of the APMC working party, stating:

This personal information is critically important when considering the behaviour of registrable persons. From the literature, practice and police intelligence, there is an accepted body of knowledge that recognises typical behaviour patterns of offenders which include them seeking to maximise their opportunities for contact with children and young people.

DOCS often finds that children are sexually abused, not by their carers, but by persons staying at the premises and befriending vulnerable parents, such as drug-abusing parents ...⁴⁰⁹

DOCS also supported the position that registered persons should be required to provide details of clubs and organisations with which they are involved, stating in its submission:

*Non-residential settings also create readily available opportunities for access with children and young people ... and often provide a low level of supervision with considerable interpersonal contact.*⁴¹⁰

The Association of Children Welfare Agencies also told the review that it believed this information should be required, commenting that ‘information [about] memberships of groups where children are present, is important in ensuring there are mechanisms in place to keep children from risk of harm.’⁴¹¹

Information provided to the review by operational police suggests that in most cases, registered persons are providing the additional ‘Stage Two’ information, at least about their contact with children, either through direct questioning or by the registered person volunteering the information.⁴¹² Some of the crime managers interviewed for the review explained their procedures and the purpose of obtaining information about a registered person’s contact with children:

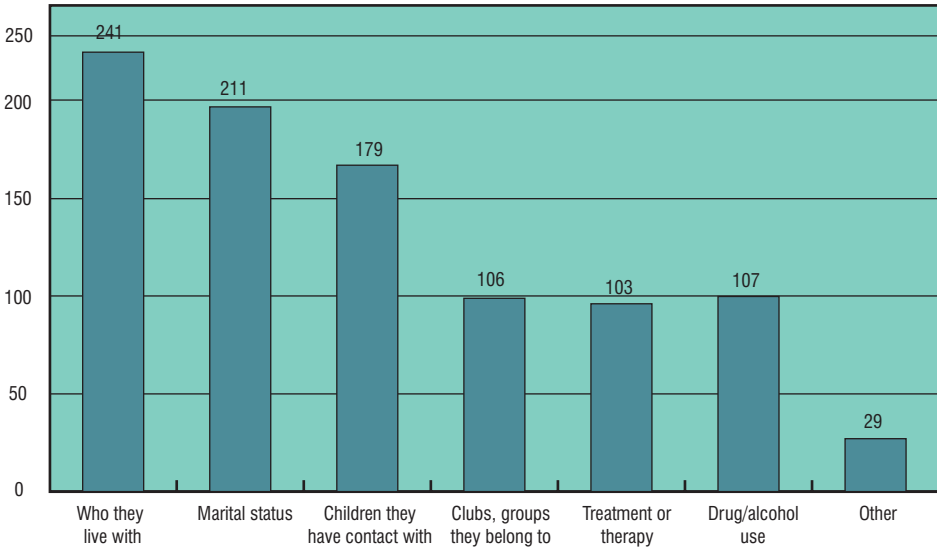
*It is standard procedure to always ask at registration whether they intend to live with any children. This is laid out in the guidelines and is important in determining whether the premises are suitable for the offender to live at.*⁴¹³

*They are all unemployed so it is important to check what they are spending their days doing and how they are keeping busy, and whether they have had any contact with children is always asked for obvious reasons.*⁴¹⁴

*It’s not a standard procedure or requirement to ask that information of the offenders, but registering officers always satisfy themselves that the living arrangements are suitable for the registered person. Sometimes it is asked directly, sometimes their parent or support person is asked, often it is volunteered information or is simply already known to police.*⁴¹⁵

The experiences of registered persons who provided information to the review seemed to confirm the regularity with which additional ‘Stage Two’ information was sought. Most of the registered persons who provided input into our review told us that they had been asked for additional information.⁴¹⁶ Over 80 per cent of respondents to our survey of registered persons reported that they were asked who they lived with, 70 per cent were asked about their marital status and 60 per cent were asked about any children they had contact with. Questions about clubs, sporting groups or churches they belonged to, or their drug and alcohol use or treatment or therapy, were asked of about 35 per cent of respondents.

Figure 5: What ‘other information’ survey respondents said they were asked



Source: Responses to Ombudsman survey of registered persons, January 2004 N=293. Numbers per category are greater than number of respondents as more than one response was possible.

Only 18 per cent of all respondents said that police told them that they did not have to provide the additional information, although we have some doubt about the reliability of this figure.⁴¹⁷ Notwithstanding these doubts, the information provided by some of the operational police interviewed for the review does not make it clear that the warning is always provided. Some of the comments made by crime managers seemed to suggest that there was little differentiation made between information required and additional information requested. However, some told us they made clear the optional nature of the additional information requested. Some examples of what crime managers told us are:

*All questions are asked as part of the formal registration process for example vehicle details, employment details, and whom they are going to live with.*⁴¹⁸

*All people registering are asked if they live with any children.*⁴¹⁹

*It is standard procedure to find out ... any other contact they may have with children other than in their living arrangement. Usually they don't hesitate to answer, although it is always made very clear that such information ... is not required of them.*⁴²⁰

One respondent, apparently having sought clarification on this issue, indicated that police had not told him the additional information was not required, and said: 'They insisted and they said they would check.'⁴²¹

NSW Privacy has expressed concerns about the 'Stage Two' registration process, not so much about the need for police to have the additional information, but about the methods of obtaining it:

*If it is necessary or expedient to obtain more information from registrable persons than is currently specified, this should be clearly indicated as voluntary or specified by regulation rather than simply included in a catch-all policy or procedure.*⁴²²

The Tasmanian Ombudsman has raised doubts about whether it is possible and fair for such information to be properly provided voluntarily, commenting:

*I understand why police would seek to acquire the information mentioned as "Stage Two" registration. However, to go beyond the requirements of the legislation, even with a statement that they cannot require the information, may breach procedural fairness. The registrable persons are disempowered in these circumstances in any event, so I would have doubts about whether they are really consenting to the additional information being included, despite the proper warnings.*⁴²³

One of the few stakeholders not in support of police requesting information about children with whom registrable persons have contact is the NSW Young Lawyers, who raised particular concerns about the appropriateness of obtaining such information from young persons on the Register.⁴²⁴ There are two aspects to these concerns.

The first is that it is inappropriate to ask a child to volunteer information, due to concerns about whether they are in a position to properly give consent. NSW Young Lawyers suggest that if police were to continue to do so, then appropriate safeguards and protections should be established, such as those currently in the *Children (Criminal Proceedings) Act 1987*⁴²⁵ and the *Crimes (Detention After Arrest) Regulation 1998*.⁴²⁶

The second issue applies whether information about contact with children is requested on a voluntary basis or required under the Act, arguing that provision of such information is 'inconsistent with s 11 CCPA [*Children (Criminal Proceedings) Act 1987*], which is aimed at protecting the identity of any child offender, child victim, or child witness.'⁴²⁷ (Section 11 prohibits the publishing and broadcasting of names of persons in criminal proceedings to which a child is a party.) These concerns would appear to be of greatest significance where a child was registered in respect of a conviction for an intrafamilial offence and is residing in the family unit with the victim, as this may identify the victim. However, it is not clear that providing such information to police would constitute 'publishing' or 'broadcasting' those names.

The overwhelming evidence suggests that information about the contact that registered persons have with children is not only essential to police, but in most cases, already being requested and provided. In our view, it would be preferable for the requirement for registered persons to provide this information to be formalised. The review notes the provisions in the Child Protection (Offenders Registration) Amendment Bill 2004 would achieve this.

11.4.3. Other additional information

Although most of the focus in respect of additional information has been on information about contact with children, some stakeholders suggested that certain other additional information should be mandatory. Whether email addresses or access to a computer should be required information in order to monitor access to child pornography and paedophile networks on the internet is one such issue.⁴²⁸ DOCS suggests that details of access to a home computer should be compulsory information, as 'inappropriate internet use can be camouflaged as a normal recreational activity and should be captured' but acknowledges the difficulties in monitoring such usage.⁴²⁹ One crime manager interviewed also raised the need for this information, noting that:

*Investigations have established the centrality of the internet in the activities of paedophiles. With the current provisions paedophiles can happily go about their business at home.*⁴³⁰

A victims' advocate, in her submission, suggested that the requirement to provide details of motor vehicles should also be extended to cover boats, stating: 'Our water ways cover many miles as does our coastline. Children gather where water means enjoyment and excitement.'⁴³¹

The APMC working party also recommended that national legislation include a provision that requires registrable persons to inform police of any tattoos or permanent distinguishing marks, and to advise any changes to those.⁴³² This is required under similar legislation in some other jurisdictions, including a number of the US states and the proposed Canadian legislation. NSW Police did not refer to these issues in its submission to our review. However, such a provision is included in the Child Protection (Offenders Registration) Amendment Bill 2004 currently before Parliament.⁴³³

11.4.4. Other registration requirements

11.4.4.1. Multiple addresses, vehicles and employers

There have been some concerns raised about whether the definition of 'generally' in respect of addresses and employment is reasonable.⁴³⁴ For some persons, such as those with irregular accommodation or with employment conducted at various locations or involving the use of various motor vehicles, reporting changed details may be difficult to comply with. In some circumstances registered persons may not be in a position to know how long they will be at a temporary address or employment location, or be required to drive a certain vehicle and whether this will last for 14 days within a 12 month period.

Not only might this be seen as onerous for registered persons, it can also create a burden on police in terms of their time and resources. As one crime manager expressed it:

For those offenders who work as salespeople, consultants or in a trade, their changing employment details should not have to be processed in such detail each time. One person worked as a consultant and so volunteered information about changing employment all the time. This was starting to become burdensome ... The main thing is that the offender knows he must keep the information updated.⁴³⁵

Another crime manager commented on a registered person who was considered low risk but who 'creates extra unnecessary work for police who really do not need to be monitoring him ... yet police are bombarded with paranoid notices about what he is up to.'⁴³⁶

The Act provides for a person to provide details of a 'general locality' they frequent if they do not have a particular address. There are concerns that homeless or itinerant people will have difficulties complying with the reporting requirements.⁴³⁷ This may be particularly so for persons with intellectual disabilities or mental illness or for some Aboriginal people such as those with an itinerant lifestyle. As one crime manager expressed it:

Some people are very nomadic. I can't understand why you can't just update the system on the basis of a verified address. Mostly they just ring up. It's a bit of an ask to make them come in if they are compliant, especially if the address is just temporary.⁴³⁸

One crime manager told us of an experience in his LAC with an Aboriginal registered person who does not have a particular place of residence but travels extensively between the coastal and inland regions.⁴³⁹ He was charged by the police with failing to comply with his reporting obligations as he had not kept police apprised of his residential address. However, the matter was dismissed at court because of confusion about the meaning of place of residence. (This matter is also discussed in *Chapter 13: Failure to comply*.) The crime manager has attempted to resolve the matter by requiring him to advise police of any address at which he resides for 14 days in a 12 month period, rather than his particular address at any given time.⁴⁴⁰ However, whether this strategy will be an effective response dealing with his itinerant lifestyle is unclear at this stage.

Another crime manager commented on the particular challenges of his area, which has 'a lot of halfway houses, so that many offenders come and go through the command.'⁴⁴¹ An analysis of the Register data shows that this area is one of the few suburbs where only a suburb is provided as the address for a number of registered persons.⁴⁴²

11.4.4.2. Details of offences

The report of the APMC working party commented that the requirement that the registered person tell the registering officer the details of their registrable offences is unnecessarily onerous and time-consuming for both police and the registered person.⁴⁴³ This is particularly the case for some registered persons who have committed a large number of offences and may not be able to provide accurate details of courts and court dates. This could potentially leave them open to being in breach of the Act as this information forms part of the required relevant personal information.⁴⁴⁴ Some registered persons have also told us that they felt the registration process took too long, particularly as much of the information required is readily known to police through existing criminal records systems. Some of the comments from respondents to our survey were:

Given that they already had the answers to all questions it took too long, as it does now reporting changes.⁴⁴⁵

Didn't like repeating facts already on file. [The register could be improved by] not asking facts already stated.⁴⁴⁶

We note that the amendment Bill removes the requirement for a registrable person to provide police with details of their offences (other than those in another jurisdiction) as part of the reporting of relevant personal information.

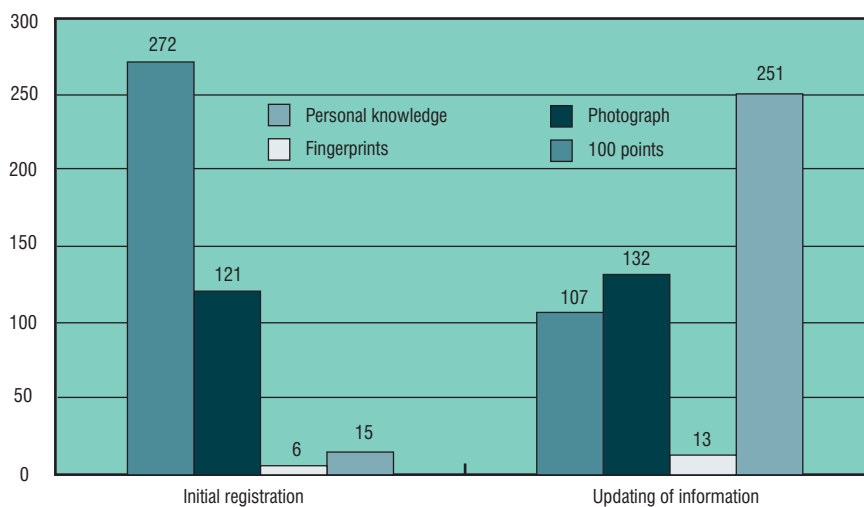
11.4.4.3. Proof of identity and photographs

Prior to the drafting of the Regulations, there was some discussion about the methods for proving identity.⁴⁴⁷ A number of parties strongly put the view that the '100 points' system would be too onerous for certain disadvantaged persons such as homeless persons, persons recently released from gaol and some Aboriginal persons. To address this concern, the Regulation allows police to take fingerprints or waive the requirement to prove identity if the person is already known to them.

The Commission for Children and Young People has commented that 'there may be some merit in clarifying the requirements associated with proof of identity, particularly in relation to disadvantaged groups such as homeless people.'⁴⁴⁸ However, the review has received very little information about any difficulties registrable persons have experienced in providing adequate identification, although some have reported problems with the provision of photographs.

An analysis of the Register data on types of identification used showed that, at initial registration, the majority of registered persons (272 or 66%) used 100 points of identification. A photograph was used to identify 121 registered persons (29%). Fingerprints were used in six cases (less than 2%) and personal knowledge of the offender in 15 cases (less than 4%). However, when a registered person updated information with the police, the most common form of identification used was personal knowledge of the offender (251 cases or about 50%) with a photograph being used in 132 cases (26%), 100 points of identification in 107 cases (21%) and fingerprints taken 13 times (just under 3%). See figure 6 below.

Figure 6: Forms of identification used by registered persons



Source: Data from the Register provided by NSW Police, October 2003 N=828.

NSW Police has told the review that establishing a registered person's identity does not appear to have caused significant problems to date.⁴⁴⁹ Some others who presented to register with no documentation, but did not claim they were unable to provide any, were required to return later with adequate proof of identity. Similar information was obtained from respondents to our survey of registered persons. Over 90 per cent reported having enough identification when they registered. Only one person reported that the police took his fingerprints.

The Child Protection (Offenders Registration) Amendment Bill 2004 includes provisions which allow police to take fingerprints of a registrable person if they are not reasonably satisfied as to their identity⁴⁵⁰, and to retain those fingerprints.⁴⁵¹ This is a significant departure from the current situation where fingerprints can only be used for identification purposes at the request of the registered person, and these fingerprints are to be used for the purposes of identification only and then immediately destroyed.⁴⁵² NSW Police has not told the review of any significant problems that would necessitate such a change. However, we accept that this may be appropriate if it were to enhance the investigation of offences against children.

The provision of photographs by registrable persons has proved more problematic. NSW Police has advised the review that many registrable persons attend a police station to register without the required passport photograph. The SOPs provide that, in these circumstances, the police may offer to take the person's photograph.⁴⁵³ If consent is not given, then the person is required to make another appointment, with a photograph, within the 28 day period after notification.⁴⁵⁴

Before the Register commenced, concerns were raised about the possibility of police forcibly taking photos of persons coming in to register.⁴⁵⁵ We have not received any advice that this has occurred – rather the opposite. We have had some reports (though generally in the early stages of the Register) that registrable persons without a photograph have been told to return at another time with one, without the police offering to take a photograph.⁴⁵⁶ Eight of the 10 respondents to our survey who did not have a photograph when they went to register told us that police took their photograph. The two who returned later with a photograph did not indicate that this caused any problems.

In its submission to our review, NSW Police observed that the provision requiring registered persons to provide their own photograph has shortcomings. NSW Police supported an alternative model which provides for police to take photographs of registered persons, replacing the requirement for them to bring their own photograph to registration.⁴⁵⁷ It argued that this would be beneficial for registered persons as many may be unwilling or unable to pay for a passport photograph.⁴⁵⁸ The Child Protection (Offenders Registration) Amendment Bill 2004 contains a provision that would allow police to take photographs of a registered person. While it is not clear from the Bill or the Explanatory Note that this is intended to replace the provision in the Regulations requiring the registered person to provide their own photograph, in his second reading speech the Minister, the Hon John Watkins, confirmed this was the case. He commented: 'The advantages of this are that the onus to provide photos is removed from the offender, the photos will be of higher quality, digital photos will be able to be scanned directly onto the register'.⁴⁵⁹

In the United Kingdom, police have the power to photograph any part of a registered person's body at registration, and can require the person to remove clothing for this purpose.⁴⁶⁰ The working party of the APMC recommended that police should have a discretionary power to photograph any part of the body of a registered person when they attend a police station to register, but without requiring them to remove clothing that would expose intimate parts of the body.⁴⁶¹ NSW Police has commented that allowing police to take photographs of registered persons may also assist with the monitoring of the 'small group of HIGH threat registered offenders [who] regularly and dramatically change their appearance, even within a relatively small time frame'.⁴⁶²

The amendment Bill includes a provision which allows police to require a registrable person to expose any non-intimate part of their body to be photographed, and to use reasonable force if the person refuses to voluntarily comply.⁴⁶³

It is critical that the information required of registered persons and maintained on the Register is sufficient for the purposes for which it is used by police to improve the protection of children. In our view, any provisions, either procedural or statutory, that facilitate the registration process, can only assist registered persons to comply. This would include police taking photographs where a registered person is unable or unwilling to provide them, and the taking of fingerprints as a means of establishing identity if the person is unable to provide 100 points of identification.

However, if reporting requirements are too complicated, some registered persons may have difficulty understanding and complying with all their obligations. Some of these concerns are raised in *Chapter 13: Failure to comply*. Inaccurate information on the Register will undermine the effectiveness of the Register as a tool for the monitoring of high risk offenders and the investigation of offences. Enhanced compliance may be assisted by the provision of clear and simple information to registered persons, at both the notification and registration stages. This issue, and that of the information police require to effectively undertake their responsibilities in respect of the Register and their child protection role generally, is discussed further in the conclusion to Part 3.

11.4.5. Timeframes for reporting

The timeframes for reporting in the Act are similar to those in the United Kingdom and other overseas legislation. However, amendments to the United Kingdom legislation in June 2001 reduced the period for initial registration from 14 to three days.⁴⁶⁴ Our review did not receive any suggestions that NSW should follow the changes in the United Kingdom and reduce the timeframes for initial registration. While noting the shorter time for initial registration in some overseas jurisdictions, NSW Police told the review that their experience suggests the 28 days is appropriate.⁴⁶⁵

The APMC working party noted that a shorter period had caused difficulties in the United Kingdom, as there was often a delay in police receiving advice about registrable persons from courts or other official sources. At times the registrable person attended a police station to register in advance of official documentation, and validating the registration requirement was unnecessarily time-consuming.⁴⁶⁶ The APMC report also commented that the notification period needs to be sufficient to allow registered persons to contact the crime manager and arrange a suitable time for registration and to obtain the necessary documents.⁴⁶⁷ The APMC supported a 28 day period for a registrable person to register after notification.⁴⁶⁸

We note that the amendment Bill reduces from 28 to 14 days the timeframe for reporting for a registrable person entering NSW. This is in accordance with the timeframe for reporting changes to personal details.

11.4.5.1. Absences from NSW

A number of stakeholders expressed concern that registered persons were not required to tell police of absences from NSW of less than 28 days.⁴⁶⁹ DCS stated that it is aware of:

... case histories where paedophiles have exploited the semi 'anonymity' of frequent interstate trips for partially legitimate purposes, such as business or sporting competition, with these purposes providing an effective 'cover' for offending behaviour in another jurisdiction.⁴⁷⁰

One crime manager commented on the arbitrariness and unreasonableness of the provision that allows a registered person to be interstate for up to 28 days without notifying police:

What's the point of people notifying police that they are going to leave the state for 28 days, if they don't have to when they are leaving for 27 days? If police check up on an offender who happens to not be at home, then they can simply say they were out of the area for 27 days so that is why they didn't notify police.⁴⁷¹

The APMC working party noted that it would be impractical for registered persons to notify police of every short absence, especially those living in border regions, or who regularly travel interstate for work. This would be unduly onerous on registered persons and create an unreasonable workload for police. However, in its view the 28 day period allowed under the Act is excessive. It recommended that nationally consistent legislation should provide for registered persons to advise police of any interstate travel of 14 days or more, or of any regular interstate travel of less than 14 days.⁴⁷² A requirement to report any travel interstate of 14 days or more in any 12 month period, would be consistent with other information that registered persons must report. NSW Police has also indicated that tightening this provision would be supported, noting that it is their experience that many registered persons who go interstate are offending straightaway.⁴⁷³ Enhanced information about the movements of registered persons would allow NSW Police to provide timely warnings to interstate jurisdictions.

The Child Protection (Offenders Registration) Amendment Bill 2004 includes a provision that requires registered persons to advise police, at the time they are reporting other information, if they intend to leave NSW and 'travel elsewhere in Australia on an average of at least once a month (irrespective of the length of any such absence)' and to provide 'in general terms' the reason for travelling and the frequency and destinations of the travel.⁴⁷⁴

11.4.5.2. Annual re-registration

Some stakeholders have also suggested that there should be provision for regular re-registration, or confirmation of registration information.⁴⁷⁵ Some of the registration schemes in the United States of America require registered persons to re-register after a certain period of time, even if details have not changed, generally between three months and a year. The scheme in Ontario, Canada requires annual re-registration.⁴⁷⁶ The legislation in the United Kingdom, on which the Act was substantially based, does not include any re-registration provision. However, there was clear consensus among consultation groups convened for a review of that legislation that there should be a requirement for periodic re-registration.⁴⁷⁷

DOCS has told the review that it supports annual registration, and 'the onus should be on the registrable person to supply the information to police rather than police having to extract the information from the offender.'⁴⁷⁸ DOCS has suggested that the annual re-registration should be independent of any other reported changes of information and could occur during the anniversary month of a registered person's sentence or release from custody. The APMC working party has also recommended that nationally consistent register legislation should contain a provision for annual re-registration, on the anniversary of the initial registration.⁴⁷⁹ The Federation of Parents and Citizens' Associations also supports periodic re-registration, but has suggested a timeframe of every six months rather than annually.⁴⁸⁰ One respondent to the survey also suggested that there should be a six monthly or annual update of information by registered persons, though more as a means of reducing the frequency with which police contact registered persons as part of ongoing monitoring.⁴⁸¹

Some of the probation and parole officers who contributed to the review supported the idea of annual re-registration in principle, but observed that there would need to be procedures in place to ensure that registered persons were not breached for failing to re-register as a failure may occur 'not necessarily because they are trying to hide but because they're not very good at managing their affairs.' One suggestion was that police could send a reminder letter at the time re-registration was required and then follow up those who failed to report.⁴⁸²

The Child Protection (Offenders Registration) Amendment Bill 2004 includes a provision which would require registered persons to report to police annually, by the end of the calendar month in which the anniversary of the date on which they first reported falls.⁴⁸³

We note strong support for annual re-registration that is based on sound arguments. In our view, appropriate procedures would need to be developed to manage such a process to ensure that registered persons who are otherwise complying with their reporting obligations are not unnecessarily breached to reduce the impact on the police and judicial system. This issue is discussed further in the conclusion to Part 3.

11.4.6. Manner in which information is to be provided

11.4.6.1. The registration process

The registration process involves an appropriately designated police officer obtaining relevant information from the registered person, checking their identification and obtaining a photograph of the person, and then entering this information (including uploading the photograph) onto a secure area of the COPS system. Some of the crime managers that we interviewed for the review when the Register first commenced told us that the registration process was cumbersome and time-consuming and reported a varying degree of technical problems.⁴⁸⁴

Some respondents to our survey reported difficulties with the registration process itself, with comments such as: ‘I was called back in a second time, first guy didn’t know what he was doing.’⁴⁸⁵ It would appear that in many cases these difficulties represent teething problems. At subsequent interviews, crime managers reported fewer technical problems. However, some crime managers told us that they still found the registration process overly time-consuming.⁴⁸⁶

It appears that some of the problems police have had with the registration process may be a consequence of not all officers having received training in the operation of the Register. The Child Protection Registry conducted comprehensive training at the Westmead Police College campus and in some regional areas in September 2001, prior to the commencement of the Act.⁴⁸⁷ A survey of 32 local area commands conducted two months after the Register had commenced revealed that just over half of the crime managers surveyed had received training on the operation of the Act. Ten crime managers had attended training sessions held at Westmead, and seven in regional areas. One crime manager had attended a meeting that addressed some issues about the Register.⁴⁸⁸ Five of the officers who did not receive any training were acting in the crime manager position at the time of the survey, although another six who were acting in the position had been trained.⁴⁸⁹ Almost all of the crime managers surveyed had access to a copy of the comprehensive manual produced by the Registry and provided to officers at the training.

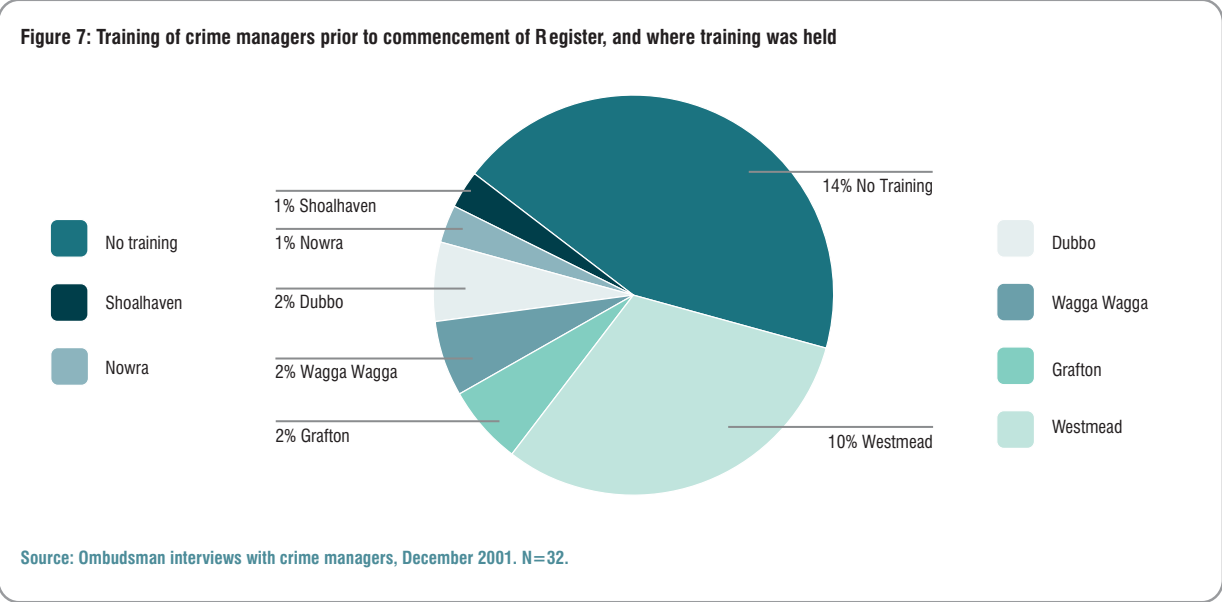
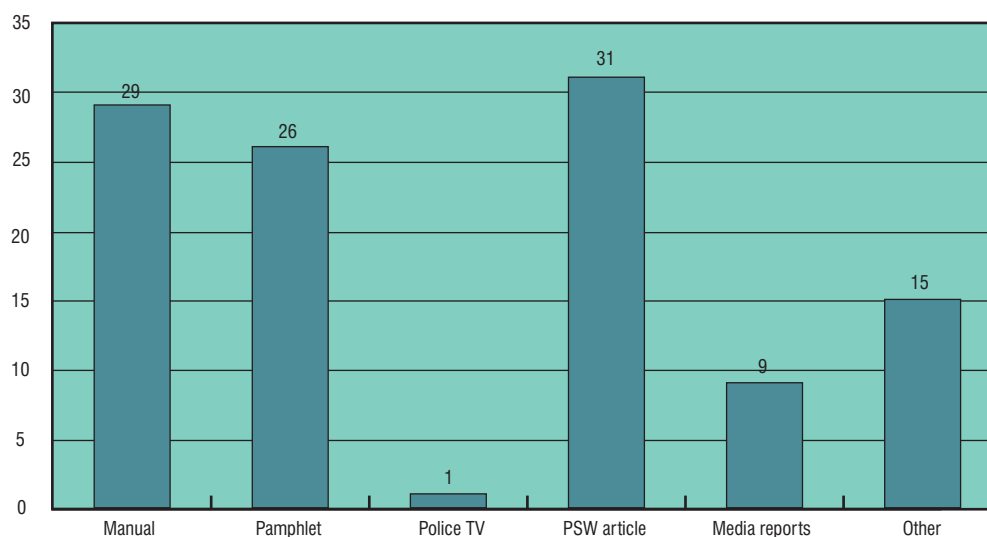


Figure 8: Types of information about the Register to which crime managers interviewed in December 2001 had access



Source: Ombudsman interviews with crime managers, December 2001. N=32.

When we interviewed crime managers again in May 2002, three reported that they had not had any training prior to taking on the role, with one commenting: 'This is an issue for people who take over the role. The support from [the Registry] is good but it isn't hands on. You need ongoing training but there isn't any time for it.'⁴⁹⁰ A number of the other crime managers interviewed commented positively on the support they received from the Child Protection Registry when they needed assistance.

Some of the crime managers interviewed at this time commented that they thought the problems they were having with the technical side of registration were just 'teething problems' with comments such as:

*Initially there were technical difficulties, but that was just because it was new, now it's quick.*⁴⁹¹

*No problems after the initial period. Got registrations down pat now.*⁴⁹²

*It's not a lot of work registering them once you get going.*⁴⁹³

However, the question of training remained an issue when we again interviewed crime managers, or those officers with primary responsibility for the Register, after the end of the two year review period.⁴⁹⁴ The five who were in the role at the commencement of the Register reported that they had received fairly extensive training through attendance at information sessions. However, officers who had subsequently come into the crime manager position, either in a permanent or acting capacity, reported that their training had been more ad hoc, with three reporting that they had received no training and nine had on the job or self-directed training only. Some of the comments from the officers interviewed were:

*Nothing formal, everything simply through memos and on the job.*⁴⁹⁵

*The job was just handed over with a brief run down from the last officer in charge of it, with no formal training at all.*⁴⁹⁶

*All the training was on the job and simply passed on by the crime manager. This is one area that could be improved.*⁴⁹⁷

One crime manager told us that he felt there was a failure of those with the training to share information with other officers.⁴⁹⁸ A number of officers remarked that they had built up special knowledge and skills to manage the Register but that this was not easily shared around because of the restricted access of general duties police to information about who was on the Register and their limited involvement in their management.⁴⁹⁹ On one level, it would appear that this perception is misconceived as other officers not having the authorisation to access the Register should not preclude the sharing of information with them. However, there may be practical limits to training and sharing skills with officers without the appropriate authorisation in the management of the Register and registered persons. The issue of ongoing training is discussed further in the conclusion to Part 3.

11.4.6.2. Crime manager being responsible for registration

The notification form (Form 3) which informs registered persons of their obligation to register advises them to telephone the crime manager and make an appointment to register.⁵⁰⁰ The SOPs direct that all enquiries from registrable persons should be forwarded to the crime manager, and that anyone can make an appointment on behalf of a registrable person.⁵⁰¹ This is intended to streamline the registration process, by ensuring that an officer designated to undertake registration is available when the registered person attends the police station, and to protect the registered person's privacy by limiting the number of officers they need to make contact with and inform of their registrable status.

However, we have received reports that these arrangements are not always working well.⁵⁰² Registered persons report difficulties both with initially making appointments with the crime manager and also with the crime manager being available at the appointed time to complete the registration. Some of the registered persons who provided information to our review told us they had difficulties locating, or contacting, the appropriate crime manager to make an appointment.

One person told us that when he rang his closest police station he was told that it was not in the LAC where he had to report.⁵⁰³ Another said he called three different police stations before he was able to locate and make an appointment with the appropriate crime manager.⁵⁰⁴ In another case the crime manager was based at two different offices and the registered person had to ring each a number of times before she was able to make an appointment.⁵⁰⁵ One registered person told us that he tried to get an appointment with the responsible officer for several days, and when he finally did and complained to her about his difficulty, she 'threatened me and called me a liar.'⁵⁰⁶

Some of the respondents to our survey made similar comments about their experiences:

*It is very hard to get an appointment with the crime manager.*⁵⁰⁷

*Getting an appointment with the crime manager took weeks.*⁵⁰⁸

*I have been shuttled from 1 officer to 5 up to date.*⁵⁰⁹

*Crime manager not available so delegated to a junior officer. Also appointment cancelled after I arrived at office.*⁵¹⁰

*Police officer failed to be there for 3 appointments.*⁵¹¹

One respondent told us that he felt that the problems he had with making an appointment with the crime manager could impact on his privacy:

*When I was released from jail I was told that I had 28 days to report to the crime manager in the area where I was going to live in ... I rang the crime manager from [the LAC] on the Monday and was told he would not be back until the following Monday ... My parole officer ... made an appointment with [the] Sergeant at [the local] police station for me to register. As [the town] is a small town ... there is nothing stopping the local police from pointing me out to their relatives or friends.*⁵¹²

NSW Police has told the review that it is aware of the difficulties experienced by some registrable persons in making appointments with police and that it proposes addressing this through 'anticipated legislative changes to support the national registration scheme.'⁵¹³ These changes are outlined at the start of the chapter and discussed further under the heading 'Requirement to register and update information in person'.

Notwithstanding these difficulties, a number of registered persons told us that they were impressed by the attitude and professionalism of the officer doing the registration. Some of the comments we received in responses to our survey were:

*I would congratulate the police for their helpful and polite treatment of me during this traumatic time.*⁵¹⁴

*Police were as helpful as could be.*⁵¹⁵

*Handled quite well by the police I have dealt with.*⁵¹⁶

*All I can say is, the officer was a very nice man.*⁵¹⁷

*crime manager at Burwood very well trained officer. All officers could follow his example.*⁵¹⁸

*My experience is that the officers concerned were not judgemental towards me and were quite friendly. That is important for my feelings of wellbeing in the community.*⁵¹⁹

Information received from participants in the Pre-Trial Diversion of Offenders Program has also indicated that crime managers have, in general, conducted themselves in a professional manner. None of the participants in the program who we interviewed reported any problems with registration, with one commenting that the crime manager was 'very helpful'.⁵²⁰ This is supported by the Director of the program, who reported only one instance in the early stages of operation where a situation was misunderstood by a crime manager and subsequently rectified.⁵²¹ However, not all the respondents

to our survey were as complimentary with some of the responses including comments such as: 'People involved are unprofessional,'⁵²² and 'I was treated as though I had no rights at all.'⁵²³

It might be useful if consideration was given to other arrangements for making appointments with crime managers, to assist with compliance. This is discussed further in the conclusion to Part 3.

11.4.6.3. Requirement to register and update information in person

The Act requires that a registrable person attend a police station in person, not only to complete the initial registration, but also each time they need to provide details of changed information. In some other jurisdictions, certain information can be provided by non-personal means such as registered mail.

Some operational police have told us that the requirement for all information to be provided in person can be unnecessarily onerous on registered persons and creates an additional workload for police.⁵²⁴ One crime manager queried the sense of a system where 'a new form has to be signed just for a new phone number.'⁵²⁵ Another crime manager in a non-metropolitan LAC related a difficulty he had experienced:

*Had trouble getting one guy in, in person, to change address details as he was working in Sydney. They should just be able to change the details on the system.*⁵²⁶

Some registered persons have also told the review of difficulties created by having to attend a police station in person every time some information changes.⁵²⁷ This has been particularly problematic for persons who live some distance from the police station, especially those without transport, and for those who are working out of the area in which they are registered. Some of the problems raised in responses to our survey of registered persons include:

*I live 100 kms away from where I had to go.*⁵²⁸

*I couldn't get to Queanbeyan by the required date due to not having a vehicle.*⁵²⁹

Some reported their dislike of attending the police station in person, but without indicating that it caused them any significant difficulties, for example:

*It's downright humiliating to have to register each time one changes address or wants to leave an area for more than a month.*⁵³⁰

*I just don't like going to the police station. [I'd like] to meet the crime manager somewhere else (other than the police station).*⁵³¹

On the other hand, one person commented that it is a 'slight inconvenience to report changes to circumstances.'⁵³² And another noted:

*Reporting in person can be difficult. I understand the reasons, but perhaps phone contact with a password or similar security (internet?) could be considered.*⁵³³

While many of the responses from registered persons focused on the difficulties the registration system posed for them, some of the submissions took a different approach. A submission from a person who described herself as a victim of child sexual assault and a victims' advocate expressed a concern that there was more focus on the rights of the registered person than of the victims, commenting:

*I can assure the review team that to live with the results of ongoing childhood sexual abuse is more than onerous, it can be deadly. The damage a victim is left to live with can destroy every part of their well-being. Onerous?? for the offender.*⁵³⁴

Privacy NSW has commented that: 'It is an inescapable consequence of the statutory scheme that an ongoing obligation to notify Police will be experienced by some people as unduly onerous.' But it has also argued that community expectations in respect of the Register are not served by legislation or procedures that are 'overly cumbersome' and that information should only be recorded and used in a way that 'minimises unnecessary inconvenience.'⁵³⁵

The SOPs advise that a registered person should not be refused if they attend a police station other than the one at which they are registered to update their details.⁵³⁶ Similarly, they should not be refused if they attend to update information without an appointment.⁵³⁷ However, some of the responses to our survey would suggest that registered persons are not always able to update information at any police station. One respondent to our survey told us that he reported to his local police station but the crime manager at the police station where he had registered 'said it didn't count' and he would have to report to the crime manager personally. He told us that the matter was satisfactorily resolved. He said he 'had no way of getting there, so he came to me.'⁵³⁸

Another respondent described his difficulty with reporting at his local police station:

Can't register at the closest police station. I sent details to police. I sent relevant details of car rego through [local] police but had to appear before crime manager [at the police station where registered] in person.⁵³⁹

A number of people have suggested that some information could be updated by telephone or in writing where the identity and other details of the person can be verified.⁵⁴⁰ For example, one survey respondent complained about 'having to travel to change any detail' and suggested that registered persons 'should be able to change [details] over the phone eg address unless moving out of town.'⁵⁴¹ Yet, despite the Act not providing for registered persons to update information other than in person, we have received information that indicates that alternative arrangements are in place in some commands. One crime manager told us of one registered person in his LAC who worked as a consultant:

He volunteered information about changing employment all the time. This was starting to become burdensome so instead of constantly printing out new forms for him to sign each time that occurs, when he notified the CPR they notify the command and the information is then noted without having to print forms and require formal meetings to sign them. The main thing is the offender knows he must keep the information updated.⁵⁴²

A registered person also provided details of a similar arrangement:

We got a new truck at work. I knew I had to notify police within 14 days. It took two phone calls to get onto [the crime manager] then I just updated it on the phone. Easier than expected. I thought I would have to go in.⁵⁴³

NSW Police did not specifically comment on non-personal reporting in their submission to our review. The APMC working party has reported that it supports a flexible approach to reporting that appears to already be informally occurring in at least some commands. It recommends that nationally consistent legislation should provide for police discretion to allow that certain information need not be provided in person.⁵⁴⁴ While a more flexible reporting system might assist some registered persons comply with their obligations, there may also be implications unless there are adequate systems in place to provide evidence that information was provided by non-personal means. In the current situation, each time a registered person attends a police station to update information, a form is automatically produced when the information is entered into the Register. The person is given a copy of the form to sign and keep. This acts as material evidence should the question of whether the person informed police of changed details arise.

As outlined earlier, the Child Protection (Offenders Registration) Amendment Bill 2004 includes provisions that would allow some reporting of information to be done other than in person.⁵⁴⁵ It includes additional provisions for alternative methods of reporting by registered persons who reside more than 100 kilometres from the nearest police station.⁵⁴⁶ The Bill also provides that NSW Police must develop a system for recording all alternate reporting agreements with registered persons in remote areas, and all information provided in accordance with such an agreement. This includes the identification of the information provided by a unique reference number, which must be provided to the registered person.

This would appear to provide an adequate safeguard, in respect of persons in remote areas, to the concerns raised above. However, similar safeguards need to be provided in respect of any arrangement for the provision of information by non-personal means, by other registered persons. At present, the Bill does not include provisions in respect of this.

11.4.6.4. Privacy issues

The Act provides that a registered person is entitled to provide information 'in a place where no members of the public are present.'⁵⁴⁷ The SOPs advise police that the registering officer 'must arrange to meet the registrable person at the police station, in a suitable location, free from members of the public.'⁵⁴⁸ However, some registered persons have told the review that they believe they have not been afforded a private place to provide their information.

Thirteen respondents to our survey (less than 5%) reported that their initial registration was not done in a private place. One person reported the registration being done in the 'foyer of the police station.'⁵⁴⁹ Eight respondents told us that they felt that their privacy was not maintained when they attended the police station to update their personal information. Most of these reported that the registration interview was conducted in an office, but the process was not private.

Paraded through the general office in the presence of 6 others, not a very private office.⁵⁵⁰

If you can call the interview room 'private' where all the public can see everyone going in and out.⁵⁵¹

You still have to ... wait as well as walk through an office area to the delegated office and return. You are being escorted by the crime manager and to my knowledge no other crime requires this so while nothing may be said of course all those that are there in the office know why you are there.⁵⁵²

The Act and the SOPs only refer to a requirement that reporting occurs in an area where there are no members of the public. However, many of our respondents felt their privacy was breached when the registration interview was held in an area where other police were present, in places such as an 'open office', the 'front office', the 'duty room', 'the detectives area in the open', or 'in an open 5 desk office'.⁵⁵³ While this does not breach the requirements of the Act, it does not appear

be in accordance with the fact that only a limited number of officers are authorised to have access to information about registered persons. It would be helpful if the SOPs were to clarify where interviews should take place and the degree of privacy afforded to registrable persons while they are reporting to police.

NSW Police has also raised a concern that the use of an interpreter (if not provided by the registrable person) may breach the person’s right to privacy, unless their consent is specifically obtained.⁵⁵⁴ NSW Police supports the Act being amended in line with the proposal of the APMC working party that national legislation should explicitly provide for police to be able to request interpreters to attend registration.⁵⁵⁵

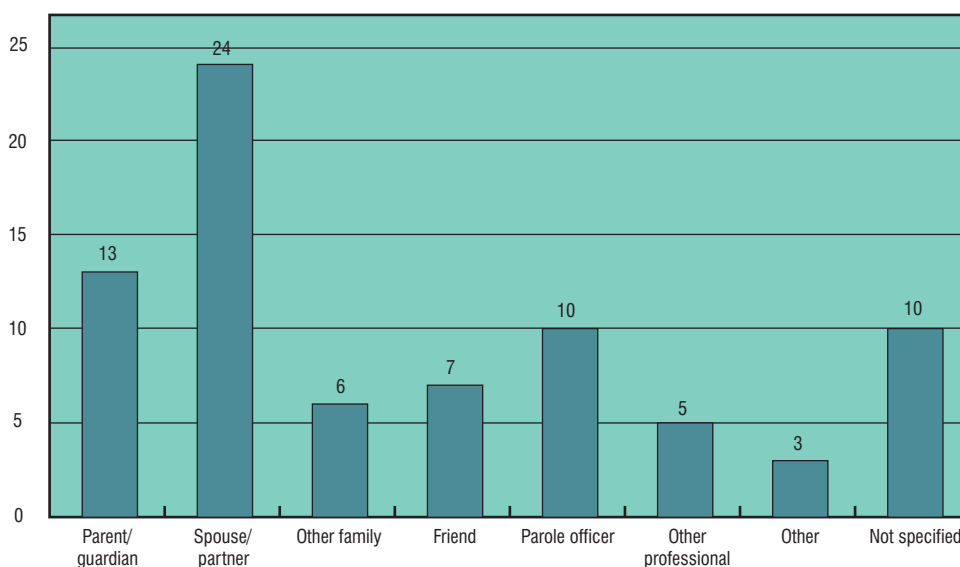
The Child Protection (Offenders Registration) Amendment Bill 2004 includes a provision that allows police to arrange for an interpreter to be present when a person is registering or updating information to police, providing the interpreter signs an undertaking not to disclose any information provided by the registered person.⁵⁵⁶ Any provisions to assist registered persons understand and comply with their reporting obligations are supported. It should be noted that accredited or official interpreters are already bound by a code of conduct that prohibits any disclosure of information obtained through their work.⁵⁵⁷

11.4.6.5. Other persons providing assistance with registration and reporting obligations

Any person is entitled to have a support person attend with them while they register or report information to police.⁵⁵⁸ However, it is expected that for the most part, this provision will be utilised by, and benefit, young people and those with special needs.

NSW Police do not keep a record of registrable persons who attend a police station with a support person. Just under 60 per cent (170) of the 293 respondents to our survey said they knew they could have a support person attend with them at registration. However, just over a quarter (78) of the respondents to our survey of registered persons said that they had someone with them when they registered. The support person was a family member in 55 per cent of the cases: a spouse or partner for 30 per cent, a parent or guardian for 17 per cent and another family member for seven per cent. Friends (10%) were also represented as support persons, as were the probation and parole officers (13%) and other professional support persons (20%).

Figure 9: Who acted as a support person for respondents to our survey where they had one



Source: Responses to Ombudsman survey of registered persons, January 2004. N=293
 Numbers of responses does not equal total as only 78 respondents stated they had a support person and were required to answer this question.

The Register data shows that 42 registered persons had a nominated guardian to assist them with their registration obligations. Of these, 10 were under 18 years of age at the time, which represents almost half of all registered persons aged under 18. Another nine registered persons with guardians were under 25, comprising about 40% of that age group.

NSW Police reported that almost all young people attended the registration process in the company of a parent, guardian or juvenile justice officer, noting that the Registry had requested that the juvenile justice officer always accompany their clients to registration to ‘provide a liaison point between police and their clients.’⁵⁵⁹ However, NSW Police report that this is

only happening on an ad hoc basis. In its submission, the DJJ did not comment on their practice in this regard, only noting that where staff assist a registrable client with their registration obligations, they have 'encountered no major problems.'⁵⁶⁰

In the early stages of the Register's operation, the Department had indicated to the review that juvenile justice officers would be unlikely to want to attend registration interviews with police. While recognising that young people would need support, it was considered preferable for that to be provided by someone else, so that juvenile justice officers could maintain a separation between their role and the young person's ongoing involvement with police.⁵⁶¹ However, counsellors from the DJJ Sex Offender Program told us that they did often attend registration with their clients and that the registration process was usually much smoother with a support person present.⁵⁶² The DJJ's internal guidelines for the management of its responsibilities under the Act note that once notification is completed, no further action is required, but adds: 'On some occasions, the supervising officer may accompany or assist the client in attending the interview with their local police station.'⁵⁶³

All of the young people under the age of 18 who responded to our survey had a support person with them, as did about 40 per cent of those aged 19 to 24. For the most part these were family members, primarily parents, rather than persons with a professional involvement.

Views on the involvement of parents in assisting their children to meet registration obligations vary. While generally there appears to be strong support among police and community stakeholders for other persons assisting certain registered persons with their reporting obligations, some cautions were sounded. Some groups had expressed concern about parents being automatically involved, particularly in circumstances where there has been a breakdown in the familial relationship.⁵⁶⁴

The Regulations provide that police may inform a support person of a registrable person's obligations for the purpose of enabling them to assist the registrable person to comply. A support person is defined as someone nominated by the registrable person or, or if no such person is nominated, a parent, guardian or carer, or a public authority that provides support to the registrable person.⁵⁶⁵ NSW Privacy has noted its concern that:

*... the inclusion of a parent or other public authority as a support person in clause 13(5) could be unreasonably intrusive where the registrable person was an adult, had limited ties with their parents and had not agreed to the parent or public authority being a support person.*⁵⁶⁶

However, NSW Privacy also comments that this potential difficulty is 'somewhat mitigated by the fact that such a person could only be contacted if the registrable person failed to nominate his or her own support person' and queries whether registered persons are nominating their own support persons, and if so, whether their choice is being respected.

Only one registered person has told us of any problem with having a support person of his choice with him during the registration process.⁵⁶⁷ He said that the registering officer would not let him have his friend, a young woman, attend the registration as a support person and gave no reason for the refusal. We advised him of complaint processes available to him but he declined. We are therefore unable to assess the merits of his allegations.

One LAC has told us of an instance where a support person was arranged, when not requested by the registered person, as a means of ensuring the person could understand and comply with his obligations:

*We arranged for the mother to come in with the man when he registered, although the offender said he didn't need anyone, to ensure that all information about his obligations were completely understood and so that his mother, as a support person and who he was living with would also be aware of his obligations.*⁵⁶⁸

The information we have received suggests that police are generally encouraging of registrable persons bringing a support person to the registration interview. As some crime managers have told us:

*Often they need support, it's hard to win them over if they're by themselves.*⁵⁶⁹

*Young people are always encouraged and have always had support people with them when registering or updating information to ensure thorough understanding of the procedures and what is required of them.*⁵⁷⁰

NSW Police has also told us that support persons and other agencies 'will become an important component of the registration process' when their role is formalised through the proposed child protection watch teams.⁵⁷¹ Child protection watch teams are discussed further in *Chapter 2: Child Protection legislation* and *Chapter 15: Monitoring of registered persons*.

While parents, carers or guardian *may* assist a registered person with their reporting obligations, they are not *required* to do so. In the United Kingdom, the equivalent legislation allows for a court to direct that a person with parental responsibility for a registrable child must comply on their behalf, and the parent is also liable for any failure to comply.⁵⁷² While many stakeholders commented that the involvement of parents or guardians was important, none expressed a view that there should be a similar legislative provision for parental responsibility in NSW.⁵⁷³

The Redfern office of the Sydney Regional Corporations Aboriginal Legal Services warned of an over-reliance on the involvement of parents, stating that it was 'particularly worried about juvenile Aboriginal offenders, whose parents may probably be disadvantaged, and therefore, cannot assist the children in fulfilling their reporting obligations.' It was concerned that these children would be particularly liable to being charged with additional offences, and the negative impact of further involvement in the criminal justice system.⁵⁷⁴

NSW Police has also told us of an instance where the involvement of the parent was counter-productive.

*The involvement of DJJ proved critical in one case where a mother prevented her son from registering with Police. The Registry and DJJ had to work closely in this case to resolve this situation.*⁵⁷⁵

As the examples above would suggest, mandated parental involvement may not always be helpful in assisting young people comply with their registration obligations.

11.4.7. Impacts for people with special needs

The Register did not have the technical capability to provide the review with data about which registered persons were identified as having a 'special need' by the end of the two year review period. We have provided some estimates about the number of persons with special needs and data on young people on the Register in *Chapter 7: Application to certain groups*.

The Act allows for a nominated person such as a parent, carer or guardian to report on behalf of a child or a person with a disability which makes it impracticable for them to do so themselves, although the registrable person must also attend the police station as well where possible.⁵⁷⁶ As noted earlier, only 42 registered persons have a nominated guardian, though many others have a support person who is not a formally nominated guardian to assist them. The review understands that during the review period, all registered persons with a nominated guardian attended their registration in person.⁵⁷⁷

Amendments to the Act in 2002 provide for registration to occur in a place other than a police station.⁵⁷⁸ This means that police may visit a registrable person to complete registration if the person is not able to attend a police station. In light of this, the APMC working party report has suggested that a provision exempting registered persons who are incapable from attending in person to complete initial registration is not required. It does not support national legislation including such a provision.⁵⁷⁹ It does, however, recommend that parents, carer and guardians of registered persons, who may be prevented from personally giving such notice, be able to provide updated information by non-personal means such as registered mail.⁵⁸⁰

As noted earlier, the Child Protection (Offenders Registration) Amendment Bill 2004 includes provisions that would allow some reporting of information to be done other than in person, and this also applies to parents, carers, guardians or other persons reporting on behalf of registered persons, who are incapable of doing so themselves.⁵⁸¹

The provisions allowing for someone else to report on behalf of a registered person do not resolve all the potential problems involved in the registration of people with special needs. Not all people with special needs are identified as such, and have someone to assist them comply with their obligations. NSW Police has told us that it has experienced various difficulties in managing persons with an intellectual disability or a mental illness. In particular, NSW Police has reported that there has been a low level of identification of registrable persons with special needs, noting that on only three occasions has it received special needs notifications from DCS and none from other agencies. NSW Police describe the problems for operational police:

*Some Police registering an offender have observed that the person may have some degree of impairment but are unable to clinically assess whether the tests of being able to "understand a statutory notice" or "understand their reporting obligations and the consequences of non-compliance with those obligations" can be satisfied. The majority of Police deal with this by formally asking the offender whether they understand their reporting obligations.*⁵⁸²

Some LACs have told us of experiences where they have registered a persons with special needs. One reported:

*This Command has two persons registered that require special needs. One person is unable to speak English and has a mental problem ... The other is a female who lives in a home. When she registered a support person from the home attended and assisted in the registration process. During both these registrations there was some difficulty in conducting the registration without the assistance of support persons and interpreters.*⁵⁸³

Another crime manager told us that in his command two Aboriginal people appeared 'to not have understood their obligations or the seriousness of their obligations.'⁵⁸⁴

The Redfern office of the Sydney Regional Corporations Aboriginal Legal Service has expressed a general concern about whether Aboriginal people may be disadvantaged because of difficulties in complying with the Act.⁵⁸⁵ However, this is primarily related to how police and courts deal with any reporting breaches, rather than the registration requirements. As is discussed further in Chapter 13, Aboriginal people make up a far greater proportion of persons charged with offences under the Act than their representation on the Register. It is noted that the SOPs do not contain any specific directions or

advice to police about managing Aboriginal registered persons, as the Act contains no specific provisions for any group other than those who are children or have a disability. This issue is discussed further in the conclusion to Part 3.

