Reportable contact with children

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Introduction

7.1 The Sex Offenders Registration Act 2004 (Vic) requires registered sex offenders to report a number of details to police, including the names and ages of some children with whom they interact.¹

7.2 In his February 2011 report on the management of registered sex offenders, the Ombudsman expressed concern that the term ‘unsupervised contact’ is not defined in the Sex Offenders Registration Act. He recommended that the Attorney-General ask the Commission to consider this matter.² The Commission’s terms of reference implement this recommendation by seeking consideration of ‘the definition of unsupervised contact, including whether this should be broadened to include non-physical contact’.³

Current reporting obligations

7.3 Registered sex offenders must report to the police⁴ the names and ages of any children ‘who generally reside in the same household’ as them or with whom they have ‘regular unsupervised contact’.⁵ While the legislation defines the meaning of some of these broad concepts,⁶ others are not defined.

7.4 As neither ‘contact’ nor ‘unsupervised’⁷ is defined in the Sex Offenders Registration Act, it is difficult for registered sex offenders to understand the precise content of their reporting obligations and for police to know whether they are receiving complete and accurate reports. Police compliance managers are required to rely on an offender’s own interpretation of ‘unsupervised contact’ with a child or to provide offenders with their own definitions of this reporting obligation.⁸

7.5 This state of affairs is highly unsatisfactory. It does not assist in protecting children from potential harm and it is unfair to the offender who may face serious penalties for either failing to comply with reporting obligations or providing false or misleading information to the police.⁹

7.6 ‘Regular’ is currently defined in the Act as three days, whether consecutive or not, in any period of 12 months.¹⁰ It remains unclear whether this means three separate incidents or three full 24-hour days of unsupervised contact. It seems likely that any unsupervised contact with a particular child or children on three separate days within any 12-month period is sufficient to trigger the reporting obligation.¹¹

7.7 It is also not clear how the 12-month period should be calculated. The Sex Offenders Registration Act does not stipulate whether a registered offender must report unsupervised contact with a child for three days in any calendar year or whether it is three days in any 12-month period calculated from the first day on which the registered sex offender had unsupervised contact with a particular child.¹² Similar problems exist when determining the meaning of the reporting obligation about residing in the same household as a child ‘for at least three days (whether consecutive or not) in any period of 12 months’.¹³

7.8 While an ordinary reading of these provisions favours the conclusion that the 12-month period should be calculated from the first day on which the registered sex offender has unsupervised contact with a particular child, an obligation of this nature seems unworkable in practice because it would require registered sex offenders to keep records of the dates on which they first had unsupervised contact with a particular child in order to ensure that they are in a

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¹ Sex Offenders Registration Act 2004 (Vic) ss 14(1)(e), (2)(b)–(c). Other reporting obligations are discussed in Chapters 3 and 6.
³ The terms of reference are set out on page vi of this report.
⁵ Sex Offenders Registration Act 2004 (Vic) s 14(1)(e).
⁶ ibid s 14(2).
⁷ Note that ‘contact’ is separately defined for Part 5 of the Sex Offenders Registration Act, which excludes registered sex offenders from child-related employment, but this definition does not apply to reports of regular unsupervised contact: Sex Offenders Registration Act 2004 (Vic) s 67 (definition of ‘contact’).
⁸ Consultation 1 (Sex Offenders Registry, Victoria Police).
⁹ Sex Offenders Registration Act 2004 (Vic) ss 46–7.
¹⁰ ibid s 14(2)(c).
¹¹ ibid.
¹² ibid s 14(2)(b).
position to comply with their reporting obligations. It is unlikely that this was the intention of Parliament when it enacted these provisions.

7.9 The Australian Community Support Organisation told the Commission about one of its clients, a registered sex offender, who saw an unaccompanied child fall off a bike outside the client’s house. As the client was unsure whether assisting the child would constitute ‘unsupervised contact’ to be reported to Victoria Police, he remained inside the house. The Office of the Victorian Privacy Commissioner noted:

The lack of definition is alarming, as a failure to comply with a reporting obligation, or furnishing false or misleading information, are both offences attracting significant penalties.

7.10 There was widespread agreement in submissions and consultations that ‘unsupervised contact’ should be defined.

Submissions and consultations in relation to ‘regular unsupervised contact’

Defining ‘contact’

7.11 Some stakeholders suggested that ‘contact’ should be defined as it is in the Children, Youth and Families Act 2005 (Vic). Others raised the need to extend any definition of ‘contact’ to non-physical contact, such as phone calls, text messaging and online contact. The Commission heard that some registered sex offenders have Facebook accounts, where they may be ‘friends’ with children.

