Summary of sex offenders registration report

Overview
The report is about strengthening Victoria's sex offenders registration scheme so that it plays a more effective role in protecting children from sexual abuse.

The sex offenders registration scheme
The scheme has been operating since October 2004.

Under the *Sex Offenders Registration Act 2004*, all adults sentenced for committing sexual offences involving a child are automatically included in a register of sex offenders. Sex offenders under the age of 18 years, and adults sentenced for sexual offences against adult victims, are not automatically included in the register but they may be included by order of the court.

Registration is not part of the offender’s sentence. It is a separate scheme administered by Victoria Police. It is intended to be protective, not punitive.

Registered sex offenders living in the community must keep the police informed about their personal details and whereabouts for a period determined by the Act. They must also report the names and ages of children with whom they live or have had 'regular unsupervised contact'.

Adult offenders report for 8 years, 15 years or life, depending on the offences. Young offenders report for 4 years or 7.5 years.

Why the report was prepared
The Attorney-General, the Hon Robert Clark MP, asked the Commission to review the registration of sex offenders in April 2011. The request followed a report by the Ombudsman to Parliament about the management of information that registered sex offenders give the police. Victoria Police were found to have not informed the Department of Human Services of more than 300 registered sex offenders who were living with children or had unsupervised contact with them.

The Ombudsman referred in his report to concerns held by various senior office holders about the limitations of the Sex Offenders Registration Act. The Commission found that others with direct experience of the operation of the scheme and the management and treatment of sex offenders share these concerns.

The Commission’s report examines the issues that have arisen from its conduct of the reference. It proposes systemic reform to the registration scheme to strengthen the focus on protecting children from those who may harm them in a sexual way and to enable Victoria Police and the Department of Human Services to direct their resources more effectively to that purpose.
The Commission’s findings

The purpose of the scheme has evolved

The scheme was established to provide information to the police for law enforcement purposes and reduce the likelihood that sex offenders will re-offend. Now, one of its primary functions is to operate as a source of information for child protection authorities about children who may be at risk of harm.

The Sex Offenders Registration Act does not readily accommodate the shift in expectations of the scheme and the Commission has made a series of recommendations to sharpen the focus on the protection of children. The recommendations will enable police to:

- better manage those offenders who could pose a risk of sexual harm to children and
- provide child protection authorities with timely information about children who might be at risk unless those authorities and the children’s parents take action to safeguard the child.

Later legislation contributed to the evolving purpose of the scheme

The Sex Offenders Registration Act is one of three statutory post-sentencing schemes in Victoria that seek to protect children from exposure to convicted child sex offenders who are living in the community. As it was the first comprehensive legislative scheme to take a preventative approach to sexual offending in Victoria, it led the government into uncharted territory.

Since then, post-sentencing schemes have been introduced under the Working with Children Act 2005 (Vic) and the Serious Sex Offenders Monitoring Act 2005 (which was replaced by the Serious Sex Offenders (Detention and Supervision) Act 2009). They have contributed to the evolving purpose of the registration scheme by providing additional ways of taking preventative action when responsible authorities fear that a particular convicted sex offender might pose a risk to the sexual safety of children.

The later schemes have taken over and refined some of the preventative expectations of the registration scheme. The Working with Children Act addresses the risk of harm from any sex offenders targeting and sexually abusing children through their paid or voluntary work. The serious sex offenders legislation permits a targeted response when there is evidence to suggest that an offender should be detained in custody, or subjected to close supervision while living in the community, because of an unacceptable risk of re-offending. It applies to offenders who sexually abuse adults as well as those who sexually abuse children.
Expectations of the scheme should take into account the risk of harm to children from sex offenders

Existing research indicates that child sex offenders do not comprise a homogenous and coherent group. For example, commonly held assumptions that child sex offenders have high rates of recidivism and predominantly prey upon children who are unknown to them are not supported by evidence.

Research overseas has found that sex offenders have lower recidivism rates and less criminal history than offenders who commit non-sexual serious crimes. Most serious violent and sex offenders do not have previous convictions for offences of that type, and nor are they convicted again for offences of that type.

Australian research into registered sex offenders has found that:

- fewer than a quarter of the registered sex offenders studied had previous convictions for sexual offences
- 94 per cent abused their own child or a child they already knew.