One crime manager told us that registering persons with special needs did not pose significant problems as:

*The accuracy of the information they have provided is tested in the home visits which proves they understand what is required of them.*⁵⁸⁶

Another crime manager reported a problem with one person in the command with a mental illness, which culminated in the mental health unit and Protective Commissioner being involved, but added:

*... there is no need to incorporate special provisions for dealing with these people in Child Protection legislation, because the senior people already dealing with them are well aware and experienced in accommodating those needs anyway.*⁵⁸⁷

However, not all persons who provided input to the review were as confident as this. The Department of Ageing, Disability and Home Care observed that, despite the special provisions in the Act:

*... there is always a risk that some people with an intellectual disability will not have the capacity to understand and fulfill registration and reporting obligations.*⁵⁸⁸

Ten of the respondents to our survey indicated that they had a disability or communication difficulty.⁵⁸⁹ Four of these indicated that they had a problem with the registration process, although from the details provided it appeared that the problem actually only related to their disability or communication difficulty in two cases.⁵⁹⁰

One person, who indicated that his parole officer attended the registration interview with him as a support person, stated that it had been: 'Confusing. Did not understand due to disability.'⁵⁹¹

The other person, who indicated that he did not have anyone with him when he registered, and that he did not know he was entitled to have someone, stated: 'It can be hard for people with no English no car. It is hard and difficult for mentally sick/people with no language.'⁵⁹²

While having a support person assisting with registration is generally offered as the best way of addressing the needs of persons with disabilities, the IDRS has expressed concern about the ability of agencies or others to effectively take on this role. In its submission to our review, IDRS stated:

*Present support agencies that play a role in working with registrable persons have told IDRS that the intensive case management required to ensure compliance is not available to many registrable persons with intellectual disabilities ... [This may] adversely impact already disadvantaged individuals who are unable to access support whether it is through family, or friends or through external agencies. Many external agencies that provide support to individuals may also not have sufficient resources to play an active role in ensuring compliance – a resource intensive task that may fall outside their service role.*⁵⁹³

Information the review has received suggests that having a support person does not always guarantee the registration process will be smooth for young people. DJJ has reported in its submission to our review that staff who have assisted clients to register have encountered 'no major problems.'⁵⁹⁴ However, DJJ Sex Offender Program counsellors have told us that in their experience, the experiences of young people have varied depending on the police station at which the person registered. One counsellor reported that the officer doing the registration of one young person was 'quite disrespectful' although others reported it as being 'quite a positive experience'.⁵⁹⁵ The mother of a young registered person who was interviewed for this review told of the difficulties she had in helping her son register (see case study 9).

Case study 9.

The mother of a 13 year old was told by the DJJ Sex Offender Program counsellor that her son would have to be on the Register. She rang one police station but was told to contact another. After a number of telephone calls she arranged for her son to attend the police station and register. She said her son did not receive any information about being on the register until they were at the police station when the forms were printed up. The mother reported that the officer doing the registration was unhelpful. He was unable to answer her questions about what registration would mean for her son, and got angry at her for asking. She said she felt that the police were blaming her and her husband for her son's behaviour, and that her son is caught up in something that is meant for paedophiles.⁵⁹⁶

Better identification of persons with special needs, and ongoing training for police involved in registration and management of them and young people, may assist these registered persons to understand and comply with their reporting obligations. This is discussed further at the conclusion to Part 3.

Endnotes

- ³⁶⁷ Section 9(1) *Child Protection (Offenders Registration) Act*
- ³⁶⁸ Section 9(2)(a) *Child Protection (Offenders Registration) Act*
- ³⁶⁹ Section 11(1), (2), (4) *Child Protection (Offenders Registration) Act*
- ³⁷⁰ Section 12(4)(b) of the *Child Protection (Offenders Registration) Act* provides for the Regulation to make provisions with respect to “the nature of any verifying documentation to be produced”. The proof of identity requirements are contained in Clause 14 of the *Child Protection (Offenders Registration) Regulation*
- ³⁷¹ Clause 5, *Child Protection (Offenders Registration) Regulation*.
- ³⁷² Clause 14, *Child Protection (Offenders Registration) Regulation*.
- ³⁷³ Clause 15, *Child Protection (Offenders Registration) Regulation*. The Regulation does not empower police to take fingerprints to establish the identity of parents, carers or nominees.
- ³⁷⁴ Sections 10 and 11, *Child Protection (Offenders Registration) Act*
- ³⁷⁵ The only exception to this is that ‘existing controlled persons’ had 90 days to register after the commencement of the legislation (section 10(1) *Child Protection (Offenders Registration) Act*).
- ³⁷⁶ Registrable persons do not have to notify Police of their absence from or return to NSW if they did not leave Australia and were absent for less than 28 days (section 10(3) *Child Protection (Offenders Registration) Act*).
- ³⁷⁷ Section 12(1) *Child Protection (Offenders Registration) Act*.
- ³⁷⁸ Section 12(7)(a) *Child Protection (Offenders Registration) Act*.
- ³⁷⁹ *Child Protection Amendment Act 2002* Schedule 1 Item 4 amending section 12(1) *Child Protection (Offenders Registration) Act*.
- ³⁸⁰ Sections 12(2) and (3) *Child Protection (Offenders Registration) Act*. The form of this acknowledgement is set out in Clause 16 of the *Child Protection (Offenders Registration) Regulation*.
- ³⁸¹ Section 12(7)(b) *Child Protection (Offenders Registration) Act*.
- ³⁸² Section 12(5) *Child Protection (Offenders Registration) Act*.
- ³⁸³ Section 12(6) *Child Protection (Offenders Registration) Act*.
- ³⁸⁴ Any person (not just a registrable person) can be charged under section 18 *Child Protection (Offenders Registration) Act* for providing false or misleading information.
- ³⁸⁵ Section 9 *Child Protection (Offenders Registration) Amendment Bill 2004*.
- ³⁸⁶ Section 12D *Child Protection (Offenders Registration) Amendment Bill 2004*.
- ³⁸⁷ Section 12E *Child Protection (Offenders Registration) Amendment Bill 2004*.
- ³⁸⁸ Section 12H *Child Protection (Offenders Registration) Amendment Bill 2004*.
- ³⁸⁹ Section 12F *Child Protection (Offenders Registration) Amendment Bill 2004*.
- ³⁹⁰ Section 12G *Child Protection (Offenders Registration) Amendment Bill 2004*.
- ³⁹¹ Section 11 *Child Protection (Offenders Registration) Amendment Bill 2004*.
- ³⁹² Section 11D *Child Protection (Offenders Registration) Amendment Bill 2004*.
- ³⁹³ Section 9A *Child Protection (Offenders Registration) Amendment Bill 2004*.
- ³⁹⁴ Section 10 *Child Protection (Offenders Registration) Amendment Bill 2004*.
- ³⁹⁵ Section 12A *Child Protection (Offenders Registration) Amendment Bill 2004*.
- ³⁹⁶ Section 12I *Child Protection (Offenders Registration) Amendment Bill 2004*.
- ³⁹⁷ Section 12B(2) *Child Protection (Offenders Registration) Amendment Bill 2004*.
- ³⁹⁸ *Standard Operating Procedures: Child Protection (Offenders Registration) Act 2000*, NSW Police Service, first published August 2001, amended October 2002, Paragraph 4.8.
- ³⁹⁹ SOPs Paragraph 4.8 (A).
- ⁴⁰⁰ The warning that Police are to give before requesting further information as part of ‘Stage Two Registration’, at section 4.8(A) of the SOPs, is: ‘The registration process has now been completed and you have met your reporting obligations under the *Child Protection (Offenders Registration) Act*. However, before you go, there are some additional questions I would like to ask you. The law does not require that you answer these questions.’
- ⁴⁰¹ SOPs, Chapter 5.
- ⁴⁰² SOPs, Chapters 7 and 8.
- ⁴⁰³ See, for example, submissions nos 16, 25, 27, 42 and 44. Appendix 4 contains a full list of submissions.
- ⁴⁰⁴ Inter-jurisdictional Working Party Report to the APMC, June 2003.
- ⁴⁰⁵ Inter-jurisdictional Working Party Report to the APMC, June 2003.
- ⁴⁰⁶ Submission no 42 from NSW Police, 22 January 2004
- ⁴⁰⁷ Section 9(1) *Child Protection (Offenders Registration) Amendment Bill 2004*.
- ⁴⁰⁸ Submissions no 25 from the Commission for Children and Young People, 14 October 2003, and DOCS, 29 January 2004.
- ⁴⁰⁹ Submission no 44 from DOCS, 29 January 2004.
- ⁴¹⁰ Submission no 44 from DOCS, 29 January 2004
- ⁴¹¹ Submission no 16 from the Association of Childrens Welfare Agencies, 20 October 2003.
- ⁴¹² 11 of the 18 crime managers interviewed in February 2004 advised that this information was being asked at all registration interviews and another three advised that whether this was asked or not depended on the individual case, though often it was volunteered.
- ⁴¹³ Interviews with crime managers, February 2004, LAC 32 Western Region.
- ⁴¹⁴ Interviews with crime managers, February 2004, LAC 30 Southern Region.
- ⁴¹⁵ Interviews with crime managers, February 2004, LAC 22 Northern Region.
- ⁴¹⁶ Both registered persons interviewed individually and respondents to the survey of registered persons. See Appendix 5 for anonymised details of registered persons interviewed during the review.
- ⁴¹⁷ From the responses received it would appear that not all respondents understood that this question referred only to the additional ‘Stage Two’ information and not to the relevant personal information required under the Act.
- ⁴¹⁸ Interviews with crime managers, February 2004, LAC 2 Greater Metro Region.

- ⁴¹⁹ Interviews with crime managers, February 2004, LAC 25 Southern Region.
- ⁴²⁰ Interviews with crime managers, February 2004, LAC 21 Northern Region.
- ⁴²¹ Survey no 21.
- ⁴²² Submission no 32 from Privacy NSW, 19 November 2003.
- ⁴²³ Submission no 24 from Tasmanian Ombudsman, 20 October 2003.
- ⁴²⁴ Submission from NSW Young Lawyers, 16 October 2003.
- ⁴²⁵ Section 13 provides that any statement or information given to police by a child shall not be admitted in evidence unless a person responsible for the child or a legal representative was present.
- ⁴²⁶ Clause 20 and 26 provide for 'vulnerable persons' (which includes children) to be assisted to exercise their rights to assistance from a support person or legal representative.
- ⁴²⁷ Submission from NSW Young Lawyers, 16 October 2003.
- ⁴²⁸ Interviews with crime managers, December 2001, LAC 19 Northern Region; and, Submission no 44 from DOCS, 29 January 2004.
- ⁴²⁹ Submission no 44 from DOCS, 29 January 2004.
- ⁴³⁰ Interviews with crime managers, December 2001, LAC 19 Northern Region.
- ⁴³¹ Submission no 13 from Patricia Wagstaff, 12 October 2003.
- ⁴³² Inter-jurisdictional Working Party Report to the APMC, June 2003.
- ⁴³³ Section 9(1)(i) Child Protection (Offenders Registration) Amendment Bill 2004.
- ⁴³⁴ Interviews with crime managers in May 2002 and February 2004.
- ⁴³⁵ Interviews with crime managers, February 2004, LAC 11 Inner Metro Region.
- ⁴³⁶ Interviews with crime managers, February 2004, LAC 10 Inner Metro Region.
- ⁴³⁷ For example, raised in a meeting with Jennifer Hickey, Crime Prevention Division, Attorney-General's Department, 10 October 2001, and in submission no 9 from Shopfront Youth Legal Services, 17 October 2003; and interviews with crime managers, May 2002, LAC 21 Northern Region and LAC 18 Inner Metro Region.
- ⁴³⁸ Interviews with crime managers, May 2002, LAC 21 Northern Region.
- ⁴³⁹ Information provided in a phone conversation with crime manager from Oxley LAC, 20 July 2004.
- ⁴⁴⁰ As provided by section 9(2)(a) of the *Child Protection (Offenders Registration) Act*.
- ⁴⁴¹ Interview with crime managers, February 2004, LAC 18 Inner Metro Region.
- ⁴⁴² At the end of the two year review period, the primary address provided by registered persons was given as a suburb only in two cases, and a town outside the metropolitan area only was provided in a further 14 cases. Analyses undertaken at different times provided similar results (given that address information is constantly changing). However, the inner city suburb referred to appears to be regularly represented in the 'suburb only' data.
- ⁴⁴³ Inter-jurisdictional Working Party Report to the APMC, June 2003.
- ⁴⁴⁴ Section 9(1)(f) *Child Protection (Offenders Registration) Act*
- ⁴⁴⁵ Survey no 99
- ⁴⁴⁶ Survey no 287
- ⁴⁴⁷ Implementation Committee meetings 11 April 2001 and 25 July 2001.
- ⁴⁴⁸ Submission no 25 from Commission for Children and Young People, 14 October 2003.
- ⁴⁴⁹ Submission from NSW Police, 22 January 2004.
- ⁴⁵⁰ Section 12E Child Protection (Offenders Registration) Amendment Bill 2004.
- ⁴⁵¹ Section 12G(c) Child Protection (Offenders Registration) Amendment Bill 2004.
- ⁴⁵² *Child Protection (Offenders Registration) Regulation* clause 14.
- ⁴⁵³ SOPs paragraph 4.4(b)
- ⁴⁵⁴ SOPs paragraph 4.4(d)
- ⁴⁵⁵ Implementation Committee meetings of 7 March 2001 and 11 April 2001.
- ⁴⁵⁶ Interviews with crime managers in May 2002 and interview with a registrable person. One LAC reported that when a registered person came to register without a photograph he was given 14 days to return with one and complete registration. As he did not provide a photograph within 14 days he was charged with failing to comply with his reporting obligations. (The charge also related to him providing an incorrect address. He was convicted and received a 3 month custodial sentence.) No information was provided about whether the option for police to take his photograph was offered. (Information contained in submission no 6 from Penrith LAC, 17 October 2003).
- ⁴⁵⁷ Submission no 42 from NSW Police, 22 January 2004.
- ⁴⁵⁸ Submission no 42 from NSW Police, 22 January 2004.
- ⁴⁵⁹ Hansard, Legislative Assembly, 23 June 2004, The Hon John Watkins, Minister for Police, Second Reading speech, Child Protection (Offenders Registration) Bill 2004.
- ⁴⁶⁰ *Criminal Justice and Court Services Act 2000 (UK)*.
- ⁴⁶¹ Inter-jurisdictional Working Party Report to the APMC, June 2003. The working party has suggested that privacy protections consistent with those in the definition of an 'intimate forensic procedure' in the *Crimes (Forensic Procedures Act) 2000* should apply.
- ⁴⁶² Submission no 42 from NSW Police, 22 January 2004.
- ⁴⁶³ Sections 12F and 12G Child Protection (Offenders Registration) Amendment Bill 2004. Section 12F(2) provides that: 'A police officer cannot, under this section, require a registrable person to expose his or her genitals, the anal area of his or her buttocks or, in the case of females or a transgender person who identify as females, their breasts.'
- ⁴⁶⁴ *Criminal Justice and Court Services Act 2000 (UK)*
- ⁴⁶⁵ Submission no 42 from NSW Police, 22 January 2004.
- ⁴⁶⁶ Inter-jurisdictional Working Party Report to the APMC, June 2003, quoting from J. Plotnikoff and R. Woolfson, *Where are they now? An evaluation of sex offender registration in England and Wales*, Police Research Series paper 126, Home Office, London, 2000.
- ⁴⁶⁷ Inter-jurisdictional Working Party Report to the APMC, June 2003.
- ⁴⁶⁸ Inter-jurisdictional Working Party Report to the APMC, June 2003.
- ⁴⁶⁹ For example, submissions no 13 and 44. Also raised in meeting with the Child Protection Registry, 16 October 2002, and with the probation and parole service, Mt Druitt, 16 April 2003.
- ⁴⁷⁰ Submission no 44 from DCS, 29 January 2004.

⁴⁷¹ Interviews with crime managers, February 2004, LAC 10 Inner Metro Region.

⁴⁷² Inter-jurisdictional Working Party Report to the APMC, June 2003.

⁴⁷³ Meeting with the Child Protection Registry, 22 July 2003.

⁴⁷⁴ Section 11D Child Protection (Offenders Registration) Amendment Bill 2004.

⁴⁷⁵ For example, submissions no 13, 18 and 44. See Appendix 4 for details of submissions.

⁴⁷⁶ See Appendix 1 for details of the various schemes in other jurisdictions.

⁴⁷⁷ *Consultation Paper on the Review of Part 1 of the Sex Offenders Act 1997*, Home Office, UK, July 2001.

⁴⁷⁸ Submission no 44 from DOCS, 29 January 2004.

⁴⁷⁹ Inter-jurisdictional Working Party Report to the APMC, June 2003.

⁴⁸⁰ Submission no 18 from Federation of Parents and Citizens' Associations, 29 October 2003.

⁴⁸¹ Survey no 246.

⁴⁸² Meeting with probation and parole service, Mt Druitt, 16 April 2003

⁴⁸³ Section 10 Child Protection (Offenders Registration) Amendment Bill 2004.

⁴⁸⁴ Interviews with crime managers, December 2001.

⁴⁸⁵ Survey no 204

⁴⁸⁶ Interviews with crime managers, May 2002.

⁴⁸⁷ Officers from the Ombudsman's office attended a training session on 5 September 2001 at Westmead.

⁴⁸⁸ Interviews with crime managers, December 2001.

⁴⁸⁹ Three of the five said a colleague had attended training; two did not know if anyone else had been trained.

⁴⁹⁰ Interviews with crime managers, May 2002, LAC 32 Western Region.

⁴⁹¹ Interviews with crime managers, May 2002, LAC 1 Greater Metro Region.

⁴⁹² Interviews with crime managers, May 2002, LAC 35 Western Region.

⁴⁹³ Interviews with crime managers, May 2002, LAC 14 Inner Metro Region.

⁴⁹⁴ Interviews with crime managers, February 2004.

⁴⁹⁵ Interviews with crime managers, February 2004, LAC 10 Inner Metro Region.

⁴⁹⁶ Interviews with crime managers, February 2004, LAC 30 Southern Region.

⁴⁹⁷ Interviews with crime managers, February 2004, LAC 8 Greater Metro Region.

⁴⁹⁸ Interviews with crime managers, December 2001, LAC 31 Western Region.

⁴⁹⁹ Interviews with crime managers, February 2004, LAC 8 Greater Metro Region, LAC 18 Inner Metro Region, LAC 22 Northern Region, LAC 14 Inner Metro Region, LAC 11 Inner Metro Region.

⁵⁰⁰ SOPs paragraph 4.2.

⁵⁰¹ Section 4 of the SOPs deals with the registration process, and section 5 with the updating of personal information.

⁵⁰² Interviews with registered persons; survey of registered persons; meeting with DJJ Sex Offender Program counsellors, 23 May 2002; and submission no 42 from NSW Police, 22 January 2004.

⁵⁰³ Interview with registered person RP7, 27 November 2002. See Appendix 5 for an anonymised list of the registered persons interviewed during the review.

⁵⁰⁴ Interview with registered person RP4, 20 November 2002.

⁵⁰⁵ Interview with registered person RP8, 3 February 2002.

⁵⁰⁶ Phone conversation with registered person RP12, 13 October 2003. See Appendix 5 for anonymised details of registered persons interviewed for the review.

⁵⁰⁷ Survey no 39.

⁵⁰⁸ Survey no 131.

⁵⁰⁹ Survey no 97.

⁵¹⁰ Survey no 281.

⁵¹¹ Survey no 289.

⁵¹² Survey no 203.

⁵¹³ Submission no 42 from NSW Police, 22 January 2004.

⁵¹⁴ Survey no 94.

⁵¹⁵ Survey no 145.

⁵¹⁶ Survey no 239.

⁵¹⁷ Survey no 243.

⁵¹⁸ Survey no 254.

⁵¹⁹ Survey no 292.

⁵²⁰ Interviews with registered persons who are participants in the Pre-Trial Diversion of Offenders program, November 2002, quoting RP7. See Appendix 5 for an anonymised list of registered persons interviewed during the review.

⁵²¹ Correspondence from Dale Tolliday, Director, NSW Pre-Trial Diversion of Offenders Program to David Hunt, NSW Ministry of Police, dated 16 April 2003.

⁵²² Survey no 266. This person also reported that his privacy was breached as he was interviewed at the front desk.

⁵²³ Survey no 215. This person also reported a breach of privacy when a civilian in the reception area who 'knew everything' about him and made comments about him in front of members of the public.

⁵²⁴ Interviews with crime managers, May 2002 and February 2004.

⁵²⁵ Interviews with crime managers, May 2002, LAC 29 Southern Region.

⁵²⁶ Interviews with crime managers, May 2002, LAC 19 Northern Region.

⁵²⁷ Interviews with 3 registered persons and at least 12 responses from surveys.

⁵²⁸ Survey no 77.

⁵²⁹ Survey no 113.

⁵³⁰ Survey no 189.

⁵³¹ Survey no 96.

- 532 Survey no 128.
- 533 Survey no 200.
- 534 Submission no 13 from Patricia Wagstaff, 12 October 2003.
- 535 Submission no 32 from Privacy NSW, 19 November 2003.
- 536 SOPs Paragraph 5.3(A)(c)
- 537 SOPs Paragraph 5.3(A)(d)
- 538 Survey no 219.
- 539 Survey no 220.
- 540 Interview with crime managers December 2001, May 2002 and February 2004, interviews with registered persons, survey of registered persons.
- 541 Survey no 93. Similar suggestions were made in surveys no 78 and 191.
- 542 Interview with crime managers February 2004, LAC 11 Inner Metro Region.
- 543 Interview with registered person RP4, 20 November 2002. See Appendix 5 for an anonymised list of the registered persons interviewed during the review.
- 544 Inter-jurisdictional Working Party Report to the APMC, June 2003.
- 545 Section 12A(3) Child Protection (Offenders Registration) Amendment Bill 2004.
- 546 Section 12I and Child Protection (Offenders Registration) Amendment Bill 2004.
- 547 Section 12(7)(a) *Child Protection (Offenders Registration) Act*.
- 548 SOPs paragraph 4.2(B)(a)
- 549 Survey no 42.
- 550 Survey no 281.
- 551 Survey no 99.
- 552 Survey no 48.
- 553 For example, survey nos 186, 272, 56, 236, 179, 213.
- 554 Submission no 42 from NSW Police, 22 January 2004
- 555 Inter-jurisdictional Working Party Report to the APMC, June 2003.
- 556 Section 12(B)(2) and (3) Child Protection (Offenders Registration) Amendment Bill 2004
- 557 For example, the Community Relations Commission of NSW (which generally provides interpreters to NSW Police) have a Code of Conduct for Interpreters and Translators, which, amongst other principles, requires interpreters and translators to maintain confidentiality and not disclose information acquired in the course of their assignments; and ensure they do not take personal advantage of any information obtained in the course of their work.
- 558 Section 12(7)(b) *Child Protection (Offenders Registration) Act*.
- 559 Submission no 42 from NSW Police, 22 January 2004.
- 560 Submission no 29 from the DJJ, 10 November 2003.
- 561 Meeting with Marjorie Anderson and Graham Scaysbrook, DJJ, 18 December 2001.
- 562 Meeting with DJJ Sex Offender Program Counsellors, 23 May 2002.
- 563 *Registrable offenders: Policy and Procedures*, DJJ, December 2003.
- 564 For example, submission no 32 from Privacy NSW, 19 November 2003 and raised at the Implementation Committee meeting on 7 March 2001.
- 565 Clause 13 *Child Protection (Offenders Registration) Regulation*.
- 566 Submission no 32 from Privacy NSW, 19 November 2003.
- 567 Phone conversation with registered person RP12, 13 October 2003. See Appendix 5 for anonymised details of registered persons interviewed for the review.
- 568 Interviews with crime managers, February 2004, LAC 25 Southern Region.
- 569 Interviews with crime managers, May 2002, LAC 18 Inner Metro Region.
- 570 Interviews with crime managers, February 2004, LAC 30 Southern Region.
- 571 Submission no 42 from NSW Police, 22 January 2004.
- 572 Section 4(3) of *Sex Offenders Act 1997 (United Kingdom)*
- 573 See for example, submission nos 6, 13 and 22. Appendix 4 contains a full list of submissions.
- 574 Submission no 17 from the Aboriginal Legal Service, Redfern, October 2003.
- 575 Submission no 42 from NSW Police, 22 January 2004.
- 576 Section 12(5) and (6) *Child Protection (Offenders Registration) Act*.
- 577 Inter-jurisdictional Working Party Report to the APMC, June 2003, notes that NSW Police has advised that the offender has been present at all registrations.
- 578 *Child Protection Amendment Act 2002* Schedule 1 Item 4 amending section 12(1) *Child Protection (Offenders Registration) Act*, commenced in February 2003.
- 579 Inter-jurisdictional Working Party Report to the APMC, June 2003.
- 580 Inter-jurisdictional Working Party Report to the APMC, June 2003.
- 581 Section 12A(3) and (5) Child Protection (Offenders Registration) Amendment Bill 2004.
- 582 Submission no 42 from NSW Police, 22 January 2004.
- 583 Submission no 6 from Penrith LAC, 17 October 2003.
- 584 Interviews with crime managers, February 2004, LAC 32 Western Region.
- 585 Submission no 17 from Redfern office of the Sydney Regional corporations Aboriginal Legal Service, October 2004.
- 586 Interviews with crime managers, February 2004, LAC 29 Southern Region.
- 587 Interviews with crime managers, February 2004, LAC 21 Northern Region.
- 588 Submission no 33 from Department of Ageing, Disability and Home Care, 20 November 2003.
- 589 The survey did not ask a direct question about this; this information provided indirectly through answers to other questions or the general comments made by respondents.
- 590 One person reported that the registering officer was not there the first time he attended and he had to go back a second time (survey no 181), and the other person reported that it was 'upsetting to be asked that information.' (survey no 40)

⁵⁹¹ Survey no 162.

⁵⁹² Survey no 170.

⁵⁹³ Submission no 23 from the IDRS, 23 October 2003.

⁵⁹⁴ Submission no 29 from the DJJ, 10 November 2003.

⁵⁹⁵ Meeting with DJJ Sex Offender Program counsellors, 23 May 2002.

⁵⁹⁶ Interview with mother of registered person RP2, 9 July 2002. See Appendix 5 for an anonymised list of persons interviewed during the review.

Chapter 12. Reporting periods

12.1. Relevant provisions of the Act and Regulations

The reporting period is the length of time that a registrable person is required to keep police informed of any changes to their relevant personal information.

A number of matters are taken into account in the calculation of reporting periods.⁵⁹⁷ These include whether offences committed are Class 1 or Class 2 and the number, combination and timing of offences committed.⁵⁹⁸ When calculating reporting periods, all previous relevant offences are taken into account, not just the offence for which the person has become registrable. Offences committed in other jurisdictions are also used for calculating reporting periods.

The length of reporting periods can vary from eight to 15 years, with provision for lifetime reporting in some circumstances. Reduced reporting periods apply to young persons. The various reporting periods provided for in the Act are:

- eight years for a person convicted of a single Class 2 offence
- ten years for a person convicted of a single Class 1 offence, other than an offence against section 66EA of the *Crimes Act* (relating to the persistent sexual abuse of a child)
- twelve years for a person convicted of a Class 2 offence who has previously or at the same time been convicted of another Class 2 offence
- fifteen years for a person convicted of a Class 1 offence who has been previously or at the same time been convicted of another Class 1 offence or a Class 2 offence, or for a person convicted of a single offence against section 66EA of the *Crimes Act*
- lifetime reporting for a person convicted of a Class 1 offence who is subsequently convicted of another Class 1 offence
- lifetime reporting for anyone subject to a lifetime parole licence.⁵⁹⁹

These reporting periods are halved where the registrable offence was committed when the person was under the age of 18, with a reporting period of seven and a half years where a lifetime reporting period would apply to an adult.⁶⁰⁰ A registrable person is required to continue to report during any period of parole or license, regardless of when their reporting period might otherwise have ended.⁶⁰¹

12.2. Relevant police procedures

Reporting periods were adjusted for existing controlled persons in the community at the time the Act commenced to take account of the time already spent under supervision. This was to ensure that they were not disadvantaged in comparison to persons who were subject to the Act from the beginning of their supervision. How this operates is outlined in the box below.

12.3. Example

A 10 year reporting period for a person serving a custodial sentence starts on the date the person is released from custody. If an existing controlled person with a 10 year reporting period had already spent four months on parole when the legislation commenced, their reporting period would be reduced to nine years and eight months to ensure they would not be required to report for more than 10 years after the completion of their sentence.

The Child Protection Registry calculates a person's reporting period once it has received the court results.⁶⁰² As part of this process, the National Names Index is checked to ascertain whether the person has been found guilty of a registrable offence interstate. The reporting period is included on the Form 3 (notification form) which is transferred electronically to the supervising authority within five working days of the court result. This means that there is often a slight delay after sentencing before the registrable person knows their reporting period. Those notified by the Court do not know their reporting period until the time they attend a police station to register. This issue is discussed in *Chapter 10: Notification processes of the obligation to register*.

Registered persons are informed of the opportunity for review of the calculation in the Form 3 which advises, under the heading 'What to do if you do not understand or wish to query anything in this notice':

*If you believe there has been a mistake ... in calculating your reporting period ... you should write to the NSW Police Service's Child Protection Registry and ask them to review your case.*⁶⁰³

There is no formalised system for administrative review of the calculation of reporting periods. However, the Child Protection Registry will review calculations if requested. This is generally in response to telephone or written enquiries from registered persons or their representatives.

12.4. Relevant provisions of the Child Protection (Offenders Registration) Amendment Bill 2004

The provisions of the Child Protection (Offenders Registration) Amendment Bill substantially alter the periods for which registrable persons are required to maintain their reporting obligations. The provisions simplify the process for determining reporting periods while, in most cases, increasing them.

The reporting periods provided for by the scheme in the amendment Bill are:

Eight years:

- for a person convicted of a single Class 2 offence (remains the same).

Fifteen years:

- for a person convicted of a single Class 1 offence (previously 10 years).
- for a person convicted of a Class 2 offence who has previously or at the same time been convicted of another Class 2 offence (previously 12).

Lifetime reporting:

- for a person convicted of a Class 1 offence who has previously or at the same time been convicted of another Class 1 offence or a Class 2 offence (previously 15).
- for a person convicted of a Class 1 offence who is subsequently convicted of another Class 2 offence (previously 15 years).
- for a person convicted of a Class 2 offence who is subsequently convicted of another Class 2 offence and has ever been found guilty of three or more Class 2 offences (previously 12 years).
- for a person convicted of a Class 1 offence who is subsequently convicted of another Class 1 offence (remains the same).⁶⁰⁴

Halved reporting periods for people who are convicted of a registrable offence committed as a child remain⁶⁰⁵, as does the provision that requires a person to continue to report during any period of parole.⁶⁰⁶

The Bill provides that the reporting period applicable to an existing registrable person 'continues to apply, except as provided by the regulations.'⁶⁰⁷

Snapshot of reporting periods

The most common reporting period is 15 years (or its equivalent of seven and a half years for juveniles). As at 15 October 2003, over 40% of all registrable persons (including those in custody who have yet to register) have a 15 year reporting period.

Of those already registered, about 35% have a 15 year reporting period while 21% have a 12 year reporting period (six years for juveniles). A 10 year reporting period (or five years for juveniles) applies to about 17% of registered persons with just under a quarter having an 8 year reporting period (or the equivalent four years for juveniles).

For the 360 registrable persons who are still in custody and yet to register, the proportion with a 15 year reporting period (or seven and a half years for juveniles) rises to over 60%. Just under 10% have a 12 year reporting period (or the equivalent six years for juveniles) and 20% have a 10 year reporting period (or five years for juveniles). An eight year reporting period (four years for juveniles) applies to just over 10% of registrable persons still in custody.

A lifetime reporting period applies to three people. Only one of these is currently registered and the remaining two are yet to be released from custody

The reporting period has been amended for 48 registrable persons. In most cases the reporting period was increased as a consequence of convictions for additional offences. However, it could also be reduced if an appeal for a registrable offence was successful, or as the result of a clarification of the nature or timing of an offence.

12.5. Commentary on the operation of the provisions

Any consideration of reporting periods will be primarily concerned with matters of policy, although there are also operational implications. The issues raised most frequently about reporting periods during the course of our review were of a policy nature, with a focus on why and how reporting periods are set for a particular period. We are presenting here the range of views provided to the review on these issues, to inform the Minister's review of the policy objectives of the Act. The operational issues, more relevant to our review, are also discussed.

It is generally acknowledged that the system provided by the Act for determining reporting periods is complicated. The system provides for nine different reporting periods, with five for adult offenders (eight, 10, 12 or 15 years or lifetime) and four (four, five, six or seven and a half years) for juveniles. It also takes into account the class and number of offences and whether offences were committed concurrently or prior or subsequent to the first conviction for a registrable offence.

The length of reporting period is intended to be indicative of the period for which the risk of recidivism remains high and the registrable person is most likely to be a risk to the community. However, the research shows that recidivism among child sex offenders is not something that can be easily predicted.⁶⁰⁸ The APMC working party reports that having a 15 year reporting period as the upper level in NSW was based on analysis by the NSW DCS.⁶⁰⁹ This analysis found that the majority of repeat child sex offenders are detected re-offending in the three to 15 year period after release, with a very low rate of detected recidivism after 15 years if the person has not offended in that time, and only 10 per cent detected re-offending within the first three years of release from custody. The 10 year period is based on this being the maximum registration period in the United Kingdom and the most common period in most jurisdictions in the United States.⁶¹⁰

Multiple convictions are not necessarily evidence of recidivism, as multiple offences can arise from the same incident. For this reason, the Act distinguishes between offences committed at the same time, and those committed over a period of time. A person convicted of two offences at different times is subject to a longer period of registration than a person convicted of two offences arising from the one incident, as the latter is not considered to demonstrate recidivist behaviour.⁶¹¹

A number of parties commented on reporting periods during the course of our review, including eight of the 44 submissions (18%) received in response to our discussion paper, and 33 of the 293 respondents (11%) to our survey of registered persons.⁶¹² It was also the focus of debate by the APMC during their consideration of developing nationally consistent legislation.

Most raised issues in relation to the principles behind the system of calculation of reporting periods, including the complexity of the process and the length of reporting periods. Others raised issues about how and when registered persons are advised of their reporting period and a need for a system of review or explanation of the calculation process.⁶¹³

Input to the review suggests that the reduced reporting periods for young people are generally well-supported. This special provisions in the Act for young people are discussed further in *Chapter 7: Application to certain groups*, *Chapter 10: Notification of the obligation to register* and *Chapter 11: Registration processes and reporting obligations*.

The timing of advice of reporting periods has been substantially dealt with in *Chapter 10: Notification of the obligation to register*. It should be noted, however, that if reporting periods were less complex to calculate, then it may be easier to avoid some of the delays in registrable persons being informed of their reporting periods.

This chapter will deal specifically with the system for determining reporting periods and the operational implications arising from the length of time for which reporting obligations apply. It will also address the question of review of calculations to determine the reporting period.

12.5.1. The system of determining reporting periods

The Tasmanian Ombudsman expressed the view that as 'the reporting periods are quite lengthy, and the period is arbitrary, the calculation system should be kept as simple as possible.'⁶¹⁴ Similar concerns were expressed by the IDRS, who commented that it viewed 'the mechanism for calculating reporting periods to be complex and difficult for a person with an intellectual disability to challenge without the assistance of others.'⁶¹⁵ (See *Chapter 10: Notification of the obligation to register* for details of the example provided by the IDRS.)

Many of the respondents to our survey of registered persons thought that the system for determining reporting periods was not fair and did not properly reflect the risk or seriousness of their circumstances. Some of their comments were general, such as suggesting the Register could be improved by: 'Being more realistic about who has to register and time on register'.⁶¹⁶ Most provided suggestions for changing the method of calculating reporting periods. However, many of these were in fact more complex than the current situation, because they aimed to individualise the process:

Criteria should be developed to identify persons who pose a current risk to children. For example: A man who committed an offence 25 years ago, who can demonstrate he has rehabilitated himself, has lived an exemplary life for

a period longer than his now reporting period, has raised a family in that time, has a loving and supportive wife and family and extended family should not be on the register.⁶¹⁷

There should be some way that a Pysch report could influence the time to be spent on the register. After 13 years of intensive psych work which included 6 years in gaol I still have to spend another 11 years on the register.⁶¹⁸

I believe that the register could be improved in that to be included in the register a separate hearing should be held to determine if the offender is a risk to children. If it is then deemed that they are a threat then a suitable period can be assigned to the offender.⁶¹⁹

While the appeal of an individualised system of determining reporting periods is understandable, particularly to the persons affected, there is no doubt that it would be administratively complex, expensive and time-consuming to implement.

One submission suggested that reporting periods should be calculated using a formula based on length of sentence by class of offence.⁶²⁰ While this offers a simpler solution, it does not address the concern raised in one submission about the impact of plea bargaining which may result in the length of sentence not reflecting the seriousness of the incident.⁶²¹ There may be a reduction in the reporting period if a person is convicted of a lesser offence than they were originally charged with, in return for pleading guilty. However, this effect is likely to occur under any system for calculating reporting periods which is based on either type of offence or length of sentence.

12.5.2. Length of reporting periods

A number of registered persons have suggested that the length of the reporting period should be re-assessed after a certain time. This idea is similar to the proposed Canadian scheme, where registered offenders would be able to seek review of their registration obligations after five, 10 and 20 years.⁶²² One of the registered persons suggested this would act as an incentive to improve behaviour:

Each case should be reviewed after 5 years, if no offences then the reporting period should be reduced to 3 years, an incentive to change.⁶²³

Another respondent to our survey simply commented:

I would like to appeal to the Administrative Appeals Tribunal about the length of my reporting period.⁶²⁴

Several registered persons suggested that there should be an assessment to consider the risk to children should be used to determine the reporting period:

I believe that the register could be improved in that to be included in the register a separate hearing should be held to determine if the offender is a risk to children. If it is then deemed that they are a threat then a suitable period can be assigned to the offender.⁶²⁵

One other registered person, similarly concerned about the length of the reporting period, suggested that the period should be equal to parole:

People need the right to appeal, people in my situation should not be on the register any longer than their parole period.⁶²⁶

Thirty-two of the 293 respondents to our survey of registered persons commented on reporting periods. Perhaps not surprisingly, most of these (17) thought that reporting periods were too long. Some had specific ideas about the length that reporting periods should be, such as the respondent who suggested that: 'the register be there for a set time, say for example 5 years.'⁶²⁷ Another respondent, who also suggested a reporting period of five years was 'more realistic', offered a considered rationale for his view, taking a slightly different approach to most other registered persons. He argued that it would be difficult for a person to remember to comply if a reporting period was too long and it could be a:

... a potential entrapment tool for a genuine mistake of forgetting to see the crime manager to change something as simple as motor vehicle details when a new vehicle is purchased.⁶²⁸

Others thought reporting periods should be shorter in certain circumstances, to better reflect the risk posed by the registered person:

Shorter reporting time for low risk offenders. One size does not fit all. Register should be run on a case by case basis.⁶²⁹

I understand the merit of a child protection register but I also have strong reservations about the blanket approach ... and the inequality in the reporting periods. I was told by my probation officer that I would have to be on the register for 7 years. I looked into the rules and was astonished to see that for anybody who has raped or molested a child they

*have to be on the Register for 9 years, only 2 more years than me! (I believe this is correct information ... maybe it was 10 years.)*⁶³⁰

*I was shocked when I was told at the police interview I would have to report for the next 13 years and so many days I feel it was a long time for someone who realised his mistake and wanted to right the wrong.*⁶³¹

Some registered persons suggested that factors such as age, or distance of time from the offence, should impact on reporting periods:

*I'm 75, own property interstate and am restricted for 11 years. Talk about over kill.*⁶³²

*The alleged offence happened 1989 and not just seemed it will be a long 13 years if I see that far. I am 73 years old.*⁶³³

*My reporting period seems extreme based on the age of the crime, my health and my age. I can't see any benefit to the community.*⁶³⁴

*My one offence was 30 years ago. It seems to be a waste to be on it for 8 years.*⁶³⁵

*I offended 40 years ago. Haven't offended again. 10 years on register is a waste of time.*⁶³⁶

Some operational police have also told the review that, in some circumstances, they feel that reporting periods are too long. Some have suggested that reporting periods should not extend beyond the period of parole, or that parole periods should be extended if ongoing supervision or monitoring was seen to be necessary in individual cases, so that the probation and parole service maintained an ongoing involvement.⁶³⁷ We note that not all registrable persons will have a period of supervision.

Despite the expressed view of many stakeholders that the process for calculating report periods should be improved to properly reflecting the seriousness of the offences, none has suggested an effective alternative that avoided the various pitfalls.⁶³⁸ That is not to say that a simpler method is not possible or desirable.

NSW Privacy has suggested that any changes to reporting periods should be 'clearly justified by reference to experience and clear argument based on how the scheme has operated in New South Wales to date.'⁶³⁹

The APMC working party has endorsed a model, proposed by the South Australia Police, Victoria Police and Western Australia Police Service, for determining reporting periods.⁶⁴⁰ It is a modified and simplified version of the NSW system that draws on the experiences of NSW, based on the principle that proven recidivism should incur the highest reporting period. Under this proposal, there would be only three basic reporting periods: eight years, 15 years, or a lifetime reporting obligation.⁶⁴¹

The Child Protection (Offenders Registration) Amendment Bill 2004 contains provisions which reflect this proposal. These are outlined at the start of this chapter and would substantially alter the reporting periods currently provided by the Act, were they to become law. A longer reporting period would apply in most circumstances, with the number of people with a lifetime reporting obligation increasing considerably (at the end of the review period there were only three people with a lifetime reporting obligation).

While this proposed arrangement is simpler than that currently provided for by the Act, it establishes a regime with some significantly increased reporting periods. The key issue is whether these new arrangements will provide better protection for children. If there is a reasonable concern that registered persons will continue to pose a serious risk to children for longer than their reporting obligations currently continue, then increased reporting periods are clearly justified. We note below some of the challenges presented by increasing reporting periods.

If reporting periods are increased, there will be a consequential increase in workloads and resources required to manage the Register, which may negatively impact on its effectiveness as a child protection tool. Based on an analysis of the reporting periods of registrable persons during the review period, about 75 per cent of registrable persons would be registered for 15 years or their lifetime, if the criteria of the proposal in the Amendment Bill were applied. There would be a considerable increase in the number of registered persons with a lifetime reporting period. People would continue to register at the same rate, the majority for longer periods, but with fewer registered persons coming to the end of their reporting periods and being removed from the Register. Thus the total number of registered persons on the Register would increase at a faster rate and be maintained at higher levels for longer. This would have ongoing impacts on police resources, particularly in relation to sustaining effective monitoring over a long period of time.

The monitoring guidelines remind police of the need to ensure a suitable level of operational response is maintained over time 'to avoid complacency, a false sense of security, and to ensure the on-going protection of children', and provides suggestions for 'remaining focused'.⁶⁴² These concerns become even more relevant if the majority of registered persons are required to report for 15 years or for the rest of their life.

Longer reporting periods may also have a negative effect on registered persons' compliance with reporting obligations, over time. This may be a consequence of registered persons lacking the necessary organisational skills to maintain proper

reporting over a longer period, or of a reluctance to comply if reporting periods are seen as too harsh or unreasonable. As discussed in Chapter 11, the need for police to manage increased non-compliance would also place more pressure on resources. This may result in resources not being focused on registered persons assessed as being the highest risk, as police would be required to respond to non-compliance regardless of the person's level of risk, diverting attention away from the management and monitoring of persons at a high risk of re-offending. Reduced compliance would also impact on the usefulness of the Register.

The amendment Bill provides for the current reporting periods of existing registrable persons to be maintained. We note that the amendment Bill provides for an exception to the maintenance of existing reporting periods by regulation. Any exceptions would need to be carefully managed to ensure they enhance the protection of children, and do not have unintended consequences such as driving registered persons underground or deliberate non-compliance. Increasing reporting periods for existing registrable persons may have implications for compliance, as discussed above. These issues are discussed further in the conclusion to Part 3.

12.5.3. Explanation and review or recalculation of the reporting period

A number of registrable persons expressed confusion about how their reporting period was calculated and few showed any understanding of why it was the length it was, or that the nature of the offence was taken into account, as comments such as these show:

*Confused about the sentence I received and reporting period.*⁶⁴³

*How is the decision of time on register made and by whom?*⁶⁴⁴

*Have the reporting period to fit the crime or explain how the time frame is set.*⁶⁴⁵

*More explanation re: length of time.*⁶⁴⁶

The need to be able to understand the process was reflected in a submission from an individual that suggested that reporting periods should be calculated using a simple formula, so that registrable persons could easily establish what their reporting period would be at the time of sentencing.⁶⁴⁷

It is not only registered persons who are uncertain about the process. Some of the probation and parole officers have told the review that they do not feel confident to fully explain all aspects of the Act to registered persons, although they often find themselves in the position of having to provide clarification or explanation to their clients.⁶⁴⁸

The question of the need for a way of reviewing reporting periods was raised by a number of respondents to our survey of registered persons. Most of these were proposing a merits-based review system that would re-determine reporting periods according to the particular circumstances of case, rather than just a review of an administrative action.

*I think the period that a person has to be required to be registered for should be reviewed in each persons case based on their special/individual behaviour/compliance.*⁶⁴⁹

*Look at offence then decide how long i.e. mine could have been 1 year not 8 years.*⁶⁵⁰

*Be consultative not just use a formula, it should have a right of objection to time.*⁶⁵¹

The review received little support for a merits-based review of reporting periods other than from registered persons. For example, the Commissioner for Children and Young People noted that she 'does not consider there is any evidence to suggest a need to establish a review mechanism for determining the length of reporting periods.'⁶⁵²

However, there is broader support for an enhanced process to allow persons to question or better understand the calculation of their reporting period.

The APMC also favoured the current approach in place in NSW after exploring mechanisms in different jurisdictions.⁶⁵³ The report recommended the NSW approach be adopted at a national level. It noted that:

*... the timeframes for recidivist offending are sufficiently long to suggest any individual assessment of risk within a fixed registration period may be fraught. Also, allowing all those subject to fixed registration periods to periodically apply for review would be administratively complex, extremely resources intensive, and could cause additional distress to victims.*⁶⁵⁴

Views provided to this office on broader review or appeal mechanisms with the power to exempt a person from registration obligations are discussed separately in *Chapter 8: Review and appeal processes*.

NSW Police has advised that the Registry has responded to 'numerous telephone and letter enquiries from offenders and solicitors clarifying the calculation of the reporting period' and that 'this functionality is carried out on a daily basis'.⁶⁵⁵ We understand that no separate record is maintained of requests for re-calculations and the outcomes. NSW Police has not

been able to provide specific data on the number of persons who have sought a recalculation of their reporting period.⁶⁵⁶ In our view, it would be preferable if this process were formalised, as part of the business practice of the Registry, with written procedures and appropriate data recording. All persons should have the right to a clear and understandable explanation of how any administrative decision is reached. We do not believe that formalising guidelines for a process that is already being undertaken would have negative implications on police workloads. Nor would it have any detrimental impacts on child protection.

As there were amendments to the reporting period for only 48 registered persons in the first two years of the operation of the Act (and it is likely the majority of these would have been as a consequence of a further conviction for a registrable offence) it appears that more people sought clarification than there were incorrect calculations. The Registry has advised us that many registered persons who request an explanation of their reporting period do so, not because they believe it has been miscalculated, but because they do not understand the system or feel that a particular reporting period should not apply in their circumstances.⁶⁵⁷

We note the number of registered persons who have questioned their reporting period or sought an amendment is not necessarily an accurate indicator of the extent of any problems with the current arrangements. It may be that registered persons accept the information they are given and not question it.⁶⁵⁸ Further, as the IDRS have indicated, some registered persons may not have the personal skills to effectively question a calculation.⁶⁵⁹ This matter is discussed in more detail at *Chapter 10: Notification processes*.

Endnotes

⁵⁹⁷ Section 14 of the Act provides the mechanisms for the calculation of reporting periods.

⁵⁹⁸ In calculating reporting periods, the legislation draws a distinction between offences committed at the same time as the primary offence and offences committed at an earlier time or subsequently.

⁵⁹⁹ Section 14(2) *Child Protection (Offenders Registration) Act 2000*.

⁶⁰⁰ Section 14(6) *Child Protection (Offenders Registration) Act 2000*.

⁶⁰¹ Section 14(7) *Child Protection (Offenders Registration) Act 2000*.

⁶⁰² The process for this is at Paragraph 2.3 of the SOPs.

⁶⁰³ Paragraph 13, Form 3.

⁶⁰⁴ Section 14A *Child Protection (Offenders Registration) Amendment Bill 2004*.

⁶⁰⁵ Section 14B *Child Protection (Offenders Registration) Amendment Bill 2004*.

⁶⁰⁶ Section 14C *Child Protection (Offenders Registration) Amendment Bill 2004*.

⁶⁰⁷ Schedule 2 Part 2 *Child Protection (Offenders Registration) Amendment Bill 2004*.

⁶⁰⁸ A review of recidivism studies, found that 'recidivism rates across studies are confounded by differences in legal guidelines and statutes among States, length of exposure time ... offender characteristics, treatment-related variables ... amount and quality of posttreatment supervision and many other factors.' R.A. Prentky, R.A. Knight, A.F.S. Lee, *Child Sexual Molestation: Research Issues*, 1997.

⁶⁰⁹ Inter-jurisdictional Working Party Report to the APMC, June 2003, p.125.

⁶¹⁰ See Appendix 1 which provides an overview of registration legislation in other jurisdictions.

⁶¹¹ Section 3(3) *Child Protection (Offenders Registration) Act*.

⁶¹² The survey of registered persons did not ask a specific question seeking views on reporting periods, with most comments on this issue in response to questions about problems experienced at notification or registration, or about ways of improving the registration system, or in general comments.

⁶¹³ Five submissions raised the issue of reporting periods: 8, 13, 23, 24 and 32; as did 27 of the 32 survey respondents. See Appendix 4 for details of the submissions received.

⁶¹⁴ Submission no 24 from Tasmanian Ombudsman, 20 October 2003.

⁶¹⁵ Submission no 23 from IDRS, 23 October 2003.

⁶¹⁶ Survey no 157.

⁶¹⁷ Survey no 207.

⁶¹⁸ Survey no 102.

⁶¹⁹ Survey no 209.

⁶²⁰ Submission no 8 from William Franklin,, 10 October 2003..

⁶²¹ Submission no 13 from Patricia Wagstaff, 12 October 2003.

⁶²² Inter-jurisdictional Working Party Report to the APMC, June 2003, p.129.

⁶²³ Survey no 130.

⁶²⁴ Survey no 128.

⁶²⁵ Survey no 209.

⁶²⁶ Survey no 157.

- ⁶²⁷ Survey no 48.
- ⁶²⁸ Survey no 202.
- ⁶²⁹ Survey no 196.
- ⁶³⁰ Survey no 212. This person reports he was convicted of a 'computer crime' and 'served no jail time.'
- ⁶³¹ Survey no 213. He also reported that he was 'someone whom brought the matter out, pleased guilty from the start I also did the offenders course while in jail I was not compelled to do it but did it to help me be a better person.'
- ⁶³² Survey no 124.
- ⁶³³ Survey no 67.
- ⁶³⁴ Survey no 140. This person gave his age as 45-59 and his reporting period as 12 years.
- ⁶³⁵ Survey no 29.
- ⁶³⁶ Survey no 156.
- ⁶³⁷ Interviews with crime managers December 2001 and February 2004, LAC 10 Inner Metro Region, LAC 21 Northern Region, LAC 2 Greater Metro Region, LAC 22 Northern Region, LAC 30 Southern Region.
- ⁶³⁸ Submissions from Patricia Wagstaff, Tasmanian Ombudsman, Privacy NSW, William Franklin.
- ⁶³⁹ Submission no 32 from Privacy NSW, 19 November 2003.
- ⁶⁴⁰ Inter-jurisdictional Working Party Report to the APMC, June 2003, p. 126.
- ⁶⁴¹ Inter-jurisdictional Working Party Report to the APMC, June 2003. Similar to the current system in NSW this proposal includes halved reporting periods for juveniles, and review of reporting obligations for persons with lifetime reporting periods only after 15 years registration.
- ⁶⁴² Monitoring guidelines, Paragraph 3.8.
- ⁶⁴³ Survey no 96.
- ⁶⁴⁴ Survey no 236.
- ⁶⁴⁵ Survey no 50.
- ⁶⁴⁶ Survey no 267
- ⁶⁴⁷ Submission no 8 from William Franklin, 10 October 2003.
- ⁶⁴⁸ Meetings with probation and parole officers at Penrith, 20 February 2003 and Mt Druitt, 16 April 2003. Form 3 (notification form) advises that if the recipient does not understand the form, they should 'have someone explain it to you such as ... your probation and parole officer ...'
- ⁶⁴⁹ Survey no 167.
- ⁶⁵⁰ Survey no 34.
- ⁶⁵¹ Survey no 49.
- ⁶⁵² Submission no 25 from the Commission for Children and Young People, 14 October 2004.
- ⁶⁵³ Inter-jurisdictional Working Party Report to the APMC, June 2003.
- ⁶⁵⁴ Inter-jurisdictional Working Party Report to the APMC, June 2003.
- ⁶⁵⁵ Submission no 42 from NSW Police, 22 January 2004.
- ⁶⁵⁶ Email correspondence from Beth Cullen, Manager Child Protection and Sex Crimes Squad, NSW Police, 11 August 2004, and phone conversation with Martin Welfare, Child Protection Registry 18 August 2004.
- ⁶⁵⁷ Email correspondence from Beth Cullen, Manager Child Protection and Sex Crimes Squad, NSW Police, 11 August 2004, and phone conversation with Martin Welfare, Child Protection Registry 18 August 2004.
- ⁶⁵⁸ There have been very few formal complaints to this office in comparison to the number of people who have indicated to us, either directly or through the survey of registered persons, that they have had some problem in relation to the Register. This suggests that while registered persons do experience problems they do not make complaints.
- ⁶⁵⁹ Submission no 23 from IDRS, 23 October 2003.

Chapter 13. Failure to comply

13.1. Relevant provisions of the Act and Regulations

It is an offence under the Act to fail to comply with reporting obligations without reasonable excuse⁶⁶⁰, and to knowingly provide information that is false or misleading.⁶⁶¹ Both offences carry a maximum penalty of a fine of 100 penalty points (currently \$11,000) or two years imprisonment or both.

The offence of failing to comply with reporting obligations applies only to registrable persons. The Act allows a person to have a reasonable excuse for failing to comply with their obligations. It also directs the court to have regard to certain issues when considering whether the person had a reasonable excuse. These are:

- the person's age
- whether the person has a disability that affects their ability to understand, or to comply with, those obligations
- any matter prescribed by the regulations
- any other matter the court considers appropriate.⁶⁶²

The Regulations provide that a court hearing a matter in relation to failing to comply with reporting obligations is to have regard to the sufficiency of information provided to the person in relation to their obligations under the Act, having regard to their circumstances.⁶⁶³

The Act also provides that not having been properly notified, or being otherwise unaware, of reporting obligations is a defence in proceedings for the alleged offence of failing to comply.⁶⁶⁴

The offence of knowingly providing false or misleading information applies to anyone providing information to police in respect of a registrable person's reporting obligations, not just to the registered person. The Act provides for no mitigating factors in respect of the offence of providing false or misleading information.

An amendment to the Act in November 2002 provides for NSW Police to give evidence by way of certificate that certifies details of a person's registration at a particular date.⁶⁶⁵

13.2. Relevant police procedures

The SOPs provide substantial direction to police about procedures for dealing with breaches under sections 17 and 18 of the Act, including separate instructions about potential breaches by a registered person who is a child, or a person with a disability or special need.⁶⁶⁶ The SOPs provide direction in respect of offences committed by both those who fail to comply with their initial registration requirement as well those who have registered but subsequently fail to comply with ongoing reporting requirements.

Where a person fails to comply with their initial reporting requirement, the prime responsibility for the management of any action lies with the Child Protection Registry, although the LAC in which the person is believed to reside may become involved. The SOPs direct that, where applicable, the person's parole officer should be contacted to identify any mitigating factors which may have hindered registration, prior to proceeding to the issue of a warrant.⁶⁶⁷

The SOPs also provide that where police become aware that a person registered in their LAC is subsequently in breach of the Act, either by failing to comply with ongoing reporting obligations, or by providing information which they know to be false or misleading in purported compliance with their reporting obligations, they must commence an investigation into the offence.⁶⁶⁸ Such an investigation will not necessarily lead to a charge being laid, with the SOPs noting that there may be four outcomes to such an investigation: three in which no offence is revealed and one, where an offence has been established, leading to arrest and charging.⁶⁶⁹

The SOPs provide direction on the action that should be taken for the different circumstances where an investigation has revealed there is no offence.⁶⁷⁰

- The person was not notified or was otherwise unaware of their reporting obligations. In this case, the police are to notify the person and inform them that they have five working days to register before charges will be laid.
- The person failed to understand their reporting obligations. If an officer reasonably suspects the person is of an age, or has a disability or special need, that affects their ability to understand or comply with their reporting obligations, they should act in accordance with the directions in the SOPs for dealing with registered persons who are a child, or a person with a disability or special need.

