



Victorian
Law Reform
Commission

Sex offenders registration



INFORMATION PAPER

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Call for submissions

Call for submissions

The Victorian Law Reform Commission invites responses to the issues we discuss in this information paper.

What is a submission?

Submissions are your ideas or opinions about the law under review and how to improve it. The information paper contains a number of questions that seek to guide submissions. You are not required to answer any or all of these questions if you wish to make a submission.

Submissions can be anything from a personal story about how the law has affected you, to a research paper complete with footnotes and bibliography. The Commission wants to hear from anyone who has experience with the law under review. It does not matter if you only have one or two points to make—we still want to hear from you.

What is my submission used for?

Submissions help the Commission understand different views and experiences about the law it is researching. We use information in submissions, and from consultations, along with other research to write our reports and develop recommendations.

How do I make a submission?

Submissions can be made in writing or, in the case of those requiring assistance, verbally to one of the Commission staff. There is no required format. However, it would help us if you addressed some or all of the questions at the end of the paper.

Submissions can be made by:

- Email: law.reform@lawreform.vic.gov.au
- Mail: GPO Box 4637, Melbourne Vic 3001
- Fax: (03) 8608 7888
- Phone: (03) 8608 7800, 1300 666 557 (TTY) or 1300 666 555 (cost of a local call)

Assistance

If you require an interpreter, need assistance to have your views heard, or would like a copy of this paper in an accessible format, please contact the Commission.

Publication of submissions

The Commission is committed to open access to information and we publish submissions on our website to encourage discussion and keep the community informed about our projects.

We will not place submissions on our website that contain offensive or defamatory comments, or which are outside the scope of the reference. Before publication, we may remove personally identifying information from submissions that discuss specific cases or the personal circumstances and experiences of people other than the author. Personal addresses and contact details are removed from all submissions before they are published.

The views expressed in the submissions are those of the individuals or organisations who submit them and their publication on our website does not imply that the Commission agrees with these views.

We keep submissions on the website for 12 months following the completion of a reference. A reference is complete on the date the final report is tabled in Parliament. Hardcopies of submissions are archived and sent to the Public Records Office Victoria.

The Commission also accepts submissions made in confidence. These submissions will not be published on the website or elsewhere. Submissions may be confidential because they include personal experiences or other sensitive information. Any request for access to a confidential submission will be determined in accordance with the Freedom of Information Act 1982 (Vic), which has provisions designed to protect personal information and information given in confidence. Further information can be found at <http://www.foi.vic.gov.au>.

Please note that submissions that do not have an author or organisation's name attached will not be published on the Commission's website or made publicly available and will be treated as confidential submissions.

Confidentiality

When you make a submission you must decide how you want your submission to be treated. Submissions are either public or confidential.

- Public submissions can be referred to in our reports, uploaded to our website and made available to the public to read in our offices. The names of submitters will be listed in the final report. Private addresses and contact details will be removed from submissions before they are made public.
- Confidential submissions are not made available to the public. The Commission considers confidential submissions but they are not referred to in our final reports as a source of information or opinion other than in exceptional circumstances.

Please let us know your preference when you make your submission. If you do not tell us you want your submission treated as confidential we will treat it as a public submission.

Anonymous submissions

If you do not put your name or an organisation's name on your submission, it will be difficult for us to make use of the information you have provided. If you have concerns about your identity being made public, please consider making your submission confidential rather than submitting it anonymously.

More information about the submission process and this reference is available on our website: www.lawreform.vic.gov.au.