7.12 The Law Institute of Victoria suggested that the definition of ‘contact’ from Part 5 of the Sex Offenders Registration Act be used when dealing with reporting obligations. This definition states:

\[
\text{contact means any form of contact between a person and a child and includes—}
\]

(a) any form of physical contact;
(b) any form of oral communication, whether face to face or by telephone;
(c) any form of written communication, including electronic communication.

Defining ‘unsupervised’ or ‘supervision’

7.13 One suggestion was to remove the word ‘unsupervised’ and require registered sex offenders to report all contact with children, or to define ‘supervision’ as a responsible adult being present. However, the Commission has been told of an instance where a child was offended against in the same room as other adults, the child and offender being covered by a blanket. This suggests that something more than other adults being present is required to constitute appropriate supervision.
7.14 Another suggestion was that the definition of ‘supervision’ should include:
  • the child’s parent being with the child, in the same room, at all times\textsuperscript{24}
  • both visual supervision (if the child is online) and in-person supervision (if the child is having face-to-face contact with a registered sex offender).\textsuperscript{25}

**Defining ‘regular’**

7.15 Some stakeholders were of the view that the definition of ‘regular’ should be decreased from three days in any 12-month period to one day in any 12-month period.\textsuperscript{26}

**The Commission’s response and recommendation**

7.16 The Commission is of the view that there must be greater clarity concerning those interactions with children that registered sex offenders must report to the police. Most members of the community are in ‘contact’ with children on a daily basis, even if only in the supermarket or on public transport. Is an offender obliged to report ‘contact’ of this nature if it is ‘unsupervised’—perhaps in the sense that the child is not under the direct supervision of a parent, guardian or teacher—and occurs on three separate days in a 12-month period? The answer to that question is not clear.

7.17 It is not fair to either the police or registered sex offenders for the current level of uncertainty surrounding ‘unsupervised contact’ with children to continue. In some circumstances, the police might feel the need to collect and give the Department of Human Services a significant amount of information that does not identify a particular child or children, while in others a registered sex offender might risk being prosecuted for failing to comply with their reporting obligations if inadvertent contact with a child is not reported.

7.18 The Sex Offenders Registration Act should clearly describe the contact with children that registered sex offenders must report to the police.

**Define the types of contact with children that must be reported**

**Remove ‘unsupervised’**

7.19 It seems impossible to devise a meaningful definition of the term ‘unsupervised contact’. Retaining this term within the Act will only perpetuate confusion and misunderstanding about the type of contact with children that registered sex offenders are required to report.

7.20 The existing obligation is simply too vague for inclusion in a statute of this nature because different people will have a different understanding of the meaning of ‘unsupervised’. Therefore, the Commission recommends the removal of the term ‘unsupervised’.

**Remove ‘regular’**

7.21 There appear to be two reasons for the current requirement that registered sex offenders must report only ‘regular’ unsupervised contact with children. They are:
  • to exclude contact with children that is merely incidental, for example, in the street or on public transport, and
  • to limit the information provided to Victoria Police to that relating to contact with particular children which might be of concern.

7.22 The existing definition of ‘regular’ as three days in any 12-month period is arbitrary. Any new definition of ‘regular’ devised by the Commission would be equally arbitrary. The Commission believes that if the type of contact with children that registered sex offenders are required to report is adequately defined, there will be no need for that contact to be ‘regular’, however defined, in order to be reportable. One instance of a particular type of contact will be sufficient to activate the reporting obligation.

\textsuperscript{24} Consultation 16 (Sex Offenders Registry Liaison, Department of Human Services).
\textsuperscript{25} Consultation 26 (Child Protection, Department of Human Services, Eastern Region).
\textsuperscript{26} See, eg, Submission 15 (Law Institute of Victoria).
Define the mode and circumstances of contact with children that registered sex offenders must report

7.23 The Commission believes that registered sex offenders should continue to be obliged to report the names and ages of any children with whom they have ‘contact’, as well as the addresses of those children and any other means of contacting them. In some instances, the registered sex offender may not know the full name, age or address of the child with whom they have been having contact. However, as much detail should be provided as possible, and may include the child’s mobile phone number or email address.