- The person had a reasonable excuse for not reporting. If an officer determines that a registrable person had a reasonable excuse for failing to meet their reporting obligations, they should make arrangements for the registrable person to attend a police station and supply the required information. The officer should also consider issuing the offender with a formal warning and recording that in their notebook and on their record on the Register.

If an investigation reveals an offence, police are advised they have the option of:

- proceeding by way of complaint and summons where there is no reason to suspect the registrable person will abscond or not attend court proceedings
- by arresting the person in accordance with section 352 of the *Crimes Act 1900* ⁶⁷¹
- by means of first instance warrant, if such a warrant is in existence. ⁶⁷²

Additional guidance is provided in the SOPs for dealing with situations where police believe an offence under the Act has been committed by a person who is a child or has a disability or a special need. The SOPs direct that police should not charge a registrable person with an offence if they are aware that person is unable to understand a statutory notice, their reporting obligations or the consequences of not complying. ⁶⁷³ The SOPs also remind police that not all children or persons with a disability or a special need are unable to understand their reporting obligations, and that section 17 of the Act only provides an excuse where it can be proven that a registrable person could not understand and comply with their reporting obligations. ⁶⁷⁴

The SOPs advise that should a case manager become aware that a registrable person who is a child, or is a person with a disability or a special need, is not meeting their reporting obligations, they should consider seeking assistance from the person's 'supervision network'. Alternatively, if the person is incapable of understanding their reporting obligations, a copy of the Form 3 (notification form) should be sent to a support person, requesting that the support person assist the person meet their reporting obligations. ⁶⁷⁵

The SOPs also remind police that the offence of providing false or misleading information can be committed by someone other than the registrable person, such as a parent, carer or guardian, or nominee. If police become aware that someone has supplied information for the purposes of the Act, knowing that information is false or misleading, then the SOPs advise that police are to proceed by way of caution, summons or arrest as for other offences under the Act. ⁶⁷⁶

13.3. Relevant provisions of the Child Protection (Offenders Registration) Amendment Bill 2004

The Child Protection (Offenders Registration) Amendment Bill 2004 includes a new provision that would waive the statute of limitations, and allow proceedings for an offence under the Act to commence at any time. ⁶⁷⁷

The amendment Bill also provides that, when determining whether the person had a reasonable excuse for failing to comply with their reporting obligations, the court must consider whether the form of the notification given about the person's obligations was adequate, having regard to their circumstances. ⁶⁷⁸ This is currently provided for in the Regulations. ⁶⁷⁹

Snapshot of breach offences

Number of charges

An analysis of the Register shows that there were 60 charges for offences under the Act in the first two years of the Register's operation. This represents 54 people as four people were charged with breach offences on more than one occasion (one was charged four times and three were charged twice).

All 54 were charged under section 17 (fail to comply with reporting obligations), with two also being charged under section 18 (provide false or misleading information).

There were no charges under the Act brought against anyone who was not a registered person.

Timing of charges

There were no charges laid in the first three months of the Register's operation. In the following three months, just under 20 per cent of the charges were brought. More than half the charges were brought in the last nine months of the review period. (See graph below for the spread of charges across the review period.)

LACs

The LACs with the greatest number of breach charges were not those with the most registered persons. In two LACs, four persons were charged, which represents 28% and 25% of all registered persons in the LAC, respectively. In a further two LACs, there were three persons charged (11% and 14%).

Penalties

Of the 55 charges finalised, 36 convictions were recorded, five matters were withdrawn and 14 were dismissed. Penalties for convictions ranged from:

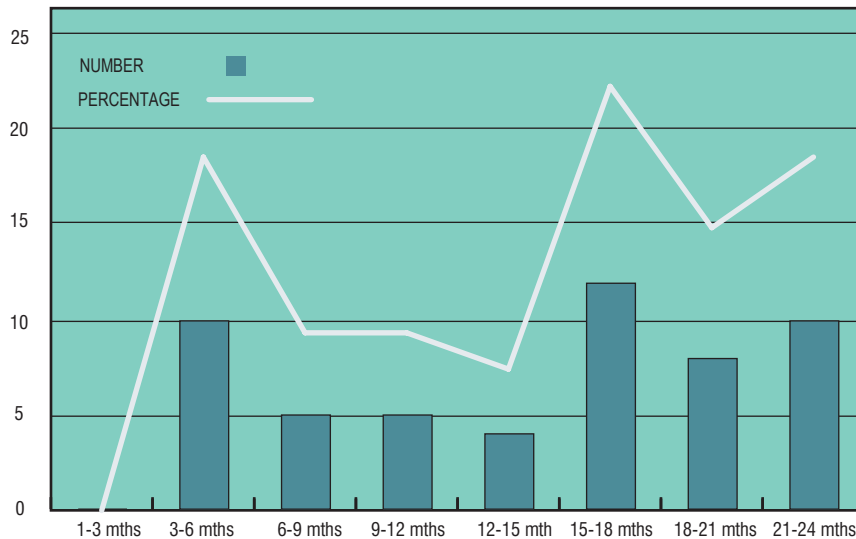
1. fines of between \$10 and \$2000 (21 matters)
2. bonds of between six months and two years (five matters)
3. imprisonment of between one and 15 months (10 matters).

See graph below and table later in the chapter for more details on the penalties.

Characteristics of persons charged

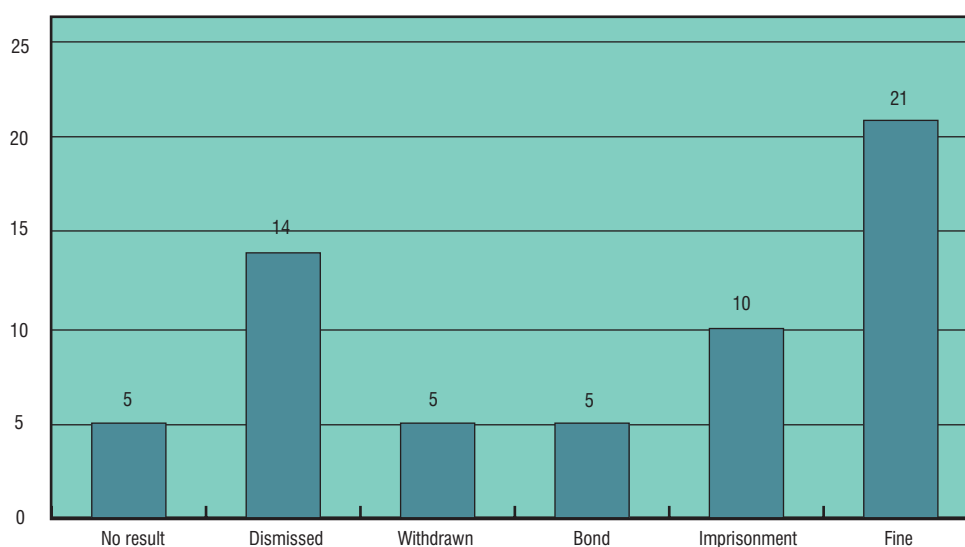
Of those breached, 10 were Aboriginal. This is nearly 20% of all persons breached although Aboriginal people make up less than 4% of persons on the Register. Six of the persons breached were under the age of 18, or were on the Register for an offence committed as a young person. Only one of these was under the age of 18 at the time of the breach charge. Four were known to have a disability or a special need.⁶⁸⁰ One of the persons charged was a woman.

Figure 10: Number and percentage of breach charges laid in each quarter of the review period



Source: Data provided by the Child Protection Registry, June 2002. N=60

Figure 11: Outcomes of breach charges in review period



Source: Data provided by the Child Protection Registry, June 2004. N=60

13.4. Commentary on the operation of the procedures

13.4.1. Management of non-compliance with reporting obligations

As outlined above, police do not charge all persons who have failed to register within 28 days or failed to provide changed details within 14 days of the change, with an offence under the Act. The Child Protection Registry has advised the review that in the first instance police encourage and assist registrable persons to comply with their obligations rather than proceeding directly to laying charges.⁶⁸¹ This practice was also reported by a number of the crime managers we interviewed.⁶⁸²

In its submission, NSW Police told us that the majority of breach offences are committed by persons who originally register with police but then fail to continue to meet their reporting obligations. There is a current compliance rate of about 90-95 per cent of persons complying with their initial registration obligation.⁶⁸³ It is not clear how many registered persons subsequently fail to meet their ongoing reporting obligations in respect of advising police of changes to their details. NSW Police report that the 'non-compliance arrest rate in NSW is affected by the absence of ongoing or annual reporting requirements.'⁶⁸⁴ This may suggest that more registered persons than have been charged have failed to comply with their obligations, and would have been prosecuted had their non-compliance been detected by police.

Many of the crime managers we interviewed told us they put far greater emphasis on ensuring compliance than charging registered persons in breach of their reporting obligations. Some of the examples of their practice are:

There was only one offender not really wanting to comply with his obligations, mainly because he simply doesn't agree with the idea of the Register. To deal with that, we made efforts to be very upfront and clear and to get him on side so as to ensure compliance and encourage the offender to oblige so as not to suffer any consequences. This approach has worked to ensure no breaches have occurred.⁶⁸⁵

One wasn't too keen [to register] but we got him when reporting for something else. We prefer not to arrest and charge them but just to get them to register.⁶⁸⁶

We have had two instances of breach of reporting obligations. On both occasions I have used discretion not to prosecute, but have given cautions as both persons had not fully understood the impact of not abiding by the reporting conditions. I did not consider either registered person was a danger to society.⁶⁸⁷

There have been no recorded breaches in the command, apparently due to the strong message conveyed upon registering about the consequences of breaching obligations. The only one incident was a misunderstanding when an offender was transferred into the command and moved back and forth between his divorced parents, also due to employment changes. This was because he was originally registered elsewhere and simply did not understand the full extent of his obligations.⁶⁸⁸

*There haven't been any breaches, although that is probably due to the very informative process of registration where everything is very clearly explained, coupled with extensive monitoring that identifies any possible information that hasn't been updated and can be done so accordingly. For example at the moment one case has been identified as having moved, and as usual the offender is simply asked why the details were not updated and there is usually a reasonable enough explanation. Generally everyone registered complies with all of his or her obligations.*⁶⁸⁹

*There are been a few breaches although generally offenders are given the opportunity to explain why they were breaching their obligations and often there is a legitimate reason to excuse the breach.*⁶⁹⁰

*Normally we don't sit back and wait [until they have failed to comply], but make an effort to contact people.*⁶⁹¹

The comments from the crime managers that we interviewed would suggest that generally the first priority for police is to achieve compliance, and that proceeding to charge is kept for the most serious offences. One crime manager told us that the response in his LAC depends on the particular registered person and the circumstances of the non-compliance. He told us that one person was charged recently without a warning 'because he failed to declare he was seeking employment in a child-related industry', but noted that failing to keep personal details up to date is not generally seen as quite so serious.⁶⁹²

Another crime manager told us that his LAC always considers if a warning is the best response to non-compliant behaviour, but in some instances it is appropriate to bring charges. He told us of one person in his LAC who had a history of failing to comply with court ordered obligations. He failed to register within the prescribed period on his release from prison, and so police charged him. He was convicted and sentenced to six months imprisonment. On release, he again failed to comply and was charged and convicted again. Further details are in case study 10 below.

Case study 10.

A man who is registrable as the result of a conviction for kidnap failed to register following his initial notification. He was subsequently charged with fail to comply and was sentenced to six months imprisonment. Police have indicated that his substantial criminal history and a general unwillingness to cooperate with police were factors in the decision to bring charges and the length of his sentence. He has previously been charged and convicted of breaching periodic detention orders and probation orders. When he was subsequently released he was again notified of his registration obligations, but this time refused to sign the notice. He did eventually register but told police he did not understand why he should be on the register. When the police checked the address he provided, it was found to be his mother's address, where he had not lived for some time and his mother said he was not welcome. He was charged with failing to comply with reporting obligations and providing false and misleading information. However the 'provide false information' charge was withdrawn when his mother was reluctant to provide a full statement. He was sentenced to a further six months imprisonment on the 'fail to comply' since. He has been registered since his second release from prison.⁶⁹³

The Tasmanian Ombudsman commented in its submission that 'the SOPs regarding failure to report seem reasonable' and noted that 'clearly it is in police interest to ensure they gain the required information, not add to the burden of matters in the courts'.⁶⁹⁴ As Privacy NSW pointed out in its submission, the key issue is whether charges are being laid in appropriate circumstances. It wrote:

*In the discussions leading up to the Act it was understood that breach proceedings would be a last resort after alternative steps to get offenders to comply had failed.*⁶⁹⁵

Only five of the 293 respondents to our survey of registered persons commented on the breach provisions for failing to comply with their obligations.⁶⁹⁶ Three of these commented only on their fear of being breached or being threatened with further charges if they did not comply, rather than any actual experience of being breached:

*If I forget to notify on some point I will be punished unfairly. I have memory problems.*⁶⁹⁷

*[A detective] came to my house because he had been told by [the Registry] that I had left the country. I don't like being wrongfully accused. I am not sure the Law applied to me ... if I had not complied I was told I would be sent back to Gaol. I felt I was forced into signing up with the threat of more Gaol time. I feel threatened by a reimprisonment term if I did not sign up.*⁶⁹⁸

*P[olice] officer said quite nastily if I didn't attend would be find or gaoled.*⁶⁹⁹

The NSW Police Association raised a separate issue in its submission, questioning why re-offending was not a specific offence under the Act:

*The registrable person can be put into gaol for three months for not changing their personal details or updating the type of vehicle they drive or their telephone number, but if they re-offend, there is no offence committed under this Act.*⁷⁰⁰

It is noted that the SOPs provide police with a significant degree of discretion in terms of which instances of non-compliance should proceed to charges being laid. In assessing whether to charge a person the prime considerations must be the likelihood of ongoing deliberate non-compliance and the degree of risk this poses to children.

13.4.2. Impact on young persons and persons with a disability or special needs

One of the major concerns raised by a number of parties, prior to the commencement of the Act, was that people with poor understanding of their obligations or limited capacity to comply would be particularly vulnerable to being breached.⁷⁰¹ As outlined above, there are substantial provisions in the Act and in the SOPs to address these concerns. However, a number of organisations that made submissions to the review continued to raise concerns about the breach provisions of the Act disproportionately affecting vulnerable people. None of these provided the review with any actual examples of a registered person being breached in circumstances which they believed to be unreasonable.

In its submission, the Tasmanian Ombudsman commented that 'clearly it is in police interest to ensure they gain the required information, not to add to the burden of matters in the courts where a person with a disability fails to comply.'⁷⁰²

The Department of Ageing, Disability and Home Care (DADHC) noted there is 'a risk that some people with an intellectual disability will not have the capacity to understand and fulfill registration and reporting obligations' but notes that DADHC provided extensive advice to the Ministry for Police working group regarding the drafting of the special provisions in the Act for people with a disability.⁷⁰³ The IDRS acknowledges these provisions in the Act but still expresses concerns, stating:

*In the view of our Service this may still disproportionately expose people with an intellectual disability to further legal processes and, notwithstanding the provision, the possibility of further criminal sanction on the basis of the manifestation of their disability.*⁷⁰⁴

It is of particular concern to IDRS that it may not be apparent that a person is vulnerable or has an intellectual disability, noting that 'many people with intellectual disabilities may not disclose their disability, especially to the police, until they are in breach of their obligations.' It is relevant to note that during the review period the functionality to allow recording of 'special needs' on the Register was not operational, and that police were only very rarely being advised by notifying authorities that a registrable person had a special need.⁷⁰⁵ IDRS further stated:

*The legislation, in providing a large discretion to the police as to whether to proceed in recording a reporting failure as a breach, must be accompanied with ongoing professional development for police officers in understanding intellectual disabilities. IDRS is concerned that at present a person who, for a multitude of reasons, does not disclose their intellectual disability when the reporting requirements are explained should not be harshly punished for that non-disclosure if they subsequently breach their obligations due to their inability to understand their obligations.*⁷⁰⁶

One of the respondents to our survey of registered persons told us about being breached for failing to comply: 'It is difficult & hard for me being mentally ill & I got recharged.'⁷⁰⁷ From the limited information that he provided, it appears that his is the same case that was referred to in a submission made by a crime manager.⁷⁰⁸ He wrote: 'One person is unable to speak English and has a mental problem. This person has recently been summons for failing to notify a change of address.'⁷⁰⁹ The crime manager subsequently told the review that since the summons was issued, it has been determined that the provisions of the *Mental Health (Criminal Procedure) Act* should apply in his case, and the matter was likely to be dismissed.⁷¹⁰ An examination of the breach charges data indicates that the matter was withdrawn.

As outlined in the 'Snapshot' at the start of this chapter, during the review period Aboriginal people on the Register were charged with breach offences at a significantly higher rate than their representation on the Register. We note that the SOPs contain no specific advice for police for managing compliance by Aboriginal registered persons, although their circumstances may pose particular challenges.

By way of example, one crime manager told us of a matter where police had brought charges against an Aboriginal man who had initially given police an address in the Tweed Heads LAC, but was found to be living in Tamworth some two months later, without having advised police of his change of address. He was charged by the police in Tamworth, but the matter was dismissed at court because of a dispute about the meaning of place of residence. The man does not have a particular place of residence but travels extensively between the coastal and inland regions.⁷¹¹ Police are attempting to deal with the matter by ensuring the man advises police of any address at which he resides for 14 days in a 12 month period, rather than his particular address at any given time.⁷¹²

In its submission, the Redfern office of the Aboriginal Legal Services raised other concerns about the impact of the Act on Aboriginal people:

*We are particularly worried about juvenile aboriginal offenders, whose parents may probably be disadvantaged, and therefore, can not assist the children in fulfilling their reporting obligations. The children concerned may be subsequently labeled with further offences.*⁷¹³

The particular difficulties that young people may have in complying with their reporting obligations was noted by one crime manager we interviewed. He explained his LAC's response to dealing with these situations:

*There are two juveniles registered who appear to be in breach of their obligations though unintentionally. As young people they are more focused on trying to make a go of their lives and so are forced to move around a bit with work and living arrangements, and so don't always keep police informed of their every movement. It is unlikely that this is intentional however and police are only warning them and reminding them of their obligations to ensure compliance. Young people are always encouraged and have always had support people with them when registering or updating information to ensure thorough understanding of procedures and what is required of them.*⁷¹⁴

This is in line with the SOPs, which direct police to contact a registered person's support person or their 'supervision network' if there is a concern that the person is unable to comply.

However, some police have told us that they have had difficulty in finding individuals or agencies to assist with compliance in some circumstances. The Child Protection Registry has told us that ensuring compliance by registered persons with a mental illness or intellectual disability is a significant problem for LACs. Some registered persons are continually failing to comply but police are finding that bringing charges produces no useful outcome, with the matters being dismissed or the person receiving relatively minor fines. The Registry has told us that in some cases, attempts to involve other agencies to assist the person to comply have been unfruitful. Police would prefer not to bring charges in these circumstances, but feel that they have no other option.⁷¹⁵ Case study 11 below outlines one such matter.

Case study 11.

An unemployed man with no fixed place of address and an alcohol and substance abuse problem and suffering from a mental illness is known to frequent the train system in Western Sydney, where he approaches children and other members of the public. Police consider him to be a high risk threat. A transit police officer intercepted him and notified him of his registration obligations. He failed to attend a police station to register within the required time. The Child Protection Registry wanted to arrange for a court to consider to have him assessed under section 32 of the *Mental Health (Criminal Procedure) Act* as a means of having a public guardian appointed to case manage him. However, when he was arrested the local police did not believe he needed to be assessed under section 32 and charged him with 'fail to comply.' The matter was dismissed at court. Two months later he was again detained for failing to register, after police were called to a shopping centre to deal with a person causing offence. He was charged again and this time the court convicted him and fined him \$100. One month later he again came to the attention of police as a result of a disturbance. He was again charged, and finally registered with police. When the matter came to court he was fined \$10. Six months later, he was spoken to by police at a railway station in relation to a number of minor offences. While no action was taken in relation to those matters, police became aware that he had failed to comply with his register obligations in that he had not provided police with his current address. The address he had given police at registration was a refuge for homeless men, but he had moved a number of times since then without advising police. When charged for the fourth time he told police he was living at premises which enquiries showed to no longer exist. He was convicted of failing to comply and fined \$20. The Child Protection Registry has been unsuccessful in having a public guardian appointed.

As discussed above, a support person, or someone assisting a registered person comply with their reporting obligations, could be charged with providing false information. To date there have been no charges for providing false information laid against anyone other than a registered person. There is no provision to charge anyone other than a registered person with failing to comply with reporting obligations, unlike in the United Kingdom. There, if a court directs that a person with parental responsibility for a child who is a registrable person is to comply on their behalf, they are then liable for any failure to comply.⁷¹⁶ This option was rejected in NSW.

13.4.3. Outcomes of breach charges

There was a significant range of outcomes for the 60 breach charges during the review period. These ranged from dismissal, to fines, to bonds, to imprisonment. See table 1 below for types and details of penalties. It is not the role of this review to consider whether the penalties set by the courts are appropriate. However, it is useful to review some of the individual matters to ascertain how the provisions are being used.

Table 1. Outcomes of breach charges during review period

Breach charge outcome		Number ⁷¹⁷
No result yet (matter not yet heard)		4
No action (warrant issued but person not found)		1
Dismissed/non conviction		14
Withdrawn		5
Bond (Length in months)		5
6 months	2	
8 months	1	
12 months	1	
24 months	1	
Imprisonment (Length in months)		10
1 month	1	
3 months	5	
6 months	2	
15 months	1	
Fines (Amount in dollars)		21
Less than \$100	2	
\$100-\$199	3	
\$200-\$299	3	
\$300-\$399	0	
\$400-\$499	4	
\$500-\$599	5	
\$600-\$699	1	
\$700-\$799	0	
\$800-\$899	0	
\$900-\$999	0	
\$1000-\$1499	2	
\$1500-1999	0	
\$2000	1	
Total		60

This wide diversity of outcomes is consistent with the experience in the United Kingdom in the first year of its register's operation. Police in the United Kingdom expressed concerns that 'excessively lenient penalties could undermine the extent of registration compliance.'⁷¹⁸ However, the evaluation of the first year of the Sex Offenders Register in the United Kingdom produced no evidence to that effect.⁷¹⁹ It cannot be assumed that penalties at the severe end of the range will encourage compliance. The evaluation in the United Kingdom noted that one offender had been jailed three times for failure to register. Case study 10, above, shows that one registered person in NSW who received a custodial sentence for failing to comply, subsequently failed to comply, and again received a prison sentence. In this instance, at least, it would appear that penalties at the more severe end of the scale did not improve compliance.

Similar to the experience reported in the United Kingdom, some police in NSW have expressed disquiet at the leniency of courts in dealing with breaches by registered persons, arguing that the low penalties being handed down are not an adequate deterrent to continued non-compliance and undermine attempts by police to encourage compliance. For example, some of the comments from crime managers include:

In the event of a breach, the fine is only \$100, which isn't really effective. One particular offender keeps failing to notify any changes although he has already been charged. He is a low-risk offender and it's only because he's in contact with police through other non-sex crimes that enable the updating of information.⁷²⁰

The legislation could also be amended to be tougher on those people in breach of their obligations.⁷²¹

Increase breach penalties in line with the seriousness of those breaches.⁷²²

[the probation and parole service] are the ones with the power to revoke parole conditions so it is they who are more suited to control the behaviour of sex offenders. The courts seem more likely to dismiss charges for breach offences that police identify anyway.⁷²³

There have been no breaches because it is important to consider how difficult it would be to prove they intended to breach their obligations, rather, offenders mistakenly forget or are some way unable to update their information or inform police of any changes.⁷²⁴

As outlined above, 14 of the 60 (23%) charges brought were dismissed. Where a conviction was proven and a fine imposed (in 35% of cases), in the majority of cases, it was less than \$600. However, as our analysis of the penalties for breach offences shows, only five fines imposed were less than \$200, and three of these were in respect of repeated breaches by the same person, whose addiction and mental health problems made it difficult for him to comply (see case study 11).

At the more severe end of the scale of penalties, terms of imprisonment of more than a year were imposed in two cases (13 months and 15 months respectively). Details of these convictions are set out in case studies 12 and 13, below. The 13 months penalty, in case study 12, was for a number of offences and not directly related to the seriousness of the breach offence. However, the 15 months penalty imposed in case study 13 was directly related to the seriousness of the threat posed by the registrable person.

Case study 12.

Police conducting a highway patrol, stopped the driver of a car and asked for his licence. He provided a Queensland licence in a particular name. However, the highway patrol officers received information that he was known by a different name. A COPS check on that name revealed eight outstanding warrants, and that he was wanted for failing to register in accordance with the Act. He is an Aboriginal man described by police as a 'habitual traffic offender who has no regard for punishments set down by the court.' He appeared before the court in respect of 17 offences, including the 'fail to comply' charge. The other charges related to traffic offences, breach of good behaviour bonds, assault and goods in custody. He was convicted of the majority of the charges, including 'fail to comply'. He was sentenced to 13 months imprisonment as a total sentence for all the convictions.

Case study 13.

Police in NSW received information from Queensland that a person with an extensive history of fraud and child sex offences was entering NSW. He had been recently released from prison after having completed a sentence for a registrable offence. A notice of obligation to register in accordance with the Act was served on him, and he registered with police. He provided no employment details. He was assessed as 'high threat'. Police subsequently received information that he had reached an agreement with a cleaning product distributor to act as his agent, and had opened a post office box, and telephone account at his home address, in the company name. He had contacted a primary school about purchasing the company's products. As he had failed to notify police that he was working for the company, he was charged with failure to comply with his reporting obligations. He was convicted and sentenced to 15 months imprisonment for the breach offence.

Another two people received fines in excess of \$1000 (\$1200 and \$2000). Both of these fines were issued by the same court, and in both cases the breach involved the registered person moving interstate without informing police. One person is still interstate while the other is living in NSW again and complying with his obligations.

In our view, information on the penalties imposed during the review period do not support a view that they are overly lenient. It could be anticipated that an offence where a number of mitigating factors must be considered will not always result in a conviction. This effect could be expected to be amplified with a new offence, where points of reference or precedents are yet to be established. It could perhaps also be argued that the varied outcomes of the breach charges are an indication that the specific provisions of the Act which protect persons with a limited capacity to understand and comply, are working.

Some of the case studies discussed here where no conviction was obtained (or the matter was withdrawn) clearly highlight issues about the registered person's ability to comply with the Act.

The fact that not all the prosecutions of breach charges in the two year review period were successful, may also suggest that charges may not always have been brought in the most appropriate circumstances.

By way of example, one crime coordinator told us of a registered person who was charged with failing to comply with his reporting obligations soon after the commencement of the Register. This man had informed his parole officer of his new address and thought that was sufficient. However the police proceeded to charge him as he had not kept police informed directly of his new address. The matter was dismissed at court as the magistrate accepted that he had not sufficiently understood his obligations. The crime coordinator acknowledged that police were aware that this Aboriginal man had literacy difficulties. He told us that procedures in his LAC had now changed with increased familiarity with the Register, and that police would always warn someone rather than charge them straightaway for failing to update their details with police.⁷²⁵

In a similar matter, a man with a history of mental illness was charged with failing to comply with his obligations because he had not registered at a police station in the LAC where he was living. However, the matter was dismissed at court as it was shown that he had registered at a neighbouring LAC.

It may also be relevant that six of the matters dismissed were brought within the first 12 months of the Register's operation (including the two examples discussed above). This may be indicative of an uncertainty on the part of police, at least initially, about how to handle breaches, or an inadequate understanding of how to prepare cases. The details in case study 14 suggest that bringing a charge against the person was an appropriate response to repeated non-compliance, but one that was unsuccessful due to a technicality in the preparation of the case. This charge occurred within the first six months of the Register's operation.

Case study 14.

An Aboriginal man in custody was notified of his obligation to register at the correctional centre. He signed the notification form stating that he understood his reporting obligations. He failed to register within the required time frame. When his parole officer checked with him why he had not registered he said that he had not signed the form and did not understand his obligations. The parole officer provided him with new forms and explained his obligations to him. He refused to sign until he had had advice from the Aboriginal Legal Service. An appointment was made for him with the Aboriginal Legal Service, but he failed to attend. The parole officer then accompanied him to the police station so that he could register with police. However, he left without registering while the parole officer was talking to a police officer. A short time later while he was in custody in relation to another matter, police charged him with failing to comply with his reporting obligations. The matter went to court but was dismissed due to a technicality as the police had failed to issue the proper certificate under section 21A, setting out the details of the Register which established his failure to register.

The NSW Police internal journal, *Police Weekly*, provided commentary on a matter where a magistrate dismissed a charge of failing to comply with reporting obligations. It reported:

The magistrate was not satisfied that the police went "far enough on the evidence to satisfy me beyond a reasonable doubt that the defendant understood that any change of address permanent or otherwise had to be notified", and dismissed the charge.

It is essential that every person registered under this Act fully understands what is required of them. It may not be enough to simply have the offender sign the acknowledgement on the notice that is served when the person is registered.⁷²⁶

We are aware that NSW Police is undertaking an internal review of failed prosecutions. Unsuccessful prosecutions of offences under the Act should be considered as part of this. This project may result in recommendations for future prosecutions. It may be useful if an assessment of which instances of non-compliance should proceed to charge and preparation of breach matters for court was incorporated into ongoing training provided to police in respect of their management of the Register. Training for police who have Register responsibilities is discussed in the conclusion to Part 3.

13.4.4. Persons charged more than once

Four people have been charged with a breach offence more than once. One person had the following outcomes: non conviction, fines of \$10, \$100 and \$20 (case study 11). The other three were each charged twice, with these outcomes: one received 6 months imprisonment on 2 separate occasions (case study 10); one had one charge dismissed and the other recorded as withdrawn; and the other received fines of \$100 and \$600.

Case study 11 suggests that, in some cases, repeated breaches of reporting obligations may be more indicative of an inability to comply rather than an unwillingness to do so. However, case study 10 and 15 (below) show that in other cases, multiple breach offences are a result of a deliberate refusal to comply with registration and reporting obligations.

Case study 15.

A person described as a 'high risk habitual sex offender', who also has a number of convictions for violence and drug offences, failed to register with police in accordance with the Act on his release from custody. A warrant was issued for his arrest for failing to comply. He came to the attention of police in respect of a traffic matter and, as he then complied with obligations by registering with police and because he told police he was not fully aware of his obligations, the charge was withdrawn. He provided his grandparents address in Sydney as his primary address. Three months later, he again came to the attention of police, as a result of an alleged involvement with a 15 year old girl on the north coast. He was staying at his mother's house. He was again charged with 'fail to comply' as he had not informed the police of his new address. The matter was dismissed at court, as there was some dispute about whether he was visiting rather than living with his mother, and the court accepted that he was only visiting and had not relocated. He subsequently provided police with his mother's address on the north coast as his primary address.

13.4.5. Non-compliance by registered persons convicted of non-sexual offences

NSW Police has told the review that there appears to be a greater level of non-compliance amongst registered persons convicted of non-sexual registrable offences (that is, kidnap and murder). NSW Police advised: 'The non-compliance rate for registrable persons in NSW is currently approximately 10%. However, for persons placed on the register for kidnapping offences, the non-compliance rate is over 20%.'⁷²⁷

Of the 60 breach charges laid in the review period, five were against persons on the Register for non-sexual offences (two for kidnap offences and two for murder), with one person with kidnap as a registrable offence charged twice. These charges represent eight per cent of all breach charges.⁷²⁸

One crime manager reported that a man in his LAC who has failed to comply is on the Register for murder. The crime manager attributed this breach to the man's conviction being for a non-sexual offence, and his fear that, by registering, he would be seen as a sex offender. He sought to leave the country to attend a funeral in Greece, but was not permitted to by the probation and parole service. He is believed to have left the country, without advising the probation and parole service or police. A warrant has been issued in respect of failing to comply with reporting obligations, which will be served on him should he be located.⁷²⁹

One person registered in respect of a conviction for a kidnap offence which had no sexual element, who had been breached, contacted this office. He also responded to our survey and wrote:

*Wrong day was put on the notice for the first registration with police by [parole]. Police charged me and held me 3 days for nothing!!! Case was dismissed. I have been [incarcerated] for 3 days because they made a mistake I was told.*⁷³⁰

He told us that the Form 3 (notification form) he received in October 2001 stated, in error, that he was to register by the end of January 2003, instead of January 2002. He admits that he knew that he was meant to register within 90 days (that is by the end of January 2002)⁷³¹ but was very resistant to registering because he felt that he should not be included on the Register because of the nature of his offence. His charge was dismissed by the magistrate and he eventually registered with police.⁷³²

NSW Police has noted its concern that registered persons who are 'placed on the Register for offences clearly non-sexual in nature, may challenge the clear intent and purpose of the legislation in courts, when charged with failing to meet their reporting obligations.'⁷³³

13.4.6. Statute of limitations

In its submission, NSW Police advised that the 'non-compliance arrest rate in NSW is affected by ... statute of limitations issues in bringing prosecutions'.⁷³⁴ In NSW, proceedings for summary offences must be commenced within six months of the offence, unless the limitation is extended or removed by legislation.⁷³⁵ The report of the working party of the APMC expanded on the concerns of NSW Police. It states:

In NSW, the statute of limitations has proven problematic in prosecuting offenders who have left the state without informing police and who subsequently return. As an element of the offence is leaving the jurisdiction, and proceedings cannot be commenced whilst the offender is outside the jurisdiction, the 6 month statute of limitations has created problems in bringing forward some prosecutions.

It is also possible that a failure to report changes to personal details will not be detected within 6 months of that change.

...

*A short period in which to commence proceedings is inconsistent with the long-term child protection purposes of the legislation.*⁷³⁶

The APMC working party has recommended that national legislation should provide that there be no statute of limitations in commencing proceedings for offences under the Act. The Child Protection (Offenders Registration) Amendment Bill 2004, which was introduced to Parliament in July 2004, contains a provision to this effect. Section 21B of the Bill states: 'Despite anything to the contrary in the *Criminal Procedure Act 1986*, a proceeding for an offence under this Act may be commenced at any time.'

The question of an appropriate timeframe to permit commencement of criminal proceedings is one, in the first place, for the legislature. We note however, that although a failure to provide correct details may not be detected till more than six months after the time the details have changed, it is our understanding that the registered person would still be in breach of their obligations at the time the non-compliance was detected. We are unsure why NSW Police believe the statute of limitations would prevent proceeding with a breach charge in these circumstances. If the breach is not detected until after the person has provided correct details, as in the example provided above, where the registered person has left the state and not advised police until they have returned, then it is not clear why police would wish to proceed with a breach charge if the person is currently complying.

Endnotes

⁶⁶⁰ Section 17(1) *Child Protection (Offenders Registration) Act*.

⁶⁶¹ Section 18 *Child Protection (Offenders Registration) Act*.

⁶⁶² Section 17(2) *Child Protection (Offenders Registration) Act*.

⁶⁶³ Clause 17 *Child Protection (Offenders Registration) Regulations*.

⁶⁶⁴ Section 17(3) *Child Protection (Offenders Registration) Act*.

⁶⁶⁵ Section 21A *Child Protection (Offenders Registration) Act*

⁶⁶⁶ Chapter 9, Chapter 7 Paragraphs 7.6 and 7.7, and Chapter 8 Paragraphs 8.5 and 8.6, *Standard Operating Procedures: Child Protection (Offenders Registration) Act 2000, Version 2*, NSW Police State Crime Command, October 2002.

⁶⁶⁷ SOPs, paragraph 9.1, p.49.

⁶⁶⁸ SOPs, paragraph 9.2, pp.49-50.

⁶⁶⁹ SOPs, paragraphs 9.3 and 9.4, p.50.

⁶⁷⁰ SOPs, paragraph 9.3, p.50.

⁶⁷¹ Section 352 of the *Crime Act* provides for the arrest of a person who has (or is reasonably suspected to have) committed an offence with or without a warrant.

⁶⁷² SOPs, paragraph 9.4, p.50.

⁶⁷³ SOPs, paragraph 7.6, p.40 (in respect of a child) and paragraph 8.5, p.46 (in respect of persons with a disability).

⁶⁷⁴ SOPs, p.40 and p.46.

⁶⁷⁵ SOPs, paragraph 7.6, p.40 (in respect of a child) and paragraph 8.5, p.46 (in respect of persons with a disability). Chapters 7 and 8 provide further advice to police on dealing with registered persons who are a child or a person with a disability or a special need, including about serving a duplicate notice and establishing a supervision network or interagency monitoring team.

⁶⁷⁶ SOPs, paragraphs 7.7, p.40 and 8.6, p.47

⁶⁷⁷ Section 21B *Child Protection (Offenders Registration) Amendment Bill 2004*.

⁶⁷⁸ The *Child Protection (Offenders Registration) Amendment Bill 2004* adds a new subsection to section 17(2) of the *Child Protection (Offenders Registration) Act*.

- ⁶⁷⁹ Clause 17 *Child Protection (Offenders Registration) Regulations*.
- ⁶⁸⁰ One was described as having an alcohol/substance abuse and mental health problem, one as illiterate, one as having a mental health problem, and one as being of a non-English speaking background and having a mental illness.
- ⁶⁸¹ Meeting with the Child Protection Registry, 26 February 2002.
- ⁶⁸² Interviews with crime managers, May 2002 and Feb 2004
- ⁶⁸³ Submission no 42 from NSW Police, 22 January 2004.
- ⁶⁸⁴ Submission no 42 from NSW Police, 22 January 2004.
- ⁶⁸⁵ Interviews with crime managers, February 2004, LAC 25 Southern Region.
- ⁶⁸⁶ Interviews with crime managers, May 2002, LAC 11 Inner Metro Region.
- ⁶⁸⁷ Submission no 5 from Waratah LAC, 16 October 2003.
- ⁶⁸⁸ Interviews with crime managers, February 2004, LAC 2 Greater Metro Region.
- ⁶⁸⁹ Interviews with crime managers, February 2004, LAC 5 Greater Metro Region.
- ⁶⁹⁰ Interviews with crime managers, February 2004, LAC 18 Inner Metro Region.
- ⁶⁹¹ Interviews with crime managers, May 2002, LAC 29 Southern Region.
- ⁶⁹² Information provided from phone conversation with crime manager from Oxley LAC, 20 July 2004.
- ⁶⁹³ Additional information provided in phone conversation with crime manager, 20 July 2004, LAC 7 Greater Metro Region.
- ⁶⁹⁴ Submission no 24 from the Tasmanian Ombudsman, 20 October 2003.
- ⁶⁹⁵ Submission no 32 from Privacy NSW, 19 November 2003.
- ⁶⁹⁶ No specific question was asked about breach offences. This information was provided in response to other questions, or in the section for other comments.
- ⁶⁹⁷ Survey no 191.
- ⁶⁹⁸ Survey no 216.
- ⁶⁹⁹ Survey no 227.
- ⁷⁰⁰ Submission no 7 from Police Association of NSW, 16 October 2003.
- ⁷⁰¹ Such as the NSW Law Society, the IDRS, the Hon Ian Cohen, The Greens MLC, The Hon. Dr Arthur Chesterfield-Evans, Democrats MLC.
- ⁷⁰² Submission no 24 from the Tasmanian Ombudsman, 20 October 2003.
- ⁷⁰³ Submission no 33 from the Department of Ageing, Disability and Home Care, 20 November 2003.
- ⁷⁰⁴ Submission no 23 from IDRS, 23 October 2003.
- ⁷⁰⁵ NSW Police in its submission, dated 22 January 2004, advised us that it had received only three special needs notifications from DCS and none from other agencies.
- ⁷⁰⁶ Submission no 23 from IDRS, 23 October 2003.
- ⁷⁰⁷ Survey no 170.
- ⁷⁰⁸ Although the survey was anonymous, the respondent provided details of the LAC at which he was registered, and some information about his special needs, and these appeared to match the limited details included in the submission.
- ⁷⁰⁹ Submission no 6 from Penrith LAC, 7 October 2003.
- ⁷¹⁰ Additional information provided during phone conversation, 29 January 2004.
- ⁷¹¹ Information provided in a phone conversation with crime manager, 20 July 2004, LAC 35 Western Region.
- ⁷¹² As provided by section 9(2)(a) of the *Child Protection (Offenders Registration) Act*.
- ⁷¹³ Submission no 17 from Redfern office, Aboriginal Legal Services, October 2003.
- ⁷¹⁴ Interviews with crime managers February 2004, LAC 30 Southern Region.
- ⁷¹⁵ Meeting with the Child Protection Registry, 22 July 2003.
- ⁷¹⁶ Section 4(3) of *Sex Offenders Act 1997 (U.K.)*.
- ⁷¹⁷ Outcomes of registrable persons charged with multiple offences are listed individually.
- ⁷¹⁸ Plotnikoff and Woolfson (2000) *Where are they now?: An evaluation of sex offender registration in England and Wales*, p.7.
- ⁷¹⁹ Plotnikoff and Woolfson (2000) *Where are they now?: An evaluation of sex offender registration in England and Wales*, pp.7-9.
- ⁷²⁰ Interviews with crime managers, February 2004, LAC 19 Northern Region.
- ⁷²¹ Interviews with crime managers, February 2004, LAC 24 Southern Region.
- ⁷²² Interviews with crime managers, February 2004, LAC 32 Western Region.
- ⁷²³ Interviews with crime managers, February 2004, LAC 35 Western Region.
- ⁷²⁴ Interviews with crime managers, February 2004, LAC 30 Southern Region.
- ⁷²⁵ Information provided in a phone conversation with crime coordinator, 16 July 2004, LAC 27 Southern Region.
- ⁷²⁶ *Police Weekly, Vol 16 No 23*, 14 June 2004.
- ⁷²⁷ Communication from Kim McKay, Commander, NSW Police Child Protection and Sex Crime Squad, 6 August 2003.
- ⁷²⁸ We assume that the NSW Police non-compliance figures include all non-compliance detected, and not just that which led to charges being laid.
- ⁷²⁹ Information provided in a phone conversation with crime manager, Kuring-Gai LAC, 20 July 2004.
- ⁷³⁰ Survey no 115. Although the survey was conducted anonymously, this respondent chose to provide his name.
- ⁷³¹ 'Existing controlled persons' (those serving a sentence at the commencement of the Act) had 90 days to register after the commencement of the Act. Section 10(1) *Child Protection (Offenders Registration) Act*.
- ⁷³² Interview with registered person RP9, 26 February 2003. See Appendix 5 for an anonymised list of registered persons interviewed for the review.
- ⁷³³ Communication from Kim McKay, Commander, NSW Police Child Protection and Sex Crime Squad, 6 August 2003.
- ⁷³⁴ Submission no 42 from NSW Police, 22 January 2004.
- ⁷³⁵ Section 179(1) *Criminal Procedure Act 1986* states: 'Proceedings for a summary offence must be commenced not later than 6 months from when the offence was alleged to have been committed.'
- ⁷³⁶ Inter-jurisdictional Working Party Report to the APMC, June 2003, p.135.

Chapter 14. Conclusions and recommendations

The Act requires the collection of personal information about registered persons for the purposes of enhancing child protection and not as an end in itself. It is therefore important that the provisions and processes which underpin this aspect of the Register are efficient, appropriate and manageable to ensure the highest levels of compliance.

This will result in the details held on the Register being accurate and thorough, providing police with the necessary information for the management of its child protection responsibilities.

Information provided to this review suggests that, in general, the provisions and procedures for the management of registration and reporting obligations are adequate and operate effectively. However, there are some areas where improvements would lead to more effective operation. We note that the Child Protection (Offenders Registration) Amendment Bill 2004 provides for significant amendments to various aspects of the registration and reporting requirements.

14.1. Notification processes

Although the review was provided with some examples of problems with the notification procedures, there was no substantive information to suggest there were any major concerns. However, this is not to say that the notification process could not be improved, specifically in relation to ensuring registered persons, particularly those with special needs, understand their obligations. We make the following suggestions.

14.2. Provision of information

The first step in making certain that the Register information is up-to-date and accurate is ensuring that registered persons understand what obligations the Act imposes on them. This requires the information provided to registrable persons about their obligations and the consequences of not complying to be clear and unambiguous. This can only lead to greater compliance.

The notification process might be enhanced if NSW Police were to produce simplified material, to be given to all registrable persons at the time of notification, and again at registration. For example it could reissue its pamphlet setting out reporting obligations in simple English. Another option might be for police to produce a simplified list of reporting obligations in a credit card sized format so that registered persons could carry this in their wallet for easy ongoing reference. The production of other forms of information such as video or audio tapes, as discussed prior to the commencement of the Register, might also be helpful.

14.3. Supervising authorities

It may be useful for the Child Protection Registry to take a coordinating role in the ongoing development and provision of training to supervising authorities' staff in undertaking the notification role. As part of this process, it may assist if the Registry were to work with agencies to review their procedures, with a particular emphasis on the identification and notification of persons with special needs. This may be particularly useful in relation to the role of the courts in notification, given the particular concerns raised.

In this regard, it also seems reasonable that the exercise of the courts' notification function by the probation and parole service and the DJJ, for registrable persons commencing supervised sentences, be formalised to reflect existing practice, as outlined in Chapter 10.

14.4. Persons with special needs

The notification provisions and processes must also take account of the particular concerns for registrable persons with disabilities or other special needs, that might impact on their ability to understand and comply.

As discussed in Chapters 10 and 11, better identification of persons with special needs would enhance police management of the Register. The Register system did not support the recording of 'special needs' during the review process. As this aspect is now functional, it may be useful for police to monitor the extent to which supervising authorities are providing advice about registrable persons with special needs. Improved identification, at the outset, of persons with

special needs will assist police to be aware of when support persons and supervision networks might be required to assist with registration and compliance. This would have a positive impact on the workload of police and their ability to focus their time and resources on those assessed as the highest risk.

Consideration should also be given to modifying the system to allow for the recording of the involvement of support persons or other professionals. This will become even more relevant once the child protection watch teams are established. These are discussed further in Part 4.

14.5. Police powers for notification

The provision in the amendment Bill to allow police to detain a person for the purposes of notification, provides an uncommon power in the absence of an offence being committed. While the review did not receive any evidence about why such a power was required, it may well be warranted. If the amendment to the Act is passed, we suggest that NSW Police ensure that adequate guidelines and training about the new power are provided, and that its use is monitored.

14.6. Registration and reporting processes

The nature of the information registered persons are required to provide to police goes to the value the Register has as a child protection tool. If police are to effectively use the Register to prevent, detect and investigate offences, the information held needs to be thorough and relevant to child protection issues. However, the desire for breadth of information should not make reporting so complicated that compliance becomes impracticable. The processes for registration and reporting need to be as simple and streamlined as possible. The simpler the process for reporting is, the more likely it is to happen.

14.7. Reporting obligations

Information available to the review would suggest that the ability of police to better manage the Register and effectively carry out their child protection role would be enhanced by some adjustments to reporting obligations and arrangements.

We note that the amendment Bill includes a number of provisions which accord with recommendations that this review would have otherwise made. On this basis, the review supports the amendments in the Bill that provide for:

- registered persons to provide details of children they live with or have regular unsupervised contact with
- registered persons to provide details of any club or organisation that they are affiliated with that has child membership or participation
- registered persons to provide details of tattoos or other distinguishing marks
- registered persons to report interstate absences of any 14 days in a 12 month period or regular short absences.
- police to take photographs of registered persons, including of tattoos or other distinguishing marks, rather than requiring the person to provide a photograph
- annual re-registration, even where details are unchanged
- the provision of interpreters
- the introduction of more flexible reporting arrangements, especially for registered persons in remote areas, as long as they are accompanied by adequate provision in respect of confirmation of information provided
- the removal of the statute of limitations in respect of offences under the Act.

14.8. Procedures in local area commands

In addition to the changes provided by the amendment Bill, it may also be useful if internal police procedures were to be clarified in respect to certain aspects of the registration and reporting process.

As outlined in Chapter 11, the review has received information which indicates that the current system for making an appointment with the crime manager to complete initial registration or to update information at times makes it difficult for registrable persons to comply with their obligations within the appropriate timeframes. It may be helpful if the arrangements were reviewed. For example, consideration might be given to nominating an alternative contact person should the crime manager be unavailable, or allowing appointments to be made outside the statutory timeframes if contact is made earlier.

It may also be appropriate for the SOPs to clarify the processes for ensuring an appropriate degree of privacy is afforded to registrable persons while they are reporting to police. For example, consideration might be given as to whether it is appropriate that officers without direct involvement in the management of the Register are made aware a registrable person is reporting, and whether a registrable person should be entitled to report in a private room without other officers present.

14.9. Annual re-registration

We would also recommend appropriate guidelines be developed to manage the annual re-registration process, to avoid an increase in inadvertent breaches requiring the redirection of police resources away from managing high risk registered persons. Information provided to registered persons must emphasise this requirement and consideration might need to be given to establishing a reminder system, in order to promote compliance.

14.10. Reporting periods

One aspect of the system that may benefit from simplification is the calculation of reporting periods. If the method of determining reporting periods were simpler, it could be more easily explained and understood. Information about how the reporting periods are calculated could form part of information provided at notification. This may result in fewer requests for re-calculations or explanations of the reporting period, which would have a positive impact on the workload on the Child Protection Registry. As discussed in Chapter 12, in our view it would be appropriate for NSW Police to regularise the current informal process for managing requests for re-calculation of reporting periods. A simpler system which aids understanding may also reduce a sense of frustration with the system which may in turn enhance compliance.

We note that the amendment Bill provides for a much simpler system of determining reporting periods. This system would provide for substantially longer reporting periods for the majority of registrable persons. While it is essential that persons who pose a risk to children are monitored during the time they are most at risk of re-offending, a matter canvassed in detail in Part 4, greatly increased reporting periods present some dilemmas. As discussed in Chapter 12, the introduction of 15 year or lifetime reporting periods for the majority of registered persons may substantially increase the workload of police in managing the Register, and might be counter-productive to compliance.

14.11. Managing non-compliance

Management of registered persons in breach of their obligations should be targeted at encouraging compliance. Proceeding to charges should generally be the response where non-compliance is wilful, repeated or is an indication that children are at risk, rather than being a consequence of a person's inability to understand or meet requirements under the Act. It is important that a balance is struck between making it easy enough for people to comply while still maintaining a strong system with sanctions with a high deterrence value for those who deliberately try to avoid their obligations and the ongoing scrutiny by police which that entails.

We note that the SOPs provide police with a significant degree of discretion in terms of when to proceed to charges being laid. In our view, the first response should be to encourage compliance, because of the long-term benefits of having accurate information on the Register for the prevention, detection and investigation of offences against children. However, in assessing whether to charge a person the degree of risk posed to children must be the fundamental concern, along with the likelihood of ongoing deliberate non-compliance. In all aspects of managing the Register it is essential that police focus their time and resources on the registered persons assessed as being the highest risk.

14.12. Training

Police management of the notification and registration processes and responding to non-compliance would be enhanced by the provision of ongoing training. It is important that officers newly taking on responsibilities in respect of the Register receive the training necessary for them to undertake this role effectively. As discussed in Chapter 11, officers who undertook training prior to the commencement of the Register reported it being very useful, while those who did not receive training were less confident about their responsibilities. Ongoing training should also address specific issues that officers may face, such as the identification and management of persons with special needs, encouraging compliance and any changes to guidelines or processes. It may be useful if case studies of instances of non-compliance which have proceeded to charge, and preparation of breach matters for court, was incorporated into ongoing training.

14.13. Aboriginal registered persons

As is discussed in Chapters 11 and 13, Aboriginal people make up a far greater proportion of persons charged with offences under the Act than their representation on the Register. It is noted that the SOPs do not contain any specific directions or advice to police about managing Aboriginal registered persons. Although the Act does not contain any specific provisions for any group other than those who are children or have a disability, this should not preclude the development of procedural guidelines. This is particularly important in respect of Aboriginal registered persons, given ongoing issues about their relationship with police and their high representation among persons charged with breach offences, and in the judicial system generally. We suggest that NSW Police should develop guidelines in respect of dealing

with Aboriginal registrable persons. Consultation with appropriate stakeholders, including for example, the Aboriginal Justice Advisory Committee, would clearly be helpful. Consideration should be given involving Aboriginal community liaison officers or youth liaison officers in the notification and registration process and management of compliance, where this may be indicated.

14.14. Recommendations

RECOMMENDATION 4: That, in respect of notification, the Minister considers formalising the probation and parole service's exercise of the courts' notification functions.

RECOMMENDATION 5: That, in respect of notification and registration arrangements, NSW Police considers the proposals outlined above to modify the system to ensure enhanced compliance, including:

- the development and provision of clearer information to registrable persons in simplified formats
- working with supervising authorities to improve identification and recording of persons with special needs
- the provision of ongoing training for police and agencies with responsibilities for notification
- clarifying and revising guidelines in respect of certain aspects of the reporting process
- the development of guidelines to assist with the management of reporting and compliance by Aboriginal registered persons
- development and provision of ongoing training for police in the management of non-compliance, particularly in relation to laying charges.

In response to the consultation draft of this report provided to NSW Police the former Minister for Police has provided comments on these recommendations. DCS also provided some comments on the consultation draft.

In relation to Recommendation 4, the former Minister stated that NSW Police has advised they see no difficulties with this recommendation in relation to the functions of the Register, but noted that DCS also submitted a response to the draft report.

DCS has provided significant comment on this part of the report, and specifically on this recommendation which it does not support.

To the extent appropriate, these comments have been incorporated into Chapter 10 and Appendix 6.

The DCS view is that courts are generally meeting their notification requirements, and if they do not NSW Police are responsible, except in limited circumstances, to notify offenders.

Our review, however, suggests:

- To date, the probation and parole service have primarily notified persons sentenced to non-custodial sentences of their reporting obligations.
- Most of these were persons required to register at the commencement of the Act. However, there continue to be persons newly convicted and sentenced, who the courts do not notify, and the probation and parole service do notify.
- To the credit of DCS, the probation and parole service have in place systems that succeed in identifying persons who must register, and have not been notified of their obligations by courts or police.

DCS have suggested that the requirement for courts to notify, with checking by another agency (so called "dual notification"), ensures persons are notified in spite of any administrative errors by courts. While there is some force to this view, courts have outlined their difficulties in meeting notification obligations. It is questionable whether it is appropriate or preferable to continue to require courts to exercise any function in these circumstances. This is especially the case where the probation and parole service appear to be performing this role effectively.

There is a concern, raised by DCS, that if the probation and parole service is responsible for the first notification, a person with a community-based sentence would be at a disadvantage compared to other registrable persons. This is because section 10(1)(d) of the Act states that a person must register within 28 days of sentencing. A person with a supervised sentence usually attends an interview with the probation and parole service within one to three weeks. If this was when the person was first notified of their registration obligations, they would not have the full benefit of the 28 day period in which to register.

We note this is a matter which requires consideration should DCS be formally given an extended role. However, section 10(1)(d) notwithstanding, the Form 3 (notification of obligation to register) states that a registrable person has 28 days from the date on which they receive the notice in which to register. Further, section 17(3) provides that it is a defence to proceedings in respect of failing to comply, if a person has not received notice of their obligations. The SOPs give police discretion in determining when to proceed to charge a person for failing to comply. Given this, it is highly unlikely that any charge would be laid, or prosecution be successful, in respect of a person who had not registered within 28 days of sentencing, if they had not been notified until some weeks into that period, and were still within the 28 day period of the notice being given.