In Victoria, over the period 2006-07 to 2007-08, 93.1 per cent of the charges in Victoria for sexual penetration of a child aged 10 to 16 years were against defendants with no prior convictions for sexual offences. The highest proportion of defendants with a prior sexual offence conviction occurred in cases with charges of sexual penetration of a child aged under 10 (22.5 per cent).

Sexual assaults of children by strangers are uncommon. The Australian Bureau of Statistics recorded 1000 victims of sexual assault under the age of 15 in Victoria in 2010. Of these, 399 (40 per cent) were assaulted by family members, 499 (50 per cent) were assaulted by someone else they knew, and 67 (7 per cent) were assaulted by a stranger. In 41 cases, the relationship of the offender to the victim was not known. These results are consistent with findings elsewhere in Australia and overseas.

On the other hand, criminological studies demonstrate the existence of a subset of child sex offenders who do re-offend frequently against a high number of victims. The Commission considers that the registration scheme should be refined and strengthened in order to concentrate upon those people who pose the most risk to children.

In his report, the Ombudsman observed that 899 registered sex offenders had reported to the police that they had contact with a child between October 2004 and March 2010. The police did not notify the Department of Human Services about the contact reported by 376 of these offenders. Discovery of this omission saw the Department of Human Services undertake a risk assessment of all of those cases and it found that the 376 offenders had been in contact with a total of 641 children. Following further investigation, most cases did not require further protective action. Of the cases requiring protective intervention, the Department of Human Services only commenced protection application proceedings in the Children’s Court in 11 cases. In half of these protection application cases, the Department’s primary concern was risk of harm from sexual abuse.
The scheme is not adequately focused on the risk of harm to children

As not all sex offenders present the same risk of re-offending, the automatic registration of every adult who commits a sexual offence against a child has extended the reach of the scheme to offenders who are highly unlikely, based on any reasonable assessment, to offend again.

The Sex Offenders Registration Act proceeds on the assumption that all people convicted of the same offence pose the same risk of re-offending and should have the same reporting obligations for the same period. The approach is generic and not based on individual assessments of risk. The current undifferentiated, and generic rather than individual, method of selecting who should be registered has led to a Register which appears to have outstripped initial estimates of size.

The Register, which is becoming increasingly expensive to maintain, contains a vast amount of information of variable usefulness. The Commission found that it is time to assess whether the benefits of the scheme in its current form justify its escalating cost, especially as there are approximately 50 new registrants each month.

As at 1 December 2011, 4165 people had been included on the Sex Offenders Register in the seven years since the scheme commenced. At the current rate of increase, there will be approximately 10,000 registrations by 2020. As details are collected from all registered offenders for many years—and from some for life—the value of the information that is collected is highly likely to decline as the register continues to expand.

Details about people who might be potentially dangerous sex re-offenders sit alongside those of offenders who pose no risk of harm, with police and child protection authorities having no reasonable means of allocating risk ratings, and investigative resources, to particular offenders.

The long reporting periods impose a significant burden on the police to compile and manage information that may be of little operational value in many instances. Demands on the time of child protection workers at the Department of Human Services are also building as the number of reports of contact between registered sex offenders and children continues to rise. Understandably, all of these reports are investigated regardless of the risk of re-offending posed by a particular offender, unless there is compelling evidence of the child’s safety.

Recommendations for systemic reform

Strengthening the focus of the scheme

Individual assessment instead of automatic inclusion

The Commission considers that if registration were more closely aligned with the risk of harm to children, the rate of growth in numbers of registered offenders might be manageable. The police and child protection resources allocated to administering the scheme and taking protective action could be directed to those people who are more likely to re-offend.
Replacing automatic inclusion in the register with a process that allows for individual assessment of the offender is highly likely to enhance the effectiveness of a scheme that places a great strain on the resources of Victoria Police and the Department of Human Services without, as yet, any clear evidence of its success in reducing child sexual abuse. Risk management of an offender is best informed by an individual formulation of the risk relating to that offender, rather than by a one size fits all approach.