7.24 ‘Contact’ should be clearly defined in the Sex Offenders Registration Act, to clarify the reporting obligation for both Victoria Police and registered sex offenders and to ensure that the information collected is useful for child protection purposes. The Commission believes that the ‘contact’ with a child that must be reported should include both the mode of contact—for example, whether it is face-to-face, over the telephone or online—and the circumstances in which that contact occurs.

7.25 When describing the mode of contact with children that registered sex offenders should be required to report, the Commission recommends a definition based on the definition of ‘contact’ in Part 5 of the Sex Offenders Registration Act.27 This will cover particular types of physical contact, verbal communication and written communication, whether in person, by telephone or over the internet. Physical contact should include both physical proximity and touching. The registered sex offender being present in the same dwelling as the child would constitute physical proximity.28

7.26 Defining the circumstances of the contact that a registered sex offender must report is more difficult. The definition should include any contact, of a defined mode, where the registered sex offender is supervising, caring for, visiting or forming a relationship with the child, but exclude any incidental or one-off contact the offender may have with a child, for example, on public transport or in the street.

7.27 The reason for this recommendation is that the Department of Human Services can only usefully investigate any child protection concerns where there is an identified child or children who may be at some risk of harm because of the nature of that child’s contact with a registered sex offender. Further, it would be unnecessarily onerous and resource-intensive to require registered sex offenders to report all incidental contact with any children.

7.28 Registered sex offenders should be required to report all contact where they are supervising a child, caring for a child, or visiting or residing at a dwelling where a child or children are present. This type of contact may arise in circumstances where the registered sex offender is:

- a relative of the child or of the child’s parent or carer
- a friend, partner or acquaintance of the child’s parent or carer, or
- someone with occasional responsibility for the child, such as babysitting the child or taking them to school.

7.29 Some other types of contact outside of the familial or domestic setting should also be reported. These types of contact may not involve a caring, supervisory or visiting aspect, but involve an attempt to establish a relationship with the child that is more than incidental. While the Commission is of the view that an offender should not be required to report being served by a child at the supermarket or sitting near a child on public transport, a registered sex offender should be required to report:

- attempting to befriend a child, including via social media sites such as Facebook and MySpace
- exchanging contact details with a child.

27 Part 5 of the Sex Offenders Registration Act 2004 (Vic) excludes registered sex offenders from child-related employment.
28 As discussed below, this type of physical proximity could involve the registered sex offender visiting a household where children are present or residing in the same household as children.
29 Residing with children is dealt with below at [7.30]–[7.34].
Include ‘residing with a child or children’ as one type of contact that must be reported

7.30 The Commission is of the view that registered sex offenders should continue to be required to report the names and ages of any children who reside in the same household as them. The Sex Offenders Registration Act already requires this form of contact to be reported.\(^{30}\) However, the Commission recommends some amendments to the current reporting requirement.

7.31 Residing in the same household as a child is currently defined as residing together for three days, whether consecutive or not, in any period of 12 months.\(^{31}\) As with reports of ‘regular unsupervised contact’, it is unclear whether this 12-month period refers to a calendar year or to 12 months from the first day of residing together.\(^{32}\) A literal interpretation suggests that it is the latter. Registered sex offenders are required to report residing with a child within one day—presumably within one day of the third day of residing together.\(^{33}\) It seems that a registered sex offender must keep a record of all days for which they have resided in the same household as a particular child, and calculate whether these days have fallen in one 12-month period.

7.32 The Commission considers this definition unhelpful. Although it requires registered sex offenders to report residing in the same house as a child or children within one day of the third occurrence in a 12-month period, this may be months after the first and second occasions on which the registered sex offender has stayed under the same roof as a child. From a child protection perspective, the child or children could have been at risk of harm on either of these earlier occasions without any requirement for the offender to have made a report. Any attempt to redefine ‘residing with a child’ by number of days or length of time is equally arbitrary.

7.33 To resolve this difficulty, the Commission recommends that ‘residing with a child or children’ be included as one type of contact that registered sex offenders are required to report. With the new definition of ‘contact’ that the Commission is proposing, there would no longer be any need for a distinction between ‘contact with a child’ and ‘residing with a child’.

7.34 Including ‘residing with a child’ as just one type of contact with a child that a registered sex offender is required to report would eliminate the need for a precise definition of this term and the arbitrary time limits that would accompany such a definition. Any contact that does not fall within ‘residing with a child’ would be captured by one of the other categories of contact, such as visiting or staying overnight at a dwelling where a child is present.