DCS have also flagged that requiring the probation and parole service to undertake the notification of all registrable offenders with a supervised sentence would constitute a significant increase in workload. Information available to us does not strongly support this contention. It is, however, a matter that should be closely considered if this recommendation be accepted. In addition, there would be a reduced workload for court registry staff.

On balance, we remain of the view that it is preferable for an amendment to the Act or Regulation to provide for the probation and parole service to exercise the courts' functions in respect of registrable persons serving supervised sentences. We also note again in this respect, that while it may be preferable that this occur, failure to strictly comply with current requirements does not appear to have resulted in registrable persons not being notified of their obligations.

In relation to Recommendation 5, the former Minister's response advises that:

- The former Minister supported the development and provision of clearer information to registrable persons in simplified formats. He noted that as a result of the passing of the *Child Protection (Offenders Registration) Amendment Act 2004*, the Child Protection Registry is currently re-designing the information pamphlet and forms provided to registered persons. He advised that this will include the incorporation of simple diagrams to explain registration and reporting requirements. Research into the viability of a training video for police is also under way. Any change to information packages and forms provided to registered persons and police will be subject to legal review.
- The former Minister supported NSW Police working with supervising authorities to improve identification and recording of persons with special needs. He noted that under the provisions of the *Child Protection (Offenders Registration) Amendment Act 2004*, regulations must be made to facilitate notification and reporting of a registered person who has a special need or disability. He advised that child registry staff will be seeking to address the issue of registered persons with special needs through training for police officers and referrals to child protection watch teams.
- The former Minister supported the provision of ongoing training for police on the Register. If NSW Police were to develop and conduct training for other supervising authorities, a system similar to that used for the joint investigation response teams, where participating agencies established a Memorandum of Understanding outlining cost sharing arrangements and assigning responsibilities may be appropriate. Additional training would require additional resources.
- The former Minister did not support allowing the registered person an alternate point of contact should the crime manager be unavailable. He commented that this may result in less experienced officers accepting information from registered persons and would introduce further points at which the communication chain could fail. Officers appointed to crime manager positions are experienced police who aim to ensure reporting obligations are complied with. However, they understand the balance required between meeting the needs of the registered person and community safety. The former Minister also noted that the general practice is for LAC crime managers to provide leniency where a registered person has made a genuine attempt to make and keep an appointment within the required timeframe and for acceptable reasons has failed to comply. Crime managers are understandably less inclined to offer such leniency when the criminal history of a registered person indicates they are a recidivist, high-risk offender.

While we agree generally with these comments, providing for a degree of flexibility so that local commands can determine whether an alternative contact is appropriate would address the present difficulties where the crime manager is unavailable. It should not result in a lessening of expertise in dealing with registrable persons.

- The former Minister supported the recommendation to modify the SOPs to specify that a registered person be allowed to report in a private room where possible. He noted that NSW Police is currently scoping the establishment of a computer-generated system to accommodate registered persons' new annual reporting requirements.
- The former Minister supported the recommendation that the registration scheme should make adequate provisions for indigenous registered persons to facilitate compliance. He advised that Child Protection Registry staff will be seeking to address the issue of indigenous registered persons through training for NSW Police, including the utilisation of LAC based Aboriginal Community Liaison officers.

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- The former Minister did not support the recommendation for development and provision of ongoing training for police in the management of non-compliance, particularly in relation to laying charges, commenting that further research into the factors contributing to failed prosecutions is required. He further noted that NSW Police's internal review of failed prosecutions may provide relevant information on training requirements for police and other authorities in relation to handling non-compliance offences.

We note the former Minister's views on this issue, and suggest that our recommendation in respect of training for police in the management of non-compliance be further considered once the outcome of the internal review of failed prosecutions is known.

Part 4.

Management of register to enhance child protection

This part of the report deals with how police ensure that the Register is used to improve the protection of children in the community. It includes chapters on how the monitoring of registered persons, and the use and disclosure of information held on the Register, assists in the prevention and detection of offences and, thus, how the Register enhances the safety of the community. It also discusses the impact on the Register's effectiveness of NSW being the only state in Australia to have registration legislation, particularly in relation to ensuring its application to persons convicted outside NSW.

As the Act contains no provisions specifically for the implementation of these aspects of management of the Register, they have been enabled through the development of internal policies and guidelines. These are outlined and discussed in the following chapters.

This part also comments on a number of related new developments, including the commencement of a trial of child protection watch teams; the introduction of child protection prohibition orders; certain provisions in the Child Protection (Offenders Registration) Amendment Bill to enhance information sharing; procedural changes in respect of disclosure of information about registrable persons; and moves towards the development of a national approach to registration.

Chapter 15. Monitoring of registered persons

15.1. Relevant provisions of the Act

There are no specific provisions in the Act which provide for NSW Police or any other authority to monitor registered persons' compliance with their reporting obligations, or to monitor their actions or behaviour.

15.2. Relevant police procedures

Directions for how police should monitor registered persons are contained in the SOPs⁷³⁷ and guidelines for operational police developed by the Child Protection Registry.⁷³⁸

The first version of the SOPs, issued in August 2001, included some guidance on the monitoring and supervision of children and persons with special needs but no general directions for the monitoring of all registered persons. The second version of the SOPs, issued in October 2002, includes some directions on the monitoring of registered persons.

The SOPs now recommend that where police have had no contact with a registered person for 12 months, they should undertake a check to ensure that the person is complying with their reporting obligations. The SOPs advise that this can be done in one of four ways:

- I-ASK Habitation check through Field Services (Consider RTA, Lands and Titles Office, utilities and telecommunications carriers).⁷³⁹
- A plain clothes visitation to the offenders primary address.
- Making an undisclosed telephone call asking to speak to the registered offender at their home or work.
- Request information from other case managers who regularly visit the offender including parole officers, carers or guardians.⁷⁴⁰

The SOPs also advise that more frequent checks should be considered where there is 'a history of non-compliance offences such a breach of parole or bail, or the crime manager reasonably suspects the offender will not comply with their reporting obligations.'⁷⁴¹

Draft monitoring guidelines were made available in October 2001 during training sessions prior to the commencement of the Register.⁷⁴² A final version of the guidelines was issued to LACs by the Child Protection Registry in September 2002. Prior to this, LACs were entitled, though not required, to use the advice contained in the draft version as the basis for their monitoring activities.

The guidelines define monitoring as 'the on-going collection, collation and analysis of tactical intelligence in relation to a HIGH threat registered offender and the development of pro-active crime prevention strategies to protect the community.'⁷⁴³ The guidelines state they are to 'assist local area commands monitor HIGH THREAT serious violent or sexual offenders registered under the *Child Protection (Offenders Registration) Act*' and provide 'guidance only' (original emphasis).⁷⁴⁴

The guidelines cover such issues as how to determine which registered persons to monitor and what strategies police can use. The guidelines identify registered persons assessed as high threat where there are concerning factors, intelligence or other information as requiring the highest level of proactive monitoring. They state that the minimum standard of monitoring for registered persons assessed as low or medium threat is a mandatory annual compliance check and an assessment of any new information and intelligence as it comes to light.⁷⁴⁵

The guidelines outline various monitoring options, noting that the strategy chosen should be 'tailor-made' and will 'depend on the criminality of the offender.'⁷⁴⁶ Some of the suggested strategies focus on overlooking individual registered persons. These include home visits, surveillance, intelligence gathering, and forming supervision networks or case management teams.⁷⁴⁷ Other strategies are aimed at 'reducing the vulnerability of potential victims'.⁷⁴⁸ These include patrolling of schools and other places where young people congregate, increased use of the youth liaison officer, and the development of information packages for children, parents and schools. The guidelines also provide information on which activities are inappropriate, noting that any monitoring action should not be viewed as offender intimidation and harassment and that information should only be sought in a discreet and confidential manner. They also emphasise that monitoring must not involve disclosure to the public.⁷⁴⁹

The guidelines include advice on disseminating information to general duties police. The guidelines note that although access to the Register is limited to a small number of persons at each LAC, crime managers have the discretion to pass

information to general duties police when they consider a registered person poses a risk to the community. They provide that some more sensitive information may only be available to members of a case team, but police who are participating in an operational strategy should be well informed 'as to the appearance and criminality of a registered offender'. The guidelines state that such information should never be displayed in areas where it can be viewed by members of the public, and that production of handouts for police incorporating photographs and personal information should be used with extreme caution.⁷⁵⁰ They also reiterate the direction in the SOPs that: 'any officer who intercepts a registered person or their vehicle, or conducts a COPS inquiry on a registrable person, is required to furnish an information report (of the type CPR-related).'⁷⁵¹

The guidelines also contain some strategies for protecting registered persons from community harassment, noting that such behaviour may drive the person underground. These include proceeding with charges against vigilantes or formally warning them that their behaviour is criminal; assisting the registered person to take out an Apprehended Violence Order (AVO); providing support to the registered person or their family, with the assistance of other government departments; and addressing community forums.⁷⁵²

15.3. Commentary on the operation of the procedures

While the Act contains no specific provisions for police to monitor the actions and behaviour of persons on the Register, it was clearly the intention of Parliament that the monitoring of registered persons was one of the purposes of the Act. The then Police Minister, The Hon. Paul Whelan, noted in his second reading speech that one of the objectives of the legislation was 'to assist in the monitoring and management of child sex offenders in the community'.⁷⁵³

The monitoring guidelines developed by the Child Protection Registry also make it clear that monitoring is intended to be a significant part of the police role in relation to the Register. They state:

The Child Protection Register provides a unique opportunity for "intelligence-led" policing, through the collation of tactical intelligence relating to local child sex offenders. More importantly, these procedures recognise that intelligence pertaining to HIGH THREAT offenders, regardless of their criminality, should be actioned and used to generate proactive strategies to reduce re-offending. [Original emphasis].⁷⁵⁴

Our review is intended to address the operation of 'the provisions of the Act and the regulations'. Even though there are no specific provisions relating to monitoring, this is a significant aspect of the police implementation of the Act. It is an issue on which the review received considerable input, especially from police and registered persons, and one that the Minister's review must address in considering whether the Act has met its policy objectives. As such, it would be remiss of this review not to pay attention to this issue.

15.3.1. Approaches to monitoring

Information the review has received indicates that there is a varied approach to monitoring across LACs.⁷⁵⁵ Some LACs use a structured and proactive strategy for monitoring offenders, while for others it appears there is a more ad hoc approach. Some LACs undertake home visits and surveillance, while others rely more on intelligence-based methods. In its submission, NSW Police acknowledged this, reiterating the advice in the monitoring guidelines that 'ultimately, local area commands are required to make judgements about competing priorities and resources in each command'.⁷⁵⁶

15.3.1.1. Information from police

Monitoring was a focus of the interviews with crime managers conducted in May 2002, which provided us with information about the monitoring practices in 13 LACs in the first seven months of the Register. A number of LACs told us they had undertaken very little monitoring at this stage, though some were planning to start a more structured approach.⁷⁵⁷ One crime manager reported that the approach in his LAC was 'ad hoc to say the least. After registration we just wait to see if they need to come in to change any details'.⁷⁵⁸ Those with a structured approach to monitoring tended to focus on home visits and telephone contact. Some of the approaches they described included:

The Field Intel officer [a senior constable] does a three monthly check. He goes and knocks on their doors, an in-person contact in plain clothes.⁷⁵⁹

If they weren't high risk, then I would make telephone contact to ensure they're still at the same address. I let them know at registration that I'll be in touch. I would go round if I was concerned.⁷⁶⁰

We're looking at having quarterly contact until we can form our own opinion. The case officer will do home visits in plain clothes, we'll be discreet.⁷⁶¹

The detective checks on them. He goes to their address or rings them or asks them to come in, or might speak to their counsellor. It depends on each individual.⁷⁶²

*Initially I was seeing them on a weekly basis, getting them to come in after their parole appointment. They all kept their appointments but eventually I decided it wasn't needed.*⁷⁶³

Other LACs tended to rely more on record-based checking to maintain awareness of the whereabouts or activities of registered persons. In many LACs, this is primarily the information reports which operational police who have had contact with any registered person are required to provide. These information reports are disseminated on a daily basis to the nominated case officer for the particular registered person.

*There's no process to monitor them, except through people accessing records. Intel reports are very good in this LAC. The local police or anyone in the Command puts them in.*⁷⁶⁴

*I'll be notified if others make an enquiry on the system and will contact them if necessary.*⁷⁶⁵

*We'll monitor intel reports and so on. There are constant disseminations about access and inquiries on a day-to-day basis.*⁷⁶⁶

*There's no structured monitoring but staff are aware there's pro-active tasking. We'd follow them up if they were seen, check who they're associating with, where they are etc, but the levels of sightings are minute. If alarm bells rang other officers would bring it to my attention.*⁷⁶⁷

By the end of the review period, our interviews with crime managers suggested that a structured approach to monitoring was more common. In most of the LACs where we conducted interviews, the minimum level of monitoring required by the SOPs and guidelines was undertaken, and generally more. Most told us that they monitored registered persons on a regular basis, generally through a periodic visit. The frequency of this visit varied from monthly to annually. In some LACs this was determined by the threat level of the registered person, as advised by the monitoring guidelines. However, in other LACs the level of monitoring appeared to be the same for all registered persons, without reference to the individual threat assessment rating of the person. The practice for the level of monitoring varied across the LACs, as the following comments show:

*They are visited each month for check-ups. They are all unemployed so it is important to check what they are spending their days doing and how they are keeping busy.*⁷⁶⁸

*They are each monitored according to their [threat] assessment every 90 to 220 days in the form of a home visit.*⁷⁶⁹

*Home visits are conducted in plain clothes and with unmarked cars, with high risk offenders checked every 3 to 4 months, whilst low risk offenders being checked every 6 to 12 months.*⁷⁷⁰

*Offenders in the LAC are all mainly low risk. They are all visited at least every 6 months.*⁷⁷¹

*[Their details] are then checked once a year, by calling the offender discreetly and checking if their details are still the same. They are all low risk offenders.*⁷⁷²

*All offenders are generally asked to report once a week for a month whilst a continued assessment is made, with the outcome after a month then determining how often ask offenders to report whether it is once a week, once a fortnight or once a month. Generally once a month they get patrol target teams, consisting of junior officers, to check whether offenders are still residing at their given address. This is done in a strictly confidential manner with the target teams being simply told to check on the residence without any indication of whether the resident is an offender.*⁷⁷³

*Each person has an assigned task force team of detectives who look out for any incidents involving those people that might arise, and then every 2 months the detectives visit the offenders and have a chat about what they have been up to, and whether any information has needed to be updated.*⁷⁷⁴

*Random checks are able to be conducted over the phone because they are low risk, whilst now and then if intelligence officers have some spare time they are sometimes asked to track offenders and ensure they are driving the same vehicle they said they were, or living at the same place they said they were. Intelligence officers are able to do this very discreetly and it doesn't take much to do.*⁷⁷⁵

One crime manager told us that his LAC devoted considerable time and resources to monitoring, primarily with home visits conducted on a regular basis depending on the risk rating of the person. All registered persons in this LAC are also monitored daily via COPS, and visits are conducted every six months or annually.⁷⁷⁶

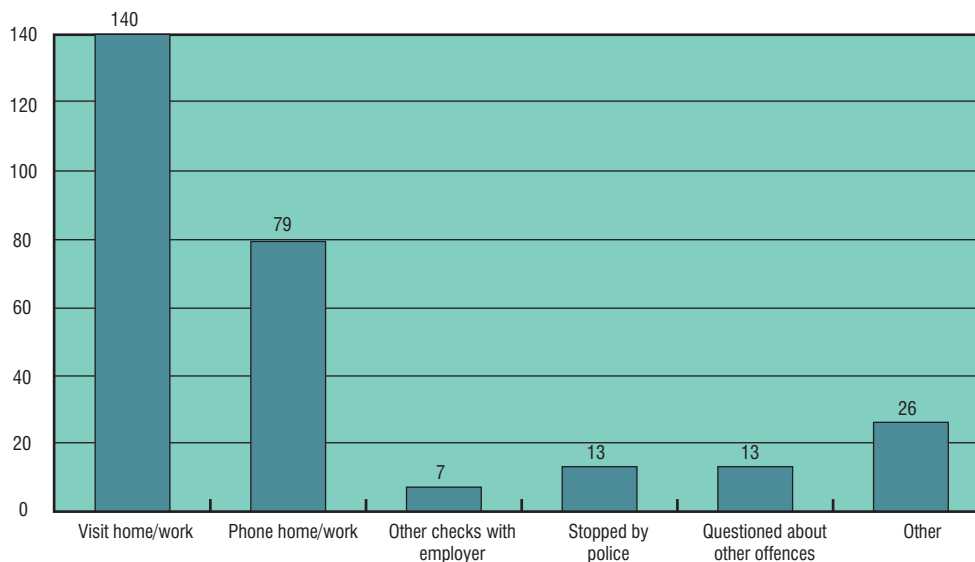
It appears that some LACs are adopting the same approach to monitoring registered persons, regardless of their assessed risk. It would be preferable, and in accordance with the monitoring guidelines, if police tailored their monitoring style to the risk assessment of the registered person, reserving the more direct and intensive monitoring only for those assessed as the highest risk. Not only would this ensure that those who pose the greatest risk to the community are kept under the highest level of scrutiny, it may also serve to reduce perceptions of heavy-handedness or overly intrusive monitoring among compliant registered persons. This would also ensure that police time and resources available for child protection purposes are used efficiently.

This process may be aided if a decision about the extent of monitoring required for each person was made and recorded at the initial registration interview or in the early stages of the registration period, and reviewed and updated as necessary. It may be useful to consider whether the crime manager should advise each registered person of their risk rating and apprise them of the type and extent of ongoing contact they can expect from police. This may be particularly useful where a registered person is assessed as high risk and specific pro-active monitoring strategies are planned, to put the person on notice that they will be subject to close scrutiny, as a means of preventing further offending behaviour. We note that this approach is already used by police in respect of other high risk persons identified under the Suspect Target Management Plan (STMP). The importance of focusing monitoring activities on high risk registered persons is discussed further in the conclusion to Part 4.

15.3.1.2. Information from registered persons

In our survey of registered persons, conducted at the end of the review period, we asked whether respondents had had any contact from police since they had registered. One-hundred and ninety-three of the 293 respondents (66%) told us they had had some contact from police.⁷⁷⁷ About half of these reported that this took the form of a visit at their home or place of employment, and over a quarter saying that they had had a telephone call at home or work, while seven reported that other checks had been made with their employer. Only 15 respondents reported being stopped by police since they had registered and 13 said they had been questioned by police about other offences.⁷⁷⁸

Figure 12: Respondents to survey: types of contact with police since registering



Source: Responses to Ombudsman survey of registered persons, January 2004. N=293
Numbers per category are greater than number of respondents as more than one response was possible.

The survey provided us with other information that we had not anticipated, which may suggest that police are not always aware of the whereabouts of registered persons in their LAC. All surveys were sent by registered mail and those unclaimed were subsequently returned to us. Over 13 per cent of surveys (106) sent to the address registered persons had provided to police were returned to us as unclaimed.⁷⁷⁹ Our analysis of the Register data showed that in only 19 cases had the registered person subsequently provided police with a new address. This suggests that over 11 per cent of registered persons may not have been at the address where police believed them to be. The percentage of unclaimed surveys in some LACs was far higher than in others, with 23 LACs having 20 per cent or more of surveys unclaimed.⁷⁸⁰

While some may see this as a failure by police to effectively monitor compliance by registered persons, in our view that interpretation is simplistic and flawed. Firstly, failure to collect a registered mail item is not evidence that the person is not living at a particular address; other explanations are possible.⁷⁸¹ However, even if police did have the wrong addresses in these instances, it should be noted that the monitoring guidelines emphasise that pro-active monitoring activities should be targeted to those assessed as high risk only. The recommendation that registered persons who are considered low or medium risk should be subject to an annual compliance check was not in the first version of the SOPs, and the second version which included this was only made available to police in October 2002. Further, it is the responsibility of the registered person, and not police, to ensure all relevant personal information is correct and up-to-date. The annual re-registration provisions of the Child Protection (Offenders Registration) Amendment Bill 2004, outlined in Chapter 11, should help improve the accuracy of information held on the Register.

15.3.1.3. Standardisation across local area commands

There is a clear intention that local area commanders should have considerable flexibility in their approaches to monitoring. The monitoring guidelines are unambiguous about providing 'guidance only' and that decisions about the level of monitoring and strategies used is to be determined by the 'judgements by local area commanders about the priorities, resources and expertise that exist within each command.'⁷⁸² The SOPs also provide only broad guidance to LACs, including setting a basic minimum standard for monitoring of annual habitation checks. It should be noted that even this is couched as a 'recommendation', as is the suggestion that more frequent checks 'should be considered' for certain registered persons.⁷⁸³

The working party of the APMC endorsed the NSW position in its recommendations for national legislation, noting that responsibility for the coordination of monitoring remaining with local police is also the model used in most states in America and in the United Kingdom.⁷⁸⁴

However, the lack of a more coordinated approach to monitoring across LACs was raised as a concern by a number of police. Some indicated that they would find it helpful to know how other commands approached the monitoring task. Others told us that they felt their attitude to monitoring was being undermined by other commands who did not take such a rigorous approach. Some of the comments we received were:

*Not much crossover or communication between LACs.*⁷⁸⁵

*Standardising across the police service is needed, also with the risk assessments and profiles.*⁷⁸⁶

*There should also definitely be a standard set of protocols across all LACs to ensure procedures are the same.*⁷⁸⁷

*The lack of uniformity across the region is a limitation to the overall use of the Register. Should be more region-level coordination about how to monitor offenders so that similar standards are uniform across different LACs.*⁷⁸⁸

Some crime managers saw particular problems arising from lack of uniformity which impacted on their ability to effectively manage the Register in their own command.

*It's not standard across LACs how it's implemented. Some LACs don't advise when someone's moving into your Command. Just transfer on the system so you don't get the full details.*⁷⁸⁹

*Offenders can simply move to another region to avoid the high level of monitoring in place [in this LAC]. While other LACs are not maintaining any monitoring procedures of a similar standard to [this] or some other LACs it undermines the efforts of those LACs endeavouring to be proactive. More scrutiny about the reasons why offenders wish to move from a LAC, eg is it because they don't wish to be monitored.*⁷⁹⁰

A number of crime managers did not so much criticise the lack of a uniform approach as note that more communication between LACs would be beneficial. Some identified this as a need for more training to assist them develop appropriate and effective strategies for monitoring.

*It would be good to get an idea of what other LACs are doing, what works, what doesn't and so on. Exchange of information is always useful, though I recognise there are privacy issues.*⁷⁹¹

*The lack of training is a problem in terms of knowing exactly what works best to monitor the people registered.*⁷⁹²

*There should be better training to help specifically with monitoring of people and gathering intelligence for the Register. This could be facilitated by a more uniform approach across LACs to find the best methods.*⁷⁹³

*The officers involved could share experiences and tips on how to cope with the Register across LACs.*⁷⁹⁴

The benefits of an exchange of ideas were outlined by one crime manager who indicated that such a process was already under way in his LAC.

*[This LAC] is a unique LAC because there are a lot of halfway houses, so that many offenders come and go through the Command. This allows the crime managers to be in a lot of contact with other crime managers of other LACs and discuss the nature of each case and provide any information or assistance between the Commands in dealing with the offenders when they are transferred. This has led us to believe that we're doing what's necessary in the Command, in similar ways to other LACs.*⁷⁹⁵

In its submission, DOCS questioned whether the variable approaches to monitoring across LACs meant that in some areas there was 'patchy or ineffectual monitoring'. It argued that monitoring requirements should be standardised across NSW to 'underpin the essential purpose of the Register.'⁷⁹⁶ DOCS suggested that it would be useful to identify appropriate monitoring practices and to set these out in the Regulations or SOPs.⁷⁹⁷

These concerns about lack of a consistent approach across LACs are understandable. While it is reasonable that individual commands should want to retain a certain degree of control over the management of registered persons and

the allocation of resources in their area, it is unlikely that the lives and activities of registered persons are restricted to within the boundaries of an LAC, particularly in the metropolitan area. As a certain number of registered persons would move frequently, it is important that there is a degree of consistency in the level of scrutiny they can expect regardless of where they live. It is also important, where high risk registered persons move between commands, that effective communication exists so that each command can ensure an awareness, and appropriate coordinated risk management action. It would be of particular concern if some LACs became known as providing a less rigorous monitoring regime and therefore became an area of residence for registered persons who wished to come to minimum notice of the police.

In our view, it may be appropriate for NSW Police to encourage or require greater compliance with the suggestions and recommendations for monitoring contained in the monitoring guidelines and SOPs, with certain minimum standards of oversight set down for each risk rating category. This would accord with the provisions of the Child Protection (Offenders Registration) Amendment Bill 2004 which establish a statutory requirement for annual re-registration. It may be appropriate for the Child Protection Registry to take a coordinating role in establishing a 'whole of police' response, for example by facilitating LACs to share information about effective management strategies, assessing risk and targeting resources, and by developing training to complement this. Establishing appropriate benchmarks for monitoring and targeting monitoring efforts to high risk registered persons, and the role of the Registry in coordinating this and providing training, are discussed further in the conclusion to Part 4.

15.3.2. Threat assessments

The emphasis in the guidelines is on the monitoring of 'high threat offenders'.⁷⁹⁸ A registered person's level of risk is determined by the completion of a sexual offender or violent offender threat assessment instrument. This is done by the police officer responsible for charging a person with a registrable offence, at the time of charging. It can and should be updated if new information about the person is made available to police.⁷⁹⁹ The instrument was developed from a number of different risk assessment tools used by NSW Police, specifically for the purpose of assessing the risk of sex offenders as a response to the introduction of child protection register legislation. The assessment is a multiple choice format about certain aspects of the offender's behaviour and offences, the answers to which are read across a matrix to determine if a person is assessed as low, medium or high risk.

Some operational police have queried the usefulness of the threat assessment, suggesting there were limitations in the instrument used. One crime manager commented that the threat assessments 'fail to provide a full profile'⁸⁰⁰ and another observing that they 'make some people rate as high risk when they're not.'⁸⁰¹ Others questioned the reliability of assessments, noting that 'low risk people often end up being high risk.'⁸⁰²

Some crime managers indicated that they would use additional or independent information to make an assessment of the level of a person and the degree of monitoring required. The probation and parole service and intelligence reports are the most common source of additional information about a registered person.

*The formal ones are done but we also ring probation and parole for background and take account of other knowledge.*⁸⁰³

*We have an analyst that does that now. He looks at issues like proximity to areas of offence, the MO, victim profiles. They [the registered persons] also tell us things. If we found they weren't being truthful that would affect their rating.*⁸⁰⁴

*They [assessments] don't direct our monitoring. What we do is based on what we hear.*⁸⁰⁵

The assessment made of the risk posed by a registered person is the linchpin of effective monitoring, as it is used to determine the level of management and the appropriate allocation of resources. Targeting of police time and resources is essential, not only to ensure that those who pose the highest risk to children are subject to the highest levels of scrutiny, but also to effectively manage police workloads. Therefore it is important that the threat assessment rating reflects the level of risk associated with each registered person, and that this is used to determine how that person is monitored.

While the simplified threat assessment instrument used by NSW Police may not be a strong predictor of harm or recidivism, it does provide some guidance to operational police. Unlike other more sophisticated risk assessment tools, it requires minimal training to administer and does not require a lengthy assessment or interview process. As most of the literature on risk assessments focuses on more sophisticated instruments than that used by NSW Police, it is difficult to determine how appropriate a tool it is.⁸⁰⁶ It may be of some value for NSW Police to commission an assessment of the relative validity of its threat assessment instrument. Further discussion on the importance of the assessment of the risk of registered persons is discussed further at the conclusion to Part 4.

In addition, it may not always be adequate for police to rely solely on the rating produced by the threat assessment tool, particularly where there is any doubt about its accuracy. Rather it may be helpful for the rating to be seen as a starting point, to be supplemented with information or intelligence obtained from other sources.

15.3.3. Harassment and privacy issues

In the developmental stages of the legislation, the question of how police would monitor persons on the Register was one of the greatest areas of concern, with a number of parties expressing fears that police may be over-zealous and excessive in their actions.

15.3.3.1. Monitoring guidelines

The monitoring guidelines provide advice to police about how to conduct their monitoring activities. They state that operational activity:

Must not involve disclosure to general members of the public. *When conducting lawful enquiries in relation to the registered offender you must always seek information in a discrete and confidential manner [Original emphasis].*⁸⁰⁷

The monitoring guidelines also state that home visits should be in plain clothes.⁸⁰⁸ They also warn police that although they:

*... have a common law right to conduct lawful enquiries, there is no statutory power to contact offenders, conduct visitations or gain entry to premises outside of the registration process. Constant activity of this nature which is against the explicit wishes of the registrable person may be viewed as Police harassment.*⁸⁰⁹

The monitoring guidelines advise police that 'where it is possible' a rapport may be established with the registered person to enable a home visit 'on a needs basis'. The guidelines note that such an approach may be useful where a registered person indicates they would like the 'on-going support of police and are willing to discuss their offending behaviour', but that little will be gained by visiting persons who 'deny the offence or show a lack of remorse', other than to validate their current address or vehicle details.⁸¹⁰

The guidelines also remind police that home visits have a range of benefits, such as identifying other persons residing at the address who may be at risk of harm, identifying concerning or deviant behaviour or acting as a deterrent to re-offending.⁸¹¹

15.3.3.2. Information from registered persons

A concern about privacy being compromised as a result of monitoring activities was a theme that came through strongly in the responses to our survey. This was raised by about 30 per cent of respondents who reported they had concerns with the contact they had had with police since registration.

The feedback that we have received from registered persons suggests it is the way in which monitoring is done, rather than whether it is excessive, that is of most concern to registered persons. Forty per cent (78 of 193) of the respondents to our survey who reported having had contact with police since they registered said they had concerns about that contact. Some respondents to our survey reported instances of what they saw as harassment or unnecessarily hostile monitoring, while others expressed a fear of being harassed.

One respondent who told us he had been contacted at home in person and by phone, and that other checks had been made with his employer and that he had been stopped by police, reported he was 'Harassed and intimidated all the time by police and civilians to the point where I make formal complaints.'⁸¹² A registered person who reported he had received visits and phone calls at home and work, stated that police were 'Very aggressive. Spoke to my previous employer and neighbours.'⁸¹³ Another respondent who reported he had been contacted in person at both home and work, said he had been:

*Treated inhumanely, threatened, they knew where I worked as I told the police when I saw them about my licence. They turned up at work instead of ringing and asking me to come in. Lost respect for the police force and their childish attitudes.*⁸¹⁴

For some respondents, the perceived harassment was experienced mostly while they were driving. One respondent told us he was, 'Pulled up and harassed all the time. They constantly harass myself and family members.' He reported he had been contacted at home in person and by phone, as well as having been stopped by police and questioned about other offences.⁸¹⁵ Another respondent reported an incident of, 'a police patrol car pulling up beside me and saying we'll get you soon', noting his concern that, 'They will get me next time for nothing.'⁸¹⁶ One person was concerned 'that I would be pulled over each time I drove or was in town shopping.' He said he had been stopped by police while driving, and commented that he was afraid that, 'Police would pick on me for no reason except been on the Register.'⁸¹⁷

One respondent, who had been visited at home, expressed a concern about harassment, rather than reporting he had been harassed. He stated that he worried about 'harassment because of [my] offence. A person can't move on in life, or put it behind them.'⁸¹⁸ This fear of possible harassment was echoed by another respondent who commented, 'What if they get a set on you?'⁸¹⁹

A number of respondents to our survey reported experiences, both at home and at work, which might suggest that police monitoring was not always as discreet as the guidelines advise. One respondent stated:

*Contacted at work while in the company of work colleagues. Police have visited my home while I was at work. Contacted while passenger in a car in company of work colleagues, had to answer questions in front of colleagues.*⁸²⁰

*The visit at home could have been better handled. [It was conducted] outside my flat in the carport. Too bad if my next-door neighbour heard the conversation or happened to come outside at that point. Very sloppy I think.*⁸²¹

Some other respondents have made similar comments about their privacy being compromised during visits, with one noting that it, 'was fairly embarrassing when they called to work'⁸²², and another concerned at police, 'producing ID in front of my neighbours.'⁸²³

Other respondents, however, have expressed their fears about the impact of visits on their privacy, rather than reporting actual incidents of breaches of privacy, with comments such as:

*Two officer came to my unit not uniformed. Worry that neighbours would hear.*⁸²⁴

*Neighbours in full view.*⁸²⁵

*I live in shared accommodation and I would rather be away from other residents when officers introduce themselves.*⁸²⁶

*Concerned about visits to workplace as I have kept this confidential from my workmates.*⁸²⁷

Information from one respondent suggests that although one visit raised some privacy issues, the registered person and police were able to come to a suitable arrangement for future visits. He reports:

*officer identified himself to property owner where I live as a policeman. But not the reason he was there for. He has taken my phone no. and said they would ring in the future.*⁸²⁸

The potential for police disclosing a person's registrable status to other people was clearly a major concern for many respondents to our survey, although very few told us that this actually had occurred. As the comments above show, registered persons were worried that neighbours, housemates or colleagues would overhear or guess the reason for the police contact. One crime manager acknowledged this concern but suggested it was unfounded, at least in his LAC:

*A few offenders don't like home visits. It is mainly due to their families being unaware of their convictions. Police always turn up and don't outline their reason for visiting to any other residents the offenders may live with. They always show up in plain clothes and unmarked cars.*⁸²⁹

A number of registered persons told us that they resented the police coming to check on them without any prior warning. Some of the comments registered persons made in the surveys on this issue are:

*Was not told that police could call on me without notice.*⁸³⁰

*Invasion of privacy and I cannot predict when they are coming so I cannot make plans as I am scared of what they will do if I am not here when they call.*⁸³¹

*No warning of arrival.*⁸³²

*They arrived without notice, alarmed family members.*⁸³³

*I was not aware of home visits to check on my doings.*⁸³⁴

*Without notice it can be embarrassing if I have visitors who know nothing.*⁸³⁵

*Last time they came without ringing and my mother had an anxiety attack because she wasn't expecting them on that day.*⁸³⁶

*I don't mind being checked up on, but a phone call to arrange a time would have been nice, and neutral ground in a park or somewhere else.*⁸³⁷

*Told registering crime manager I would be happy to come to him if he requested. Told him I did not want any police to call on me for clerical reasons. Subsequent crime manager decide to be "pro-active" and send detectives to my home.*⁸³⁸

*I have 2 phones, a mobile and a home phone, the Police could ring me any time to check on my where-about. In most cases when they ring I could be at a local police station with 1/2 hr to sign a book say? Or any other reason. They have my car make model and rego no ... I don't like Police coming round home looking for me they say they are only doing their job.*⁸³⁹

Some of the experiences reported by registered persons suggest that not all LACs may be as mindful of the requirements of the guidelines in respect of maintaining the registered person's privacy and the need for discretion during home visits, as the following comments show (see case study 16).

*Was told plain clothes police would come. But uniformed police came to my house five times.*⁸⁴⁰

*Uniformed officer and wagon to my house would not come inside. [In] full view of neighbours.*⁸⁴¹

Case study 16.

A woman rang our office to tell us about the experiences of her son who is on the Register following a conviction for murder committed when he was aged 17. She said that when he registered the detective who did the registration told them that he would need to come and visit at some point to check that her son was still at the address he gave. But he told them that he would call first and would only come in plain clothes and an unmarked police car. A few months later a constable arrived at their home, in plain clothes but in a marked police car, and asked for their son. The woman's husband said he wasn't there and reports that the constable was rude to him. When the woman questioned why he was there and what he knew, the constable told her that all he knew was that her son was on the Register and he had to verify his details. The woman was very unhappy as she felt the constable (or other officers in a similar role) would think that her son is a paedophile.

She told us that she complained to the detective who had registered her son, who explained that he had had to delegate some files, but said that he would speak to the constable.⁸⁴²

15.3.3.3. Information from police

As outlined in the previous section on 'Approaches to monitoring' most LACs appear to use home visits as an integral part of monitoring. Few appeared to make a decision to undertake home visits on the basis of the individual circumstances of each registered person.

A number of crime managers told us that home visits were conducted in plain clothes and with unmarked cars and that checks were done 'very discreetly'.⁸⁴³ As one crime manager noted: 'We don't want to be over the top, don't want to hound them.'⁸⁴⁴ Other crime managers told us:

*They know they're being watched and monitored but we told them they won't be harassed and their confidentiality will be maintained.*⁸⁴⁵

*[The checks are] done in strictly confidential manner with the target teams being simply told to check on the residence without any indication of whether the resident is an offender.*⁸⁴⁶

Clearly these attitudes are appreciated by some registered persons. One respondent to our survey told us his fears about how police would monitor him were allayed when 'they explained that contact would be in plain clothes, unmarked cars' and another commented that 'police have been very polite and unobtrusive – friendly'.⁸⁴⁷

However, another crime manager we interviewed acknowledged that there may be a problem with police stopping people while they are driving. He commented that when the police check their details on COPS they 'may get a tarnished name because police are made aware that they are on the Register but are left to create their own mental image of what the offence was'.⁸⁴⁸

15.3.3.4. Complaints to the Ombudsman

The Ombudsman has received only one formal complaint about the monitoring activities of police.⁸⁴⁹ This was an allegation that police breached a registered person's privacy or potentially disclosed his registrable status through their monitoring actions.

A registered person alleged that on two occasions when police had been to his flat to verify his registration details his privacy was compromised. On the first occasion, he said two officers let themselves into the security building where his flat is, ignoring the intercom system. They knocked on his door and when he opened it they began to question him in the hallway which 'echoes hence broadcasting my past to anyone and everyone in the unit block.' On a later occasion he reported that a police officer came to his residence, he did use the intercom. It was answered by his girlfriend who told the officer that he was not at home. He then began questioning the girlfriend over the intercom 'with no regard to who or if anyone could hear him'. His girlfriend invited him to come upstairs where he continued to question her in the hallway and

told her of his criminal history. He did not ask who she was. He says his girlfriend was *'badly shaken and upset by the whole intrusion.'*

The police investigation found that there was no breach of the registered person's privacy in this instance. The police records show that his girlfriend was aware of his criminal history and had provided her name to police. However, in response to the registered person's concerns about harassment, the LAC decided to reduce the frequency with which they monitor him from 28 days to 90 days, which is still considered to be appropriate management of a high risk registered person. In addition, an internal memo was sent to all police in the LAC to remind them of the need to maintain an individual's right to privacy while carrying out their duties and to show common sense when dealing with more sensitive matters.

It is not clear why a significant number of registered persons expected to be given notice before a visit. This may have arisen from a misunderstanding of how the police would monitor them, or from not being informed at registration of how monitoring would occur, or from police not having acted in accordance with undertakings given. However, it is interesting to note that only 54 per cent of survey respondents reported that police had told them at the registration interview about proposed monitoring activities. This compares to 82 per cent saying they were told about what information they had to tell police and when they had to report, and 71 per cent being told of the consequences of failing to comply with their registration obligations.

It is understandable that registered persons might prefer police to give advance warning of home visits, and to not make contact with other people. Such an approach may be entirely reasonable where registered persons are complying with their obligations, and is in accordance with the monitoring guidelines.

However, it may not always be appropriate for police to notify of monitoring visits in advance, or not to make enquiries with other parties (as long as the reason for the contact is not disclosed). This is particularly the case for a registered person assessed as high risk or where police have justifiable fears that the person may be avoiding registration obligations or intending to commit further offences. The Child Protection Registry has told the review of one instance where police made a visit to a registered person's home while he was not there. When they asked his housemate where he was, they were told that he was down at the local bowling alley teaching children to bowl. In this instance, if police had advised the registered person in advance of their intention to visit, it is unlikely they would have obtained this information about the registered person's prohibited contact with children.⁸⁵⁰

This matter underscores the need for monitoring strategies to be appropriately tailored to each registered person, based on the assessed level of risk they pose.

15.3.5. Are additional powers or a legislative basis for monitoring required?

In the early stages of the Register, prior to the monitoring guidelines being issued, there appeared to be considerable confusion and uncertainty among police about what monitoring actions they could legitimately undertake without being perceived as harassing registered persons.⁸⁵¹ A submission from the NSW Police Association, which collated various comments from its members, suggests that uncertainty remains for at least some officers as the following comments suggest:

How often should person registered be checked up on?

*Registered persons are not allowed to be targeted by local police in the same form as for instance, high risk offenders as they have already served their sentences. Between undefined monitoring times then, how do you know what they are up to, especially since you are only allowed to go so far as to check.*⁸⁵²

While one crime manager commented that 'it needs to be made clear to police how they can use their powers and how they should prioritise the workload', operational police generally expressed less uncertainty about monitoring approaches at the end of the review period, when the guidelines had been in place for over a year.⁸⁵³

In the early stage of the Register some police also told the review that they were concerned at the lack of legislative basis for any monitoring activities.⁸⁵⁴ This position appears to have continued, at least for some, as a number of police continue to express a concern that they lack adequate powers to undertake a monitoring role effectively.⁸⁵⁵

*Currently police do not have the power, or their powers are not properly clarified, in relation to what they can do with the Register. There is no specified police power ... If the registered people don't want to meet with police then they don't have to. Home visits must be approved by the person. There is such a huge limitation with the restriction on police powers to ensure compliance.*⁸⁵⁶

*No power to properly monitor, no power to go into their houses. We can and do check regularly if their details are correct, but we have no way of properly monitoring what they are doing.*⁸⁵⁷

*The monitoring by Police cannot be unreasonable or intrusive as we do not have the power to be so. All we can do is check they are living at the nominated house, work at the stated employment, and drive the nominated vehicles.*⁸⁵⁸

Another concern appeared to relate to an uncertainty about existing powers that police can use to monitor registered persons, such as those under section 11G of the *Summary Offences Act 1988*.⁸⁵⁹ Section 11G provides that a convicted child sex offender who loiters, without reasonable excuse, in or near a school, or a public place regularly frequented by children and in which children are present at the time of the loitering is guilty of an offence. At least one officer appeared not to be aware of the use of this provision to manage registered persons. He commented:

*There is apparently a person on the Register who moved close to a school, yet police are restricted from doing anything about it.*⁸⁶⁰

However, an officer from another LAC reported that he found the existing powers sufficient:

*Police powers are excellent in dealing with offenders. It is great that there is a provision to charge sex offenders loitering in certain places, as it works really well with the Register.*⁸⁶¹

More generally, though, police appeared to be concerned that they did not have the authority to enter the premises of a registered person. The need for this was commonly seen as enabling police to 'to check things such as pornography, children's toys, posters'.⁸⁶²

*It would be useful for a provision enabling police to enter premises or search perhaps with the approval of senior ranking officers so as to step in and take further action where necessary.*⁸⁶³

*Our powers are limited by the consent of the people on the Register. Police do not have the right to enter their houses to monitor the offenders – they have to be let in.*⁸⁶⁴

*Police powers could possibly be extended to allow senior ranking officers to enter the premises of high-risk offenders to check, for example, their computers or other high-risk items of concern.*⁸⁶⁵

Police have the power to enter premises in certain circumstances, if they believe an offence is being committed. Further, there is nothing restricting an officer attempting to obtain a search warrant if they have reasonable suspicion that an offence has been committed, for example if there was information to suspect that a registered person was involved with child pornography. However, officers appear to be suggesting that police should have a new and additional power to enter a registered person's premises even where there is no reasonable suspicion of an offence.

In the United Kingdom, the *Criminal Justice and Court Services Act 2000* imposes a duty on police (and the probation service) to assess and manage the risks posed by registered persons. Neither this Act nor the *Sex Offenders Act 1997* (which establishes the Sex Offenders Register) contain provisions which provide police with specific powers to monitor registered persons. An evaluation of the Register in the United Kingdom did not conclude that this posed a particular problem. Rather it found that, although police had no right of entry to the offender's home, almost all offenders cooperated with the home visits.⁸⁶⁷

The AMPC working party has commented that imposing a statutory duty on police to assess and manage the risks posed by registered sex offenders is not needed and may unreasonably raise community expectation 'that the registration process will enable police to prevent all re-offending and could conceivably increase police liability in some cases where re-offending occurs.'⁸⁶⁸

Some operational police have told us of similar fears that the community might hold them liable for further offences by registered persons. This was raised by a number of crime managers interviewed in December 2001 who made comments such as: 'What are the repercussions if we can't catch up with them and they re-offend?' and 'Bottom line is if this person re-offends someone will be held accountable and it will more than likely be me.'⁸⁶⁹ Although a number of police advocated additional powers, none suggested that the Act should include any statutory responsibility for police management of registered persons.

In our view, police already have a number of powers to enter premises for the detection or prevention of offences, and to carry out their child protection responsibilities. No clear information has been provided to this review to justify an increase in police powers which would allow them to enter premises of a registered person, on the basis only of the fact that the person is on the Register. We have not received any evidence of such exceptional circumstances. On the contrary, the information provided to the review suggests that the majority of registered persons are cooperating with police monitoring. In our view, it cannot reasonably be argued that additional powers are warranted, particularly in the absence of any legislative requirement for monitoring. However, as discussed above, and in the conclusion to Part 4, it may be helpful if the monitoring guidelines contained clearer directions for police about their responsibilities and a clear outline of their powers in respect of monitoring, supported by ongoing training.

15.5.6. Issues for persons with special needs

As discussed in *Chapter 7: Application to certain groups*, we have no clear data on the number of registered persons with a special need. However, estimates derived from our analysis of all sentences received by registered persons suggest that around 10 per cent of registered persons may have some form of psychiatric or intellectual disability. The management and monitoring of these registered persons clearly poses significant issues for police. This is acknowledged by NSW Police and has been raised in a number of the submissions to our review.⁸⁷⁰

Some parties told us that they were concerned that police monitoring of offenders might have an undue impact on registered persons with special needs. The IDRS has told us it is concerned that police may more directly and frequently monitor registered persons who may have difficulty understanding their reporting obligations.

Even if this is approached as benevolent concerns for the interests of the registrable person it is not, in the view of IDRS, an appropriate response under the Act... This raises the issue that registrable persons with an intellectual disability and without support may face over monitoring and surveillance beyond that other registrable people under the Act may experience... Given that there is a lack of legislative power for the police to attend a registrable person's address purely to monitor compliance, we submit that the proper response is the use of discretion... The ability to question the appropriateness of these police responses often relies on access to legal services or intensive case management.⁸⁷¹

IDRS commented that it had raised this issue directly with police and was advised that direct monitoring could be the subject of a complaint to the Ombudsman. However, it added that the registrable person may not have understood that intrusive monitoring was inappropriate and may not have had the resources to make a complaint. As noted, earlier, the Ombudsman has received only one formal complaint about monitoring activities of police, despite the substantial anecdotal information we have received from registered persons about their concerns. If registered persons generally are reluctant to make complaints, this may well be compounded for persons with intellectual disabilities.

The Redfern office of the Aboriginal Legal Service observed that while there are provisions in relation to people with special needs, there are none to address the particular needs of Aboriginal offenders. The Aboriginal Legal Service notes that contact with police remains a dilemma for Aboriginal people and that such 'tension may impede the Aboriginal registrable persons from reporting to the police regularly or in time.' It further queried how Aboriginal people would fare 'in the absence of any specific working guideline for Aboriginal people.'⁸⁷²

Some operational police have told us of their experiences of ensuring persons with special needs comply with their obligations. One commented that there were 'no special procedures for monitoring them in a different way to any other offender.' He gave the example of a woman who is in full-time care in a community home for persons with a mental illness. He said it would be 'inconvenient to monitor her more when we're satisfied her carers are sufficiently monitoring her activities.'⁸⁷³

Another reported an experience from his command, which suggests that police are developing monitoring strategies tailored to individuals with special needs:

One person is classified as high risk because of his psychiatric problems and drug and alcohol abuse. Although there has been initial information warning that he poses a higher risk of re-offending, nothing about his behaviour has raised specific concern for police. He does tend to wander the streets a bit and often at night, but this is most probably due to his alcohol and drug problems rather than any specific intention to re-offend. He is continually reminded of his obligations to ensure that he understands them. The command is currently exploring his profile and whether more measures are need to deal with him.⁸⁷⁴

Some submissions in response to our discussion paper have argued that compliance responsibilities for people with special needs should not be relaxed, although different processes may need to apply.⁸⁷⁵ One submission recounted an experience where a resident of a group home in her area:

... would visit the small shopping centre where he would accost young girls, asking them to go home with him to bed where they would have fun. It was passed over by some parents as the male was intellectually disabled, it was very upsetting to our daughter who had been a victim of child sex abuse. It could be said the man was not aware of the distress he was causing or that he was unaware of the illegality of what he was doing. [There should be monitoring] so that there would not be such occurrences happening and [they are not] placed in a situation that will harm others as well as themselves.⁸⁷⁶

Some parties have commented on the specific issues in relation to the monitoring of young people on the Register. The Southern Youth and Family Services Association has noted its concern that it 'appears that juveniles are treated the same as adults'.⁸⁷⁷ The parents of another young person on the Register have expressed their shock at learning that police would be coming to their house to check if their son was still living there.⁸⁷⁸

The Redfern office of the Aboriginal Legal Service raised a particular concern about ongoing police involvement with young Aboriginal offenders. Not only did it observe that the parents may not be able to assist their children fulfil their registration obligations, it was concerned that 'lack of sufficient attention and incautious behaviour on the part of police ... may lead to vicious circle in their relation between Aboriginal people and the police authorities.'⁸⁷⁹

The DJJ has also commented to the review that it can be difficult for young Aboriginal people to comply with their obligations to ensure that police always have their personal details because they often move frequently.⁸⁸⁰ One crime manager recognised that because of the particular circumstances of young people a different approach may be needed. He described the approach in his LAC:

*There are two juveniles registered who appear to be in breach of their obligations though unintentionally. As young people they are more focused on trying to make a go of their lives and so are forced to move around a bit with work and living arrangements, and so don't always keep police informed of their every movement. It is unlikely that this is intentional however and police are only warning them and reminding them of their obligations to ensure compliance.*⁸⁸¹

As discussed in Chapters 11 and 13, the SOPs contain no specific advice or directions for police in respect of Aboriginal registered persons, although they account for a substantial proportion of persons charged with offences under the Act. The fact that the Act does not contain any specific provisions other than for children or those who have a disability should not preclude the development of procedural guidelines for other groups who may have particular needs or whose management might raise special concerns. This is particularly important in respect of Aboriginal registered persons, given ongoing issues about their relationship with police and their high representation among persons charged with breach offences, and in the judicial system generally. In our view, it would be appropriate for NSW Police to develop guidelines in respect of the monitoring and management of Aboriginal registrable persons, with consideration given to issues such as those confronting young Aboriginal people or Aboriginal people who reside in more than one location, and the involvement of NSW Police Aboriginal community liaison officers or youth liaison officers.

The question of the involvement of other agencies in the monitoring of registered persons, particularly those with special needs, is discussed further below, and in the conclusion to Part 4.

15.3.7. Other agency involvement

Many registered persons will be under the responsibility of a supervising agency at least for the early part of their registration period. For the majority, this will be the probation and parole service, but other agencies may also have responsibility for registered persons, such as the DJJ and the Pre-Trial Diversion of Offenders Program. However, supervision would rarely extend for the length of time that reporting obligations continue, given that the minimum reporting period for an adult is eight years and four years for a young person.

Some registered persons may have involvement with other agencies that are not designated 'supervising authorities', such as mental health teams or welfare agencies. However, such involvement is generally not compulsory, unless the requirement to attend forms part of a supervision order.

Other registered persons will be released from custody 'time-served' and not under any form of supervision. These people are usually those who have been assessed as not eligible for early release on parole, often because they have failed to participate in remedial programs while in custody or to show any remorse. These registrable persons are likely to be the ones assessed as high risk and most requiring monitoring.

The SOPs state that 'registered offenders who are being monitored by a supervising authority remain the responsibility of that agency.'⁸⁸² The monitoring guidelines advise 'it may not be necessary to monitor "LOW" threat offenders or those that are currently under the supervision of another agency such as the probation and parole service, the DJJ or the Pre-Trial Diversion Program.'⁸⁸³

The SOPs provide clear directions to police as to how they should work with supervising authorities such as the probation and parole service and DJJ.⁸⁸⁴ This includes making initial contact to ascertain the registered person's current circumstances, seeking agreement that the agency will contact police if there are concerns or if the registered person's details change, and maintaining ongoing liaison.

Despite these directions, a number of operational police interviewed for the review appeared to be of the view that the full responsibility for monitoring remained with police.

15.3.7.1. The probation and parole service

The probation and parole service is a division of DCS which manages offenders in the community, on either probation or parole, and provides community-based offender programs. Probation is a flexible sentence, that can include different orders such as bonds,⁸⁸⁵ community service,⁸⁸⁶ drug court orders; or suspended sentences,⁸⁸⁷ and combines sanctions for re-offending or failing to comply with conditions, with constructive case management. A person on probation must report

to a probation and parole officer, who will visit the person's home and make enquiries to confirm they are meeting the conditions of their order. For those sentenced to a custodial sentence (unless sentenced to a fixed term of imprisonment) the court is required to set a minimum term that the person must serve and an additional term during which the person may be released on parole.⁸⁸⁸ When released to parole supervision, the person is subject to conditions to be of good behaviour and not re-offend. Additional conditions may apply, such as undertaking specified treatment or counselling. Failure to abide by the conditions can result in revocation of the parole order and a return to prison. The probation and parole officers are responsible for monitoring parole conditions.

In its submission to our review, NSW Police noted that, in the early stages, some police attempted to duplicate the role of the probation services' and some parole officers incorrectly assumed that the level of their case management could be reduced because the offender had registered with police.⁸⁸⁹

Information the review received from the probation and parole service suggests that there are varying views on the level of involvement officers should or do have in ensuring registered persons comply with their registration obligations.⁸⁹⁰ When the Register was in its infancy, the manager of policy, programs and training, told us that in the view of the probation and parole service, the Register is basically a police function, with the service only having a peripheral role. She explained that the roles of police and the service in respect of supervision and monitoring are different and should be kept separate, balancing the police need to protect the community with the probation and parole service's aim of individual rehabilitation.⁸⁹¹

However, a different view was expressed by some of the probation and parole officers, with one suggesting that 'police involvement is not really necessary while we are supervising'⁸⁹² and another stating: 'We need to have a high level of involvement in getting registered persons to comply with their obligations.'⁸⁹³ Some of the probation and parole officers suggested that they needed to take a lead role in monitoring because of their obligations to their clients, others because they felt that without their involvement there would be minimal monitoring by police of those registered persons. The probation and parole officers seemed to view their role as a dual one of assisting their clients maintain their reporting obligations, and monitoring and managing potential offending behaviour.

*Lots of registered persons are unlikely to maintain their obligations without assistance though not necessarily through ill-will or bad intentions – it's just not high on their priorities. Some offenders are fairly disorganised and have trouble just maintaining their daily life. They need to be reminded to contact police every time details change.*⁸⁹⁴

*Police sometimes have unrealistic expectations of other agencies. But we can work together.*⁸⁹⁵

*You get the impression there will be no supervision or monitoring once parole has ended. [One LAC] seems to only monitor through intelligence – they often rely on us for information about sex offenders and their behaviour etc.*⁸⁹⁶

A great number of operational police have told the review that they see the management of the Register as more akin to the probation and parole officers' duties, and not an appropriate role for police. This was a particularly widespread view in the early stages of the Register.