**Revised registrable offences**

Another important means of strengthening the scheme’s contribution to child protection is by revising the character and categorisation of the offences that lead to registration. The Commission has devised a refined list of offences which will assist in focusing the scheme on offenders who pose a risk of sexually harming children.

The refined list orders the sexual offences against or involving children into three categories according to the type of offending. The categories seek to reflect, in very broad terms, the risk of sexual abuse of children from re-offending.

The Commission proposes that the courts be given clear legislative guidance when making individual assessments of the need for offenders in each category to be registered. They would be required to apply a different test for each category. The policy underpinning these tests is clear: the higher the category of offence, the higher the expectation that the court will make a registration order.

The proposed changes seek to ensure that the court assesses whether the individual offender poses a risk of sexual harm to children. By directing courts to consider whether registration will serve a useful protective purpose, the new system should avoid the over-inclusiveness of the current scheme which has led to unnecessary diversion of police and child protection resources from dealing with people who pose some risk of re-offending.

The practical outcome will be that most adults who commit penetrative sexual offences against children will be registered, and all other child sexual offenders will be registered if the court finds that this step will serve a useful protective purpose.

In the Commission’s view, the registration scheme should apply only to offenders who have committed sexual offences against children. Offenders who have committed sexual offences against adults currently account for less than three per cent of all registered offenders. The Serious Sex Offenders (Detention and Supervision) Act provides a more suitable protective legislative response to the risk of harm these offenders pose to the community.

**Reporting obligations**

**Special conditions**

All registered sex offenders have the same reporting obligations regardless of their risk of re-offending or their need for assistance to avoid offending behaviour. Again, a generic rather than an individual approach is taken. There is no capacity for individual assessment of the needs of the community or the offender. Consequently, there is no opportunity to include any components that
may assist the offender to comply with their reporting obligations or which could reduce the risk of re-offending. There is no scope to impose any additional preventative measures that may assist child protection authorities to safeguard particular children from harm or permit the police to monitor a particular offender more closely than others.

The Commission believes it should be possible to tailor reporting conditions to support registered offenders in functioning successfully in the community and to better manage the risk of harm to children when there are heightened concerns about the likely behaviour of a particular individual.

It recommends that courts should be permitted to impose special conditions that:

- provide for offenders who are of particular concern to report more frequently
- require an offender with a cognitive disability or mental illness to be accompanied by an independent third person, assigned by the Office of the Public Advocate, when making a report in person
- direct an offender to attend and participate in rehabilitation programs that provide behavioural guidance and assist with integration into the community
- authorise a representative of the Department of Human Services to be present when a registered sex offender is reporting information about their contact with a child or children to the police.

Duration and extension

The duration of a registered sex offender's reporting obligations depends upon the nature of the offences for which the offender was sentenced, and whether the offender was an adult or a child at the time of committing the offences—again adopting a generic rather than an individual approach.

As at 1 December 2011, 711 of the 2830 registered sex offenders who were living in the community faced lifetime reporting obligations. Another 1178 were required to report for 15 years, while 912 registrants were required to report for 8 years. A person who faces lifetime registration can apply to the Supreme Court for removal after 15 years. It will not be possible for anyone to make an application of this nature until 1 October 2019.

The Commission believes that the current reporting periods should be re-considered because they are producing spiralling workloads for Victoria Police and the Department of Human Services without any evidence of the benefits that such lengthy registration produces.

Shorter initial reporting periods for the proposed three new categories of offenders are recommended. Category 1 and Category 2 offenders would be registered for five years, while Category 3 offenders would be registered for three years.

However, the Commission envisages that the total period for which a registered sex offender may be required to report could be longer. It would be possible for the Chief Commissioner of Police to apply to a court to extend a registration
order (and the associated reporting period) for all three categories of offenders. There would be no limit to the number of extensions that could be made in relation to a particular offender.

The reviewing court would consider whether further monitoring would be useful and whether additional assistance such as ongoing participation in rehabilitation programs is desirable. A person’s registration would cease if no useful preventative purpose would be served by ongoing reporting obligations.

Regular review will provide an incentive to the person to comply with conditions such as rehabilitation programs, and to seek reintegration into the community. It would also enhance the allocation of police and Department of Human Services resources by enabling them to focus on those offenders who pose a real risk of harm.