### Recommendations

31. Registered sex offenders should be required to report the names, ages and addresses of any children with whom they have ‘contact’, and the means of contacting those children.

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\(^{30}\) Sex Offenders Registration Act 2004 (Vic) ss 14(1)(e), (2)(b).

\(^{31}\) Ibid s 14(2)(b).

\(^{32}\) The Act does not provide clarification about this: Ibid.

\(^{33}\) Sex Offenders Registration Act 2004 (Vic) s 14(2)(b).
32. The *Sex Offenders Registration Act 2004* (Vic) should define ‘contact’ with a child or children for these purposes as:

(a) any form of physical contact, including physical proximity or touching, or

(b) any form of oral communication, including face-to-face, by telephone or over the internet, or

(c) any form of written communication, including electronic communication,

in circumstances where the registered sex offender is:

(a) supervising or caring for a child or children, or

(b) visiting or residing at a dwelling where a child or children are present, including staying overnight, or

(c) exchanging contact details with a child or children, or

(d) attempting to befriend a child or children.

**Registered sex offenders who are under the age of 18**

7.35 It would place an onerous burden on registered sex offenders who are under the age of 18 to require them to report all contact of this nature that they have with other children. Much of their social life will involve visiting and staying overnight with children, attempting to befriend other children and exchanging contact details with other children. Many registered sex offenders under the age of 18 would need to make reports almost daily, each time they went to school or added a new friend on Facebook.

7.36 For this reason, the Commission recommends in Chapter 6 that the Children’s Court should be permitted to alter the reporting obligations of offenders who are under the age of 18, as appropriate in the circumstances. This recommendation would apply to the child contact report, as well as to other reporting obligations.

**Timing of child contact reports**

7.37 Another difficulty with reporting contact with a child is whether the report should be made before or after the contact occurs. At present, the registered sex offender is required to report ‘regular unsupervised contact’ prospectively, as they do not have regular unsupervised contact with a child unless that contact is for three days in any 12-month period. This threshold is met until the three days contact has occurred.

7.38 Reporting contact after it has occurred is not always helpful from a child protection perspective—harm to the child can clearly occur in less than three days and reporting contact after the event does little to protect the child.

7.39 Several stakeholders recommended that particular types of contact with a child should be reported prospectively, as this would then allow an assessment to be made of whether that contact should occur. However, other submissions pointed out the problems with this proposal:

- the *Sex Offenders Registration Act* does not permit police to prohibit the unsupervised contact from occurring, as such contact is not, of itself, unlawful, and
- unsupervised contact with a child will not always be planned or initiated by the offender.

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34 Ibid s 14(2)(c).
35 Submissions 7 (CASA Forum); 8 (Royal Australian and New Zealand College of Psychiatrists, Victorian Branch); 11 (CEASE); 19 (Gatehouse Royal Children’s Hospital).
36 This second point was made by the Australian Community Support Organisation and the Law Institute of Victoria in their submissions: Submissions 9 (Australian Community Support Organisation); 15 (Law Institute of Victoria).
The Law Institute of Victoria is opposed to prospective reporting, as it would often be impossible to predict contact and may cause offenders to breach their reporting obligations where contact was unplanned.37

The Commission’s response and recommendations

Although there are obvious benefits in requiring registered sex offenders to report contact with a child before it occurs, the Commission believes that it would be practically unworkable to require them to do so. In many instances, it would not be possible for a person to know if and when contact with a child will occur. Further, prospective reporting would impose an onerous burden on the Department of Human Services, as the child protection service would be obliged to counsel parents or guardians about contact between their child and a registered sex offender that might never occur.

In addition, prospective reports would probably be of very limited practical use to police or child protection authorities, as potential offenders are highly unlikely to report any proposed contact with a child they plan to sexually abuse.

The Commission does not recommend prospective reporting. Instead, it recommends retaining the requirement for registered sex offenders to notify police that information about their contact with a child has changed, within one day of the contact occurring. This notification would not be a detailed report of the mode and circumstances of the contact, but simply an indication that the registered sex offender intends to make a full child contact report within seven days. Requiring this notification to be made within one day of the contact occurring is not particularly onerous, as the notification may be made by telephone.38

In addition, the more detailed written form in which the Commission recommends the child contact report be made—the child contact report form—would need to be submitted within seven days of the contact occurring.39

At present, registered sex offenders are required to make certain reports to police in person, including the initial report, annual report and reporting changes to their place of residence.40 The Commission considers that the proposed child contact report, to be made within seven days of contact occurring, should be made in person. This is consistent with the recommendation that a court, when making a registration order, should be permitted to authorise a delegate of the Secretary of the Department of Human Services to be present for the child contact report.41

Recommendations

33. Registered sex offenders should be required to make a child contact report when their reporting obligations commence, annually, and when any information about their contact with children changes.