Some operational police have taken a very blunt position on police responsibility for the Register, with comments such as: 'I just don't think it's our job', 'it is simply not a police function', 'this is a process that the probation and parole service should have been responsible for', and 'I honestly think the monitoring of the Register would be better equipped under the probation and parole office'. Others saw it as a duplication of services, or more a function of DCS or the probation and parole service.⁸⁹⁷ One crime manager expanded on his reasons for his view that it was an inappropriate role for police:

*Once a court has convicted a person who then serves their time and the courts say they are OK to be sent back into the community, the Register simply become a complete waste of police resources in having to monitor people simply not posing a threat to society.*⁸⁹⁸

Although some officers still appeared to hold that view, the more prevalent view in the latter part of the review period was that the probation and parole service or other agencies or professionals should share the responsibility for monitoring with police.⁸⁹⁹ In its submission to this review, NSW Police acknowledges these views:

*Traditionally, Police are viewed by other agencies (and themselves) as being a reactive agency, responsible for the investigation of crime and placing offenders before courts. The Child Protection (Offender Registration) Act 2000 is the first statute in NSW, which provides Police with a role in the proactive monitoring of offenders post-sentencing. This new role took some adjusting by all agencies involved.*⁹⁰⁰ [Original emphasis].

For some police, the more significant issue was which agency was better placed to undertake monitoring, with some officers concerned about their lack of powers.

Police are unable to be upfront with people registered, home visits must be approved by the person, which is different to their relationship with probation and parole who are able to force a home visit. Currently police do not have the power, or their powers are not properly clarified, in relation to what they can do with the Register, so they should have

*more of a role in monitoring people registered. Unless police are given information from probation and parole then police don't know what they're doing.*⁹⁰¹

However, some crime managers supported the new role for police, recognising that the particular powers and functions of police were important in maintaining compliance with the Act and in accordance with the wider role of NSW Police in the prevention of re-offending. Some of their comments were:

*It is proper for police to be maintaining the register because at the end of the day if any issue arises, police are the ones with powers to deal with these people, not any other agency like probation and parole.*⁹⁰²

*It is appropriate for police to be dealing with people on the Register more so than probation and parole because of the ability of police to act on any possible incidents. Police have the knowledge of what people are doing and have the right powers to act on that information.*⁹⁰³

*probation and parole are more suited to monitoring low-risk offenders. But it is important for police to still maintain a role, particularly when there are issues arising, or in the event of a breach offence.*⁹⁰⁴

*It really is appropriate for police to be involved with the monitoring of offenders, rather than the probation and parole Service. Police are able to instantly access intelligence and know of any breaches of people of concern. This ability to act immediately on information known to police would be severely limited if the probation and parole Service or some other agency were involved in place of police because the whole process would be just so slow.*⁹⁰⁵

However, a greater involvement of the probation and parole service was generally seen as essential, because of their better knowledge of the person's behaviour and activities, and ability to provide police with useful information:

*Probation and parole should have more of a role in monitoring the people who are registered. Unless police are given information by probation and parole, police don't know what they're doing.*⁹⁰⁶

*There is also more room for increased contact between probation and parole and police, to have them notifying police if there are any changes they are aware of.*⁹⁰⁷

*More of a role for probation and parole to monitor without police and work on an increased system of what's already in place to notify police of any concerns.*⁹⁰⁸

*probation and parole could have more of a role in monitoring offenders because they already know a lot about the offenders, and so it seems logical for them to go out and do the visits of police and then simply notify police about what's going on.*⁹⁰⁹

Some crime managers saw an increased role for the probation and parole officers as important because of their perceived greater ability to have more influence on registered persons, as the following comments suggest:

*They are the ones with the power to revoke parole conditions so it is they who are more suited to control the behaviour of sex offenders.*⁹¹⁰

*There could also be the possible role of probation and parole to help ease offenders back into society, with more emphasis on rehabilitation.*⁹¹¹

However, one of the probation and parole officers thought that monitoring by police rather than by the probation and parole service was crucial to the effective operation of the Register.

*Unless they're monitored properly by police, the Register is unlikely to have any impact on re-offending. But if registered persons knew that police might be checking up on them then it could be useful. If they feared they may be under surveillance or knew police might be likely to do a home visit they might be cautious about, say, having a child at their house.*⁹¹²

Similarly, one crime manager also saw potential difficulties if one agency did not maintain the overall responsibility for registered persons.

*If people on the Register already have conditions to report for probation and parole then perhaps there could be some way to increase the role of probation and parole to limit the role of police. It has to be one way or the other though because it would seriously complicate matters if half were monitored by probation and parole and the other half by police. The way probation and parole assist could perhaps be increased.*⁹¹³

Advice from crime managers and the probation and parole officers suggested that the level of cooperative arrangements and exchange of information varied significantly among LACs and often depended on the quality of the existing relationships.⁹¹⁴ However, one crime manager commented that having a good working relationship with the probation and parole service was a more general issue for LACs, that went beyond the management of the Register.

For example, the probation and parole officers in one area, who had involvement with two LACs, told the review that liaison with police in one LAC was ad hoc, following an initial meeting to discuss how the two agencies would work together. The

other LAC had regular meetings with the probation and parole service and a liaison officer was appointed, but that this was an established arrangement that existed independently of, and prior to, the implementation of the Register.⁹¹⁵

Similarly, the probation and parole officers in another area, whose area covered three LACs, reported that there were differing attitudes to liaison over registered persons in each LAC, and that police in one LAC 'take a serious attitude to the Register'.

Some police reported already having a strong working relationship with the probation and parole service in their commands, but wanted them to have a more structured role in the monitoring of registered persons in conjunction with police.

*Probation and parole have been really helpful in providing information about offenders and making suggestions about what police should be aware of and what police should be asking offenders. But they could have more of a role in monitoring offenders because they already know a lot about the offenders and so it seems logical for them to go out and do the visits instead of police and then simply notify police about what's going on.*⁹¹⁶

*Would be really useful to work more closely with probation and parole and let them take charge of the monitoring of the low-risk offenders. I recognise the very important police role at least initially in identifying what level risk the offenders pose to the community, but the monitoring could definitely be carried out by probation and parole.*⁹¹⁷

Some crime managers told the review that where the LAC had a close relationship with the probation and parole service, this was generally an existing relationship.⁹¹⁸ One used their regular meetings to discuss registered persons who are their clients.⁹¹⁹ One crime manager told us: 'We have a good relationship with the probation and parole service and informal information sharing arrangements, which works really well.'⁹²⁰ While another said:

*The majority [of registered persons in the LAC] are with probation and parole. We have a good relationship with them and currently have an arrangement that they give us notification if anyone changes addresses or whatever.*⁹²¹

Others commented that they would need to develop or improve relationships with the probation and parole service. For example, one crime manager explained that only one of the registered persons in his LAC was under supervision and they had 'no real relationship with probation and parole but would foster a partnership if need be.'⁹²² Another acknowledged that a 'fair bit of work to be done between police and probation and parole to work out what information goes both ways.'⁹²³

The probation and parole officers also suggested that arrangements would be enhanced if there were defined protocols for liaison with police, with other agencies such as DOCS also involved.⁹²⁴

On a separate issue, some parties have suggested that registrable persons should be subject to additional periods of supervision or conditions. One crime manager suggested that perhaps registrable persons should not be able to be released from custody without conditions of parole, otherwise it 'makes it very hard to track offenders and find out information about them.'⁹²⁵ The Association of Child Welfare Agencies has also commented:

*A further issue is the difficulty in monitoring and restricting the activities of persons who have completed their sentence after conviction for a sex offence involving a child. It may be that these issues could be more effectively addressed by ensuring that sentencing included requirements involving post-custodial restrictions on activities involving contact with children.*⁹²⁶

15.3.7.2. Supervision networks

In its submission to this review, NSW Police reiterated its position in the monitoring guidelines that 'a multi-agency approach to offender management is required to best monitor and case manage serious child sex offenders in the community.'⁹²⁷

The monitoring guidelines suggest that forming a 'supervision network' may be a suitable option for 'intellectually and physically disabled offenders, cultural and minority groups and juvenile offenders.'⁹²⁸ These supervision networks are intended to involve staff in government departments as well as family members, private guardians, carers or therapists, in assisting police with the monitoring of registered persons and with helping the registered person abstain from concerning behaviour.

However, there are some restrictions on the establishment of supervision networks. The guidelines state that the persons involved must have knowledge of the person's offending history and registrable status and have a willingness to assist the person maintain their registration obligations. Supervision network arrangements must not be against the express wishes of the registrable person. Establishing contact with any potential support person who is not from a supervising authority must be with their consent, unless 'they have a special need which prevents them from giving informed consent.'⁹²⁹

NSW Police has not provided the review with any information about how successfully or frequently supervision networks have been established.

Although most of the involvement with other agencies that operational police reported was with the probation and parole service, some indicated they had had contact with other agencies or individuals. Some crime managers we interviewed for the review told us of local arrangements for certain registered persons in their commands, but these generally appeared to be informal understandings based on existing relationships rather than the establishment of specific networks for supervision.

For example, one crime manager told us that their management of the Register was easier because the registered persons are 'all are on probation or parole and most are in welfare institutions.'⁹³⁰ Another noted that 'young people are always encouraged and have always had support people with them.'⁹³¹ Others commented:

Other agencies have been really helpful, but the Command already had a good relationship with JJ and probation and parole anyway.⁹³²

We maintain a strong relationship with probation and parole who are involved in supervision of various offenders. They inform police where changes occur or in the event of action required.⁹³³

Some crime managers reported involving DOCS, when they believed a young person was at risk from a registered person.⁹³⁴ One crime manager, however, expressed concern that DOCS could only remain involved until the person at risk turned 16.⁹³⁵ Another reported involving the mother of a registrable person with a special need as a support person.⁹³⁶

One crime manager told us about his LAC exploring the involvement of other agencies in the management of a registered person with a psychiatric condition.⁹³⁷ One LAC also told us about how it required the assistance of a support person in the registration and management of a person with a mental health problem, but noted that the LAC had received very little assistance by the Department of Health in respect of this person.⁹³⁸ However, another provided details of a case where the involvement of a mental health agency was more successful:

A mental health unit was called in to make an assessment of [a registered person with special needs]. The Police then contacted the Protective Commissioner to place the person under their custody or be responsible for the man.⁹³⁹

Another crime manager commented: 'Most serious offenders seem to suffer mental problems that lead them to offending types of behaviour. It is that behaviour which needs to be treated by professionals, rather than monitored by police' and suggested that more assistance from other agencies was needed 'outside of police to help in their rehabilitation.'⁹⁴⁰

It is not clear if the operational police urging a more structured approach to cooperation with and involvement of other agencies, particularly the probation and parole service, are suggesting that the current guidelines for forming supervision networks are inadequate, because they impose no obligations on other agencies. None provided detailed suggestions for alternative arrangements, for example whether they felt there should be a statutory obligation on other agencies or whether a more coordinated approach was better achieved through memoranda of understanding between departments or a greater emphasis on enhanced local arrangements.

15.3.7.3. Child protection watch teams

Establishing a more structured role for other agencies' involvement in the management and monitoring of registered persons is the basis for child protection watch teams. This is an initiative announced by the government in March 2003. A trial of the teams will commence shortly in South Western Sydney. It is specifically focused on developing appropriate strategies to monitor and manage registered persons assessed as being a particularly high risk. An overview of the Teams is at Chapter 2.

These teams, substantially modelled on the Public Protection Panels in the United Kingdom, are intended to:

... monitor and manage offenders at a local level. Child protection watch teams will comprise of local agency representatives including Police, probation and parole, DOCS and Housing. The Teams will operate on a regional basis to case manage offenders and provide an early warning system for inappropriate behaviours, associations, living arrangements and activities.⁹⁴¹

The APMC working party report has noted that one of the concerns about police maintaining registration schemes is that other bodies may come to view the management of child sex offenders as entirely a police responsibility.⁹⁴² The child protection watch teams are seen as a way of ensuring there is a coordinated approach to the management in the community of high risk registered persons. However it needs to be understood that the establishment of such teams is not a guaranteed solution to a successful multi-agency approach. A Home Office study of Public Protection Panels notes that a single agency tended to take 'ownership' of the process. While observing that this is not necessarily undesirable in itself, the study found that in practice, it tended to 'produce a sense of exclusion from real decision-making, of being 'used' merely as a source of information, or resentment at 'carrying too much of the burden'.⁹⁴³

While the child protection watch teams will provide the more formalised structure for inter-agency cooperation that NSW Police has sought, their effectiveness may depend on how they are established and resourced. The Home Office study into

the Public Protection Panels in the United Kingdom found that adequate 'resource issues were of constant concern.' This meant that for some panels, there were difficulties in 'sustaining effective risk management.' The report of the study also recommended that for 'defensible decision-making in a difficult and controversial field' there needed to be more attention given to 'the managerial oversight, monitoring and accountability.'⁹⁴⁴ It found that senior police officers in areas with a high number of registered offenders were 'sometimes placed under a severe burden because of their responsibilities on the panel' as these duties had simply been added to their normal workload.

An evaluation phase is built into the trial of the child protection watch teams.⁹⁴⁵ It may be useful if these issues of concern identified from the United Kingdom experience were incorporated into the evaluation criteria.

15.3.7.4. Child Protection Prohibition Orders

The Child Protection Prohibition Orders, provided for by the *Child Protection (Offenders Prohibition Orders) Act 2004*, may also be a useful means of managing some registered persons, through the imposition of specific restrictions. This Act was assented to on 6 July 2004, but has yet to commence operation. It provides for police to apply to the court for an order that prohibits a registered person from engaging in specific behaviour, where there is reasonable cause to believe the person poses a risk to children. This may include visiting certain places or undertaking specific activities, which brings the person into contact with children, where this raises a concern about the safety of children. However, orders cannot be made that require a person to do something (such as attend therapy.)

15.3.8. Foundations of effective monitoring

In our view, effective monitoring requires three key elements.

Firstly, monitoring must be targeted at registered persons assessed as posing the greatest risk. This requires not only an effective means of assessing risk, but that monitoring strategies for each person are selected on the basis of that assessment. This will allow limited police resources to be appropriately targeted, and will ensure that persons who pose the greatest risk to children are subject to the highest levels of scrutiny to achieve compliance and prevent re-offending. Employing methods of monitoring appropriate to a particular registered person should reduce any perceptions of police harassment or intimidation. This is particularly important in respect of compliant persons, and may have a beneficial impact on compliance.

Secondly, the Register should operate more effectively as a child protection tool if the management of registered persons is better coordinated across NSW. While a degree of flexibility for commands is important to take account of local circumstances, the effectiveness of the Register in preventing offences against children will be enhanced if there is a greater clarity as to required standards of monitoring. Otherwise, the structured monitoring targeted at high risk persons undertaken in some LACs will be undermined if those persons can move to another area to escape the same degree of scrutiny. Clear directions, rather than suggestions, about monitoring, supported by regular ongoing training, and coordinated by the Child Protection Registry, will help to reduce the confusion that some police report about their role and the parameters of their responsibility.

Thirdly, and in a similar vein, the involvement of other agencies in the management and monitoring of registered persons requires clarification and formalisation. The soon to be established child protection watch teams should play an important role in achieving this. They will provide police and other agencies with an opportunity to establish protocols and guidelines for the management of persons who pose a threat to children who interact with a range of services.

Other aspects of the involvement of other agencies are discussed in Chapter 14.

All these matters, and implementation issues that arise from them, are discussed further at the conclusion to Part 4.

Endnotes

- ⁷³⁷ SOPs: *Child Protection (Offenders Registration) Act 2000*, New South Wales Police State Crime Command, October, 2002. Paragraphs 4.11 to 4.14 contain most of the references to post-registration monitoring.
- ⁷³⁸ *The Post Registration Monitoring of Child Sex Offenders: Guidelines for Operational Police*, Child Protection Registry, Child Protection Squad, NSW Police, September 2002.
- ⁷³⁹ An 'I-ASK habitation check' is an electronic check of address details against records held by other agencies.
- ⁷⁴⁰ SOPs paragraph 4.13.
- ⁷⁴¹ SOPs paragraph 4.13.
- ⁷⁴² *Interim Training Guidelines for Monitoring Persons Registered under the Child Protection (Offenders Registration) Act 2000*, Child Protection Registry, Information & Intelligence Centre, NSW Police, August 2001.
- ⁷⁴³ Monitoring guidelines, paragraph 2, p 4.
- ⁷⁴⁴ Monitoring guidelines, Introduction, pp 1-2.
- ⁷⁴⁵ Monitoring guidelines, paragraph 1, page 2.
- ⁷⁴⁶ Monitoring guidelines, paragraph 3.1(a), page 4.
- ⁷⁴⁷ Monitoring guidelines, paragraph 3.4–3.8, pages 6-8.
- ⁷⁴⁸ Monitoring guidelines, paragraph 3.3 page 5.
- ⁷⁴⁹ Monitoring guidelines, paragraph 4, page 8.
- ⁷⁵⁰ Monitoring guidelines, paragraph 5, page 9.
- ⁷⁵¹ Monitoring guidelines, paragraph 5(b), page 9, quoting *Standard Operating Procedures: Child Protection (Offenders Registration) Act 2000*, New South Wales Police State Crime Command, October, 2002, paragraph 10.
- ⁷⁵² Monitoring guidelines, paragraph 6, page 9-10.
- ⁷⁵³ Hansard, Legislative Assembly, 1 June 2000, The Hon Paul Whelan, Minister for Police, Second Reading speech, Child Protection (Offenders Registration) Bill.
- ⁷⁵⁴ Monitoring guidelines, page 2.
- ⁷⁵⁵ Information obtained from crime managers interviewed, meetings with probation and parole service officers, and from interviews with registered persons and survey responses.
- ⁷⁵⁶ Submission no 42 from NSW Police, 22 January 2004, quoting from the monitoring guidelines, p.2.
- ⁷⁵⁷ The second version of the SOPs (September 2002) which required annual compliance checks had not been issued at the time these interviews were conducted (in May 2002).
- ⁷⁵⁸ Interviews with crime managers, May 2002, LAC 1 Greater Metro Region.
- ⁷⁵⁹ Interviews with crime managers, May 2002, LAC 8 Greater Metro Region.
- ⁷⁶⁰ Interviews with crime managers, May 2002, LAC 11 Inner Metro Region.
- ⁷⁶¹ Interviews with crime managers, May 2002, LAC 21 Northern Region.
- ⁷⁶² Interviews with crime managers, May 2002, LAC 30 Southern Region.
- ⁷⁶³ Interviews with crime managers, May 2002, LAC 18 Inner Metro Region.
- ⁷⁶⁴ Interviews with crime managers, May 2002, LAC 35 Western Region.
- ⁷⁶⁵ Interviews with crime managers, May 2002, LAC 11 Inner Metro Region.
- ⁷⁶⁶ Interviews with crime managers, May 2002, LAC 21 Northern Region.
- ⁷⁶⁷ Interviews with crime managers, May 2002, LAC 25 Southern Region.
- ⁷⁶⁸ Interviews with crime managers, February 2004, LAC 30 Southern Region.
- ⁷⁶⁹ Interviews with crime managers, February 2004, LAC 1 Greater Metro Region.
- ⁷⁷⁰ Interviews with crime managers, February 2004, LAC 19 Northern Region.
- ⁷⁷¹ Interviews with crime managers, February 2004, LAC 25 Southern Region.
- ⁷⁷² Interviews with crime managers, February 2004, LAC 11 Inner Metro Region.
- ⁷⁷³ Interviews with crime managers, February 2004, LAC 18 Inner Metro Region.
- ⁷⁷⁴ Interviews with crime managers, February 2004, LAC 14 Inner Metro Region.
- ⁷⁷⁵ Interviews with crime managers, February 2004, LAC 2 Greater Metro Region.
- ⁷⁷⁶ Submission no 6 from Penrith LAC, 17 October 2003.
- ⁷⁷⁷ Not all respondents answered this question so this result should not be interpreted as 32% saying they had had no contact with police.
- ⁷⁷⁸ These responses are not exclusive. Respondents were able to indicate as many types of contact as necessary.
- ⁷⁷⁹ The addresses we used to send out the survey were recorded about five weeks prior to the survey being sent out.
- ⁷⁸⁰ More detail about information obtained from the survey, including the uncollected letters, can be found at Appendix 3: Methodology.
- ⁷⁸¹ For example, a registered person may have received the card from Australia Post but did not collect the registered letter (either because they chose not to, or forgot to, or failed to for some other reason), or they may have not received the card from Australia Post even while living at the address (possibly because someone else collected the mail and failed to pass it on, or they were temporarily absent from their home, or it was incorrectly delivered).
- ⁷⁸² Monitoring guidelines, Introduction, p.2.
- ⁷⁸³ SOPs version 2, paragraph 4.13.
- ⁷⁸⁴ Inter-jurisdictional Working Party Report to the APMC, June 2003.
- ⁷⁸⁵ Interviews with crime managers, May 2002, LAC 1 Greater Metro Region.
- ⁷⁸⁶ Interviews with crime managers, May 2002, LAC 30 Southern Region.
- ⁷⁸⁷ Interviews with crime managers, February 2004, LAC 14 Inner Metro Region.
- ⁷⁸⁸ Interviews with crime managers, February 2004, LAC 8 Greater Metro Region.
- ⁷⁸⁹ Interviews with crime managers, May 2002, LAC 30 Southern Region.
- ⁷⁹⁰ Interviews with crime managers, February 2004, LAC 8 Greater Metro Region.
- ⁷⁹¹ Interviews with crime managers, May 2002, LAC 8 Greater Metro Region.
- ⁷⁹² Interviews with crime managers, February 2004, LAC 30 Southern Region.

- ⁷⁹³ Interviews with crime managers, February 2004, LAC 30 Southern Region.
- ⁷⁹⁴ Interviews with crime managers, February 2004, LAC 8 Greater Metro Region.
- ⁷⁹⁵ Interviews with crime managers, February 2004, LAC 18 Inner Metro Region.
- ⁷⁹⁶ Submission no 44 from DOCS, 29 January 2004.
- ⁷⁹⁷ Submission no 44 from DOCS, 29 January 2004.
- ⁷⁹⁸ The Guidelines state that they are to 'assist local area commands (LACs) in monitoring HIGH THREAT serious violent or sexual offenders registered under the *Child Protection (Offenders Registration) Act 2000*.' [Original emphasis].
- ⁷⁹⁹ Instructions to assist police complete threat assessments is contained in *Guidelines for Completing the Child Protection Register Threat Assessment*, Child Protection Registry, NSW Police, August 2002.
- ⁸⁰⁰ Interviews with crime managers, May 2002, LAC 30 Southern Region.
- ⁸⁰¹ Interviews with crime managers, May 2002, LAC 11 Inner Metro Region.
- ⁸⁰² Interviews with crime managers, May 2002, LAC 1 Greater Metro Region.
- ⁸⁰³ Interviews with crime managers, May 2002, LAC 18 Inner Metro Region.
- ⁸⁰⁴ Interviews with crime managers, May 2002, LAC 30 Southern Region.
- ⁸⁰⁵ Interviews with crime managers, May 2002, LAC 14 Inner Metro Region.
- ⁸⁰⁶ See for example, Kemshall, H. (2002) *Risk Assessment and Management of Serious Violent and Sexual Offenders: A Review of Current Issues*, Scottish Executive Social Research
- ⁸⁰⁷ Monitoring guidelines, paragraph 4(b)
- ⁸⁰⁸ Monitoring guidelines, paragraph 3.4(a)
- ⁸⁰⁹ Monitoring guidelines, paragraph 3.4(a)
- ⁸¹⁰ Monitoring guidelines, paragraph 3.4(a)
- ⁸¹¹ Monitoring guidelines, paragraph 3.4(a)
- ⁸¹² Survey no 99.
- ⁸¹³ Survey no 289.
- ⁸¹⁴ Survey no 204.
- ⁸¹⁵ Survey no 77.
- ⁸¹⁶ Survey no 50.
- ⁸¹⁷ Survey no 66.
- ⁸¹⁸ Survey no 74.
- ⁸¹⁹ Survey no 201.
- ⁸²⁰ Survey no 207.
- ⁸²¹ Survey no 202.
- ⁸²² Survey no 222.
- ⁸²³ Survey no 169.
- ⁸²⁴ Survey no 103.
- ⁸²⁵ Survey no 188.
- ⁸²⁶ Survey no 191.
- ⁸²⁷ Survey no 212.
- ⁸²⁸ Survey no 159.
- ⁸²⁹ Interviews with crime managers, February 2004, LAC 1 Greater Metro Region.
- ⁸³⁰ Survey no 33.
- ⁸³¹ Survey no 48.
- ⁸³² Survey no 73.
- ⁸³³ Survey no 196.
- ⁸³⁴ Survey no 235.
- ⁸³⁵ Survey no 7.
- ⁸³⁶ Survey no 82.
- ⁸³⁷ Survey no 202.
- ⁸³⁸ Survey no 246.
- ⁸³⁹ Survey no 201.
- ⁸⁴⁰ Survey no 279.
- ⁸⁴¹ Survey no 48.
- ⁸⁴² Interview with mother of registered person RP15, 21 January 2004. See Appendix 5 for the anonymised details of registered persons interviewed for the review.
- ⁸⁴³ Interviews with crime managers, February 2004, LAC 19 Northern Region, LAC 2 Greater Metro Region, LAC 11 Inner Metro Region.
- ⁸⁴⁴ Interviews with crime managers, May 2002, LAC 30 Southern Region.
- ⁸⁴⁵ Interviews with crime managers, May 2002, LAC 29 Southern Region.
- ⁸⁴⁶ Interviews with crime managers, February 2004, LAC 18 Inner Metro Region.
- ⁸⁴⁷ Surveys no 192 and 52.
- ⁸⁴⁸ Interviews with crime managers, February 2004, LAC 21 Northern Region.
- ⁸⁴⁹ Complaint from registered person RP5, 15 October 2003 (C/2003/7651), closed 10 June 2004. Information also provided in phone calls 24 August 2003 and 8 October 2003. See Appendix 5 for anonymised list of registered persons interviewed for the review.
- ⁸⁵⁰ Advice from Teresa Brennan, Coordinator, Child Protection Registry, on 4 November 2002. All registered persons are 'prohibited persons' within the meaning of the *Child Protection (Prohibited Employment) Act 1998*, which means they are prohibited from undertaking any 'child-related employment', including any work as a volunteer.
- ⁸⁵¹ Interim Training Guidelines were developed in August 2001 but these had 'draft only' status. A final version of the Guidelines was not issued until September 2002.
- ⁸⁵² Submission no 42 from NSW Police Association, 16 October 2004.
- ⁸⁵³ Interviews with crime managers, February 2004, LAC 32 Western Region.

- ⁸⁵⁴ Interviews with crime managers, December 2001 and May 2002.
- ⁸⁵⁵ Interviews with crime managers, February 2004 and submissions no 2 from an LAC in Greater Metro Region, 1 October 2003; and submission no 5 from Oxley LAC, 16 October 2003.
- ⁸⁵⁶ Interviews with crime managers, February 2004, LAC 21 Northern Region. This crime manager also commented that 'there haven't been any particular incidents any of the people registered.'
- ⁸⁵⁷ Oral submission no 2 from LAC in Greater Metro Region, 1 October 2003.
- ⁸⁵⁸ Submission no 5 from Waratah LAC, 16 October 2003.
- ⁸⁵⁹ Section 11(G) provides that: 'A person who is a convicted child sexual offender and who loiters, without reasonable excuse, in or near: (a) a school, or (b) a public place regularly frequented by children and in which children are present at the time of the loitering, is guilty of an offence.'
- ⁸⁶⁰ Interviews with crime managers, February 2004, LAC 35 Western Region.
- ⁸⁶¹ Interviews with crime managers, February 2004, LAC 29 Southern Region.
- ⁸⁶² Submission no 5 from Waratah LAC, 16 October 2003.
- ⁸⁶³ Interviews with crime managers, February 2004, LAC 4 Greater Metro Region.
- ⁸⁶⁴ Interviews with crime managers, February 2004, LAC 35 Western Region.
- ⁸⁶⁵ Interviews with crime managers, February 2004, LAC 14 Inner Metro Region.
- ⁸⁶⁶ Section 67(2) *Criminal Justice and Court Services Act 2000* (UK)
- ⁸⁶⁷ Plotnikoff, J & Woolfson, R: *Where Are They Now?: An evaluation of sex offender registration in England and Wales*, Police Research Series Paper 126, Home Office UK, July 2000.
- ⁸⁶⁸ Inter-jurisdictional Working Party Report to the APMC, June 2003.
- ⁸⁶⁹ Interviews with crime managers, December 2001. It was not raised as a concern at subsequent interviews.
- ⁸⁷⁰ Concerns about the management and monitoring of registered persons with a mental illness was raised in submission nos 6, 13, 20, 23, 24, 32, 33 and 42 (see Appendix 4 for a full list of submissions); interviews with crime managers, February 2004, LAC 8 Greater Metro Region, LAC 30 Southern Region, LAC 21 Northern Region, LAC 29 Southern Region, LAC 32 Western Region, LAC 25 Southern Region; and meetings with the Child Protection Registry, 12 May 2002 and 22 July 2003.
- ⁸⁷¹ Submission no 23 from IDRS, 23 October 2003.
- ⁸⁷² Submission no 17 from Redfern office of the Aboriginal Legal Service, 20 October 2003.
- ⁸⁷³ Interviews with crime managers, February 2004, LAC 8 Greater Metro Region.
- ⁸⁷⁴ Interviews with crime managers, February 2004, LAC 30 Southern Region.
- ⁸⁷⁵ For example, submissions no 13, 24, 26, and 33. A full list of submissions is at Appendix 4.
- ⁸⁷⁶ Submission no 13 from Patricia Wagstaff, 20 October 2003.
- ⁸⁷⁷ Submission no 28 from Southern Youth and Family Services Association, 10 November 2003.
- ⁸⁷⁸ Anonymous submission no 10 from parents of a registered person, 19 October 2003.
- ⁸⁷⁹ Submission no 17 from the Redfern office of the Aboriginal Legal Service, 20 October 2003.
- ⁸⁸⁰ Meeting with Marjorie Anderson, Manager Executive Services, DJJ, 18 December 2001.
- ⁸⁸¹ Interviews with crime managers, February 2004, LAC 30 Southern Region.
- ⁸⁸² SOPs, paragraph 4.12
- ⁸⁸³ Monitoring guidelines, section 1, p.2.
- ⁸⁸⁴ SOPs, paragraph 4.12
- ⁸⁸⁵ Under section 9, 10 and 11 of the *Crimes (Sentencing Procedures) Act 1999*.
- ⁸⁸⁶ Under the *Community Service Orders Act 1979*.
- ⁸⁸⁷ Under section 12 of the *Crimes (Sentencing Procedures) Act 1999*.
- ⁸⁸⁸ Under the *Sentencing Act 1989*. The process of parole differs depending on whether the person is sentenced to three years or less, or more than three years. Where a court sentences a person to a term of imprisonment to three years or more, release at the end of the non-parole period is not automatic. Where a court sentences a person to a term of imprisonment to three years or less, the person will automatically be released at the end of the non-parole period unless required to serve another term of imprisonment.
- ⁸⁸⁹ Submission from NSW Police, 22 January 2004
- ⁸⁹⁰ Meetings with Rosemary Caruana, Manager Policy, Programs and Training, probation and parole service, 10 December 2001 and with probation and parole officers at Penrith, 20 January 2003; Fairfield, 30 January 2003; and Mt Druitt, 16 April 2003.
- ⁸⁹¹ Meeting with Rosemary Caruana, Manager Policy, Programs and Training, probation and parole service, 10 December 2001.
- ⁸⁹² Meeting with probation and parole officers at Fairfield, 30 January 2003.
- ⁸⁹³ Meeting with probation and parole officers at Mt Druitt, 16 April 2003.
- ⁸⁹⁴ Meeting with probation and parole officers at Mt Druitt, 16 April 2003.
- ⁸⁹⁵ Meeting with probation and parole officers at Penrith, 20 January 2003.
- ⁸⁹⁶ Meeting with probation and parole officers at Mt Druitt, 16 April 2003.
- ⁸⁹⁷ Interviews with crime managers, February 2004, LAC 21 Northern Region, and LAC 10 Inner Metro Region; December 2001, LAC 8 Greater Metro Region, LAC 15 Inner Metro Region; Submission no 5 from Waratah LAC, 16 October 2003.
- ⁸⁹⁸ Interviews with crime managers, February 2004, LAC 10 Inner Metro Region.
- ⁸⁹⁹ Interviews with crime managers in December 2001, May 2002 and February 2004; submission no 2 from an LAC in Greater Metro Region, 1 October 2003; and, submission no 5 from Oxley LAC. A full list of submissions is at Appendix 4.
- ⁹⁰⁰ Submission no 42 from NSW Police, 22 January 2004.
- ⁹⁰¹ Interviews with crime managers, February 2004, LAC 21 Northern Region.
- ⁹⁰² Interviews with crime managers, February 2004, LAC 1 Greater Metro Region.
- ⁹⁰³ Interviews with crime managers, February 2004, LAC 24 Southern Region.
- ⁹⁰⁴ Interviews with crime managers, February 2004, LAC 2 Greater Metro Region.
- ⁹⁰⁵ Interviews with crime managers, February 2004, LAC 5 Greater Metro Region.
- ⁹⁰⁶ Interview with crime managers, February 2004, LAC 21 Northern Region.
- ⁹⁰⁷ Interview with crime managers, February 2004, LAC 19 Northern Region.
- ⁹⁰⁸ Interviews with crime managers, February 2004, LAC 32 Western Region.

- ⁹⁰⁹ Interview with crime managers, February 2004, LAC 25 Southern Region.
- ⁹¹⁰ Interviews with crime managers, February 2004, LAC 35 Western Region.
- ⁹¹¹ Interviews with crime managers, February 2004, LAC 22 Northern Region.
- ⁹¹² Meeting with probation and parole officers, Mt Druitt, 16 October 2003.
- ⁹¹³ Interviews with crime managers, February 2004, LAC 29 Southern Region.
- ⁹¹⁴ Interviews with crime manager, December 2201, May 2002, and February 2004, and meetings with probation and parole officers in January and April 2003.
- ⁹¹⁵ Meeting with probation and parole service, Fairfield, 30 January 2003.
- ⁹¹⁶ Interviews with crime managers, February 2004, LAC 25 Southern Region.
- ⁹¹⁷ Interviews with crime managers, February 2004, LAC 4 Greater Metro Region.
- ⁹¹⁸ For example, interview with crime managers, February 2004, LAC 24 Southern Region; submission from Penrith LAC, 7 October 2004.
- ⁹¹⁹ Submission from Penrith LAC, 7 October 2004.
- ⁹²⁰ Interview with crime managers, May 2002, LAC 35 Western Region.
- ⁹²¹ Interview with crime managers, May 2002, LAC 5 Greater Metro Region.
- ⁹²² Interview with crime managers, May 2002, LAC 25 Southern Region.
- ⁹²³ Interview with crime managers, May 2002, LAC 30 Southern Region.
- ⁹²⁴ Meeting with probation and parole officers, Penrith, 20 February 2003.
- ⁹²⁵ Interviews with crime managers, February 2004, LAC 22 Northern Region.
- ⁹²⁶ Submission no 16 from the Association of Childrens Welfare Agencies, 20 October 2003.
- ⁹²⁷ Submission no 42 from NSW Police, 22 January 2004. This is the position stated in the introduction to the monitoring guidelines.
- ⁹²⁸ Monitoring guidelines, section 3.7 p. 7.
- ⁹²⁹ Monitoring guidelines, section 3.7 p.7 which references section 4.4 of the Information and Disclosure Policy and Guidelines. This states: 'Establishing contact with a support person must be with the consent of a registrable person.' and 'If the registrable person has a disability or special need, which makes them incapable of giving informed consent to disclosure, an officer should establish support person contact with a parent, carer, guardian or public authority assisting that person.'
- ⁹³⁰ Interviews with crime managers, May 2002, LAC 18 Inner Metro Region.
- ⁹³¹ Interviews with crime managers, February 2004, LAC 30 Southern Region.
- ⁹³² Interviews with crime managers, February 2004, LAC 24 Southern Region.
- ⁹³³ Interviews with crime managers, February 2004, LAC 2 Greater Metro Region.
- ⁹³⁴ For example, in submission no 6 from Penrith LAC, 17 October 2003 and interviews with crime managers, February 2004, LAC 22 Northern Region.
- ⁹³⁵ Interviews with crime managers, February 2004, LAC 22 Northern Region.
- ⁹³⁶ Interviews with crime managers, February 2004, LAC 25 Southern Region.
- ⁹³⁷ Interviews with crime managers, February 2004, LAC 30 Southern Region.
- ⁹³⁸ Submission no 6 from Penrith LAC, 7 October 2003.
- ⁹³⁹ Interviews with crime managers, February 2004, LAC 21 Northern Region.
- ⁹⁴⁰ Interviews with crime managers, February 2004, LAC 35 Western Region.
- ⁹⁴¹ *Child Sexual Abuse: Labor's Plan to Protect Children*, Australian Labor Party, NSW Branch, March 2003
- ⁹⁴² Inter-jurisdictional Working Party Report to the APMC, June 2003.
- ⁹⁴³ Maguire, M., Kemshall, H., Noaks, L. & Wincup, E. (2001) *Risk Management of Sexual and Violent Offenders: The work of Public Protection Panels*, Police Research Series Paper 139, Home Office, UK, p. 22
- ⁹⁴⁴ Maguire, M., Kemshall, H., Noaks, L. & Wincup, E. (2001) *Risk Management of Sexual and Violent Offenders: The work of Public Protection Panels*, Police Research Series Paper 139, Home Office, UK
- ⁹⁴⁵ Letter from Director-General, Ministry for Police to Dr Neil Shepherd, Chair, Human Services CEOs Group, undated copy provided to the Ombudsman on 12 July 2004.

Chapter 16. Management and disclosure of Register information

16.1. Relevant provisions of the Act

The Act is silent on how police can use and manage the information held on the Register. Nor does it include any specific provisions about the protection of Register information, or provide penalties for improper use or disclosure of information.

16.2. Relevant police procedures

NSW Police has produced policy and procedure documents to assist operational police manage exchange with, and disclosure of Register information to, other agencies, principally the *Registrable Persons – Child Protection Registry: Information Disclosure Policy and Procedures*.⁹⁴⁶ The monitoring guidelines⁹⁴⁷ and guidelines for the NSWPOL Communications Group⁹⁴⁸ also provide some direction for police in relation to this issue.⁹⁴⁹

NSW Police notes that it was government policy for the role of police in disclosing personal information to be addressed administratively by Commissioner's guidelines and policies, and this was the impetus for the development of these guidelines and procedures.⁹⁵⁰

16.2.1. Information disclosure

The introduction to the Information Disclosure Policy and Procedures (IDPP), which was issued in October 2002, states:

It is government policy that NSW Police employees may only disclose personal information about a registrable person, obtained through their employment, for specified law enforcement and child protection purposes. There is a strong presumption in favour of non-disclosure.

As such, the introduction of the Act poses special information management challenges for the NSW Police. The exchange of information in relation to child sexual and violent offenders is a complex issue and involves balancing the protection of children and the public interest with the rights of a registrable person to maintain their privacy.

*In many instances, disclosure of information will be prescribed by particular legislation, for example the Children and Young Persons (Care and Protection) Act 1998. However, there will be times when it is not so clear whether personal information about a registrable person should or should not be disclosed. In these instances officers will be called upon to assess each situation on a case by case basis, being guided by the key information disclosure principles outlined in this policy. In many cases, it will be necessary to obtain the approval of the LAC/Specialist Operations Commander before any disclosure can take place.*⁹⁵¹

The policy does not authorise the release of information about specific registered persons into the public domain.

The IDPP contains seven principles which provide the basis for decision-making by police about any disclosure of information. These principles are:

- 1) presumption of non-disclosure
- 2) disclosure must be justified
- 3) disclosed information must be reliable and accurate
- 4) disclosed information must relate to the role and function of recipient
- 5) disclosed information should be proportionate to the purpose of the disclosure
- 6) risk of disclosure vs risk of non-disclosure must be assessed
- 7) disclosed information must be documented

The IDPP divides the disclosure of information into two categories – those that require commander approval and those that do not. The policy provides advice about various specific circumstances for the release of personal information within those categories. It details 13 circumstances where information can be disclosed without commander approval. These are:

- 1) where a registrable person consents to or requests the disclosure of information

- 2) disclosure of Information to DCS and the Children's Guardian
- 3) removal of a Child under the *Children and Young Persons (Care and Protection) Act 1998*
- 4) to current or previous supervising authorities
- 5) to assist other law enforcement agencies
- 6) to assist judicial and related processes
- 7) to assist border control and customs authorities
- 8) to provide Employment Screening Services
- 9) to ensure compliance with the *Child Protection (Prohibited Employment) Act 1998*
- 10) to comply with a direction of the Commission for Children and Young People
- 11) to the Ombudsman, Police Integrity Commission or the Independent Commission Against Corruption
- 12) to advise the Minister for Police or Premier
- 13) to comply with any law.

It also outlines seven situations where information disclosure is possible with commander approval:

- 1) to government agencies responsible for monitoring, managing or supporting the offender
- 2) to government or non-government educational institutions that cater for persons under the age of 16 years, where a registrable person is a student
- 3) to obtain an assessment of a registrable person, or advice on strategies to manage a particular registrable person
- 4) the involvement of support persons
- 5) to comment on information already in the public domain
- 6) the provision of general warnings
- 7) to investigate an offence or to locate an offender for law enforcement purposes.

The IDPP explains that personal information about a registrable person may not be disclosed unless these exceptions apply.⁹⁵² It specifically notes that the policy does not authorise police to identify registrable persons living in the community to educational institutions.⁹⁵³

It also includes an information disclosure checklist for police to complete prior to disclosing any information to a new recipient of such information. The checklist requires police to consider whether the disclosure is in accordance with the principles in the policy. It also provides directions for police on documenting any disclosure.⁹⁵⁴

The IDPP states that it will be reviewed six months after implementation to examine operational usefulness, policy compliance and practitioner feedback.⁹⁵⁵ The Child Protection Registry advised us that this was done in 2002.⁹⁵⁶

16.2.2. Communications policy

Separate guidelines⁹⁵⁷ were issued in August 2002 to assist police radio operators relay information about persons with a 'CPR flag'.⁹⁵⁸ These set out what information can and should be passed on to officers conducting a routine enquiry, what can be relayed on air and how this should be done. The guidelines stipulate that:

- operators must notify the officer conducting the enquiry if there is a warning that the person has not been notified or has failed to register
- operators should advise police if a person is on the Register, and if there are related vehicles or locations
- information must be relayed in a way to maintain the integrity of the Register.

These guidelines advise that all information 'must be disseminated in a manner, which attempts to preserve the security and integrity of the register.'⁹⁵⁹ Specifically, it advises that:

- when providing information “on-air”, the operator should ensure that the receiving officer’s radio is “secure” and out of ear-shot of general members of the public
- if possible, information can be provided to an officer’s mobile phone rather than “on-air.”

16.2.3. Security of information

The IDPP contains a section on information security, which notes that ‘any information held by NSW Police, which relates to a registrable person be classified (and protected) at a level commensurate with the perceived damage that would result from the loss, attrition or unauthorised disclosure of that material.’⁹⁶⁰ The monitoring guidelines expand on this:

It is important that any information held by the Service, which relates to a registered person be classified (and protected) at a level commensurate with the perceived damage, which would result from the loss, attrition or unauthorised disclosure of that material. Any information received by the Service from an external agency or person should be treated as sensitive material and classified and protected accordingly. Generally, registered information is classified PROTECTED [Original emphasis].⁹⁶¹

The IDPP provides advice to operational police on the general management of information about registered persons:

NSW Police’s Code of Best Practice for Information Management (2000) provides the broad framework for the handling of all police information. It covers the entire lifecycle of information management from conception to destruction. You should refer to the Code if you wish to clarify any general aspect of information management, although this policy prevails over the Code to the extent there is any inconsistency in the provisions dealing with the release of information.⁹⁶²

The monitoring guidelines also includes directions on the storage of information and documents that might be held in addition to that which is on the police computer system.

All original documents and photographs obtained during the registration process should be forwarded to the Registry in a sealed envelope and preferably using the Service’s internal mailing system. LACS are not required to store copies of this material, unless there is a pressing operational need. Any material which is retained by an LAC should be stored in a safe or locked cabinet within the Crime Management Unit.⁹⁶³

The monitoring guidelines also provide direction on how information about registered persons being targeted in a particular command is to be distributed.

*Staff who are expected to participate in an operational strategy should be well informed as to the appearance and criminality of a registered offender. However, this information should never be displayed in areas where it can be viewed by members of the public. Likewise, production of handouts for Police displaying offender photographs and personal information should be utilised with **extreme caution** [Original emphasis].⁹⁶⁴*

Absent specific provisions in the Act, the same penalties apply to unauthorised access or disclosure of information held on the Register as to unauthorised access or disclosure of any other information that NSW Police holds. The Regulation provides that members of NSW Police must treat all information received in their official capacity as confidential and must ‘on no account without proper authority divulge it to anyone’.⁹⁶⁵ This is reinforced by the NSW Police Code of Conduct and Ethics which notes that failure to comply ‘could result in either criminal charges or internal disciplinary action resulting in dismissal’.⁹⁶⁶

Access to the information held on the Register about registered persons is restricted to specific officers within NSW Police. There are four levels of authorised access to the information held on the Register.

- 1) The Child Protection Registry can enquire, add and modify all ‘CPR cases’.⁹⁶⁷ The Registry can also access the Registry worklog, and download and print reports and lists of registered persons.
- 2) Crime managers and members of the crime management unit and, on average, about six senior nominated officers in each LAC can enquire, add and modify all CPR cases in their LAC.
- 3) An assisting officer, or case manager, can access and modify only the particular CPR case of a registered person allocated to them.
- 4) All police officers, when conducting a person, vehicle or location enquiry on COPS, can see if the entity is associated with a CPR case, and details of the case number, the officer in charge of the case, the LAC responsible for the case and the threat assessment rating.

Each time an officer makes a COPS enquiry on a registered person, the officer in charge of the CPR case receives an automatic dissemination to advise that the person was enquired on, and the details of the enquirer are recorded. The officer

in charge of the case can make inquiries to establish the reason for the enquiry, and to follow up with the officer making the enquiry, as required.

16.2.4. Proposed procedural changes for information sharing and disclosure

Since the end of the review period, the NSW Government has announced changes to the management of registered persons and information about them held on the Register.⁹⁶⁸ These changes will permit police to disclose details about registered persons to a member of the public or a non-government agency in situations where a genuine threat exists and harm to a child is reasonably foreseen. We understand that although Cabinet has approved the changes, new guidelines are still being developed and are not yet in operation.⁹⁶⁹

At the same time, cabinet also approved a trial of the child protection watch teams that the government announced during the last election in March 2003. These will involve various government agencies in the management of high risk registered persons and will require a greater level of information sharing amongst them.⁹⁷⁰ Child protection watch teams are discussed further in Chapter 2 and Chapter 15.

16.3. Relevant provisions of the Child Protection (Offenders Registration) Amendment Bill 2004

While the amendment Bill does not contain any provisions in respect of police disclosure or sharing of information held on the Register, it does include a new provision to allow other government agencies to disclose information about a registrable person to the police or a supervising authority.⁹⁷¹ The Bill provides that this is to have effect 'despite any other law.'⁹⁷²

16.4. Commentary on the operation of the procedures

The management of information held on the Register is an issue that has been raised by many stakeholders including operational police, registered persons, and community and government agencies. The extent to which police should disclose information about registered persons is potentially one of the most controversial issues for any registration scheme. Not surprisingly, there is a wide range of views on how information about registered persons should be managed and, in particular, who should have access to it. Most of the input we received focussed on disclosure of information to other agencies or the public. However, a number of operational police also raised issues about the management of, and access to, Register information within NSW Police.

Eighteen of the 44 submissions we received in response to the discussion paper addressed the issue of information disclosure. Eight of the submissions included comments on the issue of disclosure to government or community agencies, seven addressed the issue of disclosure to the community, while access to register information within NSW Police was raised in five of the submissions.⁹⁷³ A number of the crime managers we interviewed also made comments about use of Register information, particularly about internal police access to the information. The issue of information disclosure was also raised in many of the responses to our survey of registered persons, primarily in respect of disclosure to the public. Most of the comments from survey respondents were about a fear of community disclosure, although some reported actual or perceived instances of register information entering the public domain.

16.4.1. Access to Register information within NSW Police

The levels of access to the Register and the information held on it are outlined above.

The monitoring guidelines comment on the level of information available to all police, stating:

To ensure the integrity of the Registry is not compromised, access to the register is limited to a small number of persons at each Local Area Command. However, crime managers have the discretion to pass information to General Duties Police when they consider a registered offender poses a risk to the community ...

It is important to note that some Registry information will be available to all Police. This is considered necessary to enable officers to have vital information under routine circumstances. Other more sensitive information may only be available to members of a case team. The Service Standard Operating Procedures require any officer who intercepts a registered person or their vehicle, or conducts a COPS inquiry, to furnish an information report (of the type CPR-related). This will assist the case officer in determining that officer's reason for access ...

Staff who are expected to participate in an operational strategy should be well informed as to the appearance and criminality of a registered offender.⁹⁷⁴

NSW Police did not express a view in its submission to the review about the adequacy of the current level of access for general duties officers, but noted:

Security and access standards in relation to the Register will continue to be reviewed with the context of the ANCOR [Australian National Child Offender Register⁹⁷⁵] model to ensure the effective registration and monitoring of offenders is not inhibited whilst respecting appropriate privacy and confidentiality issues.⁹⁷⁶

Some police officers have told us that the limits on access to Register information and knowledge about registered persons in each LAC have negative impacts on the effectiveness of local policing operations. This came through strongly in the submission from the NSW Police Association, which was in the form of collated comments from members. Some of these comments were:

... registered persons are monitored by the crime manager or by his/her delegate in the Local Area Command. These people are not the ones driving around in the patrol car. There is therefore an inconsistency in that operational Police rarely know who the registered person is or where they reside because of the privacy laws. It is a very delicate public police balance, protecting children and the rights of the convicted offender.

Clarification is also needed as to the use of photographs and details of the registered persons being released to the operation Police in the Local Area Command. At some local area commands such details are released, especially by some managers who believe their troops should know who these registered people are and where they live. This is to ensure that patrols that do come across these registered persons near schools for example, can recognise them. Police know they are restricted in the use of the information and know it does not extend to the operational Police with the Local Area Command. Clarification is needed to eliminate the confusion and establish uniformity among all Commands.⁹⁷⁷

A number of the crime managers interviewed also expressed some concerns about the limited access to information on the Register for all police.⁹⁷⁸ Some saw this as a problem because it increased the workload of the few with access to the information, while others thought it limited the effective use of street patrols in monitoring registered persons and enhancing community security. For one crime manager, both of these issues were a concern:

The high level of confidentiality of information restricts who in the police force can help with work involved in implementing the Register. This creates a massive and unmanageable workload for those limited number of the officers who are in charge of the monitoring, which is then not properly managed and carried out because there simply aren't enough resources to cope with the level of work required for the Register. There should be provisions to allow all police to be aware of who is on the Register and to become involved in helping with the monitoring of offenders to more effectively balance the workload. Police are all bound by normal confidentiality, so information about the Register or simply who is on it should not be treated as a special issue. The public should not be made aware in any instances because this could lead to more serious and unnecessary concerns or suspicions within the community.⁹⁷⁹

Other crime managers expressed a similar view:

The issue of confidentiality has created some extra work. The crime manager is the only one with access to the files of all people registered. When the home checks are done, two officers conduct the investigation but are simply told to investigate and offer details back to the crime manager who then enters the information onto the confidential files that only he has access to.⁹⁸⁰

There should be less confidentiality within Police. It is limited that police of particular rank are the only ones able to read up on who is registered. Street cops should be aware of who is registered and it wouldn't be a concern because technically police have access to all criminal records where offenders can be identified. Knowing who is on the Register is a simpler way of knowing from the start those people of concern in the area. If police were going to abuse that information then they would be disciplined anyway.⁹⁸¹

Some crime managers told the review that although they retained all the responsibility themselves, because of privacy and confidentiality issues, the workload was manageable, as the numbers of registered persons was reasonably low.⁹⁸² However another said that the Register had meant that his workload had tripled, because:

... only a limited number of officers are involved with the Register, and many junior officers are unable to assist in simple monitoring tasks because of confidentiality risks. For example, junior officers on patrol may not realise the threat of particular people near school areas. They are unaware of whom to look out for, and only by officers involved in the Register taking positive action in approaching junior officers to ask what has been happening are they able to gauge an awareness of what is happening in the community.⁹⁸³

One crime manager acknowledged that 'the privacy issue is clearly very important' but also felt that 'in some ways it is just too restrictive in that only a limited number of police have access to the information on the Register.'⁹⁸⁴ Another also commented that this caused practical difficulties with case allocation, because 'you don't want to use uniformed cops for discretion.'⁹⁸⁵ Another crime manager noted that 'at times the secrecy can be difficult or challenging in that it can't be easily integrated into intel'.⁹⁸⁶ A similar point was made by another crime manager who commented that it was: 'hard to use intel

without breaching CPR privacy guidelines' which results in a 'reduced ability to target because only one or two can know about the person and check them out.'⁹⁸⁷

The monitoring guidelines provide a discretion for information to be passed to general duties police when a registered person is considered a risk to the community. There is also an assumption that officers involved in operations in relation to registered persons will have adequate information about the appearance and backgrounds of those persons. On the information provided this does not always appear to be occurring. The restrictions on access to information about registered persons for general duties police may not be as limiting as some have suggested. Although the information on the Register is sensitive, all police are bound by confidentiality requirements in respect of any information they acquire in the course of their duties. These safeguards should act to prevent inappropriate disclosure of Register information in the same way as for other sensitive information.

Training for operational police about the level of information that can be provided to general duties police about registered persons on a day-to-day basis, in respect of monitoring activities and for specialist operations, would encourage a better understanding of this aspect of Register management.

The working party of the APMC recommended that a nationally consistent registration system follow the NSW model of restricted and graduated levels of access. It has proposed access arrangements that would allow for 'police in the field who encounter a person and call up their police computer records [to] be informed if the person is a registered offender (they may then check compliance)'.⁹⁸⁸

Given the sensitivity of the information held on the Register, it seems reasonable that access to the information should be restricted to that which an officer requires to carry out specific duties. Workload requirements in a particular LAC may mean that the restriction of access to only a few officers causes difficulties. In that case, it would seem sensible for the guidelines to incorporate a process to authorise additional (and properly trained) officers to have access in those LACs, so that they can assist in the management of registered persons. This would be preferable to increasing the level of access to all officers. These issues are discussed further in the conclusion to Part 4.

16.4.2. Sharing of information with other government agencies

NSW Police has observed that the introduction of the Register has 'produced some unique challenges for Police in information disclosure.'⁹⁸⁹ NSW Police's IDPP provides for police to disclose information to various government agencies involved in the management of registered persons. It also recognises the difficulty that disclosure to other agencies poses. The IDPP advises:

*Staff should note that when information is disseminated or released to another agency, NSW Police no longer maintains control of that information and the information disclosure policies of the other agency will apply. Staff should therefore alert any agency or person to whom the information is disclosed as to the sensitivity of the information and the importance of its appropriate protection.*⁹⁹⁰

NSW Police also has the expectation that the provision of information will be a two-way process, with other government agencies releasing relevant information to NSW Police about registered persons. The section of the IDPP that discusses disclosure of information to supervising authorities refers to 'information exchange' rather than just 'information disclosure'.⁹⁹¹ In addition, both the monitoring guidelines and the SOPs refer to the establishment of 'supervision networks', involving staff from other government agencies (as well as other suitable persons) to assist with the management of registered persons.⁹⁹² However, NSW Police has informed us that:

*... there is hesitation on the part of some other government agencies that do not have such broad exemptions under the Privacy and Personal Information Protection Act (1998) to disclose information to Police.*⁹⁹³

The provision in the Child Protection (Offenders Registration) Amendment Bill 2004, outlined at the start of this chapter, is intended to overcome this reluctance, identified by NSW Police, of other agencies to provide information, by removing any ambiguity about legislative restrictions. NSW Police also told the review that, to date, most of the information received from other agencies tended to be 'rudimentary in nature' such as details of sentence, release and parole, and that the level of information exchanged differed between agencies.⁹⁹⁴ The quality and depth of information provided by other agencies should improve, if this provision is incorporated into the Act.