Suspension

There are only a few circumstances in which reporting obligations may be suspended under the Sex Offenders Registration Act. The Commission understands that the reporting obligations of some registered sex offenders are currently suspended for medical reasons, even though there is no provision under the Act to deal with these situations.

It recommends permitting the Chief Commissioner of Police to suspend the reporting obligations for up to 12 months if satisfied that the offender is no longer able to comply with them due to physical or cognitive impairment.

Transitional arrangements

Implementation of the Commission’s proposed changes to the sex offenders registration scheme would result in two very different schemes for two groups of people—those already on the Sex Offenders Register and those placed on the Register by a court order under the revised scheme—unless the new arrangements can be applied to those people now on the Register.

There is a need for consistency in the way sex offenders are managed under a registration scheme, regardless of the time at which they were registered.

The absence of appropriate transitional arrangements would prolong the inefficiency and expense caused by the current undifferentiated and generic approach to the selection of offenders for inclusion on the Register. These arrangements are also necessary as a matter of fairness to existing registered sex offenders so that they are treated in the same way as later registered sex offenders.

After considering various options, the Commission believes that a rigorous, efficient, transparent and fair process would be to establish a panel of experts to review the circumstances of each existing registered sex offender in order to determine how that person should be dealt with under the proposed new scheme.

The Commission proposes that the panel comprise a retired judge, a health professional who is experienced in treating child sex offenders, and at least one other person with experience making decisions about the management of offenders, such as a current or former member of the Adult Parole Board. A
panel of this nature should bring appropriate experience to the task of making transitional decisions.

Offenders registered under another scheme
All other Australian states and territories have sex offender registration schemes. Each scheme recognises and enforces the registration of offenders under the other schemes. A sex offender who is registered in one state or territory cannot escape their reporting obligations by visiting or moving interstate.

The Commission does not believe that interstate registrants should be encouraged to re-locate in order to benefit from any changes to Victoria’s legislation. Victoria should continue to require interstate offenders who re-locate to Victoria to remain on the Register for the period determined by the law in the original jurisdiction.

Police powers and breaches of reporting obligations
The police have the power to enter and search any premises without a warrant when they have reasonable grounds for believing that a registered sex offender has committed the offence of failing to comply with their reporting obligations.

The same powers are not available to the police in relation to the offence of furnishing false and misleading information.

The Commission believes that the police should be given specific entry and search powers when dealing with all suspected breaches of the Sex Offenders Registration Act. The Commission also proposes that the two offence provisions be combined into a single summary offence for which the maximum penalty is proportionate to the degree of wrongdoing.

Reportable contact with children
The Commission makes a number of recommendations to enhance the timely flow of useful information from the Register to the Department of Human Services to assist it in investigating protective concerns about a registered sex offender having contact with a particular child or children. These recommendations include clearly defining the type of ‘contact’ with a child that registered sex offenders are required to report to police, and amending the process by which information about registered sex offenders’ contact with children is collected by Victoria Police and shared with the Department of Human Services. It is necessary that the obligations imposed on registered sex offenders are clear and unambiguous. That is not the case under the current legislation and consequently the Commission has recommended changes to rectify this deficiency.

Child protection prohibition orders
Sometimes a person who has completed a sentence following a conviction for a sexual offence involving a child might behave in a way that is lawful but of concern to the police or child protection authorities. Such behaviour could include contacting a child against whom the person has previously committed offences, or frequenting a place where grooming or other offending previously occurred, such as a municipal swimming pool or park. Other Australian
jurisdictions have introduced child protection prohibition orders to enable a court to place restrictions upon this type of behaviour.

Child protection prohibition orders provide a preventative mechanism that permits a court to order that a registered offender not engage in certain types of behaviour or employment, go to certain places, or contact certain people. They are similar to other types of preventative orders made under the Family Violence Protection Act 2008 and the Personal Safety Intervention Orders Act 2010.

The Commission recommends that child protection prohibition orders should be available in Victoria. They would enable Victoria Police to take appropriate action to protect a child who may be at risk of harm from a registered sex offender without child protection authorities having to follow the existing practice of making a protection application in relation to the child.