34. Registered sex offenders should be required to:
   (a) within one day of the change, notify the police of any changes to information about their contact with children, and
   (b) within seven days of the change, provide a written child contact report to the police in person.

37 Submission 15 (Law Institute of Victoria).
38 Currently, reports that are able to be made other than in person may be made to the Chief Commissioner of Police or the Registrar by telephone: Sex Offenders Registration Act 2004 (Vic) s 23(2); Sex Offenders Registration Regulations 2004 (Vic) reg 10.
39 See below at [7.51]–[7.55] for discussion and recommendations relating to the form in which the child contact report is to be made.
40 Sex Offenders Registration Act 2004 (Vic) s 23(1).
41 See Chapter 6 for this recommendation.
The manner of reporting contact with a child

7.46 Due to inconsistent practices in the collection of information from registered sex offenders by police compliance managers, and the requirement that Victoria Police pass on all reports of unsupervised contact with children, the information provided to the Department of Human Services in these reports is of varying quality and utility in conducting a protective investigation.

7.47 The Commission has been told by the Department of Human Services that the information it receives about registered sex offenders’ contact with children is sometimes not detailed enough, and may not include the nature of the contact, or the identity or whereabouts of the children. The Department has indicated a desire for more targeted information.

7.48 Collecting information about the contact that a registered sex offender is having with children is not a typical police function. Some compliance managers may not know the questions to ask to ascertain whether a registered sex offender might pose a risk to a particular child or children. The quality of the information provided to the Department of Human Services depends on whether the police compliance manager is familiar with the process of reporting on child protection matters.

7.49 The current policy for all reports of unsupervised contact to be passed from Victoria Police to the Department of Human Services without filtering also means that the Department receives a large amount of information, not all of which will be relevant to investigating protective concerns. The Commission understands that this practice has had significant resource implications for the Department.

7.50 In comparison to the many reports of unsupervised contact that the Department of Human Services receives, the number of substantiated reports or reports that result in a protection application is relatively small. This emphasises the need for more targeted information so that the child protection authorities can quickly identify children who might be at risk and take appropriate investigative steps.

The Commission’s response and recommendation

7.51 A new mechanism for collecting information from registered sex offenders is required to improve the varying quality of information currently provided to the Department of Human Services by Victoria Police about contact between registered sex offenders and children.

7.52 Clearly defining the type of contact to be reported, and equipping police compliance managers with a series of questions in a form for the registered sex offender to complete, would help to ensure that the Department of Human Services is provided with information that is of use when conducting protective investigations.

7.53 The Victoria Police Manual already requires compliance managers to complete a questionnaire when registered offenders are reporting contact with children. A new child contact report form should be devised by the key agencies after consulting organisations with relevant experience working with offenders.

7.54 Both Victoria Police and the Department of Human Services should be responsible for designing the child contact report form, as police compliance managers will have primary responsibility for ensuring that registered sex offenders complete it appropriately and the Department of Human Services will use the information it contains to inform its protective investigations.

42 The requirement for Victoria Police to pass on all reports of unsupervised contact with children to the Department of Human Services is discussed in Chapter 9 at [9.33]-[9.38].

43 Consultation 2 (Child Protection, Department of Human Services); 26 (Child Protection, Department of Human Services, Eastern Region).

44 Ibid.

45 Consultation 2 (Child Protection, Department of Human Services).

46 Consultation 26 (Child Protection, Department of Human Services, Eastern Region).

47 Consultation 9 (Principal Practitioner, Department of Human Services).

48 Of the 641 reports of unsupervised contact from the audit, 11 proceeded to protection application and, of these, harm from sexual abuse was the ground for the protection application in five or six of the cases: Consultation 26 (Child Protection, Department of Human Services, Eastern Region).

7.55 Both Victoria Legal Aid and the Public Advocate should be consulted, to ensure that the form is comprehensible to the many different people, including some with a disability, who will be required to complete it.

** Recommendation **

35. The child contact report should be required to be made in the form jointly devised by the Secretary of the Department of Human Services and the Chief Commissioner of Police, in consultation with other relevant agencies, including Victoria Legal Aid and the Public Advocate.