The issue of the relationships between NSW Police and other agencies, and other agencies' involvement in the management of registered persons, is discussed further at *Chapter 15: Monitoring of registered persons*, and in the conclusion to Part 4.

Generally, agencies with whom the police currently shared information under the guidelines contained in the IDPP, told us that they supported these arrangements.

DOCS commented, in its submission, that it strongly supports police being able to disclose information that a person is a registrable person, when a young person is being removed under section 43 of the *Children and Young Persons (Care and Protection) Act 1998*. It argues that this:

*... may alleviate fear, suspicion and confusion in the removal process. It will help non-offending parents and care-givers understand why their children are being removed, particularly if the only reason is due to the danger of the child or young person being exposed to a registrable person.*⁹⁹⁵

Similarly, the Department of Housing stated:

The Department supports the current provision allowing a NSW Police employee to disclose information about a registrable person to an officer of the Department of Housing, for the purpose of arranging Public Housing for a registrable person in a suitable location, for example not in close proximity to a school ... the department will take this information into account in making allocation decisions ... [and] ... in considering a transfer application from a registrable person currently in ... an unsuitable location, giving urgent priority to that transfer application.

The Department of Housing further stated that it did 'not consider that its officers should have access to information on the Register except in those instances where a specific disclosure is in the public interest.'⁹⁹⁶

The Department of Education and Training also did not argue for additional levels of disclosure. It notes its concern about the potential for registered persons to engage in conduct that might pose a risk to the community and suggests that the current practice which allows for 'a specific warning by Police about the particular behaviours of concern, issued to schools and other facilities frequented by children, would be the minimum steps appropriate to ensuring the safety of children.'⁹⁹⁷

On the other hand, the Federation of NSW Parents and Citizens' Associations has suggested that a broader system of disclosure should apply to schools. It has recommended that the police be required to inform school principals of any registered person who lives within one kilometre of the school, or who is a parent or carer or resides with any child enrolled at the school.⁹⁹⁸ This raises the issue of how such disclosed information may be used.

In its submission, Privacy NSW states that it has no specific concerns about the guidelines contained in the IDPP on issuing general warnings, but argues that the use of register information by other agencies may need to be monitored to ensure that it is not used inappropriately. It comments that if any agencies have policies which single out people for special treatment on the basis of registrable status, then it is important to determine whether this is a justifiable use of such information. It reports on a circumstance that came to its attention:

*We were recently approached for advice over a policy that involved differential treatment of clients with registrable status within the correctional system. It was not evident that the fact of registrable status provided a justification for singling out individuals for special treatment as envisaged by the policy.*⁹⁹⁹

The review is not aware of any DCS' policies which provide differential treatment solely on the basis of registrable status, although convictions for certain types of offences, which may include registrable offences, may be taken into consideration in determining various matters within the correctional system. The differential treatment provided by the Department of Housing, as described above, would appear to be a justifiable use of information about registrable status, when it is used to make decisions about public housing placements which reduce or avoid risks to the community.

The introduction of the child protection watch teams should provide a more structured approach to information sharing with other government agencies. It would be helpful if the protocols developed to manage the child protection watch teams took account of the concerns about information exchange and disclosure raised here. The evaluation of the pilot project should also incorporate consideration of how information sharing about registered persons is managed by the various agencies. The child protection watch teams are discussed further at Chapter 2 and Chapter 15, and in the conclusion to Part 4.

16.4.3. Limited disclosure of information to non-government agencies and specific members of the public

As discussed above, after the end of our review period, the government announced that it had approved a broader degree of disclosure, so that in certain limited circumstances information about registered persons could be disclosed to non-government agencies or a member of the public. NSW Police has told the review that this is linked to the proposed nationally consistent legislation:

*The working party responsible for developing the national registration model recommended that each jurisdiction should consider their police reflecting the UK disclosure model, where a senior police officer is able to authorise disclosure of personal information about registered offenders in special cases, where the information disclosed, and the persons who receive the disclosure, is limited to that which is necessary to protect a child or children in any given case. The Ministry of Police has advised NSW Police that this recommendation will be considered by Government.*¹⁰⁰⁰

NSW Police told us about certain cases where they believed that limited public disclosure would have assisted with their management of high risk registered persons.¹⁰⁰¹

One was the case of a registered person whose work took him to schools. Police were aware that the high risk registered person was employed distributing cleaning products to community groups and schools (although he had not advised police of the details of this employment when he registered). Police were concerned that this work potentially gave him access to children, particularly in light of his known *modus operandi*. As this work was not 'child-related employment' for the purposes of the *Child Protection (Prohibited Employment) Act* he could not be prevented from attending the school under that Act. Nor could he be charged with loitering under the *Summary Offences Act*, as he was attending the school for a specific purpose. NSW Police told us they would have liked to have been able to advise his employer of his unsuitability for this work but were prevented from doing so by the terms of the IDPP.

In this case, in accordance with the IDPP, police were able to provide a school he had been attending with a general description and a photograph of the registered person.¹⁰⁰² When he returned to the school, the secretary recognised him and contacted police. He was arrested and charged with failing to comply with reporting obligations.¹⁰⁰³

NSW Police also told us of other cases where registered persons were known to attend sites frequented by children and young people, such as a public swimming pool and games arcades, where they felt that being able to disclose the presence of a registered person to the manager would assist in managing the risk that person posed to children.¹⁰⁰⁴ One crime manager commented that some registered persons share accommodation with other members of the public who may not be aware they are on the Register. He suggested that 'police should be able to inform only the people who they reside with that they are on the register. Especially if children reside at the same location.'¹⁰⁰⁵

The Association of Childrens Welfare Agencies (ACWA) has taken a broader position on disclosure of information about registered persons to non-government agencies. It has argued that not only should registered persons be obliged to provide information about community organisations they belong to, but that the information should be provided to those organisations whose activities involve children. It stated:

*It is now widely recognised by community agencies and associations that they have a responsibility to put in place policies and procedures to protect children. This includes practices to guard against unsupervised contact between children and non-related adults and employment screening processes. However, people who have been convicted of a registrable offence can still use community organisations such as sporting associations, church groups and family support services to make contact with children and their parents and to set up on-going contact with them outside of the organisation's activities. Such organisations therefore need to know if a known sex offender is operating with their organisation.*¹⁰⁰⁶

These situations raise the issue of what a recipient of information about a person's registrable status can, or should, do with that disclosed information. There are no guidelines available for individuals about appropriate or effective action, and no restrictions as to who the information could be passed to. ACWA acknowledges that this would require 'the establishment of clear protocols of information exchange between police and non-government organisations.'¹⁰⁰⁷ It does not comment on how non-government organisations might manage that information or what statutory or other controls should govern its disclosure. It should be noted that non-government agencies generally would not be subject to the same privacy and statutory obligations as government agencies.

The report of the working party of the APMC discusses the issue of information disclosure at some length. It notes that:

*The working party believes there may be very rare circumstances where it may be reasonably necessary for police to release personal information about a registered offender to a limited audience (eg: an employer) in order to protect children from harm. The working party recommends that jurisdictions give consideration to the UK model in developing their disclosure policies, where a senior police officer (no lower than the officer with Force responsibility for child protection) is able to authorise disclosure in special cases, where the information disclosed, and the person who received the disclosure, is limited to what is necessary to protect a child or children in any given case.*¹⁰⁰⁸

The APMC report does not suggest the introduction of any statutory controls, but rather recommends that limited disclosure to the public should be managed administratively.¹⁰⁰⁹ The APMC report argues that 'there are too many third parties that may receive information and too many legitimate uses for that information for specific regulation in this area to be practical or effective.'¹⁰¹⁰

The APMC acknowledges the difficulty of controlling the spread of information once it is released even to a small number of people. It recommends that police 'should warn each third party of the sensitivity of registered offender information ... [but] each party should be able to use and disclose the information in accordance with their operational needs and relevant legislation.'¹⁰¹¹ However, these limited controls would not apply to information disclosed to members of the public, such as a games arcade or swimming pool manager, where the information is not related to their operational needs or the implementation of any specific legislation.

Even limited disclosure of information about a registered person to a member of the public or a non-government agency, who is not bound by statutory privacy and other obligations, raises significant concerns about the potential for inappropriate disclosure and use of that information. NSW Police may wish to consider the concerns raised here, and in the conclusion to Part 4, about information exchange and disclosure in the development or review of any procedures which allow for limited disclosure of Register information to a member of the public or non-government agency. In particular, due attention should be paid to the question of what advice police might provide on the use, management and further disclosure of information about a registered person. Any limited release of Register information should only be considered in respect of a registered person assessed as high risk, where other management strategies have failed to provide adequate protection to children in the community.

16.4.4. Public access to information held on the Register

The Wood Royal Commission, whose recommendations were the impetus for the development of the Register in NSW, recommended that the Megan's Law model not be adopted, stating:

*... the Commission does not favour the introduction of legislation which would provide for registration and community notification along the lines of Megan's Law. It is not convinced that the advantages outweigh the disadvantages identified.*¹⁰¹²

The government has been definite from the outset that legislation in NSW to establish a registration scheme for child sex offenders would not follow the American Megan's Law model which provides for disclosure of information about registered persons to the community.¹⁰¹³ This was made clear during parliamentary debate when the Bill was introduced. The Opposition also supported the Bill without provisions for public disclosure of information.

In the second reading speech, the then Minister for Police, the Hon Paul Whelan, set out the reasons for the government's opposition to the release of register information to the community:

*Once information on child sex offenders is released to a small number of people it is difficult to prevent it being spread throughout the community. This is particularly the case in small or isolated communities. Available research suggests community notification does not reduce recidivism amongst child sex offenders. Indeed, there are strong concerns that community notification may increase the risks of recidivism, thereby exposing children to additional danger.*¹⁰¹⁴

Mr Matthew Brown, MP, also raised another of the government's concerns about public access to register information:

*Community notification has the potential also of exposing the identity of the victim. This is particularly so as child sexual assault is often intrafamilial. The honourable member for Epping referred to the rights of victims and this bill considers victims in this regard. Compulsory community notification could be a cause for humiliation of and additional hurt to the very people this process is meant to protect. Further, the royal commission also opposed the introduction of Megan's law.*¹⁰¹⁵

The then Shadow Minister for Police, Mr Tink, noted that while the Opposition had some concerns about whether the Bill adequately addressed the rights of victims, particularly in respect of offenders being allowed to reside near victims, the Opposition did not seek to take the issue of community notification '... any further at this stage but we will keep the matter under fairly close surveillance.' He told Parliament:

*I put on the record that I have the strongest reservations about an open Megan's law approach, particularly because the royal commission has made strong recommendations in this regard that weigh very heavily with us. We think that the bill should go forward in its current form without our attempting to amend it.*¹⁰¹⁶

Although the APMC working party supported limited disclosure in certain specific circumstances, the report made it clear that it was not in favour of broad community notification. It states: 'The working party strongly recommends that each jurisdiction prohibit any form of community notification not specifically addressed in its policy.' It notes that research suggests that community notification does not reduce recidivism¹⁰¹⁷ and comments that:

There are legitimate concerns that such notification may in fact reduce the protection offered to children as:

- *it may reduce compliance with registration requirements, preventing police from effectively monitoring people who pose a risk to children;*
- *offenders are likely to move more frequently to escape community hostility, making it difficult to monitor them;*
- *the resulting community labelling and hostility accompanying public disclosure may serve as a barrier to the successful rehabilitation of offenders, making them more likely to re-offend;*
- *offender identification may also identify the victim (particularly as child sexual assault is often intra-familial), which can cause them humiliation and additional hurt;*

- *it may create a false sense of security in the community, with less attention given to protecting children from non-registered offenders;*
- *it may result in fewer offenders admitting their offence, with fewer successful prosecutions;*
- *it may lead to vigilantism; and*
- *it is resource intensive, reducing the time police may spend in activities that have demonstrated child protection and law enforcement benefits.*¹⁰¹⁸

Those who advocate for greater public access generally do so because it is seen as a way of enhancing the protection of children in the community. For example, a victim's advocacy group, VOCAL, expressed a concern that the Register did not provide a system for parents to do a background check on an individual who may have contact with their children.¹⁰¹⁹ VOCAL also commented that should a parent enquire about a person who had contact with their child, and who was on the Register, then that information could not be disclosed to them.¹⁰²⁰

One of the major risks of even limited public access to Register information is the possibility of vigilante action and harassment of registered persons. This has been the experience in countries where such information has reached the public domain.

There have been several reports of harassment and violence in America where community notification is required by law. In the United Kingdom, where there is no public access to Register information, certain newspapers have made public registered persons' details. This had severe consequences in a number of cases, especially where the information was inaccurate.

For example, the *News of the World* newspaper ran a 'Name and Shame' campaign in Britain in 2000. The paper published the names, photographs and whereabouts of 82 sex offenders. The campaign was quickly discontinued after a series of violent vigilante responses. In Manchester a mob of about 150 people rioted outside the home of a man mistakenly identified as a sex offender. On one housing estate in Portsmouth a vigilante mob patrolled streets for seven nights in a row, causing four innocent families to flee after being wrongly identified as harbouring sex offenders. In another incident, the home of a female doctor in Gwent was attacked by a mob confused by 'paediatrician' and 'paedophile'.¹⁰²¹

More recently, *The Sun* newspaper in Britain published a photo next to an article about a man who had been convicted of indecently assaulting two young girls, with the headline of 'Face of Kid Ban Pervert'. However, the picture was that of an unrelated man and not the offender. The pictured man moved out of his home and sought police protection after the article appeared.¹⁰²²

Concerns about community exposure and the security of register information was one of the major themes that came out of our survey of registered persons. These issues were raised by nearly one quarter of respondents (71 of the 293 respondents). 49 respondents (17%) who told us that someone, whom they had not told, had found out that they were on the Register. Another 22 provided comments relating to the security of the information on the Register or their fear of others finding out.¹⁰²³

Of those who told us that others had found out about their registrable status, it was clear from the details provided, that many registered persons do not differentiate between disclosure of information about registrable status and public knowledge of their conviction for a registrable offence. For example, one told us: 'during court case – flyer with photograph distributed in my street and local shops and service stations'¹⁰²⁴ and another stated: 'The whole town of the place where I live [knows] and it hurts.'¹⁰²⁵

Others made specific allegations about unauthorised disclosure of register information, and provided the following details of who found out about their registrable status.

*My niece's school friends [found out] through a young guy doing work experience with police*¹⁰²⁶

*Police told my partner's ex and his wife – A police officer known to my current partner's ex looked up the COPS system for dirt on me. officer found that I was a registered person and gave information to my partner's ex, his new wife, my stepson then 10 years old. The information given included copies of paperwork and the photo I supplied to the police when registering.*¹⁰²⁷

*Some family that have police contacts [found out].*¹⁰²⁸

We were unable to investigate these specific allegations, as the questionnaires were completed anonymously and the responses did not provide sufficient information to allow effective follow-up. As these allegations remain untested we emphasise that we have drawn no conclusions as to their veracity.

Some respondents expressed a general fear of information becoming public, with comments such as: 'Always concerned who can access register'¹⁰²⁹, 'Worried someone will know'¹⁰³⁰, and 'Think my name may get into the wrong hands.'¹⁰³¹ Others told us about more specific fears.

*I am constantly frightened that my employer will find out about the crime that happened 14 years ago.*¹⁰³²

*I am scared that a corrupt officer might sell the info to the media for gain as happened in the UK with dire results.*¹⁰³³

*You always run the risk of someone finding the information on a computer and making life difficult for you.*¹⁰³⁴

One registered person contacted this office to complain about what he saw as an improper disclosure of his registered status, when a newspaper published details about him, including his name, following a court hearing in respect of a charge of failing to comply with registration obligations.¹⁰³⁵ However, there is nothing in the Act that provides for court proceedings for breach offences not to be reported in the same way as any other court processes, including the proceedings for the original offence.

In its submission to the review, Privacy NSW told us that it had not received any information to suggest that there were specific privacy concerns arising from the operation of the Act.

We receive a significant number of inquiries in relation to criminal records (119 in 2000-2001, 98 in 2001-2002 and 177 in 2002-2003). These demonstrate that the use of criminal record information is widely seen as a privacy issue. Inquirers often do not disclose the nature of offences and only a handful of inquiries expressly related to child sex offences that would require registration. An even smaller number of calls have raised issues directly related to the Act.

We received one complaint from a registrable person who failed to register on entering NSW. The complainant alleged that the reporting of court proceedings relating to a charge for failing to comply with registration requirements breached the Act. Our preliminary assessment of this matter reached the conclusion that this claim could not be sustained.¹⁰³⁶

The information obtained for this review does not prove a strong case for disclosure to the whole of the community. There are clear dangers in allowing community access to Register information, and research and experience indicates that child protection and community safety are generally not enhanced by this practice.

16.4.5. Security of information held on the Register

As noted above, access to the Register is limited to a small number of persons at each LAC, to ensure the integrity of the Register is not compromised.¹⁰³⁷ By limiting the number of people who have access to the information the risk of loss or disclosure of that information, either deliberate or accidental, is minimised.

Concerns about the unauthorised disclosure of register information were raised during parliamentary debate.¹⁰³⁸ Ms Clover Moore raised a number of scenarios where she feared that information might be disclosed with disadvantageous effects.

*My one concern is with what might happen with the information that the police have. The intent of the legislation could be undermined if police reveal information on the paedophile register to unauthorised persons. The problems are easy to see: A police officer in a rural town may go home and tell his wife about a registration, and suddenly the information is all over town. Or, a paedophile may be seen going into a police station and giving information over the counter, rather than in the privacy of an office, and suddenly the information is out.*¹⁰³⁹

During parliamentary debate, the then Police Minister, Mr Whelan addressed the concerns about unauthorised disclosure of information. He advised that:

*... the provisions of the Police Service Regulation, read in conjunction with the Privacy and Personal Information Protection Act 1998, will make it an offence for police to release information contrary to the instructions, the penalty being \$11,000 and/or two years imprisonment. This will prevent police releasing this information to the broader community.*¹⁰⁴⁰

There is also a risk of information being inadvertently disclosed through everyday police activities. In its submission, NSW Police also advised us of how it had dealt with the difficulties for radio operators in providing secure information about registered persons 'on-air' to operational police. It wrote:

*Providing operational police with information pertaining to the criminality of an offender during routine inquiries is critical in ensuring the safety of children. ... The Guidelines for the NSW Police Communication Group: Child Protection (Offenders Registration) Act 2000 were developed approximately six months after the commencement of the legislation and regulate the manner in which information should be disseminated to inquiring Police. ... Such guidelines catered for ... an increasing number of enquiries against registered offenders, their vehicles and locations by Sydney Radio Operators. Some of the enquiries involved the POI being in the company of children.*¹⁰⁴¹

The review has not received any information to suggest that the protocols and procedures developed and implemented by NSW Police to maintain the security of information held on the Register are other than satisfactory. The Child Protection Registry has told the review that, for those registered persons for whom it has direct responsibility (usually when the registrable person is interstate or overseas), audits of COPS access have found that every enquiry has had a legitimate basis and that there has been no unauthorised access or enquiries.¹⁰⁴²

While concerns about inadvertent disclosure of registrable status was raised by some people, the review has not received any information to confirm that the integrity of the Register information was been breached. Despite some reports, there have been no verified cases of Register information being improperly disclosed, either deliberately or accidentally. However, the concerns of registered persons and other stakeholders about the potential for this and the consequences are understandable. It may be helpful if ongoing training for all police (not only those directly involved in the day-to-day implementation of the Register) emphasised the sensitivity of the information on the Register and included reminders of confidentiality requirements. The issue of training is discussed further at the conclusion to Part 4.

Endnotes

- ⁹⁴⁶ *Registrable Persons – Child Protection Registry: Information Disclosure Policy and Procedures*, version 1.1, State Crime Command, Child Protection Squad, October 2002. The IDPP is closely based on the existing Code of Best Practice for Information Management; December 2000, and information in the Mandatory Continuing Police Education Scheme training package, *Use of Electronic Information*, October 2001.
- ⁹⁴⁷ *The Post Registration Monitoring of Child Sex Offenders: Guidelines for Operational Police*, Child Protection Registry NSW Police, September 2002.
- ⁹⁴⁸ Guidelines for the NSWPOL Communications Group: *Child Protection (Offenders Registration) Act 2000*, NSW Police Child Protection Registry, Information and Intelligence Centre, August 2002.
- ⁹⁴⁹ An overview of these policy and procedure documents can be found at Appendix 2.
- ⁹⁵⁰ Submission no 42, from NSW Police, 22 January 2004.
- ⁹⁵¹ Introduction, p. 4.
- ⁹⁵² Paragraph 2.1 p.6.
- ⁹⁵³ Paragraph 4.2 p.17.
- ⁹⁵⁴ Paragraph 2.7 p.8.
- ⁹⁵⁵ Paragraph 6, p.22.
- ⁹⁵⁶ Email communication from Beth Cullen, Manager Child Protection and Sex Crimes Squad, NSW Police, 11 August 2004.
- ⁹⁵⁷ Guidelines for the NSWPOL Communications Group: *Child Protection (Offenders Registration) Act 2000*, NSW Police Child Protection Registry, Information and Intelligence Centre, August 2002. See Appendix 2 for further details of NSW Police policies and guidelines relating to the operation of the child protection register.
- ⁹⁵⁸ Any police officer doing an enquiry about a particular person on COPS will know if they are on the Register by the presence of a 'CPR flag'. If a threat assessment has been completed, a routine enquiry can also obtain the threat rating (either high, medium or low).
- ⁹⁵⁹ *Guidelines for the NSW Police Communication Group: Child Protection (Offenders Registration) Act 2000*, NSW Police, Child Protection Registry, Information & Intelligence Centre, August 2002, paragraph 2.4, p.10.
- ⁹⁶⁰ Paragraph 5, p.21.
- ⁹⁶¹ *The Post Registration Monitoring of Child Sex Offenders: Guidelines for Operational Police*, Child Protection Registry NSW Police, September 2002, Section 5, p.9.
- ⁹⁶² *Registrable Persons – Child Protection Registry: Information Disclosure Policy and Procedures*, NSW Police State Crime Command, Child Protection Squad, Version 1.1, 2002, Paragraph 5. p.21.
- ⁹⁶³ *The Post Registration Monitoring of Child Sex Offenders: Guidelines for Operational Police*, Child Protection Registry NSW Police, September 2002, section 5(a), p.9.
- ⁹⁶⁴ *The Post Registration Monitoring of Child Sex Offenders: Guidelines for Operational Police*, Child Protection Registry NSW Police, September 2002, Section 5(c), p.9.
- ⁹⁶⁵ Clause 46 of the *Police Regulation 2000*.
- ⁹⁶⁶ *NSW Police Code of Conduct and Ethics*, February 2002. Section 308H of the *Crimes Act 1900* creates the summary offence of 'unauthorised access to or modification of restricted data held in a computer' for which the maximum penalty is two years imprisonment.
- ⁹⁶⁷ All the information relating to a registrable person held on the Register is referred to as a 'CPR case' in NSW Police procedures and guidelines.
- ⁹⁶⁸ 'Police given new powers to warn about paedophiles', media release by John Watkins, MP, Minister for Police, 2 May 2004.
- ⁹⁶⁹ Advice from Beth Cullen, Manager Child Protection and Sex Crimes Squad, NSW Police, at a meeting with NSW Police and Police Ministry, 16 June 2004.
- ⁹⁷⁰ Child Sexual Abuse: Labor's Plan to Protect Children (NSW), March 2003.
- ⁹⁷¹ Section 21D(1) Child Protection (Offenders Registration) Amendment Bill 2004.
- ⁹⁷² Section 21D(2) Child Protection (Offenders Registration) Amendment Bill 2004.
- ⁹⁷³ Submissions nos: 4, 6, 7, 8, 13, 15, 16, 18, 26, 27, 32, 36, 37, 38, 42 and 44. Some submissions addressed more than one issue. See Appendix 4 for a full list of submissions.
- ⁹⁷⁴ *The Post Registration Monitoring of Child Sex Offenders: Guidelines for Operational Police*, Child Protection Registry NSW Police, September 2002,

Section 5, p.9.

- ⁹⁷⁵ Formerly known as the National Child Sex Offender System, the CrimTrac database project.
- ⁹⁷⁶ Submission no 42 from NSW Police, 22 January 2004.
- ⁹⁷⁷ Submission no 7 from NSW Police Association, 16 October 2003.
- ⁹⁷⁸ Interviews with crime managers December 2002, May 2003 and February 2004.
- ⁹⁷⁹ Interviews with crime managers, February 2004, LAC 22 Northern Region.
- ⁹⁸⁰ Interviews with crime managers, February 2004, LAC 1 Greater Metro Region.
- ⁹⁸¹ Interviews with crime managers, February 2004, LAC 11 Inner Metro Region.
- ⁹⁸² Interviews with crime managers, May 2002, LAC 18 Inner Metro Region, and February 2004, LAC 5 Greater Metro Region.
- ⁹⁸³ Interviews with crime managers, February 2004, LAC 8 Greater Metro Region.
- ⁹⁸⁴ Interviews with crime managers, February 2004, LAC 14 Inner Metro Region.
- ⁹⁸⁵ Interviews with crime managers, May 2002, LAC 32 Western Region.
- ⁹⁸⁶ Interviews with crime managers, February 2004, LAC 18 Inner Metro Region.
- ⁹⁸⁷ Interviews with crime manager, May 2002, LAC 30 Southern Region.
- ⁹⁸⁸ Inter-jurisdictional Working Party Report to the APMC, June 2003, p.176.
- ⁹⁸⁹ Submission no 42 from NSW Police, 22 January 2004.
- ⁹⁹⁰ *Registrable Persons – Child Protection Registry: Information Disclosure Policy and Procedures*, version 1.1, State Crime Command, Child Protection Squad, October 2002, paragraph 4.1, p.16.
- ⁹⁹¹ IDPP, paragraph 3.4, pp.11-12.
- ⁹⁹² Monitoring guidelines, paragraph 3.7, p.7; and SOPs, paragraph 7.5, p.39, and 8.4, p.46.
- ⁹⁹³ Submission no 42 from NSW Police, 22 January 2004.
- ⁹⁹⁴ Submission no 42 from NSW Police, 22 January 2004.
- ⁹⁹⁵ Submission no 44 from DOCS, 29 January 2004.
- ⁹⁹⁶ Submission no 15 from the NSW Department of Housing, 20 October 2003.
- ⁹⁹⁷ Submission no 26 from the NSW Department of Education and Training, 30 October 2003.
- ⁹⁹⁸ Submission no 18 from the Federation of Parents & Citizens' Associations of NSW, 20 October 2003.
- ⁹⁹⁹ Submission no 32 from Privacy NSW, 19 November 2003.
- ¹⁰⁰⁰ Submission no 42 from NSW Police, 22 January 2004.
- ¹⁰⁰¹ Meeting with representatives from the NSW Police Child Protection Registry and Police Ministry, 16 June 2004.
- ¹⁰⁰² *Information Disclosure Policy and Procedures*, Paragraph 4.6 'General Warnings' states (in part): 'if an officer is concerned there is a particular registrable person in an area who has a known modus operandi ... it may be appropriate to provide a COMFIT or a photograph of a registered offender where they are suspected of committing further offences.'
- ¹⁰⁰³ Information provided at a meeting with NSW Police and Ministry for Police, 16 June 2004.
- ¹⁰⁰⁴ Meeting with representatives from the NSW Police Child Protection Registry and Police Ministry, 16 June 2004.
- ¹⁰⁰⁵ Submission no 6 from Penrith LAC, 7 October 2003.
- ¹⁰⁰⁶ Submission no 16 from the Association of Childrens Welfare Agencies, 20 October 2003.
- ¹⁰⁰⁷ Submission no 16 from the Association of Childrens Welfare Agencies, 20 October 2003.
- ¹⁰⁰⁸ Inter-jurisdictional Working Party Report to the APMC, pp.162-3.
- ¹⁰⁰⁹ Inter-jurisdictional Working Party Report to the APMC.
- ¹⁰¹⁰ Inter-jurisdictional Working Party Report to the APMC, June 2003, p.162.
- ¹⁰¹¹ Inter-jurisdictional Working Party Report to the APMC, June 2003, p.162.
- ¹⁰¹² *Royal Commission into the NSW Police Service, Final Report, Volume V: The Paedophile Inquiry*, Hon Justice JRT Wood, August 1997, p.1180.
- ¹⁰¹³ See Parliamentary debate for the Child Protection (Offenders Registration) Bill in both the Legislative Assembly and the Legislative Council, Hansard Legislative Assembly, 1 June 2000, and Legislative Council, 22 June 2000.
- ¹⁰¹⁴ Hansard, Legislative Assembly, 1 June 2000, The Hon Paul Whelan, Minister for Police, MP, Second Reading speech – Child Protection (Offenders Registration) Bill.
- ¹⁰¹⁵ Hansard, Legislative Assembly, 1 June 2000, Mr Matthew Brown, MP, Second Reading speech debate – Child Protection (Offenders Registration) Bill.
- ¹⁰¹⁶ Hansard, Legislative Assembly, 1 June 2000, Mr Andrew Tink, MP, Second Reading speech debate – Child Protection (Offenders Registration) Bill.
- ¹⁰¹⁷ These issues are canvassed in Marie Swain, *Registration of Paedophiles*, Briefing Paper no 12/97, NSW Parliamentary Library Research Service, July 1997; and Rachel Simpson, *Megan's Law and other forms of sex offender registration*, Briefing Paper no 22/99, NSW Parliamentary Library Research Service, October 2001.
- ¹⁰¹⁸ Inter-jurisdictional Working Party Report to the APMC, p.163.
- ¹⁰¹⁹ Submission no 4 from VOCAL, 16 October 2003.
- ¹⁰²⁰ Submission no 4 from VOCAL, 16 October 2003.
- ¹⁰²¹ 'Vigilantes mistake pediatrician for pedophile and attack home', *North County Times*, UK, 31 August 2000.
- ¹⁰²² 29 March 2003. *The Sun* subsequently printed apologies and agreed to pay the man damages.
- ¹⁰²³ 49 answered 'yes' to the question: 'Has anyone (who you didn't tell) found out that you're on the Register?' and provided brief details about that. Another 22 commented on their fears about security of register information or public access to that information in response to questions on the effect or value of the register, how it could be improved, or in a general comments section of the questionnaire.
- ¹⁰²⁴ Survey no 146.
- ¹⁰²⁵ Survey no 152.
- ¹⁰²⁶ Survey no 204.
- ¹⁰²⁷ Survey no 205.
- ¹⁰²⁸ Survey no 280.
- ¹⁰²⁹ Survey no 80.
- ¹⁰³⁰ Survey no 95.
- ¹⁰³¹ Survey no 103.

¹⁰³² Survey no 102.

¹⁰³³ Survey no 118.

¹⁰³⁴ Survey no 228.

¹⁰³⁵ Phone communication from registered person RP1, 9 July 2002. See Appendix 5 for anonymised details of registered persons interviewed for the review.

¹⁰³⁶ Submission no 32 from Privacy NSW, 19 November 2003.

¹⁰³⁷ *The Post Registration Monitoring of Child Sex Offenders: Guidelines for Operational Police*, Child Protection Registry NSW Police, September 2002, Section 5, p.9.

¹⁰³⁸ Hansard, Legislative Assembly, 8 June 2000, Second Reading speech debate, Child Protection (Offenders Registration) Bill. See for example, comments by Ms Clover Moore, MP, the Hon David Campbell, MP, Mr Matthew Brown, MP and the Hon Diane Beamer, MP and Hansard, Legislative Council, 20 June 2000, see for example, comments by the Hon Carmel Tebbutt, MLC, the Hon Ian Cohen, MLC and the Hon Dr Peter Wong.

¹⁰³⁹ Hansard, Legislative Assembly, 1 June 2000, Ms Clover Moore, MP, Second Reading speech debate, Child Protection (Offenders Registration) Bill.

¹⁰⁴⁰ Hansard, Legislative Assembly, 8 June 2000, the Hon Paul Whelan, Second Reading speech debate, Child Protection (Offenders Registration) Bill.

¹⁰⁴¹ Submission no 42 from NSW Police, 22 January 2004.

¹⁰⁴² Email communication from Beth Cullen, Manager Child Protection and Sex Crimes Squad, NSW Police, 11 August 2004.

Chapter 17. Community safety

17.1. Relevant provisions of the Act

There are no provisions in the Act that specifically outline how it will impact on the safety and security of victims and the community. However, when the legislation establishing the Register was introduced into Parliament, there were clear statements regarding the anticipated effect of the Register in providing an enhanced sense of safety for the community generally, and for child victims of sexual assault and their families in particular.

On introducing the legislation, the then Minister for Police articulated the desired effects of establishing the Register:

*It will increase, and improve the accuracy of, police child sex offender intelligence; assist in the investigation and prosecution of child sex offences committed by recidivist offenders; provide a deterrent to re-offending; assist police from New South Wales and other jurisdictions in monitoring high risk child sex offenders; assist in the management of child sex offenders in the community; provide child abuse victims and their families with an increased sense of security; and assist police to enforce the Child Protection (Prohibited Employment) Act 1998 and the Crimes Legislation Amendment (Child Sexual Offences) Act 1998.*¹⁰⁴³

The Minister then went on to relate the observations of the then commander of the Child Protection Enforcement Agency (CPEA) on the benefits of a registration scheme:

*Superintendent John Heslop ... has stated that the introduction of a child sex offender registration system will mean the CPEA and local police will be able to gather previously unavailable intelligence. [If] "the CPEA and local police have knowledge of the whereabouts of convicted sex offenders, they are better prepared to prevent child sex abuse".*¹⁰⁴⁴

However, the Minister urged caution regarding the Register as a 'child protection cure all':

*Whilst it may deter some recidivist offending, it will not prevent everybody who has been convicted of a child sex offence from ever abusing another child. It is a sad fact that many child sex offenders offend compulsively and will re-offend, indeed, that is the premise that underpins the bill.*¹⁰⁴⁵

17.2. Commentary on the operation of the Act

While defining and measuring the extent to which individuals and communities feel safer as a result of the existence of the Register is problematic, particularly in the relatively short time that the Register has operated, information provided in a number of submissions permits a broad survey of its usefulness to this point in time.

17.2.1. Views from NSW Police

From submissions and interviews with officers from NSW Police, it is readily apparent that the Register has already shown itself to be a useful tool in assisting law enforcement investigations of child sexual assault by helping to solve and prevent crimes by providing a means of identifying suspects and monitoring the activities of registered people.

In their submission, NSW Police acknowledged that the Register had already demonstrated its utility as an investigative tool. It believed that the Register's usefulness would become more evident over time and 'proportionately increase as the number of registered offenders increases.'¹⁰⁴⁶

NSW Police detailed how the Register has already assisted investigations:

*The Register has proven to be an invaluable investigative tool, enabling photographs of registered offenders to be matched to Comfit diagrams or CCTV footage of sex offenders. Additionally searches of registered vehicles and employment details have generated suspects for sexual assaults. A number of offenders have been identified through these means.*¹⁰⁴⁷

The following examples in the case study below demonstrate how the intelligence made available by the Register has assisted in the investigation of child sexual assault cases:

Case study 17.

Following are several examples that illustrate the above discussion:

A man attempted to abduct and assault a young girl in her local neighbourhood. She was only able to give the police a general description of him, but she was able to tell police that he had a construction hard hat and was wearing overalls. Police conducted a search of the Register for registered offenders living in the area where the assault had occurred who had reported working in the construction industry. From a list of possible persons a particular suspect was identified and charged. He was subsequently convicted.¹⁰⁴⁸

A young woman was approached at a railway station by a man who then followed her home and raped her. When she reported the assault, the police were able to use the CCTV footage to identify the man as a registered person who had an offending pattern of seeking out women at railway stations to sexually assault them. He had recently completed a custodial sentence for a child sexual offence, and when registering with police, had supplied a recent photograph as part of his registration obligations. The police were able to match this photograph against the CCTV footage. This resulted in him being charged and convicted.¹⁰⁴⁹

LACs have access to area specific information that is maintained on the Register, and are supplementing the information kept on the Register by including intelligence gathered in the course of keeping registered offenders under close watch:

*Monitoring of offenders by local area commands has enabled a variety of new offences and offending behaviour to be identified. These range from offences under the Summary Offences Act 1988 (offences of convicted child sex offenders loitering near schools and other places frequented by children, without reasonable excuse) and additional sex offences, to property and drug offences.*¹⁰⁵⁰

According to NSW Police, this monitoring of registered offenders has realised benefits in terms of prevention and intervention:

*There have been numerous incidents where local police, aware of the presence of registered sex offenders, have detected children who are at risk from the offender. In the majority of cases, this has resulted in a referral to DCS and Joint Investigative Response Teams.*¹⁰⁵¹

NSW Police reported that the registration scheme had resulted in an increased awareness 'of other orders or restrictions placed on the offender, for example parole, bail, bond and visa conditions'.¹⁰⁵² As a result, police have been able to respond quickly and effectively when offenders have breached these conditions, as evidenced by the action taken in the following examples:

- *Offenders charged with revocation of parole have been arrested within several days of a warrant being issued.*
- *Two offenders have successfully been extradited to other states where they were wanted on first instance warrants.*
- *A number of offenders have been referred to the Department of Immigration and Multicultural Affairs and subsequently deported or had their visas revoked.*¹⁰⁵³

Police have detected inappropriate housing and employment arrangements that could lead to re-offending, as well as identification and collation of information and intelligence on potential registered persons from other jurisdictions. Two examples were cited in the NSW Police submission:

- *an offender who operated one of the largest child pornography Internet sites in Australia was identified as residing in NSW as a result of the registration scheme; and*
- *several serial paedophiles who committed their offences in other jurisdictions and are known associates of each other have now been identified and their presence in NSW is now being monitored.*¹⁰⁵⁴

NSW Police said that there was a possibility that the Register acts as a deterrent to registered persons from re-offending, but advised that no formal assessment of impact on recidivism rates could be accurately given at this stage. We note that there is some evidence supporting NSW Police's view that registration will have a psychological effect on registered persons, in particular discouraging them from re-offending. It is argued that upon registration, registered persons are made aware that they are being monitored and that this will cause them to control their behaviour and deter them from re-offending.¹⁰⁵⁵ Some registered persons have also reported this effect of registration on their behaviour. This is discussed later in this chapter.

NSW Police has reported that one in seven registered offenders has been charged with a new offence following registration, 'which is higher than would normally be anticipated', but that fewer than two per cent of offenders have been arrested

for sex offences occurring in the first twelve months following registration.¹⁰⁵⁶ As many of these offenders were subject to police targeting strategies, NSW Police advises that it is difficult to determine 'whether the rate at which offending has been detected equates to a demonstration of police pro-activity or recidivism.'¹⁰⁵⁷

NSW Police submits that an increased awareness of the presence of child sex offenders in their local area:

*... has enabled local police to be quickly alerted to the earliest signs of sex offending or deviant behaviour. In most cases where new sex offences have been detected they have involved non-contact offences, such as child pornography and loitering near schools, or acts of indecency, rather than sexual assaults. Over time, the Register may therefore be able to demonstrate a reduction in the impact and severity of offences.*¹⁰⁵⁸

NSW Police submitted that their efforts would be assisted by 'nationally consistent child protection offender registration legislation [which] would increase the frequency with which interstate offenders are detected in NSW'.¹⁰⁵⁹ Nationally consistent legislation is discussed further in Chapter 2 and Chapter 18. It also submitted that their response to children at risk would be 'greatly enhance[d]' by:

*... changes to the legislation which make it compulsory for offenders to report to police all children with whom they reside or have regular contact and the introduction of child sex offender orders.*¹⁰⁶⁰

Potential changes to the information that registered persons are required to keep police informed of, arising from the Child Protection (Offenders Registration) Amendment Bill 2004, are discussed further at Chapter 11.

17.2.2. Views of crime managers

In the course of our review we surveyed crime managers on a number of occasions to ascertain if their views regarding the Register changed over time, and if so, how.

In the interviews conducted at the start of our review, few crime managers anticipated that the Register would be a useful tool for investigations of child sexual assault, with only two crime managers saying that they could see its potential benefits.¹⁰⁶¹

Over time, and with an increasing use of the Register as a source of intelligence, more and more crime managers came to the view that the Register was a useful instrument for investigations.¹⁰⁶² Of the crime managers we interviewed at the end of our review, almost all said they felt their knowledge about registered persons in their respective commands was of assistance in augmenting community safety and security.¹⁰⁶³ These crime managers found the Register useful in identifying convicted sex offenders in their command, and keeping track of their whereabouts and their behaviour.

One crime manager commented on how helpful he had found the Register, in conjunction with the relevant offences in the *Summary Offences Act 1988*, to stop registered persons in his command from loitering in parks and schools, and for monitoring and dealing with registered offenders in his LAC.¹⁰⁶⁴

Many of the crime managers suggested that the Register provided a useful starting point in checking whether descriptions given by victims met the descriptions of people registered, so as to identify or eliminate the registered offender as suspects in investigations.¹⁰⁶⁵

In addition to its usefulness in monitoring registered offenders and investigating child sexual abuse, some crime managers felt that the Register was of assistance in deterring people on the Register from re-offending.¹⁰⁶⁶ Crime managers commenting on this outcome from the Register said:

*It seems to really play on the minds of offenders by reminding them of how serious their crime was, and so as to act as a deterrent.*¹⁰⁶⁷

*It's really good the way they have the contact with police and so are reminded they are being watched, which acts as a deterrent to doing anything wrong.*¹⁰⁶⁸

However, some crime managers expressed concern and frustration at not always being able to act on the information contained in the Register. One crime manager commented that not 'many people in the community know of the Register even existing, so having the Register doesn't make them feel safer.'¹⁰⁶⁹ Another crime manager cited an instance where local police were suspicious about a registered person aged in his forties who was apparently involved with a 15 year old girl. He expressed his frustration at the lack of assistance from other agencies in dealing with the situation, particularly after the girl turned 16. He still felt she was at risk from the registered person, and his concerns were exacerbated when the registered person was charged and placed in custody for another offence, involving a friend of the 16 year old girl.¹⁰⁷⁰

Another crime manager cited the instance of a registered person claiming to be residing with his parents. Local police believed he was in a relationship with a woman with young children, thereby placing them at risk. However, local police were unable to determine the extent of contact he had with those children and whether the woman was aware of his

offending history. The crime manager observed that: 'it is particularly problematic in a small community where surveillance operations are almost impossible ... it is unclear to what extent this matter should be pursued and with what powers'.¹⁰⁷¹

17.2.3. Views from other government agencies

The crime prevention division of the Attorney General's Department noted that it was beyond the capacity of this review to report on the impact of the Register, due to the relatively short period of time since the legislation was passed. However, the division submitted that a review of recidivism rates needed to be established:

*I accept that it would not be possible to establish a causal link between being on the Register and whether or not any further offences are committed but some baseline data may be indicative of whether the Register does in fact act as a deterrent in any way as intended.*¹⁰⁷²

The Department of Housing advised that they respond promptly to any advice from NSW Police that a client of the Department is a registrable person, saying that such advice would result in:

*... arranging Public Housing for a registrable person in a suitable location, for example not in close proximity to a school ... The Department will also take such information into account in considering a transfer application from a registrable person currently in a Public Housing property in an unsuitable location, giving urgent priority to that transfer application.*¹⁰⁷³

The Department of Education and Training noted the case studies contained in our discussion paper, describing how police were able to cross reference information contained on the Register to identify registered persons suspected of an offence after they had been released. It submitted that these successes 'provide reassurance that the intent of the register to enhance the community and victims' safety is being realised'.¹⁰⁷⁴ The Department further commented that it:

*... is concerned about the potential for registrable persons to engage in conduct that suggests they may pose an increased risk to members of the community. In circumstances such as this a specific warning by Police about the particular behaviours of concern, issued to schools and other facilities frequented by children, would be the minimum steps appropriate to ensuring the safety of children in particular communities.*¹⁰⁷⁵

On the other hand, NSW Health expressed some concern that:

*... initiatives such as the Child Protection Register may create an artificial sense of overall community safety, given the low number of child sexual assault offenders who are arrested and the even lower number who are ultimately convicted.*¹⁰⁷⁶

NSW Health's concern about the risk of creating a false sense of security is not new nor is it an isolated view. For instance, the Wood Royal Commission noted some critical observations about proposals for the registration of offenders, including the risk that:

*... a false sense of security can be created by the impression that all sex offenders are known, registered and tracked, whereas in fact a very large proportion of offenders are never placed before the courts, and a significant section of convicted offenders do not register, and are lost to the system.*¹⁰⁷⁷

However, the Royal Commission went on to recommend that a registration scheme be considered, but again, this time in respect of the need for national uniform legislation, warned of a false sense of security could arise in relation to:

*... offenders from outside the State who enter the State either as visitors, or without knowledge of the registration requirements.*¹⁰⁷⁸

17.2.4. Views from community organisations and individuals

Several submissions from community agencies and individuals commented on the effect of the Register on community safety.

The Association of Children's Welfare Agencies raised the issue of post-release monitoring impacting on the effectiveness of the Register in enhancing community safety, stating that there was a:

*... difficulty in monitoring and restricting the activities of persons who have completed their sentence ... It may be that these issues could be more effectively addressed by ensuring that sentencing includes requirements involving post-custodial restrictions on activities involving contact with children.*¹⁰⁷⁹

Bravehearts, an advocacy group for victims of child sexual assault based in Queensland, congratulated NSW on establishing the Register, expressing the view that the 'community is safer as a result', and submitted that the fear of detection is a 'major factor in preventing recidivism'.¹⁰⁸⁰

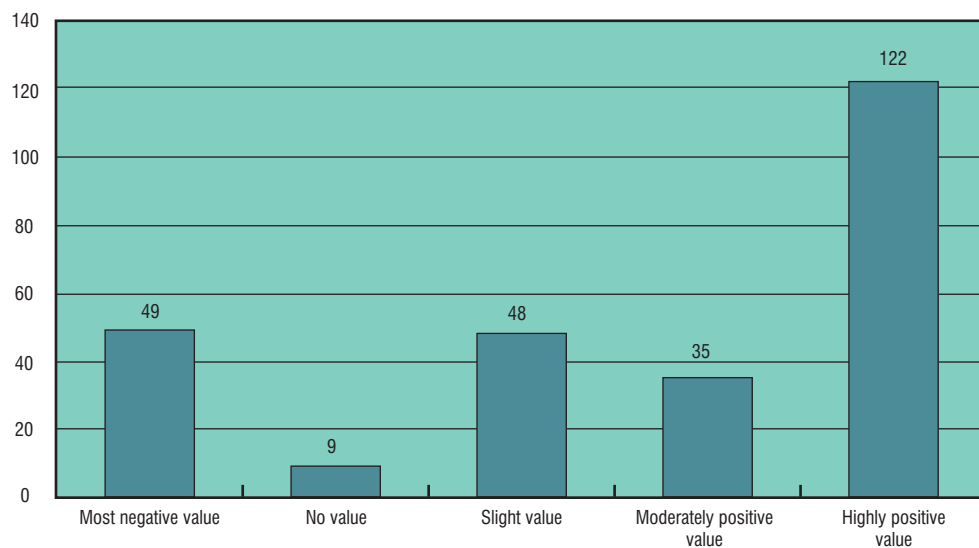
Similarly, the Victims of Crime Assistance League expressed their view that the Register would assist in dealing with offenders who re-offend, as police now had a resource to assist in investigations.¹⁰⁸¹

The Federation of Parents and Citizens' Associations of NSW regarded the 'registration of offenders [as] a vital part of child protection in NSW', however, they submitted that legislative changes were necessary to ensure the Department of Education and Training was made aware of registered persons with an association with a particular school (such as the parent or guardian of a student at the school), or who lived in close proximity to a school.¹⁰⁸² This issue is discussed further at Chapter 15.

17.2.5. Views of registered persons

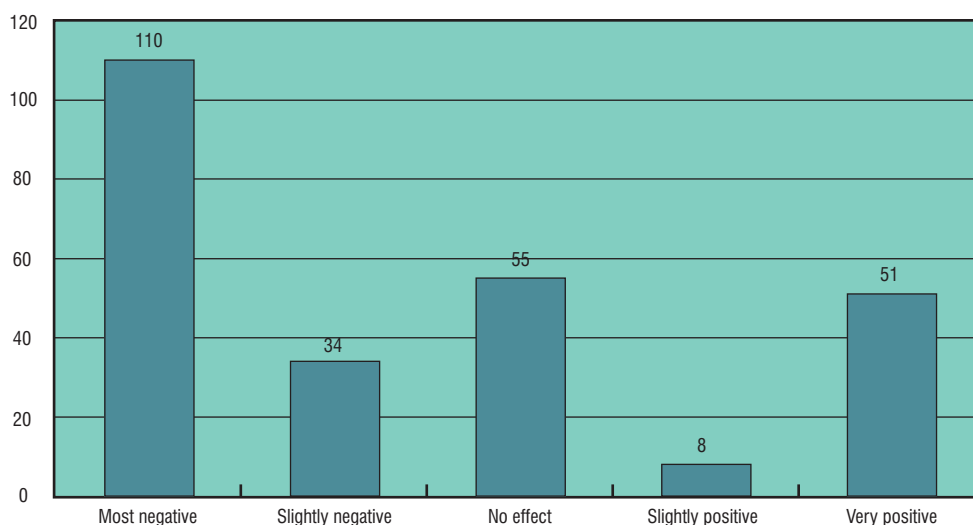
Our survey of registered persons sought their views on aspects of the operation of the Register. While there is an obvious risk that at least some of them would tell us what they thought we would want to hear, their responses were nonetheless interesting. The majority of respondents (205 or 70%) indicated that they felt that the Register had an overall positive value (42% reported its value as being 'highly positive', 12% as 'moderately positive' and 16% as 'slight'), even though most (49%) felt the Register had a negative effect on them personally (38% said its effect was 'mostly negative' effect and 12% said it was 'slightly negative'). See graphs below.

Figure 13: Survey respondents: overall value in having a Register



Source: Responses to Ombudsman survey of registered persons, January 2004 N=293
Numbers are not equal to total because of 27 responses left blank.

Figure 14: Survey respondents: overall effect of being on the Register



Source: Responses to Ombudsman survey of registered person, January 2004 N=293
Numbers are not equal to total because of 31 respondents left blank.

A significant number of registered persons believed that the ability of police to know where they were and what they were doing was a positive feature of the Register. When considering the overall value of the Register, 13 per cent of respondents said that the value of the Register was in being able to track and monitor registered persons.

Some of the registered persons considered that registration acted as a deterrent to their re-offending. Nearly 10 per cent of the respondents said that their own registration was a deterrent to offending. Some of the comments from registered persons responding to the survey included:

*I am able to know the gravity of my crime and the effect on victim more fully.*¹⁰⁸³

*Keeping myself more aware and accountable of my behaviour.*¹⁰⁸⁴

*Reinforced that what I did was socially unacceptable.*¹⁰⁸⁵

*It helps me be accountable to myself and my community.*¹⁰⁸⁶

Seven per cent of respondents told us that they thought the Register would be a useful deterrent for registered persons generally. Some of their comments were:

*Being on register enforces any possible consequences.*¹⁰⁸⁷

*Comfort to victims. General community assured. Deterrent to re-offending.*¹⁰⁸⁸

On the other hand, six out of the 293 respondents commented that the Register would not be a deterrent for some offenders, with comments such as:

*If an offender has the intention of re-offending the register wont stop him.*¹⁰⁸⁹

*If one wanted to offend, one could offend fake ID and addresses etc.*¹⁰⁹⁰

A number of respondents suggested that the constant reinforcement of their status as a convicted child sex offender by having to register and provide updated information was not helping their rehabilitation:

*Makes me feel negative, paranoid, spiteful.*¹⁰⁹¹

*It is a constant reminder that you are not trusted to change your life for the better of society.*¹⁰⁹²

These observations echo criticisms that registration might have a potentially negative impact on community safety and security. Some hold the view that the mandatory requirement to register undermines any incentive to rehabilitation. Others argue that this requirement sends a negative message that 'inadvertently encourages anti-social behaviour'.¹⁰⁹³ It is also

argued that released offenders may respond to the requirement to register by actively evading law enforcement officers, and employ strategies to remain unaccounted for, making subsequent prevention and detection much harder.¹⁰⁹⁴

17.2.6. The impact of the Register on perceptions of community safety

While there are genuine risks arising from a registration scheme for child sex offenders, this has to be balanced against the results for police and the community that have come from the scheme's operation in NSW.

It should be noted that even some of the police officers we spoke to were initially sceptical about the potential usefulness of the Register as a source of information and intelligence in preventing and detecting further abuses by registered persons. However, when surveyed towards the end of our review, these officers made it clear that they were now of the opinion that the Register was a useful policing tool. These views are reinforced by the submission of NSW Police, which highlights the many aspects of policing of child sex offences that have seen the benefits that come from maintaining the Register.

Other Government agencies and community organisations generally agreed that the community is safer as a result of the Register, but made suggestions for improvements in its operation. (These changes are discussed further at *Chapter 11: Registration processes and reporting obligations*, *Chapter 15: Monitoring of registered persons*, and *Chapter 16: Management and disclosure of Register information*, and in the conclusions to Part 3 and Part 4.) Somewhat surprisingly, even registered persons were generally positive about the value of the Register.

The warning that the Register should not be allowed to create a false sense of security is a valid concern, but one that has to be weighed against the benefits and results in terms of enhanced child protection that have been apparent from the operation of its operation in NSW.

Endnotes

- ¹⁰⁴³ Hansard, Legislative Assembly, 1 June 2000, The Hon Paul Whelan, MP, Minister for Police, Second Reading speech, Child Protection (Offenders Registration) Bill., pp. 6475-6.
- ¹⁰⁴⁴ Hansard, Legislative Assembly, 1 June 2000, The Hon Paul Whelan, MP, Minister for Police, Second Reading speech, Child Protection (Offenders Registration) Bill., pp. 6475-6.
- ¹⁰⁴⁵ Hansard, Legislative Assembly, 1 June 2000, The Hon Paul Whelan, MP, Minister for Police, Second Reading speech, Child Protection (Offenders Registration) Bill., pp. 6475-6.
- ¹⁰⁴⁶ Submission no 42 from NSW Police, 22 January 2004.
- ¹⁰⁴⁷ Submission no 42 from NSW Police, 22 January 2004.
- ¹⁰⁴⁸ Quoted in Hansard, Hansard, Legislative Assembly, 12 November 2002, The Hon Paul Crittenden, MP Parliamentary Secretary, second reading speech for the Child Protection (Offenders Registration) Amendment Bill. Additional information provided at a meeting with the Child Protection Registry, 20 July 2003.
- ¹⁰⁴⁹ Information provided at a meeting with the Child Protection Registry, 20 July 2003, and in submission no 42 from NSW Police, 22 January 2004.
- ¹⁰⁵⁰ Submission no 42 from NSW Police, 22 January 2004.
- ¹⁰⁵¹ Submission no 42 from NSW Police, 22 January 2004.
- ¹⁰⁵² Submission no 42 from NSW Police, 22 January 2004.
- ¹⁰⁵³ Submission no 42 from NSW Police, 22 January 2004.
- ¹⁰⁵⁴ Submission no 42 from NSW Police, 22 January 2004.
- ¹⁰⁵⁵ Marie Swain, *Registration of Paedophiles*, Briefing Paper no 12/97, NSW Parliamentary Library Research Service, July 1997, pp.17-18, and Rachel Simpson, *Megan's Law and other forms of sex offender registration*, Briefing Paper no 22/99, NSW Parliamentary Library Research Service, October 2001, p.12.
- ¹⁰⁵⁶ Submission no 42 from NSW Police, 22 January 2004.
- ¹⁰⁵⁷ Submission no 42 from NSW Police, 22 January 2004.
- ¹⁰⁵⁸ Submission no 42 from NSW Police, 22 January 2004.
- ¹⁰⁵⁹ Submission no 42 from NSW Police, 22 January 2004.
- ¹⁰⁶⁰ Submission no 42 from NSW Police, 22 January 2004.
- ¹⁰⁶¹ Interviews with crime managers, December 2001.
- ¹⁰⁶² Interviews with crime managers, May 2002 and February 2004.
- ¹⁰⁶³ Interviews with crime managers, February 2004. Only two crime managers made strongly negative comments about the Register, although another two expressed reservations about the overall system.
- ¹⁰⁶⁴ Interviews with crime managers, February 2004, LAC 29 Southern Region.
- ¹⁰⁶⁵ Interviews with crime managers, February 2004. (For Example, LAC24 Southern Region, LAC 2 Greater Metro Region, LAC 19 Northern Region, LAC 5 Greater Metro Region., LAC 18 Inner Metro Region.)