**Information sharing**

The Commission's terms of reference direct it to consider ‘the management and use of information about registered sex offenders'. The Ombudsman reported that various people expressed concerns to him about the Sex Offender Registration Act’s limitations concerning information sharing between Victoria Police, Corrections Victoria and the Department of Human Services.

**Sharing by Victoria Police and Corrections Victoria with the Department of Human Services**

The Commission believes that the Chief Commissioner of Police should have clear, legislative authority to pass information to the Secretary of the Department of Human Services about a registered sex offender's contact with an identified child or children. That is not the position under the current legislation.

The Commission also recommends amending the Children, Youth and Families Act to authorise the Secretary of the Department of Justice to disclose risk summary reports or assessment reports in relation to a registered sex offender where the Secretary of the Department of Human Services holds concerns about the risk the offender poses to a particular child or children.

**Giving information to parents and carers**

There are no express powers in the Sex Offenders Registration Act that permit police or child protection workers to inform members of the community that a particular person is a registered sex offender. The Commission considers that, in certain circumstances, police officers and child protection workers should be permitted to disclose to a child's parent or carer that a person having contact with the child is a registered sex offender.

Disclosures of this nature should take place with clear statutory authorisation within narrowly defined circumstances.

Given the sensitivity of the information that would be disclosed, the Commission recommends that the Secretary of the Department of Human Services and the Chief Commissioner of Police authorise only officers of a particular grade or rank (designated officers) to make these disclosures. Further, disclosures should only be made if the designated officer believes, on reasonable grounds, that the disclosure is necessary to ensure the safety and wellbeing of the child. The
Commission’s proposals draw upon guided disclosures for child protection purposes in the United Kingdom.

Designated officers, parents and carers must comply with court suppression orders and laws concerning identification of victims of sexual offences and children who are, or have been, parties to proceedings. The Commission suggests that the Chief Commissioner and the Secretary of the Department of Human Services keep this matter under on-going review as they are both well placed to recommend legislative action if unauthorised disclosures occur.

In order to assist the child’s parent or carer to respond to a disclosure under the recommended new provisions, the designated officer should be required to refer the child’s parent or carer to an appropriate counselling service.

The Commission proposes that, if a designated officer intends to make a disclosure of this kind to a child’s parent or carer, that officer should be required to make all reasonable efforts to notify the registered offender prior to making the disclosure. This step will permit registered sex offenders to be involved in the process and prepare themselves for the possible effects of the disclosure. Research from the United Kingdom illustrates the need for any disclosure scheme to complement the rehabilitation of registered sex offenders.

However, if the designated officer believes on reasonable grounds that notifying the registered sex offender before making a disclosure to a parent or carer would endanger the life or safety of any person, they should be permitted to dispense with this requirement.

Contribution to a national approach

The Sex Offenders Registration Act is based on a model endorsed by all state and territory police ministers. All jurisdictions now have similar registration schemes, though they have departed from the model in different ways and are increasingly divergent. Importantly, however, registered offenders cannot avoid their obligations by moving interstate because each state and territory recognises and enforces the reporting obligations imposed in any Australian jurisdiction.

Underpinning the national approach to registration is a national database of registered offenders, known as the Australian National Child Offender Register, to which all police forces and other law enforcement agencies have access. CrimTrac, a Commonwealth executive agency, maintains the database.

Although the Act was passed in the context of building a national approach to registration, and allows Victoria Police to share information with other law enforcement agencies, it does not provide for the disclosure of information to CrimTrac. The Commission recommends that the Act be amended to rectify this anomaly.

Accountability and review

This report, and the Ombudsman’s report, have permitted the Victorian Parliament to receive some information about the operation and impact of the sex offenders registration scheme. Such opportunities for review are not currently built into the Sex Offenders Registration Act. The Commission believes they should be.
The Commission recommends:

- expanding the compliance monitoring role that has been performed by the Director, Police Integrity and which is expected to be transferred to the Independent Broad-based Anti-corruption Commission, and requiring compliance reports to be tabled in Parliament

- requiring the Chief Commissioner of Police to report statistical information on the operation of the scheme to the Police Minister annually, for tabling in Parliament

- external review of the effectiveness of the legislation every five years.

The Commission also recommends further research into the extent to which sex offender registration schemes discourage re-offending. It would be conducted as a national project under the auspices of police ministers.