- ¹⁰⁶⁶ Interviews with crime managers, May 2002 and February 2004. 14 out of the 18 interviewed in February commented on this.
- ¹⁰⁶⁷ Interviews with crime managers, February 2004, LAC 14 Inner Metro Region.
- ¹⁰⁶⁸ Interviews with crime managers, February 2004, LAC 30 Southern Region.
- ¹⁰⁶⁹ Interviews with crime managers, February 2004, LAC 11 Inner Metro Region.
- ¹⁰⁷⁰ Interviews with crime managers, February 2004, LAC 22 Northern Region.
- ¹⁰⁷¹ Interviews with crime managers, February 2004, LAC 32 Western Region.
- ¹⁰⁷² Submission no 3 from NSW Attorney-General's Department, 9 October 2003.
- ¹⁰⁷³ Submission no 15 from the Department of Housing, 20 October 2003.
- ¹⁰⁷⁴ Submission no 26 from the Department of Education and Training, 30 October 2003.
- ¹⁰⁷⁵ Submission no 26 from the Department of Education and Training, 30 October 2003.
- ¹⁰⁷⁶ Submission no 31 from NSW Health, 4 October 2003.
- ¹⁰⁷⁷ Royal Commission into the NSW Police Service. Final Report. Volume 5. Sydney. 1997. p. 1179.
- ¹⁰⁷⁸ Royal Commission into the NSW Police Service. Final Report. Volume 5. Sydney. 1997. p.1181.
- ¹⁰⁷⁹ Submission no 16 from the Association of Childrens Welfare Agencies, 20 October 2003.
- ¹⁰⁸⁰ Submission no 27 from Bravehearts, 31 October 2003.
- ¹⁰⁸¹ Submission no 4 from VOCAL, 16 October 2003.
- ¹⁰⁸² Submission no 18 from the Federation of Parents and Citizens' Associations, 29 October 2003.
- ¹⁰⁸³ Survey no 175.
- ¹⁰⁸⁴ Survey no 142.
- ¹⁰⁸⁵ Survey no 100.
- ¹⁰⁸⁶ Survey no 119.
- ¹⁰⁸⁷ Survey no 282.
- ¹⁰⁸⁸ Survey no 246.
- ¹⁰⁸⁹ Survey no 65.
- ¹⁰⁹⁰ Survey no 281.
- ¹⁰⁹¹ Survey no 65.
- ¹⁰⁹² Survey no 130.
- ¹⁰⁹³ Simpson, Rachel, *Megan's Law and other forms of sex offender registration*, Briefing Paper no 22/99, NSW Parliamentary Library Research Service, October 2001, p. 13.
- ¹⁰⁹⁴ Simpson, Rachel, *Megan's Law and other forms of sex offender registration*, Briefing Paper no 22/99, NSW Parliamentary Library Research Service, October 2001, p. 14.

Chapter 18. Application to persons convicted outside NSW

18.1. Relevant provisions of the Act

Any person convicted of a comparable registrable offence outside NSW is required to register if they enter NSW.¹⁰⁹⁵ However, there is no specific mechanism in the legislation for notifying persons convicted of registrable offences outside NSW of their obligation to register if they enter NSW.

18.2. Relevant police procedures

18.2.1. Registrable persons on probation and parole

Despite the lack of a legislative mechanism for notifying people entering NSW of their obligations under the Act, the practical operation of the probation and parole system means that registrable persons on probation and parole in other Australian jurisdictions are notified of their obligations in NSW. We obtained information on the relevant procedures from DCS,¹⁰⁹⁶ the Minister for Justice¹⁰⁹⁷ and the Child Protection Registry.¹⁰⁹⁸

Persons under supervision orders in other jurisdictions can apply through DCS to transfer into NSW.¹⁰⁹⁹ DCS then conducts a preliminary assessment of applications to transfer for a minimum period of 28 days.¹¹⁰⁰ When the probation and parole service decide an applicant falls within the category of possibly being a registrable person, they require that person to acknowledge and accept the possibility of having to register upon entering NSW if the Registry deems them a registrable person.¹¹⁰¹ This acceptance is made in the form of a signed undertaking where the supervised person agrees to register if they are found to be a registrable person.¹¹⁰² The normal supervisory requirements of the probation and parole service are then applicable to the registrable person.¹¹⁰³

There is no structured notification process for persons convicted of registrable offences in other jurisdiction who are not under any form of supervision.

18.3. Relevant provisions of the Child Protection (Offenders Registration) Amendment Bill 2004

One of the prime purposes of the Child Protection (Offenders Registration) Amendment Bill 2004 is to make the registration scheme in NSW consistent with proposed national reporting arrangements. It therefore contains a number of provisions relating to persons convicted of registrable offences outside NSW. Most of these reflect an assumption that other jurisdictions will have corresponding legislation establishing a registration scheme. For example, there are new definitions in the Bill for 'corresponding Act', 'corresponding child protection registrable offence', 'corresponding registrable person', and so on.¹¹⁰⁴ These clarify the application of the NSW Act to persons who are registrable persons under schemes operating in other jurisdictions.

The Bill also contains provisions for registrable persons who enter NSW to be notified of their registration and reporting obligations, with NSW Police having the responsibility for notification.¹¹⁰⁵

The amendment Bill reduces the time a registrable person entering NSW has to report from 28 to 14 days.¹¹⁰⁶ The Bill also requires a person who is registrable in another jurisdiction to contact NSW Police within seven days of entering NSW to establish whether they have reporting obligations in NSW, and what these are.¹¹⁰⁷

As outlined in Chapter 11, the Bill includes provisions which would impose expanded reporting obligations on registered persons who wish to travel outside NSW.

Snapshot of interstate registrable persons

The Child Protection Registry has told the review that it is not easy to identify registrable persons convicted in other jurisdictions from the data held on the Register.¹¹⁰⁸

The Registry provided us with details of 28 persons on the Register who were convicted of a registrable offence outside NSW, at 15 October 2003. Where the originating jurisdiction was identified (in eight cases no jurisdiction was noted), it was fairly evenly spread between Queensland (six), the Australian Capital Territory (five) and Victoria (five), with two each from South Australia and the Northern Territory.

At that date police were also aware that there were 41 registrable persons absent from NSW, including 5 persons who were overdue returning from the date advised to police. The majority of those leaving NSW (27) were in Queensland.

18.4. Commentary on the operation of the provisions

Although some offenders entering NSW have been identified and placed on the Register, it is important to consider the implications of NSW being the only state in Australia that has currently enacted legislation setting up a register of child sex offenders.¹¹⁰⁹ This gives rise to some concerns about how effective a single state-based registration system can be in a country without movement controls between state borders. Without similar requirements in other states, there is the possibility that registrable persons can move interstate to avoid their registration obligations.

In its submission to our review NSW Police expressed general support for the application of the legislation to registrable offenders from other states entering NSW¹¹¹⁰. NSW Police suggested the majority of registrable persons entering NSW are currently identified through the interstate parole transfer scheme.

DCS emphasised that this process only involves registrable persons currently under supervision orders applying to transfer into NSW.¹¹¹¹

The Child Protection Registry agreed, noting that:

*The obvious problem of course is those offenders who are not under supervision and move to NSW. There is currently no way to track these persons moving into NSW.*¹¹¹²

Persons convicted of registrable offences who are not currently under supervision could enter NSW, and potentially remain for a considerable time, without knowing about their registration obligations or the police being aware of their presence.

NSW Police also becomes aware of registrable persons entering NSW through the sharing of intelligence with other jurisdictions. NSW Police told us of one example (see case study 18).¹¹¹³

Case study 18.

A person was due to finish a custodial sentence in Queensland in respect of registrable offences. As a result of surveillance and intelligence sharing arrangements, Queensland Police were able to notify NSW Police of the place, date and time of his arrival in Sydney. The Child Protection Registry arranged to be at the airport when he arrived. He was served with an outstanding warrant and taken into custody so he could be notified of his registration obligations. He indicated to police that he would leave NSW before the 28 days in which he was required to register expired. However, the conditions of his bail (in relation to the matter that was the subject of the warrant) required him to stay in NSW, and he did register with police, in accordance with his obligations.¹¹¹⁴

In the interviews we conducted with crime managers in February 2004, one crime manager expressed his concern about registrable persons convicted in other states entering NSW, stating:

*There is a fundamental limitation where offenders can ... enter the state and unless they have parole conditions that would be transferred to NSW there is no way of identifying they have committed registrable offences.*¹¹¹⁵

Another crime manager from the Greater Metropolitan Region specifically addressed the question about the operation of the Act in respect of those people convicted of a registrable offence outside NSW.¹¹¹⁶ The crime manager said in his submission to our review that there were two people in the LAC who fell into this category, and they were treated the same way as those people convicted in NSW in their requirement to register. The crime manager was not aware of any instances of persons convicted outside NSW living in NSW without being aware of their obligations.

In response to a survey conducted for our review, a registered person highlighted that being convicted outside NSW created a problem for notification. This registered person claims to have been convicted in Western Australia and remarked that he had not known he would have to register if he moved to NSW. He reported that he received the notification of his registration obligations from his parole officer, which indicates that, in his case, the system for notifying persons convicted outside NSW operated effectively.¹¹¹⁷

In the discussion paper for our review, we asked for submissions on the operation of the provisions of the Act in respect of persons convicted of registrable offences outside NSW, as well as any instances of persons convicted of registrable

offences in other jurisdictions living in NSW without being aware of their registration obligations. Fourteen of the 44 submissions we received (32%) made comments specifically on this issue. Many of these submissions suggested some form of additional legislation or formal agreement amongst the States would more adequately address the issue.

Several of the submissions from community groups and individuals were concerned with people being convicted outside NSW, and urged that child protection in general required a national response.¹¹¹⁸ One suggested the need for the federal government to introduce a national registration scheme:

*The sooner the Federal government enacts a national register, the safer the children across Australia will be.*¹¹¹⁹

Two of the submissions we received focused on children at school in NSW. The Federation of Parents & Citizens' Associations claimed there is 'a lack of clarity in the legislation' in relation to issues like offenders moving between states and territories, and how this impacts on casual teachers in border areas.¹¹²⁰ The Department of Education and Training highlighted in their submission how current legislation in NSW complements other recent legislation to protect young people in NSW schools. For example, mandatory screening of applicants against those people seeking employment in NSW government schools and colleges preventing those registered persons from gaining employment in NSW.¹¹²¹

Other submissions referred to current developments to strengthen national and cross-border efforts to address the issue of registrable people that have been convicted of a registrable offence in another state entering NSW.

The Australian Crime Commission outlined their support for developing an integrated database to assist police in all jurisdictions, as well as their support for cross-referencing of specific relevant information on CrimTrac with its Australian Criminal Intelligence Database.¹¹²²

Both the NSW Commission for Children and Young People and Privacy NSW commented on the APMC making efforts toward a nationally consistent child protection registration scheme.¹¹²³ As Privacy NSW stated:

*Given the free flow of people between jurisdictions there appear to be real obstacles to resolving any shortcomings in the process of identifying interstate entrants for the purpose of notification, short of a more comprehensive national registration or reporting scheme, as agreed this month by the Australian Police Ministers Council.*¹¹²⁴

Privacy NSW has suggested that particular attention is required to the notification and general movement of registrable people from outside NSW to ensure they adequately understand their obligations in NSW. However, the review has not received any information to indicate that any problem with the notification of registrable persons convicted of offences in another state has been a feature of breach offences during the review period.

18.4.1. Concerns raised about registered persons leaving NSW

NSW Police raised another issue in their submission that arises from NSW currently being the only state with register legislation:

*The lack of a national scheme has resulted in some offenders, in particular existing controlled persons, leaving NSW prior to notification and or registration.*¹¹²⁵

Crime managers also spoke about the ability of registered persons to come and go between the various states.¹¹²⁶ These crime managers felt their role and the Register's credibility were undermined by the ability of people on the Register to move freely across borders. An example was provided by one of the officers of a registered person notifying police of his intention to move to another State.¹¹²⁷ NSW Police were able to notify other authorities in the area to which the man said he would be moving. The crime manager was concerned that upon leaving the state, the registered person would no longer be monitored by NSW Police and therefore posed a real risk to other communities where he may choose to reside, without the knowledge of the authorities in that jurisdiction.

One crime manager commented on the arbitrary nature of registered persons required to notify police about leaving the state. He said that a person could easily abuse the requirement of only having to notify police if they intend to leave NSW for 28 days.¹¹²⁸ Although he did not provide any specific examples, he was concerned that registered persons could claim to have only been away for just short of 28 days in order to explain any absences.

This issue was also raised by some of the registered persons who responded to our survey. One reported that he had been 'thinking about moving states to get off register, but used to Sydney now.'¹¹²⁹ Another commented that: 'In a way the register is an administrative nightmare and its better I go and live interstate. I suspect the register will force many convicted people to leave NSW and go and live in Qld, S.A. or Vic i.e. move to other states.'¹¹³⁰

As outlined above, there are provisions in the Child Protection (Offenders Registration) Bill 2004 which are intended to address some of these concerns.

18.4.2. A national registration scheme

The easy movement of child sex offenders from one state to another and lack of registration requirements in other states has significant implications for police management and monitoring of registrable persons and the investigation of child sex offences, particularly in towns on the Victorian and Queensland borders and around the Australian Capital Territory.

The creation of a national database of registrable persons is the most appropriate solution to overcome current gaps in child protection. A national register would ensure that police anywhere in Australia could monitor the interstate movement of registrable persons. This would limit the ability of people convicted outside NSW to enter the state undetected, as well as the general movements of sex offenders travelling across borders.

There have been steps taken to address this recognised problem through the agreement of all states to a national approach to child protection offender registration, and the development of nationally consistent legislation. This issue has been on the agenda of the APMC since 2002, with a working party advising it on a nationally consistent scheme. An in principle agreement was reached in July 2003 by all states to develop nationally consistent legislation that would establish a register in each state. At the end of June 2004, the APMC announced that all police ministers had agreed on a model of legislation for this purpose.

As a consequence, in NSW the government introduced the Child Protection (Offenders Registration) Amendment Bill 2004 into Parliament on 23 June 2004. The Bill is intended to amend the current Act in order to reflect the model legislation agreed to by Police Ministers in all jurisdictions, and to complement legislation being introduced in other States and Territories. The Victorian government introduced a Sex Offenders Registration Bill into its Parliament on 1 June 2004, which was passed in the Lower House on 25 August 2004, but has not yet been passed in the Upper House. Western Australia is also finalising the development of similar legislation. See Chapter 2 for further detail.

The move towards achieving a nationally consistent registration scheme will go a significant way towards resolving many of the concerns raised here. The implications of a national approach are discussed further in the conclusion to Part 4.

Endnotes

¹⁰⁹⁵ In the definition of 'registrable offences' section 3 of CP (OR) Act. (For Class 1 offences: (d) anything done outside New South Wales that, if done in New South Wales, would constitute an offence referred to in paragraph (a)-(c).) And in definition of 'existing controlled person' ((f) was subject to a good behavior bond in respect of a registrable offence, being a bond under which the person was required to submit to strict supervision, whether under the laws of New South Wales or (in whatever terms expressed) under the laws of a foreign jurisdiction.) and have 'registrable person', etc.

¹⁰⁹⁶ Phone conversation with Rosemary Caruana, DCS, 21 May 2004 clarified what was written in Submission no 30, from DCS, 10 November 2003.

¹⁰⁹⁷ Submission no 11 from Minister for Justice The Hon John Hatzistergos, 17 October 2003.

¹⁰⁹⁸ Correspondence with Child Protection Registry, Katrina Sullivan, 7 July 2004 (electronic and telephone).

¹⁰⁹⁹ Correspondence with Child Protection Registry, Katrina Sullivan, 7 July 2004 (electronic and telephone); Phone conversation with Rosemary Caruana, DCS, 21 May 2004 clarified what was written in Submission no 30 from DCS, 10 November 2003.

¹¹⁰⁰ Submission no 11 from Minister for Justice The Hon John Hatzistergos, 17 October 2003.

¹¹⁰¹ Phone conversation with Rosemary Caruana, DCS, 21 May 2004.

¹¹⁰² Submission no 11 from Minister for Justice The Hon John Hatzistergos, 17 October 2003.

¹¹⁰³ Phone conversation with Rosemary Carina, DCS, 21 May 2004.

¹¹⁰⁴ Section 3 Child Protection (Offenders Registration) Amendment Bill 2004 includes a various relevant definitions. Section 3C expands the meaning of 'corresponding registrable person'.

¹¹⁰⁵ Sections 7A and 7B Child Protection (Offenders Registration) Amendment Bill 2004.

¹¹⁰⁶ Sections 9A Child Protection (Offenders Registration) Amendment Bill 2004.

¹¹⁰⁷ Sections 9C Child Protection (Offenders Registration) Amendment Bill 2004.

¹¹⁰⁸ There is no separate field on the Register to allow for ease of searching. The Registry has told us that identifying this group involves searching for those persons who have offence or other details missing from the data and individually checking interstate criminal histories or with case managers. Email communication from Martin Welfare, Child Protection Registry, 24 August 2004.

¹¹⁰⁹ Queensland does have a limited scheme whereby a court can require a convicted offender to register with police on release from custody. See Appendix 1 for an overview of this scheme.

¹¹¹⁰ Submission no 42 from NSW Police, 22 January 2004.

¹¹¹¹ Submission no 30 from DCS, 10 November 2003.

- ¹¹¹² Correspondence with Katrina Sullivan, Child Protection Registry, 7 July 2004 (electronic and telephone).
- ¹¹¹³ Information provided by the Child Protection Registry at a meeting on 16 June 2004. The registered person RP17 also contacted this office on 15 June 2004 and provided further information about the circumstances of the matter then, and in subsequent phone conversations, and in letters dated 11 June and 24 June 2004.
- ¹¹¹⁴ He was later charged with failing to comply with his reporting obligations as he failed to provide police with details of his employment. He was convicted and received a custodial sentence.
- ¹¹¹⁵ Interviews with crime managers, February 2004, LAC 35 Western Region.
- ¹¹¹⁶ Submission no 6 from Penrith LAC, 7 October 2003.
- ¹¹¹⁷ Survey no 265.
- ¹¹¹⁸ Submission nos 13, 18, 22 and 38. A full list of submissions is at Appendix 2.
- ¹¹¹⁹ Submission no 13 from Patricia Wagstaff, 12 October 2003.
- ¹¹²⁰ Submission no 18 from Federation of Parents and Citizens' Associations, 29 October 2003.
- ¹¹²¹ *Child Protection (Prohibited Employment) Act 1998*
- ¹¹²² Submission no 14 from the Australian Crime Commission, 15 October 2003.
- ¹¹²³ Submission no 26 from NSW Commission for Children and Young People, 30 October 2003, and Submission no 32 from Privacy NSW, 19 November 2003.
- ¹¹²⁴ Submission no 32 from Privacy NSW, 19 November 2003.
- ¹¹²⁵ Submission no 42 from NSW Police, 22 January 2004.
- ¹¹²⁶ Interviews with crime managers February 2004, LAC 11 Inner Metro Region, and LAC 35 Western Region.
- ¹¹²⁷ Interviews with crime managers February 2004, LAC 35 Western Region.
- ¹¹²⁸ Interviews with crime managers, February 2004, LAC 10 Inner Metro Region.
- ¹¹²⁹ Survey no 160.
- ¹¹³⁰ Survey no 245.

Chapter 19. Conclusions and recommendations

The objectives of the register are to improve the protection of children in the community, through the police having greater knowledge about convicted sex offenders to assist with the prevention, detection and investigation of offences.

Information provided to the review suggests that the Register has significant benefits in enhancing community safety. We note that all stakeholders, including registered persons, were generally positive about the value of the Register. However, the Register is just one aspect of a broad range of child protection measures in place in NSW, and it should not be allowed to create a false sense of security or be seen as the single solution to protecting children from sex offenders. At present, its effectiveness is hampered by NSW being the only jurisdiction with registration legislation. The move towards achieving a nationally consistent registration scheme will go a significant way towards addressing these limitations.

19.1. Guidance for police

As the Act provides very little direction for police in using the Register for these purposes, comprehensive and unambiguous guidelines and policies are essential. Police have primarily been assisted in undertaking their Register management role, to date, by guidelines developed by the Child Protection Registry. In our view, these need to contain more direction than is currently the case. Effective management of registered persons would be greatly enhanced by clarification and standardisation of responses and responsibilities, both within NSW Police and where other agencies are involved.

19.1.1. Monitoring guidelines

We believe it would be appropriate for the monitoring guidelines and SOPs to establish certain minimum standards of oversight for each risk rating category, reinforcing the focus on the high risk group. The involvement and responsibilities of all police, not just those assigned to specific Register duties, also need to be clarified. This would improve the consistency of approach across LACs and remove uncertainties about roles and powers, allowing police to focus on more effectively using the Register for the protection of children. If minimum standards are established, the actions of LACs to implement these should be closely assessed, and remedial action taken where a LAC's response is lacking.

19.1.2. Targeted interventions

Information provided to the review shows that some LACs are monitoring all registered persons in the same way regardless of their assessed risk, despite the advice of the monitoring guidelines. The approach to monitoring individual registered persons needs to be tailored to their circumstances and assessed level of risk.

The focus of police efforts in managing the Register should be on those registered persons who are assessed as posing the greatest risk to children in the community. This will ensure that persons of concern are subjected to the highest levels of scrutiny and are given little opportunity to re-offend or fail to comply with their obligations.

Targeting according to risk also provides more efficient use of the police time and resources available for child protection purposes. Information provided to the review suggests that management of the Register has increased the workloads of officers in some LACs. Targeting interventions to those with the highest risk rating would assist with workload management.

Better targeted monitoring may also serve to reduce perceptions of unduly intrusive monitoring and allay fears of police harassment or intimidation, particularly among compliant registered persons. More significantly, a targeted approach might reduce the opportunity for non-compliance and re-offending among high risk persons. This approach would only improve compliance, ensuring the Register becomes a more effective child protection tool.

19.1.3. Risk assessment

The assessment of the risk posed by a registered person is the basis of effective management of the Register, by allowing targeting of interventions and resources. It is therefore important that the risk rating obtained through the use of the threat assessment tool properly reflects the person's level of risk.

While the simplified instrument used by NSW Police may not be as strong a predictor of harm or recidivism as other more sophisticated tools, it requires minimal training to administer and does not require a lengthy assessment or interview process. Given the fundamental significance of risk assessment to the management of the Register it would be useful for NSW Police to commission an evaluation of the relative validity of its threat assessment instrument.

19.1.4. Aboriginal persons

We note that the SOPs and monitoring guidelines contain no specific advice or directions for police in respect of any group other than children or those who have a disability. As discussed in the conclusion to Part 3 and Chapter 15, we believe this is an omission that should be addressed in respect of Aboriginal registered persons. In our view, it would be appropriate for NSW Police to develop guidelines in respect of the monitoring and management of Aboriginal registrable persons, and the involvement of specialist officers and other agencies. See also the conclusion to Part 3.

19.2. Improved management within and between LACs

19.2.1. Workload management and information sharing within LACs

The increased workload for police as a result of Register management experienced in some LACs is exacerbated by the restrictions on access to the Register to a limited number of officers. While targeting of effort to those with the highest risk rating, as discussed above, would assist in workload management, in some LACs there may be justification for involving more officers in Register management. This may require an increased number of officers with higher levels of access. However, the situation may also be alleviated without requiring access to Register information, if all officers had a greater understanding of, and involvement with, the management of the Register at appropriate levels.

19.2.2. Information sharing between LACs

Management of the Register in individual LACs would benefit from the Child Protection Registry undertaking a coordinating role in the establishment a 'whole of police' response. The Registry could assist through the facilitation of sharing of information about effective management strategies, risk assessment, and targeting resources amongst LACs, and by the development and provision of related training. This would also assist LACs to coordinate the management of registered persons who move between LACs.

19.2.3. Training

It may be helpful if training about the Register is made available to all police (not only those directly involved in its implementation), specifically addressing the role of general duties police, and the level of Register information can be provided in different contexts and its management.

We do not believe that this would put the integrity of the Register at risk. Existing confidentiality requirements should act to prevent inappropriate disclosure of Register information. We note that the review received no evidence that the integrity of the Register information has been breached, despite concerns about inadvertent disclosure of registrable status being raised.

19.3. Inter-agency cooperation

We note the recent and proposed legislative and procedural changes in this area. These include: the establishment of child protection watch teams; the introduction of Child Protection Prohibition Orders; provisions in the Child Protection (Offenders Registration) amendment Bill to enhance information sharing between police and other agencies; procedural changes in respect of disclosure of information about registrable persons; and moves towards a nationally consistent registration scheme.

In general, these represent positive enhancements to the management of the Register leading to improved protection for children. However, the role of other agencies in the management of registered persons also needs to be clarified and formalised. Providing greater clarity for police and other agencies in relation to responsibilities and powers is particularly important where these matters are not underpinned by statutory powers or obligations. In these cases, it is essential that administrative guidelines are not only clear in their intent and guidance but also incorporate appropriate protections.

19.3.1. Information sharing and disclosure

Having adequate guidelines and protocols setting out how information can be shared between police and other agencies, and how this information is used to protect the public, is essential. This is particularly important in light of the decision of the government to authorise increased disclosure of information about registered persons, as a means of managing particularly high risk situations. As discussed in Chapter 16, even limited disclosure of information about a registered person to a member of the public or a non-government agency raises significant concerns about the potential for inappropriate disclosure and use of that information.

The need to take this potentially problematic step might be minimised if police were more easily able to involve other agencies in the management of high risk offenders, or those with special needs.

19.3.2. Child protection watch teams

The child protection watch teams should play an important role in achieving better inter-agency cooperation. The teams will provide an opportunity for police and other agencies to establish protocols and guidelines for a more structured approach to the management of persons posing a threat to children, who require involvement with a range of services.

The trial and its evaluation provide an opportunity to ensure that the structure and management of these Teams are clearly defined and well-resourced and supported by all participating agencies. The protocols for, and evaluation of, the pilot project should incorporate these issues as well as information sharing and disclosure.

19.4. Recommendations

RECOMMENDATION 6: That NSW Police establish and implement minimum standards for assessing monitoring and managing of registered persons. These standards should provide clear direction about the expectations of local area commands in dealing with registered persons, with a focus on the monitoring of high risk persons.

RECOMMENDATION 7: That the present monitoring guidelines and SOPs should:

- incorporate the minimum standards
- provide clear information about the responsibilities of officers and local area commands in implementing these standards, including sharing information within and between commands
- include special provisions about the monitoring and management of Aboriginal registered persons.

RECOMMENDATION 8: That NSW Police commissions an expert evaluation of the Threat Assessment instrument to assess its validity as a determinant of risk, in the context of the ongoing monitoring of registered persons.

RECOMMENDATION 9: That NSW Police ensure that the protocols and evaluation criteria developed for the trial of the child protection watch teams take account of the principles and practices for disclosure and sharing of information about registered persons, as well as the resourcing and support provided by participating agencies.

RECOMMENDATION 10: That NSW Police ensure adequate training and information is available to all police officers about the Register, its use, and their role in the protection of children.

In response to the consultation draft of this report provided to NSW Police the former Minister for Police provided comments on these recommendations.

The former Minister advised that he supports Recommendation 6, for the establishment and implementation of minimum standards by NSW Police for assessing monitoring and managing of registered persons. He noted that the Child Protection Registry will seek to initially address this recommendation through referral of high-risk offenders who meet established selection criteria to the child protection watch team trial for case management.

The former Minister advised that he supports Recommendation 7, about the monitoring guidelines and SOPs. He noted that that crime managers would benefit from a more efficient system to handle the registered persons caseload and that the Child Protection Registry staff aim to address this early in 2005. One option is to expand the regulations to specify the responsibilities of other supervising authorities to allow the case monitoring process to be led by another agency where appropriate, for example the DJJ. NSW Police and the Ministry for Police are currently consulting with other agencies about this option.

The former Minister advised that he supports Recommendation 8, to commission an expert evaluation of the Threat Assessment instrument, subject to funding availability. He noted that national research suggests risk assessment of sexual and violent offenders requires improvement as many existing tools are based on overseas research (Criminology Research Council: Report No 280: *Assessment of the Risk of Re-offending by Indigenous Male Violent and Sexual Offenders*).

The former Minister advised that he supports Recommendation 9.

The former Minister advised that he supports Recommendation 10, for adequate training and information to be provided to police officers. He noted that police officers currently participate in lectures explaining the *Children and Young Persons (Care and Protection) Act 1998* and NSW Police's role in the protection of children. He further notes that NSW Police are preparing lectures on the new *Child Protection (Offender Prohibition Orders) Act 2004*, which will include aspects of the *Child Protection (Offenders Registration) Amendment Act 2004*.

The former Minister also noted that since the *Child Protection (Offenders Registration) Act 2000* commenced it has proven to be a successful investigative tool and an essential part of the NSW Government's package to protect children.

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Appendix 1: Overview of existing and proposed sex offender register legislation in other jurisdictions

United States of America

In 1994, the *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act* was passed by the US Congress. This Act requires states to create registries of offenders convicted of sexually violent offences or crimes against children and to establish particular registration requirements for highly dangerous sex offenders. The requirements of the *Wetterling Act* created several conditions for sex offender registration, including: registering offenders for at least 10 years; requiring registrants to update address information when they move; verifying registered addresses periodically; and releasing registration information as necessary for public safety. It further requires offenders to verify their addresses annually for a period of 10 years and requires sexually violent predators to verify addresses on a quarterly basis for life.

States that do not establish registration programs, in compliance with this Act's provisions, are subject to a 10 per cent reduction of law enforcement grant funding. The vast majority of states have enacted sex offender registration laws within the last 15 years. Since 1991, 38 of the 50 states have passed laws. Many amendments have passed since 1994 to bring state legislation into compliance with federal law.

Megan's Law amended the *Wetterling Act* in May 1996 by requiring that each state develop protocols for the release of relevant information about sex offenders 'to protect the public.' *Megan's Law* allows states discretion in determining if disclosure of information is necessary for public protection. It also allows states discretion in specifying standards and procedures for making these determinations. States are permitted to make judgments concerning the threat an offender may pose to the public and to release information for all offenders or only those convicted of specific offences. When releasing information, states may choose to pro-actively notify communities (through mailings, media releases, or community meetings) or make the information accessible to the public upon request. *Megan's Law* carries the same compliance consequences as the original *Jacob Wetterling Act*.

The *Pam Lychner Act's* amendments to the *Wetterling Act* created new requirements for state registration programs, including a requirement that offenders convicted of an aggravated sex offence or multiple registrable offences be subject to lifetime registration.

Subsequent amendments to the *Wetterling Act* in 1998 require states to participate in the National Sex Offender Registry (NSOR). Participation in the NSOR is necessary to establish that a state has a 'minimally sufficient' sex offender registration program (as defined by the Pam Lychner Act). For states without a minimally sufficient program, the FBI will assume responsibility for registering sex offenders.

The FBI has modified the National Crime Information Centre (NCIC) to create a new crime information system, the NCIC 2000. This system, which began operations in July 1999, includes a convicted sexual offender registry file that serves as the permanent National Sex Offender Registry.

Individual American states¹¹³¹

Each American state has some form of sex offender registration, which incorporates arrangements for community notification. However, each state differs in terms of which offenders are required to register, what information is recorded, the duration of registration, how the community notification process is administered, how the information is shared and whether the public has access to the register information.

Generally, all states provide that a person must register on release from custody or at the commencement of a community-based sentence. In most states, the registering agency is the local police department or the county sheriff's office, although in some states there are multiple agencies involved in registration, including the Department of Corrections.

To comply with federal guidelines, all states must register persons convicted of offences against a child (defined as a person under the age of 18) or of a sexually violent offence. About half of the states require all young people convicted of registrable offence to register, while others only register young people who were tried as an adult. In some states, registration periods for young people are the same as for adults, while in others registration only lasts until the young person becomes an adult (either 19 or 21 depending on the state).

The information required under each registration scheme varies, but at a minimum includes the person's name, address and a law enforcement identification number. Thirty-nine states obtain a photograph of the person at registration, while others use photographs from arrest records. Some states collect more detailed information, for example relating to employment, vehicle registration and residence history. At least 13 states collect blood samples for DNA analysis.

Under the provisions of the *Wetterling Act*, offenders convicted of crimes against children or sexually violent offences are required to register for at least 10 years. Forty states have lifetime registration for certain offenders, with a small number of

states registering all sex offenders for life. In some states, length of registration is related to the seriousness of the offence: varying from 10 to 15 years to lifetime. Some states allow persons with lifetime registration to petition the courts to end their registration requirements, usually after the completion of an initial 10 year period.

Legislation in all states provide for some penalty for non-compliance, varying from fines, to revocation of parole, to imprisonment. Some states have higher penalties for repeated non-compliance, while in other states the penalties vary according to the severity of the registrable offence.

In most states, a central registry is maintained by a state justice agency such as the Police Department or Department of Public Safety, although in some states there are several small registries maintained in each county. All states have some form of community notification.

This can be active notification, where justice officials take steps to inform the community of registered offenders in their area. This can include distribution or publicly posting of flyers; announcements in local newspapers; direct advice to victims, near neighbours, schools, youth organisations or daycare centres; and other individualised methods of notification. In some states, the offenders themselves are required to do the notification.

Some states take a more passive notification role, allowing individuals to search registers for particular offenders, or offenders in particular areas. In some states this is done by means of a toll-free or pay phone number, others have their register available for viewing or searching on the internet. Some states have their registers totally available to the public, while in others the access is more restricted. In many states the level of community disclosure is linked to the risk assessment rating of the offender, and often the disclosure of information about juvenile offenders is more limited.

United Kingdom

The *Sex Offenders Act 1997* (the Sex Offenders Act) came into effect in England, Wales, Northern Ireland and Scotland on 1 September 1997. It provides for certain sex offenders against both children and adults to notify police of certain details about themselves on release from prison or on the commencement of a community sentence, and to notify police at any time those details change. The length of the notification period is determined by the sentence received and can be for five, seven or ten years, or for an indefinite period. Notification periods are halved for young people under 18 years of age. The Act also allows for a court to direct that a person with parental responsibility for a young person to whom the Act applies to comply on the young person's behalf and to be liable for any failure to comply. The Sex Offenders Act only applied to persons convicted of, or currently serving a sentence for a relevant offence from the date the legislation commenced. The legislation also provides for offences under the Sex Offenders Act, for failure to comply with the Sex Offenders Act, with a penalty of a fine up to level 5 and/or six months imprisonment.

The *Crime and Disorder Act* came into force on 1 December 1998 and contained, among other things, provisions for Sex Offender Orders. These orders were introduced by the Government as part of a series of measures to protect the public from sex offenders who live in the community. An order can be sought for anyone with a previous conviction for a sex offence listed in the Sex Offenders Act, whose current behaviour gives cause to believe that they may be a risk to the public. Police must apply to a Magistrate's Court for a Sex Offender Order. If granted, the order requires the person to register under the Sex Offenders Act and may include conditions to prohibit the person from certain actions or behaviours, although it cannot require the person to undertake any particular activity. The minimum duration of an order is five years and a breach constitutes a criminal offence, with a maximum penalty of five years imprisonment. Sex Offender Orders are intended as a way to ensure that sex offenders who would not otherwise be subject to the Sex Offenders Act because their conviction pre-dated the Sex Offenders Act, but who are exhibiting behaviour that may put the public at risk, can be obliged to register with the police and comply with the requirements of the Sex Offenders Act.

Amendments to the *Criminal Justice and Courts Act 2000*, which came into effect in June 2001, amended the Sex Offenders Act. The amendments included changes to the registration process, including reducing the period for initial registration from 14 to three days. It also provided new powers for the courts to impose a restraining order when convicting someone for a relevant sexual offence. Like Sex Offender Orders these impose restrictions on the offender's behaviour towards the public in general or particular individuals, to protect them from serious harm. The amendments also increased the maximum penalty for failure to comply with the Act to five years imprisonment (from six months) and/or a fine, and made new provisions for offenders to notify police about travel overseas.

Canada

The *Sex Offender Information Registration Act* was passed in April 2004 by Canada's Federal Parliament, but is yet to come into force. Its purpose is 'to help police services investigate crimes of a sexual nature by requiring the registration of certain information relating to sex offenders. The Registry database is to be maintained by the Royal Canadian Mounted Police. Access to the information, and the use and disclosure of it, is restricted. This Act is to be reviewed by a Parliamentary Committee after its first two years of operation.

This Act provides for a court finding a person guilty of certain designated offences to make an order requiring the person to comply with the Act. The court must prove that the offence was sexual in nature or committed with the intent to commit a sexual offence. Designated offences include a range of sexual offences against both children and adults, as well as some non-sexual offences such as murder, kidnap, and break and enter, where they are a 'crime of a sexual nature.' The court is not required to make an order, but must give reasons if it does not do so.

A person subject to a registration order is required to report to police within 15 days of sentence or release from custody, and provide details of their name and aliases; date of birth; gender; address and telephone number of any residence, work or education location; height, weight and description of distinguishing marks; and details of absences from Canada of more than 15 days. Any changes to that information must be reported within 15 days of that change, and registered persons must report to police 12 months after last report. The police may take a photo and can take fingerprints to prove identity which must be destroyed after use. This Act also provides that young people under 18 can have an adult with them when they register, and that the privacy of persons reporting must be respected.

Registration periods may be either 10 or 20 years or for life, depending on the maximum term of imprisonment possible for the designated offence. The person can apply to have an order to register terminated earlier than originally ordered.

This Act creates an offence of 'knowingly providing false and misleading information', which is punishable by a fine of not more than \$10,000 or to imprisonment for a term of not more than two years, or both. It also provides for a fine of not more than \$10,000 or imprisonment for a term of not more than six months, or both, for unauthorised access to or disclosure of information.

Ontario was the first province of Canada to pass sex offender registration legislation. *Christopher's Law (Sex Offender Registry)*, proclaimed on 23 April 2001, was developed in response to the 1988 murder of Christopher Stephenson by a convicted paedophile on federal statutory release.

The legislation provides for the establishment of a registry of the names, dates of birth, addresses and offences of certain sexual offenders, to be managed by the Ontario Provincial Police.

Registration is done at a designated police station and information must be provided within 15 days of release from custody or of receiving a non-custodial sentence, and of any change in information. Even if information has not changed the offender must also attend a police station within 12 months of the last report. Reporting periods are either for 10 years or lifetime, but will cease if the offender receives a pardon.

Sex offences, for the purposes of this Act, include sexual assault, sexual interference, incest, child pornography, bestiality and exposure. While some of the offences are specifically child-related, sexual offences involving an adult victim also lead to registration. The Act also applies to a young person convicted of certain defined sex offences.

Disclosure of information held on the Registry is prohibited except for crime prevention or law enforcement purposes and while the public does not have access to the information on the Registry, the other legislation empowers local police chiefs to publicly disclose information about offenders considered to be a significant risk to a community. Failure to comply with the Act is an offence which carries a penalty of one year's imprisonment and/or a fine of \$25,000 for a first offence and two years imprisonment and/or a \$25,000 fine for subsequent offences.

Australia

Victoria was the next state, after NSW, to develop sex offender register legislation. This Bill was introduced into Parliament on 3 June 2004, prior to the APMC agreement on national model legislation for sex offender registration. While this Bill incorporates many aspects of the model legislation, it also differs from it in certain ways.

It will establish a Register of Sex Offenders, requiring persons convicted of certain offences to register with police and keep police informed of specified personal details.

Registration is mandatory following conviction, except in respect of young people. Young people are only registrable if it is ordered by the sentencing court. The most significant difference from the model legislation is that the provisions will also apply to persons convicted of certain sex specified offences against adults. This is where a person has been sentenced as a 'serious sexual offenders' under the *Sentencing Act 1991* (that is, a person who has been convicted of two or more sex offences or a sex offence and a violence offence). This Bill also allows a sentencing court to make an order for registration in respect of a person convicted of a non-registrable offence, if the court is satisfied that the person poses a risk to the sexual safety of persons in the community (not only children).

Reporting periods will be either eight or 15 years or the person's lifetime, except for young people where reporting periods of four or 7½ years will apply.

This Bill also prohibits registered persons from applying for or engaging in child-related employment. It also creates offences of failing to comply with reporting obligations, providing false information and for applying for or engaging in child-related employment.

This Bill passed the Lower House on 25 August 2004, but debate is yet to be finalised in the Upper House.

New Zealand

This Bill was a private member's Bill and was introduced into the New Zealand parliament in March 2003, by Deborah Coddington MP¹¹³², which would establish a registry of offenders who have committed certain offences against children. This Bill was referred to the Law and Order Committee for public debate, with submissions due by September 2003. It was then referred to the Justice and Electoral Committee in April 2004.

The provisions of this Bill apply to persons convicted of defined sexual offences, and are not confined to offences against children. Registered persons are to keep police informed of any changes to name and address details. It provides for reporting periods of either 10 years or life. The information contained on the Registry would not be accessible to the public.

Endnotes

¹¹³¹ Information from: the Center for Sex Offender Management website www.csom.org; 'Sex Offender Registry Information - Registration and Community Notification': www.sexcriminals.com; *Sex Offender Registration and Notification Question and Answer Fact Sheets*, National Center for Missing and Exploited Children; www.ncmec.org; *Summary of State Sex Offender Registry Dissemination Procedures*, Bureau of Justice Statistics Fact Sheet, US Department of Justice, Office of Justice Programs, August 1999; Matson, S. and Lieb, R. (1996). *Sex Offender Registration: A Review of State laws*. Washington State Institute for Public Policy.

¹¹³² Deborah Coddington published the *Paedophile and Sex Offender Index* in New Zealand in 1996, and an Australian version in 1997. A new edition was released in New Zealand in 2004.

Appendix 2. NSW Police policies and guidelines relating to the operation of the *Child Protection (Offenders Registration) Act*

SOPs

NSW Police produced the first version of the SOPs in August 2001 and issued an updated second version in October 2002. The purpose of the SOPs is to assist operational and specialist police meet their obligations under *the Child Protection (Offenders Registration) Act 2000*.

The SOPs cover a range of practical issues. Much of what is contained in the SOPs is directly related to the implementation of specific provisions of the Act. However, other sections deal with related practices that have no direct legislative basis. The various sections of the SOPs include directions on the following issues:

Creation of a child protection register ‘case’

This covers such issues as the arrest of a person for a registrable offence; the post-charging procedures and arresting officer responsibilities, including the completion of a threat assessment and a Form 1 for the court; post-sentencing procedures, including the calculation of the reporting period; and specific procedures in relation to existing controlled persons and persons who have committed offences interstate or overseas.

The notification process

This section provides an overview of the notification provisions of the Act, as they apply to courts and supervising authorities, and the processes for the provision of advice of notification to police. It also provides specific directions for police for when they are required to notify a registrable person.

The registration process

This incorporates information about the legislative requirements of initial registration and ongoing reporting, including details of the relevant personal information the registrable person must provide, as well as specific direction about the registration procedures. These include: making of an appointment with the crime manager; establishing identification; the provision of photographs; recording of relevant personal information; and issuing a receipt. It also provides directions for obtaining additional information as part of ‘Stage two registration’.

Management of registered persons and the Register

This includes directions on information management and security; allocating officers to manage a particular registered person; and transferring a registered person to another LAC. It also includes some procedures for the managing and monitoring of registered persons, addressing issues such as where a person is supervised by another agency, ensuring compliance and action for police to take on suspicion that a person may be at risk from a registered person.

When a registrable person is a child or has a disability or a special need

This provides direction about the registration of children generally, as well as those with additional needs. It also defines ‘disability’ and ‘special needs’ for the purposes of the Act. It includes directions for notifying children or persons with special needs, particularly where they are incapable of understanding a statutory notice or their reporting obligations and the involvement of a parent, carer, guardian or nominated person; management and monitoring including the establishment of ‘supervision networks’ or interagency case monitoring teams; and offences committed by a child, a registrable person with a disability or special need, or a parent, carer, guardian or nominated person.

Non-compliance and offences under the Act.

This addresses first response arrangements for registrable persons who fail to register as well as the investigation of offences committed post-registration. It includes directions on what action should be taken where an investigation reveals no offence as well as the procedures if it is determined that an offence under the Act has been committed.

The SOPs also include directions on certain other matters such as the procedures where a registered person is a participant in the Witness Protection Program; the requirement for any officer who makes a COPS enquiry on a registered person to provide an Information Report; and how a CPR Case is finalised.

The Post Registration Monitoring of Child Sex Offenders: Guidelines For Operational Police

Draft Guidelines were produced by the Child Protection Registry in October 2001, with the final version, which incorporated some significant changes, issued in September 2002. The guidelines state that they are to assist LACs monitor high threat offenders registered under the *Child Protection (Offenders Registration) Act*, and they are for guidance only. These guidelines rely on the exercise of existing legislative and procedural powers of police, as the Act contains no provisions relating to the management and monitoring of registered persons.

The guidelines cover the following issues:

Which registered persons to monitor

This section addresses issues such as determining the threat level of registered persons and what are the indicators for change that may cause a threat level to be reassessed. It suggests minimum standards of monitoring for persons assessed as high, medium or low threat.

What constitutes monitoring

This section defines monitoring as 'the on-going collection, collation and analysis of tactical intelligence in relation to a HIGH threat registered offender and the development of proactive crime prevention strategies to protect the community' and discusses the selection and recording of appropriate strategies. It notes that strategies should be 'tailor-made' to the person which requires an understanding of the offender profile.

Strategies that police can use to monitor registered persons

The guidelines separate strategies into five groups: those that reduce the vulnerability of the victim (such as patrolling of schools or recreation areas, education programs, liaison with young people, information exchange with other agencies); overlooking the registered person (for example through home visits); surveillance; intelligence gathering (for example, systems-based, offender profiling and field intelligence); forming supervision networks (especially for young people or those with intellectual disabilities or other cultural or minority groups, and involving staff from government agencies or other appropriate people in the registered person's life); and forming a case management team (internally within the LAC).

What activities are inappropriate

This section notes that police should not use strategies which amount to intimidation and harassment or involve disclosure to general members of the public, and that enquiries should be made in a discrete and confidential manner. Strategies used should take account of the potential for violence or vigilantism, or of registered persons being driven underground, failing to comply with their reporting requirements or being driven to re-offend.

Disseminating information to general duties police

This section highlights the sensitive nature of information on the Register and the importance of maintaining the integrity of the Register. It includes directions on the storage of registered information, what information is available to all police, and when operational police can be provided with detailed information and photographs.

Protecting registered persons from community harassment.

This section suggests strategies for police to employ should they become aware that a registered person is the subject of community vigilantism or retaliation.

Registrable Persons – Child Protection Registry: Information Disclosure Policy and Procedures

The Child Protection Registry produced this policy and procedures document in October 2002 following consultations with relevant agencies. This policy provides guidance for police in relation to the release of personal information pertaining to registrable persons.

The *Child Protection (Offenders Registration) Act* does not include any specific provisions relating to disclosure of information to third parties, other than providing for the limited information exchange necessary for supervising authorities to be advised of and to undertake their notification obligations, and the provisions (in the Regulations) for children or persons with special needs where a nominee or support person has been identified, which allow that person to be notified on behalf of the registered person.

The information disclosure policy and procedures reiterate that it is government policy that NSW Police employees may only disclose personal information about a registrable person, obtained through their employment, for specified law enforcement and child protection purposes. It also states that there is a strong presumption in favour of non-disclosure. The policy does not provide for disclosure of personal information about individual registered persons to the public.

The policy notes that any police officer breaching this policy by releasing personal information about a registrable person, obtained in their official capacity, is in contravention of clause 46 of the *Police Regulation 2000* and may be subject to employee management or disciplinary action.

The policy is divided into four main sections. The first section outlines the policy objectives, scope and accountabilities. The second section sets out information disclosure principles, which form the basis for the policy. These principles are to assist police determine whether and what information can be released in a specific circumstance. The principles are:

- 1) presumption of non-disclosure
- 2) disclosure must be justified
- 3) disclosed information must be reliable and accurate
- 4) disclosed information must relate to the role and function of recipient
- 5) disclosed information should be proportionate to the purpose of the disclosure
- 6) risk of disclosure vs risk of non-disclosure must be assessed
- 7) disclosed information must be documented.

The third section identifies existing policy or legislation, which enables dissemination of information without commander approval. It outlines 13 circumstances where information can be disclosed without commander approval. These are:

- 1) where a registrable person consents to or requests the disclosure of information
- 2) disclosure of Information to DCS and the Children's Guardian
- 3) removal of a child under the *Children and Young Persons (Care and Protection) Act 1998*
- 4) to current or previous supervising authorities
- 5) to assist other law enforcement agencies
- 6) to assist judicial and related processes
- 7) to assist border control and customs authorities
- 8) to provide employment screening services
- 9) to ensure compliance with the *Child Protection (Prohibited Employment) Act 1998*
- 10) to comply with a direction of the Commission for Children and Young People
- 11) to the Ombudsman, Police Integrity Commission or the Independent Commission Against Corruption
- 12) to advise the Minister for Police or Premier
- 13) to comply with any law.

The fourth section of the policy covers circumstances in which information may be released with the authorisation of a commander. It describes seven situations where information disclosure is possible with commander approval:

- 1) to government agencies responsible for monitoring, managing or supporting the offender
- 2) to government or non-government educational institutions that cater for persons under the age of 16 years, where a registrable person is a student
- 3) to obtain an assessment of a registrable person, or advice on strategies to manage a particular registrable person
- 4) the involvement of support persons
- 6) to comment on information already in the public domain
- 7) the provision of general warnings
- 8) to investigate an offence or to locate an offender for law enforcement purposes.

The policy also provides some guidance on maintaining the security of information on the Register; an 'information disclosure checklist'; a glossary of terms; and brief details of relevant Acts which may require police to disclose information about a registered person.

A revised version of the IDPP is currently being finalised. It will include guidance for police on providing information about registered persons to child protection watch teams; and about the limited circumstances where a commander can authorise disclosure of information about a registered person to a member of the public or a non-government agency in a 'controlled community disclosure'. This version of the policy is still in draft form.

Guidelines For The NSWPOL Communications Group: Child Protection (Offenders Registration) Act 2000

These guidelines were issued by the Child Protection Registry in August 2002 to assist police radio operators. The document provides an overview of the Act, explains what information is held on registrable persons and what information is accessible to all officers on COPS.¹¹³³

The guidelines also provide information on what various CPR fields on COPS refer to, including the threat assessment ratings. In particular, they provide advice about what the 'offender status' and 'warnings' notations mean, and the appropriate response of any police officer making an enquiry about that person.

The guidelines set out what information can and should be passed on to officers conducting a routine enquiry, what can be relayed on air and how this should be done, including:

- Operators must notify the officer conducting the enquiry if there is a warning that the person has not been notified or has failed to register.
- Operators should advise all police if a person is, or should be, on the Register, particularly if there are related vehicles or locations.
- Information must be relayed in a way that maintains the integrity of the register (for example, by ensuring the officer's radio is secure or using their mobile phone).
- Police should be informed of their obligation to create an 'information report' containing the reason for contact with the registrable person, and any concerning or useful information.

Guidelines for Completing the Child Protection Register Threat Assessment

This 'on-line' document on the NSW Police intranet provides assistance to officers completing a threat assessment for a registrable person. These are initially completed at the time the person is charged with a registrable offence, but can be completed or updated at any subsequent contact. Two different threat assessments have been developed, one for sexual offenders and one for violent offenders (persons convicted of murder and kidnapping registrable offences). The guidelines advise officers how to determine which is the appropriate threat assessment to use. It provides step-by-step advice on how to complete each of the component questions in the threat assessment matrix, including what information to use and how to record it, and how to calculate the overall threat level.

Child Protection Register (CPR) COPS User Guide: Charging and Registration Processes

This is a document produced by Business and Technology Services of NSW Police in October 2002 that provides police with detailed technical directions on how to enter and manage on COPS all required information for the purposes of the Register. It covers all the various stages of the process, including: charging a person with a registrable offence; recording court outcomes and notification information; printing of forms; the registration process; updating personal details; managing and transferring cases; levels of access available to officers with various COPS security profiles; and creating intelligence reports on a registered person whose details have been accessed.

Crime managers and other designated officers were trained in using the CPR enhancements to COPS for the implementation of the Register prior to its commencement.

Endnotes

¹¹³³ Not all police have the authority to allow them to access all the information held on the register. However any police officer doing an enquiry about a particular person on COPS can tell if they are on the Register by the presence of a 'CPR flag'. If a threat assessment has been completed, a routine enquiry can also obtain the threat rating (either high, medium or low).

Appendix 3: Methodology

Overview and limitations of the methodology

A variety of different research methods was used throughout the review period. The options were somewhat restricted due to the confidentiality issues that arise from the application of the Act and a general reluctance of persons to be identified as being a registrable person. For example, very few registered persons complained to the Ombudsman about the Register, which meant that analysis of complaints was not a particularly useful means of reviewing the impact of the legislation. A lack of clearly defined stakeholder groups with a specific interest in this area also limited options for community consultation.

The review period commenced on the date the Act took effect. However, as the majority of registrable persons were not required to register for three months, and not all police policies and guidelines were finalised at the commencement, there was limited activity in the first few months of the Register's operation for us to review. This was compounded by the lack of useful data, that had been requested, in the first 15 months of the review period, as discussed below.

Analysis of data from the Child Protection Register

Prior to the commencement of the review period the Ombudsman held discussions with NSW Police about the type of information that would be required for the review. The scope of the data required was difficult to assess at the outset when it was not clear how the Register would function on a technical level. It was agreed that NSW Police would provide the Ombudsman with data collected for Register purposes, on a monthly basis. After some negotiations, the format for the provision of that information, which allowed for it be searched, manipulated and analysed, was agreed on.

The information was eventually provided in an Access database and included a series of agreed reports, and all the tables and queries used to create these. It also included reports on certain aspects of the data, developed for the reporting purposes of NSW Police. The Ombudsman had some involvement in the development of these reports so that they would take account of the data requirements of the review. Unfortunately, due to serious technical delays in the development of the database facility and the reports, full monthly data was not provided on a regular basis until January 2003, some 15 months after the commencement of the Register. Prior to this time, very limited data was provided on an ad hoc basis, in a less accessible format in the form of Excel spreadsheets.

The monthly information ultimately provided included details of all registrable persons, including: name, date of birth, gender, racial appearance, address, employment, vehicle details, travel information, registration date, registration status, reporting period, notification information, offence and sentence details, carer/guardian details and information about LAC and officer-in-charge. This was 'snapshot' data, that is, the details on the Register on the date that the download was provided. It was intended that details of registrable persons with special needs would be provided, as is required by the Act. However, delays in providing the enhancement to COPS which would allow special needs to be recorded meant that this data was not available to the review, even by the end of the two year review period.

The review was able to analyse this data to the extent allowed by the software program and the quality of the data provided. While some of the data was information entered specifically for registration purposes (for example, employment, vehicle and address details) by the registering officer, or provided electronically as part of registration (notification details) much of the data is a direct download from COPS records and pre-dates the collection of information for registration purposes. This means that much of the Register data has the same limitations of accuracy, reliability and recording styles inherent in the general data on COPS.

This was a particular problem in respect of data on offences, specifically in identifying registrable offences. Although COPS now allows for offences to be identified by 'Law Part Code' which allows for easy searching, not all offences have the Law Part Code identified if they were entered on COPS prior to this enhancement. As most offence title data is a free text field on COPS there is considerable variation in the way this has been entered. This makes searching for and obtaining accurate data on a particular offence (for example murder or kidnap) very difficult. The system includes a field for 'offence class', but this is only entered where the registrable offence occurred after the commencement of the Act. The offence data does not include any information on offences committed outside NSW, even where these are the registrable offences for which a person is on the Register. There are similar limitations with the use of sentence data.

The demographic data is also somewhat limited. Apart from there being no data on persons identified as having special needs (as outlined above) there is no other disability data. The data on ethnicity is limited to information on 'racial appearance', with the exception that there is data on Aboriginality. Racial appearance is an optional rather than mandatory field on COPS. Where has been entered it relies on the officer's assessment rather than self-reported ethnicity or place of birth information. There is no data on language spoken or competence in English.

While most of these issues are relevant to all data on COPS, there are also some limitations with the information entered specifically for the Register. For example, where reporting periods have been adjusted to allow for periods of supervision, these are recorded as years and days. In some cases it is difficult to know what the full reporting period should be. For

example, a reporting period recorded as being seven years and 100 days could either be an eight year reporting period, or a seven and a half year period for a young person. Also, although the data records whether a reporting period has been amended or not, it does not include information about whether it was increased or decreased, or the reason for the amendment.

In addition, the information recorded on notification does not make it clear which notifying agency was responsible for issuing the notice. The available fields are: notifying type, date, agency and location, and whether the notice was signed. However, the 'notifying agency' field does not contain data on which agency was the supervising authority, or undertook the notification, as might be expected. Rather it is information about when the notice was issued, for example, on release from custody or at start of sentence. This is virtually a repeat of the data contained in 'notifying type' which records a number that corresponds to the section of the Act under which the notice was issued. That is, '4' means after sentencing, '5' means start of sentence, '6' means on release from custody, '7' means by police. Therefore, it is not always clear which agency issued a notice. This is particularly the case with 'start of sentence' which does not differentiate between a custodial or community sentence and where it could be a number of agencies such as DCS (including the probation and parole service), the DJJ or the Pre-Trial Diversion of Offenders Program. As 'place of notification' is a free text field, the data is not always consistent and does not always provide easy identification of the agency responsible. For example, sometimes only a suburb is given, although other times the information is more specific, such as naming a probation and parole service office or a DJJ detention centre.

However, despite these limitations the review was able to use the Register data provided by NSW Police as the basis for analysis to gain an understanding of persons on the Register and some aspects of the operation of the Act.

Observation of training for NSW Police

The Child Protection Registry of NSW Police conducted two series of training sessions for police responsible for the implementation of the Register, primarily crime managers. The first group of these were held in September 2001, prior to the commencement of the Act. The second set of training sessions were held in November 2002, following the finalisation of the policy and procedures relating to information disclosure and the guidelines on monitoring. Both sets of training were held at the Westmead campus of the Police Training College and in certain regional locations, over a number of days. The review officer attended one day of each group of training sessions, at Westmead.

The first series of training focussed on preparing crime managers for their new role in administering the Register. Sessions included:

- an overview of the key provisions of the Act
- characteristics of child sex offenders
- how to implement the Register in practice
- information technology aspects of registration.

Attendees were also provided with a training manual which included copies of:

- the Act and Regulations
- a simplified summary of the key provisions, with flow charts
- the SOPs
- interim training (draft) guidelines for monitoring registered persons
- the Threat Assessment tool and guidelines for completing it
- the information pamphlet developed for registrable persons
- some research and other information on sex offenders and registers
- an IT users guide.

The second series of training focussed on certain aspects of the amended SOPs (charging procedures, registration, post-arrest procedures and annual compliance checks) as well as the recently approved Policy and Procedure for Information Disclosure and the Post-Registration monitoring guidelines. An optional refresher course on the IT aspects of the Register was also provided.

Consultation and interviews with NSW Police

Meetings with the Child Protection Registry

A number of meetings were held with the staff of the Child Protection Registry prior to, during and after the review period. There was also frequent email and telephone communication between Ombudsman researchers and the Registry throughout the course of the review. These meetings served a variety of purposes. In the initial stages of the review period,

these meetings were generally to discuss specific implementation issues and the provision of information to the review. Other meetings were for the Registry to provide general updates on the progress of the implementation of the Register and to discuss specific issues such as proposed amendments to the Act and the introduction of nationally consistent legislation in other jurisdictions. The review staff also briefed the Registry on any concerns that had come to the attention of the Ombudsman during the review.

Meetings with the Ministry for Police

Throughout the course of the review, the review officer and Ombudsman staff had a number of meetings with the Ministry for Police, primarily with the principal policy officer with carriage of the Register and related matters. These meetings were to provide background information for the review and to discuss specific matters relating to the implementation of the Act. Information about the APMC moves to achieve agreement for nationally consistent register legislation and the development of a national model of legislation was also provided to the review.

Interviews with crime managers

Three sets of telephone interviews were conducted with a select group of crime managers. The first interviews were held in December 2001, when the Register was newly commenced to gain some understanding of the preparations for, and early implementation of, the Register. The second interviews were conducted in May 2002, when crime managers had had substantial experience of the operation of the Register. The final interviews were held in February 2004 after the review period had ended, to allow crime managers to reflect on the Register's operation for the full two year review period.

The crime managers' responses were recorded and categorised for use in the review. Individual crime managers are not identified, as some of the information provided was quite candid and not always in accordance with the stated NSW Police position. Quotes from specific crime managers used in this report are identified by region and a number only.

First series of interviews with crime managers: December 2001

The first series of interviews were conducted with 32 crime managers, which comprised three crime managers from all but one of the (then) 11 regions, and two from the other. The aim of the survey was to gain some information from crime managers at a very early stage of the implementation of the Register about three separate issues:

- whether they were aware of their specific responsibilities in relation to the Register and what their general level of knowledge about this was
- whether they had attended the training run by the Child Protection Registry; what information or material they had been exposed to
- what they saw as concerns, problems or issues at this early stage.

The Professional Standards Manager (PSM) in each Region was contacted in the week prior to the survey, to advise that we would be conducting a survey in two or three of their Region's LACs. Particular LACs were not specified. PSMs were asked to send to a memo to all crime managers to advise that a researcher may be contacting them in the next week or two to do a brief (10 to 15 minute) phone survey about the Register. This was to ensure the crime managers' cooperation with the survey, but without giving them too much notice so they felt there was a need to prepare for the survey. PSMs were told that the survey was intended to ascertain crime managers' understanding of and exposure to the Register in the early stages of implementation, and that there would be further opportunities for input into the review during the two year review period.

Three LACs were selected from each region, with the aim of having a representative sample of LACs, in relation to size, population type, geography and socio-economic status. Not all of the three LACs initially selected participated in the survey. Alternative LACs were substituted when it became apparent that the selected crime manager would not be able to complete the survey in the weeks allocated to the survey.

A structured interview questionnaire was developed, with the researcher asking the crime manager certain specific questions and recording the answers. There was also an opportunity for a wide-ranging general discussion with the crime manager, where any other issues could be raised. Information about whether the crime manager interviewed was usually in the position or acting temporarily was also recorded. The specific questions focussed on:

- their understanding of the crime manager's specific responsibilities
- whether and what training they had received
- whether any other colleagues had received any training
- what information about the Register they had seen or been given
- whether they had been required to register any persons yet
- the ease or difficulty of the registration process
- any issues in relation to the Register that had emerged to date.

As the survey was conducted in the weeks just prior to and after Christmas 2001 there were a number of officers acting in the crime manager position, due to leave being taken by the incumbent. Although this limited the survey outcomes in some respects, in other ways it was useful as it highlighted issues about the importance of training and awareness about the Register for all officers and not just those initially identified to undertake specific roles.

By the time we conducted the second series of interviews with crime managers, NSW Police had re-structured, resulting in fewer (five) regions. Consequently, we decided to reduce the number of crime managers we interviewed. The reason for conducting further interviews was to ascertain from officers directly involved in the implementation of the Register how police attitudes to the Register had changed, developed or were reinforced; to identify issues of concern; and to inform or direct particular avenues of inquiry in the research.

Again, three crime managers from each region were interviewed, resulting in a sample of 15. Where possible, we aimed to include in this series of interviews, the crime managers we had interviewed in the first series, although the sample was adjusted to ensure a better representation of LACs. This took account of issues such as:

- whether the LAC was in the inner or outer metropolitan area, or incorporated isolated areas or larger towns
- whether the LAC had a high, medium and low numbers of registrations
- whether crime managers who had early experience of registering offenders
- whether crime managers were positive about the legislation or negative attitudes were expressed
- whether crime managers had raised specific concerns or issues during the first interviews.

The interviews in May 2002 were more unstructured than those held in December 2001, with crime managers being asked to talk about certain broad topics, with prompts from the researcher about particular aspects, as required. These interviews primarily focussed on the approach to monitoring in the particular LAC, but also asked about the crime manager's attitude to the general concept of the Register and any problems that had been encountered to date.

In relation to monitoring, crime managers were encouraged to talk about:

- what guidelines they used to direct their monitoring
- whether the threat assessment were used as a basis for monitoring
- what methods are used and which officers undertake the tasks
- whether monitoring had identified breaches and how these were dealt with.

Crime managers were also asked to talk about their overall attitude to the Register, particularly whether that had changed since it commenced. Other issues that were raised included:

- the value of the Register as a monitoring and investigation tool
- the amount of work generated by the Register
- whether the Register encompassed the most appropriate people or offences
- their attitude to police being responsible for the management of the Register.

When discussing issues relating to the management of the Register, crime managers were encouraged to raise procedural issues such as the mechanics of the registration process, information receipt and sharing, and management of breaches, as well as more structural issues such as the time and resources available, the commitment and interest from other officers, and levels of training and support available.

The same sample of 15 LACs used in May 2002 was used for the third series of interviews in February 2004. However, some of the individual crime managers interviewed were different due to staff changes and movements. Some follow-up interviews were conducted with certain crime managers and with others who had raised specific issues in other forums, to gain further information or clarify aspects of matters they had raised.

These interviews also followed the similar unstructured format of the previous series. The crime managers' opinion of the Register and any problems or difficulties encountered were again the subject of discussion, with an additional exploration of how the crime managers felt that the Register could be improved. Crime managers were also asked about what information they obtained from registered persons at the time of registration. Crime managers were also asked how long they had been in the position and what type of training they had received. An opportunity to raise any other matters was also provided.

While canvassing their opinion of the Register, crime managers were also asked to comment on its impact on community safety, as well as its value in managing offending behaviour. In respect of problems encountered issues arising from dealing with particular groups of registered persons (such as those with special needs or young people or Aboriginal people), managing compliance, and matters of registered persons' privacy, and sharing of information with other agencies were raised.

In respect of improvements, some of the matters that were discussed included:

- offences which result in registration
- risk assessments
- issues relating to young people or persons with disability or special needs
- the information registrable persons have to provide
- issues relating to monitoring and ensuring ongoing compliance, including the involvement of other agencies
- provision of information about the Register (to registered persons, police, and the public)
- police powers.

Most of the crime managers interviewed also chose to raise other matters when asked if there was anything else they wished to comment on. A number commented on particular individuals in their LAC that highlighted certain issues, such as the management of persons with special needs and compliance.

Consultation and interviews with other agencies with responsibilities under the Act

Interviews were held with all government agencies which have responsibilities under the Act, that is supervising authorities and the Courts Administration section of the Attorney General's Department. These agencies primarily have responsibilities for the notification of registrable persons. Supervising authorities were also required to identify 'existing controlled persons' for whom they had responsibility at the commencement of the Act.

Meetings, or interviews by telephone, were held with representatives of:

- Operations support and client services, Department of Corrective Services
- Probation and parole service, Department of Corrective Services
- Department of Juvenile Justice
- Pre-Trial Diversion of Offenders Program
- Forensic Executive Support, Department of Health.

At an early point in the review, interviews were conducted with the officers within the supervising authorities responsible for identifying existing controlled persons and establishing notification systems and protocols. More detailed follow up interviews were also held at a later stage with those with an ongoing involvement with registered persons, to gather information and views on the implementation of the Register. This included staff at certain district offices of the probation and parole service, sex offender counsellors with the DJJ and the director of the Pre-Trial Diversion of Offenders Program

In addition, these agencies were invited to provide a submission in response to the Discussion Paper. Further information on various aspects of the management of registered persons was followed up with supervising authorities by telephone or email communication and additional meetings as required.

Consultation with relevant government and community stakeholders

The Ombudsman's office was asked to participate in an implementation committee prior to the commencement of the Act. The committee comprised representatives of relevant government agencies, as well as certain non-government agencies. In order not to compromise the oversight role, Ombudsman participation was limited to providing advice about the review role, and commenting on proposals that might have the potential to undermine the objects of the legislation.

Involvement in this committee provided the review with valuable information about procedural issues in relation to the early implementation of the Act, and other useful background material.

The implementation committee was facilitated by the Ministry for Police and members included representatives from:

- NSW Police
- Criminal Law Review Division of the Attorney General's Department
- Department of Public Prosecutions
- Judicial Commission
- Department of Corrective Services
- Department of Juvenile Justice
- Department of Health
- Pre-Trial Diversion of Offenders Program
- Commission for Children and Young People
- Privacy NSW

- Department of Ageing, Disability and Home Care
- The Law Society
- Intellectual and Disability Rights Service.

The implementation committee met on an approximately monthly basis, from August 2000. It primarily focussed on issues affecting the practical implementation of the Act, and the development of the Regulations. Some of the issues dealt with by the implementation committee included:

- identification of 'existing controlled persons'
- procedural issues for notification by supervising authorities
- particular concerns in respect of persons with disabilities or limited English
- proposed legislative amendments
- proof of identity issues
- privacy issues
- calculation of reporting periods
- information technology requirements for enhancements to COPS
- development of educational material.

Meetings were also held with many of the implementation committee participants separately, and with other relevant agencies. There was also email and telephone communications with other agencies. These included:

- Commission for Children and Young People
- Privacy NSW
- Judicial Commission
- Criminal Law Review Division, Attorney General's Department
- Research and Statistics Unit, DCS
- Law Society of NSW
- NSW Young Lawyers
- Children's Legal Issues Committee of the Law Society of NSW
- Intellectual and Disability Rights Service
- The CrimTrac Agency of the Federal Attorney-General.

In addition, all these agencies, and a wide range of other government and non-government stakeholders were invited to make a submission to the discussion paper which was issued in September 2003.

Consultation with persons on the Register

Various different research methods were employed to obtain input from registered persons. Initially the review relied on registered persons choosing to make contact with the review. As this self-selected sample was clearly non-representative, the opportunity was provided to all registered persons to participate in the review through a survey.

Hotline

Prior to the commencement of the Register, the Ombudsman established a secure phone line to act as a 'hotline' for the review, which was not routed through the general switchboard. This allowed registrable persons to call the review officer directly without being required to disclose their name or the purpose of their call to anyone other than the review officer. This phone number was included in the NSW Police pamphlet about the Register which was given to all registrable persons initially notified of their registrable status when the Act commenced.

The pamphlet, produced by NSW Police in June 2001, included the following information under a heading 'Comments about the *Child Protection (Offenders Registration) Act 2000*': 'The NSW Ombudsman is an independent agency which is reviewing the operation of the Act. Your comments are important. To speak to the Ombudsman's project officer phone (02) 9286 0954 during office hours'.

During the review period 26 calls were made to the hotline. There were also six calls direct to the review officer's phone. There were a further six calls made after the review period. Of these 38 calls, 10 either did not leave a message or left an indecipherable or unreturnable message, seven were from members of the public or government or non-government agencies seeking information about the Register. Twenty-two calls were from, or on behalf of, registrable persons, with seven calls from the one person, and two from another. That is, 15 registrable persons contacted the review officer directly to make comment or ask questions about the operation of the Act.

Of these, six agreed to be interviewed or provided additional information for the purposes of the review; five called after having received the survey questionnaire, either to ask questions about the questionnaire or to provide some additional information; seven raised certain allegations about police in relation to the operation of the Register but only one subsequently made a formal complaint; five raised issues about the application of the legislation in their particular circumstances; and seven were seeking information or clarification about the Act and police powers and responsibilities. As some callers raised more than one issue these are not exclusive categories.

Other contacts by registered persons

A number of registered persons contacted the office directly, not through the hotline, after having learnt of the Ombudsman's review role through a variety of means. Some of these were referred by the Child Protection Registry or crime managers with whom they had contact. Others had heard of the review through distribution of the discussion paper or involvement with community organisations or legal services, through the media or some other source.

Nine direct contacts were made by, or on behalf of, registered persons. Five of these were after the review period had ended, but the person had been registered during the review period and raised issues relevant to that time. Two contacted the review officer subsequent to making a complaint on a separate issue. The majority had contacted the office, by letter or telephone, to raise general concerns about the application of the Act and operation of the Register, and these were passed to the review officer. Five raised issues about the actions or behaviour of police; seven queried whether the Act should apply in respect of their convictions (two for murder, one kidnap, two consensual underage sex, one a conviction for an offence that is no longer illegal, one an interstate conviction); and others sought clarification about the Act. As some callers raised more than one issue, these are not exclusive categories.

Interviews arranged through supervising authorities or other agencies

Supervising authorities were contacted to act as an intermediary to arrange interviews with registered persons. For the most part, they were asked to identify registered persons with whom they had contact and who they thought might agree to be interviewed and provide them with details of the Ombudsman's review. It was then up to the registered person to decide whether to participate and if so to contact the review officer directly.

- The Pre-Trial Diversion of Offenders Program passed on a letter to all its participants asking if they were willing to be interviewed as part of the Ombudsman's review project. Four participants responded and three interviews were conducted in person and one by telephone.
- Sex Offender Program counsellors from the DJJ agreed that, where they felt it was appropriate, they would ask their clients if they would like to participate in the review. In response, the mother of one young person on the Register rang the review officer and provided information about her son's experiences.
- Staff of three district offices of the probation and parole service in areas with high numbers of registered persons were asked to consider whether any clients who were on the Register might be interested in being interviewed for the Ombudsman's review. The probation and parole officers identified three potential interviewees, and asked them if they would participate, but only one contacted the review officer to be interviewed.
- A psychiatrist working with Corrections Health identified three forensic patients who were on the Register. One of these subsequently agreed to be interviewed.
- One crime manager arranged for a registered person to contact the review officer to provide information about his experience of being on the Register.

Survey of registered persons

A questionnaire was sent to all registered persons whose status was recorded as 'currently registered', towards the end of the review period.¹¹³⁴ This was done to ensure that all registered persons had an opportunity to have input into the review. A copy of the questionnaire can be found at Appendix 7.

However, there were some concerns about how to achieve this without breaching the person's privacy. To avoid the problem of a family member or house-mate receiving or opening a registered person's mail and accidentally being apprised of their registrable status, it was decided to send the surveys by registered mail. This way only the addressee could collect and open correspondence that might identify them as a registered person. The questionnaire was designed to be completed anonymously, so that even if a completed questionnaire should go astray it could not identify anyone as a registered person.

A reply paid envelope was provided with the questionnaire. Information incorporated into the questionnaire provided information about other ways registered persons could participate in the review without completing the survey. The hotline phone number, the office's 1800 free-call number and an email address were provided.

Questionnaires were sent to 770 of the 773 registered persons identified as 'currently registered' as at 30 August 2003. Questionnaires were not sent to three persons whose address was given as only a suburb, although they were sent to those whose address was a town only. The addresses used were those last provided to police as the person's 'primary address', as at 30 August 2003.

One hundred and seven questionnaires were returned to sender (see 'Unclaimed questionnaires' below for further information) and 293 completed questionnaires were returned. This represents a response rate of just over 38% (or a 44% response rate of received questionnaires, that is, those not returned to sender). This very high return rate could be attributed to a number of factors. It is possible that registered persons believed, erroneously, that they were required to complete the questionnaire as part of their registration obligations. Alternatively, it may be that persons on the Register appreciated the opportunity to give their views about the Register. Not all persons answered all questions, or provided additional clarifying information where this was requested.

Over 95% of respondents were male with all but four persons providing information about their gender. 40% were in the 45-59 age group, 32% were aged 25-44, 21% were aged over 60, with only 4% aged 19 to 24 and less than 3% under 18 years of age. Respondents indicated they were registered in 70 of the 80 LACs, with 18 not identifying where they were registered. About one third of respondents indicated that their reporting period was between 10 and 15 years (100 respondents) with one quarter stating that it was eight years or less (73 respondents). Thirty (10%) said they had a reporting period of 15 years. Six respondents said they did not know how long their reporting period was and 45 provided no information.

Although the questionnaire was designed to be completed anonymously, some persons chose to include their name and address, and requested or invited follow-up contact. One hundred and thirty-four respondents provided some information in the 'any further comments' section, including 22 who added attachments with additional details.

Any comments from respondents to the surveys used in the report are quoted exactly as they were written. We have not adjusted spelling or grammar. In some instances, additional words have been included in the quote to assist comprehension. These are enclosed in square brackets.

Fourteen persons contacted our office after having received the questionnaire. Three calls were about the questionnaire being received in error – two were in relation to persons who were no longer on the Register (one had died and the other had been advised that a registration obligation no longer applied to him) and one who had the same name and address as the person the survey was sent to, but was not a registrable person. Four calls were from people who required assistance to complete the questionnaire (one using an interpreter) and a further three querying whether they were obliged to complete it (two of whom indicated that they would prefer not to). Three people called to say they were aware that a registered mail card had been left but were unable to collect the item, one because the post office had returned it to our office in error and the other two because they had since moved address. The remaining calls were seeking clarification about the survey.

Unclaimed questionnaires

The questionnaires were sent at the beginning of October 2003 using data from August 2003, so it would be expected that some would have been sent to wrong addresses which had subsequently been changed. One hundred and six questionnaires (13.7%) were returned to sender. These were either marked 'unclaimed' (57 or 53.3% of all 'returns to sender'); 'not at this address' or 'left address' (25 or 23.8%); 'insufficiently addressed' (6 or 5.7%); or 'unknown at this address' (12 or 11.4%). A further six were returned with no reason given (5.7%). Of the 'returns to sender', only 19 (18%) had provided police with a new address in the period between when the mailing labels were prepared and the questionnaires were sent out.

The questionnaires that were returned unclaimed came from a range of LACs, with the highest number of returns not necessarily coming from LACs with a high number of registered persons. There were 25 LACs where surveys were returned unclaimed from 20% or more of registered persons (excluding those who subsequently provided a new address). Ten of these had more than 30% of questionnaires returned unclaimed. In these 25 LACs, the numbers registered ranges from one to 22: nine LACs had five registered persons or fewer; nine had between six and 10; four had between 11 and 15; and three had 16 to 22. In 34 LACs, no surveys were returned unclaimed. The numbers of registered persons in these LACs ranged from none (two LACs) to 18 (two LACs). 30 of the 34 LACs with no unclaimed surveys had 10 or fewer persons registered: 16 less than five; and 14 between six and 10.

There may be various explanations why questionnaires were returned unclaimed for the 87 registered persons who had not subsequently provided police with a new address. The most obvious is that the registered person was no longer living at the address that they had last provided to the police as part of their registration obligations. But alternative explanations are possible and it cannot be assumed that all these people were in breach of their registration obligations. It may be that the registered person received the card from Australia Post but did not collect the registered letter (either because they chose not to, or forgot to, or failed to for some other reason). Or the registered person may have not received the card from Australia Post even while living at the address (perhaps because someone else collected the mail and failed to pass it on, or they were temporarily absent from their home, or it was incorrectly delivered).

The high number of unclaimed questionnaires does tend to indicate that the police in certain LACs were not aware of the whereabouts of a substantial number of registered persons. However, this does not necessarily mean that police have failed to adequately monitor the registered persons in their LAC. The Act does not place any obligation on police to ascertain where each registered person is at all times, rather the obligation is on the registered person to advise police of their current address and other personal details. The degree of monitoring the police undertake for each registered person is dependant on the assessment of the person's threat level and the individual practices in each LAC. The minimum level of monitoring required (by internal guidelines, not the Act) is an annual check. It is expected that high threat registered persons will be monitored more frequently, but the annual check may be the only time the details of a low threat registered person are checked.

Review and analysis of complaints and enquiries to the NSW Ombudsman

The NSW Ombudsman receives complaints and enquiries directly from members of the public as well as being notified of relevant complaints made direct to NSW Police. When entering details of complaints and enquiries relating to the Register, staff of our office were asked to include a specific keyword to allow for easy identification of relevant complaints.

Three complaints were identified during the review period that were directly about the operation of the provisions of the Act. See table below.

Two of the complaints were from registrable persons who did not believe that they should be required to register. These matters were unable to be investigated by the Ombudsman as the issue of whether a person is registrable or not is outside the Ombudsman's jurisdiction. One of these complainants also complained about the police attending his house to notify him of his registration obligations. The police investigated this aspect of the complaint and determined that the officers had acted appropriately in carrying out their duties.

The other complaint was from a registered person who alleged that police monitoring amounted to harassment and that his privacy was breached by police discussing his situation with his girlfriend. The police investigation found was that there was no breach of the registered person's privacy in this instance. However, the LAC decided to reduce the frequency with which they monitor him from 28 days to 90 days, which is still considered to be appropriate management of a high risk registered person. In addition, an internal memo was sent to all police in the LAC to remind them of the need to maintain an individual's right to privacy while carrying out their duties and to show common sense when dealing with more sensitive matters.

One further complaint was received from a registered person after the review period ended, about actions of NSW Police not specifically related to the operation of the Register. Investigation of that complaint is still being finalised. He also provided other information to the review about his experiences as a registered person during the review period.

Table 2. Complaints made by registered persons

Reference	Date	Content	Outcome
C/2002/4057	26/06/02	Complained about being required to register. He said his trial was prior to the legislation starting and he wouldn't have pleaded guilty if he knew about register. He says the conviction arose from a consensual relationship.	Declined, out of jurisdiction: complaint about is legislative requirement.
C/2002/4203	8/07/02	Complained about police coming to his house with documents for him to sign notifying him of his obligation to register. Claimed that the document was not in his name (middle name misspelled) and so it did not apply to him. (He also later rang the office about the publication of his name in the local media after he was charged with failing to register, but did not lodge formal complaint.	Declined. The matter had been investigated by police who determined officers were acting in accordance with duties.

Reference	Date	Content	Outcome
C/2003/7651	17/10/03	Alleged harassment and breach of confidentiality in relation to police management of the Register. Specifically claimed that police disclosed information about his registrable status and criminal history to his girlfriend when they came to his flat to check up on him.	Investigated. No adverse findings, but frequency of monitoring was reduced and a memo sent to staff reminding them to be aware of people's right to privacy.
C/2004/2569	16/6/04	Alleged that police had inappropriately targeted him, breached his privacy by disclosing his address, and assaulted him. These allegations were not specifically about him being a registered person. Made various other claims in relation to the Register: not formal complaints.	Complaint is still open and being investigated by police. Other allegations made were declined.

There were also five enquiries about the Register. Three were from persons who were concerned they might be required to register, or who wanted some information about the Register. Two enquiries were received from members of the public about persons who they thought were or should be registrable persons.

The number of complaints and enquiries made about the Register is low, given that there are over 800 registered persons, and in relation to the number of complaints made annually to this office about NSW Police. The review anticipated that few registrable persons would use official channels to make complaints, as it was considered that it was unlikely that the population of persons convicted of child sex offences or other offences against children would be one that was vocal and firm about asserting their rights. It was for this reason that the review hotline was established (see above) as a way of allowing registrable persons to voice concerns, make comments or seek information without necessarily making a formal complaint.

Analysis of submissions made in response to a Discussion Paper

A discussion paper was published in September 2003 which was distributed widely to various interested parties including NSW Police, supervising authorities, community organisations, government agencies, community legal centres, academics and child protection specialists. An advertisement was also placed in the *Sydney Morning Herald* and the *Daily Telegraph*, as well as certain regional newspapers, to enable broader public awareness.

The discussion paper included a background to the development of Child Protection Register legislation; an explanation of the Ombudsman's review role; an overview of the various provisions of the Act and Regulations and relevant police procedures, and canvassed various issues arising from its implementation. The paper included 25 questions for consideration grouped into a number of categories. These were:

- registrable offences
- application of the Act to certain groups with special needs
- appeal or review provisions
- notification processes
- reporting obligations
- provision of personal information
- manner and timeframes for reporting
- reporting periods
- breach offences
- police monitoring of persons on the Register
- use and security of information held on the Register
- community and victims' safety and security
- persons convicted of registrable offences outside NSW.

A total of 44 submissions were received. Twenty came from government bodies or representatives (including nine from agencies with responsibilities under the Act including NSW Police); 13 from non-government organisations (including five from community legal services and other legal associations and two from victims' organisations); and 11 from individuals (including two from registered persons and two from victims or victims' advocates). A full list of submissions is at Appendix 4.

Only three submissions addressed most or all of the questions raised in the paper. The issues that were most often addressed in the submissions were: the application of the Act to certain groups; the effect of the Register on community safety; registrable offences; the use and security of Register information; and monitoring of registered persons. See table below for more detail. Nine submissions included some case studies or information about the impact of the register on specific individuals.

Table 3. List of issues of questions in the discussion paper

Issue of the questions	No of submissions
Registrable offences	17
Application of the Act to certain groups with special needs	20
Appeal or review provisions	13
Notification processes	15
Reporting obligations	
– Provision of personal information	12
– Manner and timeframes for reporting	10
– Reporting periods	3
Breach offences	11
Police monitoring of persons on the Register	16
Use and security of information held on the Register	17
Community and victims' safety and security	19
Persons convicted of registrable offences outside NSW	13

Review and analysis of similar legislation in other jurisdictions

A review of similar legislation in other jurisdictions was undertaken to gain an understanding of how registers operate elsewhere. This was primarily done by direct examination of relevant statutes and related parliamentary debate, a review of relevant websites and a literature review.

Greatest attention was paid to the Sex Offenders Register in the United Kingdom, as this provided the blueprint for the NSW legislation. In addition, this Register has been the subject of a number of reviews, giving rise to a number of amendments and additional legislation.

The various registers in all states of the United States were also reviewed, as these have been in existence the longest. Although the greatest body of literature relates to these registers, it tends to have less relevance to the operation of the Register in NSW. Most of the government and academic review and analysis of registers in the United States tends to focus on, or at least considers, the impact of community notifications which is a requirement of all registers in the United States, but is not a feature of the Register in NSW.

Some existing and proposed legislation for sex offender legislation in Canada and New Zealand was also reviewed.

The decision by the APMC that all jurisdictions in Australia would move towards developing legislation to establish child sex offender registers meant that there was significant discussion and research into the establishment of a national model for legislation. The NSW Ministry for Police and NSW Police took a lead role in this given that NSW is the only state with such legislation in place. The review took a particular interest in these discussions and decisions. Although the agreement on

national model legislation occurred after the review period ended, this was significant as the NSW government introduced a Bill into Parliament to amend the Act. Thus, the review paid specific attention to this model legislation, and the Victorian Bill to establish a sex offenders register.

An overview of the various features of the legislation establishing these registers is at Appendix 1.

Analysis of COPS and CPR records for a select group of registered persons

The review aimed to follow a select group of registered persons through review of COPS records to determine the extent and type of police contact for the group. This was intended to focus on monitoring, taking account of threat assessment ratings and criminal history; the provision of updated information by the offender; and any subsequent offending activity. In addition, the type of information held by police on the offender and recorded involvement with other agencies would be reviewed.

Initially, it was decided that the first 30 persons to register would be selected, so that they could be tracked for the full review period. However, a sample of information held for these persons found that they were not a representative sample of registrable persons, with very similar characteristics in relation to demographics, and registrable offences and sentences. A more random sample was then chosen, aiming for a balance of: LAC of registration; the nature and class of the registrable offence, including whether intra- or extra-familial; previous offending history; type of sentence received and whether currently supervised; personal characteristics, such as age and ethnicity; and threat assessment ratings. A group was eventually selected which incorporated the first 11 persons to be registered and 16 other registered persons selected through data searches to include a better representation of the factors outlined above.

The Child Protection Registry assisted the review in printing up full COPS histories, reviewing threat assessments and checking CPR records for sample. Unfortunately, the review found that this material was not as useful as anticipated for gauging or analysing the contact particular registered persons had with police, or the impact on them of being registered, although it did provide some useful case studies. This methodological approach was subsequently abandoned.

Analysis of charges for breach offences under the Act

An analysis was undertaken of all charges for offences under the Act to 15 October 2003. A total of 60 charges were laid comprising 58 charges under section 17 for failing to comply with reporting obligations and two charges under section 18 for providing false information in relation to reporting. These charges were brought against 54 people as four people were charged with breach offences on more than one occasion (one was charged four times and three were charged twice).

This information was obtained through a search of monthly Register data provided by NSW Police with additional information provided by the Child Protection Registry. The charges were analysed by date, LAC, court, sentence or outcome, and by specific personal characteristics (for example, if they were a young person, Aboriginal or had an identified mental illness or special need).

Further details for some of the offences was obtained through a search of relevant COPS event data and from discussions with the officers in the LAC or the Registry responsible for the management of the breach. Briefs of evidence and other charge information was obtained in relation to some of the offences. Specifically, further information was sought in relation to offences where:

- matters were withdrawn or dismissed
- penalties were at either end of a scale of severity
- a person had been charged more than once
- special needs or other specific disadvantage was identified
- charges were brought in the early stages of the Register's operation
- the initial registrable offence was a non-sexual offence.

Details of the analysis, and relevant case studies, are in chapter 13 of the report.

Review of relevant literature

Relevant literature on sex offender registration schemes, management of child sex offenders, recidivism, risk assessment, child protection polices and approaches in NSW and other parts of Australia and overseas, and other related matters was gathered and reviewed.

Where possible Australian literature on general child protection and child sex offender issues was the focus of the literature review. However, as NSW is the first Australian state to have a registration scheme there is no Australian evaluation literature available addressing this aspect of sex offender management. Therefore particular attention was paid to reviews and

evaluations of the registration scheme in the United Kingdom, as this formed the basis for the NSW legislation. As the Sex Offenders Register has been in place in the United Kingdom since 1998, there have been a number of government evaluations and academic studies on its implementation and effectiveness. Home Office research publications were of particular assistance to the review in this regard.

The review found that the majority of analyses of sex offender registration originated from the United States, as registration schemes have been established there for some time. However, community notification is a feature of all registration schemes in the United States, and very little of the literature separately addressed registration, with much of the analysis focusing on the effect of notification approaches. This body of literature is less useful in the context of the system in NSW.

A select bibliography can be found at the end of the report.

Endnotes

¹¹³⁴ Persons who had registered during the review period but whose registration was suspended because they were in custody, or who were absent interstate or overseas, or who had been identified as registrable but were yet to register, were excluded from the survey.

Appendix 4: List of submissions received in response to Discussion Paper

No	Date	Method	Name	Title	Organisation
1	29/9/03	Email	Lisa Curran	Individual	
2	1/10/03	By phone	Anonymous (name provided)	Crime manager	LAC in Greater Metro Region
3	9/10/03	Written	Stephen Drew	A/g Director	Crime Prevention Division, Attorney-General's Department
4	16/10/03	Email	Robyn Cottrell-Jones	Executive Director	VOCAL
5	16/10/03	Attachment to email	Belinda Nolan	Crime manager	Waratah LAC
6	7/10/03	Written	Paul Haines	A/g Local Area Commander	Penrith LAC
7	16/10/03	Written	Vicki Sokias	Research officer	NSW Police Association
8	10/10/03	Written	William Franklin	Individual	
9	17/10/03	Written	Jane Sanders	Solicitor	Shopfront Youth Legal Centre
10	20/10/03	Written	Anonymous (first names provided)	Parents of registered person	
11	17/10/03	Written	John Hatzistergos	Minister for Justice	
12	16/10/03	Written	Lester Fernandez	Chair	NSW Young Lawyers Criminal Law Committee
13	12/10/03	Written	Patricia Wagstaff	Victim advocate	
14	15/10/03	Written	Alastair Milroy	Chief Executive officer	Australian Crime Commission
15	20/10/03	Written	Terry Barnes	Director-General	Department of Housing
16	20/10/03	Written	Nigel Spence	Chief Executive officer	Association of Child Welfare Agencies
17	20/10/03	Written		Redfern office	Sydney Regional Corporations Aboriginal Legal Services

No	Date	Method	Name	Title	Organisation
18	21/10/03 29/10/03 29/10/03	By phone Meeting Written	Sharryn Brownlee	President	Federation of Parents & Citizens' Associations
19	15/10/03	Written	Anonymous (name provided)	Registered person	
20	20/10/03	Written	Robert Benjamin	President	Law Society of NSW
21	22/10/03	Written	Philippa Hall	Deputy Director-General	Department for Women
22	23/10/03	Written	Louise Voight	CEO and Director of Welfare	Barnados
23	23/10/03	Written	Meredith MacDonald	Director	Intellectual Disability Rights Service
24	20/10/03	Written	Jan O'Grady	Ombudsman	Tasmanian Ombudsman
25	14/10/03	Written	Gillian Calvert	Commissioner	Commission for Children and Young People
26	30/10/03	Written	Ian Gillespie	A/g General Manager, Personnel	Department of Education and Training
27	31/10/03	Written	Hetty Johnston	Executive officer	Bravehearts
28	10/11/03	Written	Julie Murphy	Coordinator Outreach Services	Southern Youth and Family Services Association
29	10/11/03	Written	David Sherlock	Director-General	DJJ
30	10/11/03	Written	Jeff Cunningham	Manager, Sentence Administration Branch	Department of Corrective Services
31	4/10/03	Written	Catherine Katz	A/g Deputy Director-General, Policy	NSW Health
32	19/11/03	Written	John Dickie	A/g Privacy Commissioner	Privacy NSW
33	20/11/03	Written	Margaret Allison	Director-General	Department of Ageing, Disability and Home Care

No	Date	Method	Name	Title	Organisation
34	25/11/03	Written	Anita Anderson	Director	Local Courts, NSW Attorney General's Department
35	26/11/03	Written	Basil Northey	Individual	
36	26/11/03	Written	Ahmet Kovan	Individual	
37	24/11/03	Written	Beajey Cronan	Individual	
38	24/11/03	Written	P G Hounsell	Individual	
39	24/11/03	Written	Leanne Wilson	Individual	
40	26/11/03	Written	R. J. Coles	Individual	
41	24/12/03	Written	Associate Professor C Cunneen	Chair	Juvenile Justice Advisory Council of NSW
42	22/01/03	Written	D B Madden	Deputy Commissioner Operations	NSW Police
43	21/01/04 10/3/04	By phone Email with attachment	Michelle Swift	Solicitor	Legal Aid
44	29/01/04	Written	Neil Shepherd	Director-General	NSW Department of Community Services

Appendix 5: Anonymised details of registered persons interviewed for the review

Ref	Date of contact	Status	Type of contact
RP1	20/5/02	Registered person	Letter of complaint
	9/7/02	Complainant C/20024223 (declined)	Phone message
RP2	9/7/02	Mother of registered person who is a young person	Phone conversation
RP3	18/11/02	Registered person: Pre-Trial Diversion of Offenders program participant	Phone interview
RP4	20/11/02	Registered person: Pre-Trial Diversion of Offenders program participant	In person interview
RP5	23/1/03	Registered person	Letter of complaint
	3/1/03	Complainant C/2003/7651 (investigated)	Phone interview
	4/3/03		Phone conversations
	24/8/03		
	2/12/03		
RP6	25/11/02	Registered person: Pre-Trial Diversion of Offenders program participant	In person interview
RP7	27/11/02	Registered person: Pre-Trial Diversion of Offenders program participant	In person interview
RP8	17/12/02	Registered person: Found not guilty of murder of child due to mental illness under section 38 of <i>Mental Health (Criminal Proceedings) Act</i>	Written material provided
	3/2/03		Phone interview
	11/8/03		Phone conversations
	26/3/04		
RP9	26/2/03	Registered person	In person interview
		Convicted of kidnapping where there was no sexual element	
RP10	26/2/02	Registered person: Complainant C/2002/4057 (declined)	Written complaint
	2/6/03	Convicted in respect of what he claims was consensual underage sex	Phone conversation

Ref	Date of contact	Status	Type of contact
RP11	2/6/03 27/10/03	Registered person Convicted in respect of what he claims was consensual underage sex	Phone conversation
RP12	13/10/03	Registered person	Phone conversation
RP13	22/8/03	Registered person (currently in custody) Convicted for murder of a teenager where there was no sexual element	Letter
RP14	2/12/03	Registered person	Phone conversation
RP15	21/1/04	Mother of registered person who was a young person at the time of the offence. Convicted for murder of a teenager where there was no sexual element	Phone conversation
RP16	12/3/04 29/3/04	Registered person Convicted in respect of consensual underage sex (acknowledged in judgement)	Letter to CPT Letter from PT to him
RP17	13-14-15/6/03 21/6/04 29/6/04	Registered person: (currently in custody) Convicted outside NSW	Phone enquiry Letters and phone conversations

Appendix 6: Notification procedures for Courts and Supervising Authorities

Notification by the Courts

Instructions for court staff for notification of registrable persons is contained in a Local Courts Bulletin '2001/0109: Procedure: Child Protection Register'. The Bulletin provides an overview of the Act and explains how it is determined if a person is registrable. It outlines the procedures in courts at the time of sentencing, and how registry staff become aware that a person is registrable and requires notification.

There is no automatic process to indicate when notification is required. Rather a court officer must determine this at the time of sentencing. This is assisted by documents prepared by police, as part of the court documents. When a charge includes a registrable offence, the arresting officer will prepare a Form 1 (Determination of Registrable Person Status) and complete all the details, except for the final three fields (which relate to finding of guilt and sentence). The Form 1 is then placed in a sealed envelope with the notation that it is to be viewed by the court officer only and not the bench and only to be opened on a finding of not guilty or upon sentencing. The envelope is attached to the court papers. After sentencing, registry staff open the envelope and complete the Form 1 and follow the included guide to determine if the person is registrable.

If the person is registrable, the clerk of the court prints out a copy of Form 3 (Notice of Registration Obligations) and the notice is served at the Registry counter, at the time the person is provided with copies of their sentencing order. The rights and obligations of registration are explained, and the registrable person is requested to sign the acknowledgement on the first page. The registry staff member also signs it. The bulletin notes that if a registrable person is from a non-English speaking background, the court interpreter should be used. The Form 3 is photocopied and the registrable person keeps the original.

The registry staff fax a copy of the Form 1 to the Child Protection Registry, by the close of business on the day of sentencing. This also applies where a Form 3 has not been served on a registrable person, either because they have been sentenced to imprisonment or because they have failed to attend the Registry office. Where a notice has been issued, the first page of the Form 3 is also forwarded.

The bulletin advises that although under the Act the court has an obligation to notify all registrable persons, the Regulations delegate this responsibility to supervising authorities where the person receives a custodial sentence. The bulletin also advised that the responsibility to provide notice of registration obligations to registrable persons at the time of sentencing remains with registry staff where the person is subject to a sentence which does not bring them under the control of a supervising authority. This includes home detention, periodic detention, community service order, and good behaviour bond with strict supervision. However, registry staff are required to complete the Form 1 even if the court is not required to serve the Form 3. A copy of the Form 1 is attached to the warrant of commitment to inform the supervising authority of the person's registrable status.

Notification by DCS (persons in custody)

Guidance for DCS staff for notification of registrable persons is contained in a memo '2001/059 Administrative Procedures for the Child Protection (Offender Registration) Act 2000'. This is dated 12 October 2001 and was sent to all commanders, governors and officers in charge, by the senior assistant commissioner, inmate and custodial services.

The Child Protection Registry transmits to DCS a list of persons sentenced in respect of registrable offences. Administration managers at each correctional centre generate a computer report on a weekly basis which identifies inmates who must be issued with a notice under section 4 (at commencement of sentence). Two copies of notices are generated and forwarded to the case management and classification coordinator, who list the matter for consideration by the Case Management Team to ensure that the notice is issued as soon as possible. The inmate signs both copy and is given one to retain (they are advised of the need for confidential storage, either in valuable property storage, sending it to someone or placing it on their warrant file till discharge). The other is returned to the administration manager who is responsible for entering the data of the computer system and filing the signed form on the inmate warrant file.

Registrable persons must also be notified upon discharge from custody under section 6. The Discharge Checklist used by the discharging officer has a provision for checking if an inmate is a registrable person. If so, the discharging officer generates two copies of the notice and places them in the inmate's warrant file. At the discharge interview, the discharging officer will issue the notice and ensure each copy is signed. One copy is provided to the inmate and the other copy placed in the inmate warrant file and returned to the administration manager, who is responsible for entering the data of the computer system and filing the signed form on the inmate warrant file.

Periodic detention detainees are also notified by DCS. The manager of Periodic Detention Administration also generates a weekly report to determine which newly sentenced detainees must be notified under section 5 of the Act. Two copies

of each notice are generated for each registrable person and forwarded to the appropriate periodic detention centre. The officer in charge of the Centre issues the notice to the detainee at the earliest possible time and ensures both copies are signed. One is given to the detainee to keep and the other is returned to the manager. Periodic Detention Administration is responsible for entering the data of the computer system and filing the signed form on the inmate warrant file.

Warrant files which hold DCS' copy of the notice are automatically registered on the Offender Management System file tracking module, which enables the identification of those warrant files.

The DCS administrative procedures do not mention how information about the issue of notices is advised to the Child Protection Registry, as required. Nor do they contain any directions about the identification or notification of persons with special needs.

Notification by DCS probation and parole service (persons in the community)

The review was provided with information about DCS' notification responsibilities through email communication from the Department's Child Protection Coordination and Support Unit (dated 2 February 2004) and the Sentence Administration Branch (dated 3 February 2004). Following the release of the consultation draft of this report in October 2004, DCS provided the Ombudsman with substantial further information about the probation and parole service's notification procedures.

The email from the Child Protection Coordination and Support Unit includes a document entitled 'Child Protection (Offender Registration) Act – Role of NSW Department of Corrective Services.' This states, in part, that 'officers of the Department's Community Offender Services (the probation and parole service) notify registrable offenders who are under community supervision of their responsibility to register and that failure to comply will result in action taken by the Police.' In December 2004, the Department provided the review with two memos, Memo 64/2001, dated 8 August 2001, and Memo 77/2001, dated 17 October 2001, both entitled 'probation and parole Service: Child Protection (Registration of Offenders) Act 2000'. Memo 64/2001 states 'Once the Act is proclaimed the Courts will then issue notices for all future clients of the Service who are registrable persons' but provides no further directions. Memo 77/2001 provides detailed instructions for staff in identifying clients who are registrable persons and issuing notices as required.

The probation and parole service is advised of registrable persons requiring notification through the same process as outlined above for persons in custody. That is, the Child Protection Registry electronically notifies DCS of persons convicted of registrable offences.

A probation and parole officer will be alerted to the fact that a person serving a community-based sentence may be registrable and/or may require notification, when, as part of normal procedure, details of the person's court order are entered into the department's computer system. If a person is registrable and has been notified by the courts, the registrable person's probation and parole officer will not notify them again. If, however, it is determined from court documents or otherwise that a person may be registrable despite indications to the contrary, or may require notification because the court has not done so, the probation and parole officer will contact the Child Protection Registry. The Registry determines whether the person is registrable and advises the probation and parole service. The probation and parole officer then prints up a notice and requests the registrable person to sign it. The probation and parole officer then completes the required sections of the notice and updates the computer system accordingly, and these details are transmitted electronically to the Child Protection Registry. If the registrable person requests more information about their registration obligations they are advised to contact the crime manager at the local police station.

In its response to the consultation draft, DCS also advised us that at the completion of the first interview with a new client where notification may occur, the probation and parole officer then completes the registrable person's case plan. This may take between six and eight weeks. The Case Plan is submitted to the unit leader for review. During the review the unit leader, among other things, checks to see if the person has been correctly identified as registrable and checks to see if he or she has been notified by the courts or by the probation and parole service.

The review was not provided with any information about procedures for the identification or notification of registrable persons with special needs.

Notification by the DJJ

Guidance for DJJ staff for notification of registrable persons is contained in 'Registrable Offenders: Policy and Procedures', December 2003, and in 'Registrable Offenders: Procedures for Executive Services Branch'. This provides detailed information about the responsibilities for both DJJ centre staff and community services/specialist services staff in respect of registrable persons who are clients of DJJ.

This includes information about the Act, registrable offences, how a person is determined to be a registrable person, as well as departmental responsibilities for registrable persons. It includes detailed procedural steps for all aspects of departmental

involvement, identifying the responsible officer. It also includes a section on the notification and registration of young persons with a disability or special needs. It sets out in detail the procedures in relation to notification responsibilities, for staff in centres and those in the community,

The Child Protection Registry advises the Executive Services Branch (ESB) of the DJJ of any court outcome that means a departmental client is a registrable person. The Registry advises the name, date of birth, type of offence, reporting period and date by which the young person needs to register with local police. The ESB checks its computer system to determine which centre or regional office is supervising the young person. The ESB then advises the manager of the supervising location of young person's required registration and requests a Form 3 be completed and signed by the young person and returned to ESB. When the Form 3 is received, ESB forwards the notification to the Registry, checks that the computer system has been updated and updates the spreadsheet of current registrable offenders. All correspondence is by email and copies are placed on file.

If a young person is admitted to a Juvenile Justice Centre, and they have not already been advised by ESB, notification is completed following admission. When a detainee is admitted to a centre on a fresh control order, a 'flag' will appear on the computer system if the detainee's offences are registrable. The client manager of the Juvenile Justice Centre will advise ESB of any new admission that the system notifies as a possible registrable person. ESB will forward details of possible registration to the Registry requesting confirmation of required registration. If the Registry confirms that the young person is a registrable person ESB will advise the client manager of confirmation of registration, advise start and length of reporting period and request completion and signing of Form 3. The Form 3 is issued to the person and the conditions explained regarding registration responsibilities. The person is asked to sign the form. The completed and signed form 3(1) is then returned to ESB by fax and forwarded to the Registry. The spreadsheet of current registrable offenders updated.

When a young person is sentenced to a community-based court order (bond, probation, community service order, suspended sentence) for a registrable offence, a process similar to that described above occurs. The supervising officer has responsibility for issuing the Form 3 and explaining reporting obligations to the client, and getting the form signed and returned to the Child Protection Registry. The policy states that if a client requests legal advice prior to registering, access to a legal representative must be offered and arranged.

The department must also notify a detainee who is a registrable person prior to discharge. The client manager notifies ESB at least 48 hours prior to discharge of the impending release of a registrable person. A Form 3 is completed and signed by the registrable person and forwarded to ESB, and then to the Registry. ESB then checks if young person is to remain under the department's supervision. If the young person is still under departmental community/specialist supervision, the relevant supervising officer is advised of the client's registrable status.

The policy and procedures document states that staff must 'take all reasonable steps' to ensure that a registrable client registers within the 28 day period. It notes: 'Any failure by departmental staff to fulfil this requirement may be dealt with as a breach under *Compliance Departmental Policies and Guidelines of the Code of Conduct*.' It also advises that, although no further action is required once notification is completed, on some occasions the supervising officer may accompany the client to the interview at their local police station.

Notification by the Pre-Trial Diversion of Offenders Program

The process for notification participants in the Pre-Trial Diversion of Offenders Program of their registration obligations is set out in a document entitled: 'Child Protection Register (Sex Offender Register) Cedar Cottage Procedure'. This sets out a four-step process for notification, with some additional information for staff.

At the time of referral for assessment for participation in the program, applicants are informed of the Register through a form letter. The letter advises that they will be required to register, and provides some information as to what that means, including the consequences of failing to comply. The letter also advises that the reporting period would be for between 8 and 15 years. It notes that the person will receive official information at the time of sentencing.

When the person enters into an undertaking at the District Court (equivalent to being sentenced) the program is then required to issue the formal notice (Form 3) to the person, advising them that they have 28 days to register and of their obligations.

The program then contacts the Child Protection Registry with details of the person and confirming their participation in the program and requesting calculation of the reporting period.

The reporting period is added to the Form 3 and given to the participant who is requested to sign the acknowledgement. The notifier also signs the form. The participant is provided with a copy of the form and the front sheet faxed to the Registry within 48 hours. The original is retained in the program's 'secure store' files while a copy is filed in the 'Treatment Agreement' section of the participant's file.

Notification by the Department of Health (forensic patients)

The Department of Health has advised the review that it has yet to produce written procedures for notifying forensic patients of their registration obligations under the Act. Information about the process was provided to the review in a telephone conversation on 16 August 2004, with the manager of the Forensic Executive Support Unit of the Department of Health.

The recently established Forensic Executive Support Unit is responsible for the notification of forensic patients. It receives advice when a forensic patient, who is a registrable person, is due to be released. The unit issues the notice to the person and advises the Child Protection Registry.

26. Has anyone (who you didn't tell) found out you're on the Register?
 Yes No
 If yes, provide brief details
27. What effect has being on the Register had on you?
 (Please circle?)
 negative 1 2 3 4 5 positive
 Please provide a brief explanation
28. In general, do you think there is value in having a Child Protection Register? (Please circle)
 negative 1 2 3 4 5 positive
 Please provide a brief explanation
29. How do you think the Register could be improved?
 Please provide brief details
30. Is there anything else about your experience of being on the Register that you would like to tell us that you think might be helpful to our review?
 (Use additional paper if necessary.)

Child Protection Register Review Project
 Reply Paid No XXXX
 NSW Ombudsman
 Level 24, 580 George St
 Sydney NSW 2001

Message from the NSW Ombudsman

The *Child Protection (Offenders Registration) Act 2000* established a Child Protection Register, which commenced on 15 October 2001. Since then, persons convicted of certain offences have been required to register with police and provide information about themselves.

The NSW Ombudsman is required to review the operation of the Register for the first two years.

We are sending this self-sealing reply paid questionnaire to all registered persons, to provide an opportunity for input into our review. Information about your experience of the Register will make a valuable contribution to our review.

I would appreciate it if you could complete and return the questionnaire, **by 17 October 2003**.

This is an anonymous and confidential questionnaire: we do not require your name, nor wish to identify you. Any information you provide will be used only to assist us review the operation of the Register.

If you do not wish to complete the questionnaire but would still like to be part of our review you can participate by:

- Writing to us at the address provided.
- Ringing 02 9286 0954 and speaking directly to the review officer (or leave a message with your details and your call will be returned).
- Ringing 1800 451 524 toll free and asking to speak to the Child Protection Register review officer (note that this is a general switch number and not a direct line).
- Emailing your comments to rkusuma@ombo.nsw.gov.au
- Going to our website www.ombo.nsw.gov.au and following the prompts to the Child Protection Register review discussion paper and responding to the issues it raises.

Your comments will be taken into consideration in the writing of my report to the Minister and any recommendations I may make. The report will be published in early 2004 and will be available from my office and the website.

Please note that information you provide to the review will not be dealt with as a complaint. If you wish to make a complaint about unreasonable or improper conduct arising from the implementation of this Act, you should call my office on 02 9286 1000 or 1800 451 524 and speak to an inquiry officer.

Signature

**Bruce Barbour
 Ombudsman**

When completed, please seal and post questionnaire to the NSW Ombudsman. No stamp is required.

Please return by 17 OCTOBER 2003

THANK YOU for your participation in our review.

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