Submission deadline: 29 July 2011

Glossary

ANCOR	Australian National Child Offender Register
Chief Commissioner	Chief Commissioner of Victoria Police
corresponding registrable offender	A person who would be required to report under a sex offender registration scheme in another state or territory if they had not moved to Victoria.
LEAP	The Victoria Police Law Enforcement Assistance Program. The LEAP database stores details of family incidents, missing persons and all crimes brought to the notice of Victoria Police.
registered sex offender	Someone who has been convicted and sentenced for a registrable offence and is placed on the Sex Offenders Register. The <i>Sex Offenders Registration Act 2004 (Vic)</i> uses the terms 'registrable offender' and 'registered sex offender'. We use the term 'registered sex offender' for ease of expression.
registrable offence	An offence that results in registration as a sex offender upon conviction and sentence. A registrable offence under the <i>Sex Offenders Registration Act 2004 (Vic)</i> includes an offence listed in schedule 1 or schedule 2 of the Act and an offence that results in the making of a sex offender registration order.
reportable information	Information that a registered sex offender must report to the police and keep up to date for the duration of their reporting period. It includes information about their identity, where they live and work, their contact details, children they have unsupervised contact with, travel arrangements and the car they drive.
reporting obligation	The obligation imposed on registered sex offenders to provide particular details about themselves (reportable information) to the police in certain ways within specified times and for a specified period (the reporting period).
reporting period	The period for which registered sex offenders must report information about themselves to the police in accordance with their reporting obligations. The length of the reporting period depends on the offence committed and the age of the offender at the time. For adults, it is eight years, 15 years or life. For minors it is four years or seven and a half years.
sex offender registration order	An order made by a court on the application of the Director of Public Prosecutions or police prosecutor that an offender must comply with the reporting obligations of the <i>Sex Offenders Registration Act 2004 (Vic)</i> .

Terms of reference

The Victorian Law Reform Commission is to review and report on the registration of sex offenders under the *Sex Offenders Registration Act 2004* as well as the management and use of information about registered sex offenders by law enforcement and child protection agencies.

The purpose of the review is to ensure that the legislative arrangements for the collection and use of information about registered sex offenders enable law enforcement and child protection agencies to assess the risk of re-offending, prevent further offences, and protect children from harm.

In particular, the Commission should consider:

- the powers and obligations of the Chief Commissioner of Police under the Sex Offenders Registration Act to collect information from registrants and relevant agencies and for the Chief Commissioner and those agencies to exchange that information for law enforcement purposes and for assessing the risks posed by registrants to children and the broader community
- the powers of the Chief Commissioner to assess the veracity of information provided by registrants for the purposes of enforcing the Sex Offenders Registration Act and managing risks posed by registrants to children and the broader community, and
- the definition of unsupervised contact including whether this be broadened to include non-physical contact.

In conducting the review, the Commission should have regard to:

- the report and recommendations of the Ombudsman's report *Whistleblower's Protection Act 2001—investigation into failure of agencies to manage registered sex offenders*
- the purposes of maintaining a register for sex offenders
- risk assessment processes employed by law enforcement and child protection agencies
- legislative arrangements in Victoria, other Australian jurisdictions and overseas to foster inter-agency collaboration in child protection
- the desirability of nationally consistent legislation.

In making its report, the Commission should consider the interaction between the *Sex Offenders Registration Act 2004*, the *Children, Youth and Families Act 2005* and other legislation relevant to the management of sex offenders and the protection of children.

Issues associated with the operation of the *Working with Children Act 2005* are not within the scope of the review.

The Commission is to report by 4 November 2011.





Sex offenders registration

1. Introduction

Terms of reference

- 1.1 In April 2011, the Attorney-General asked the Victorian Law Reform Commission to review the registration of sex offenders under the *Sex Offenders Registration Act 2004* (Vic) and, in particular, the management and use of information about sex offenders by law enforcement and child protection agencies.
- 1.2 The Attorney-General's reference to the Commission followed the tabling in Parliament of a report by the Victorian Ombudsman concerning failure by Victoria Police, the holder of the Sex Offenders Register, to inform the Child Protection division of the Department of Human Services that many registered sex offenders were living with or had unsupervised contact with children.¹
- 1.3 The Ombudsman referred to concerns held by various senior office holders about the limitations of the Sex Offenders Registration Act and concluded that 'the current legislative arrangements require review to ensure the obligations on both registered sex offenders and the registry are balanced with the need to protect children from harm'.²
- 1.4 The Ombudsman recommended that the Commission review the Sex Offenders Registration Act, considering both broad structural issues and some identified matters of detail.³ He proposed that we consider 'the legislative arrangements in place for the registration of sex offenders and the management of the information' they are required to provide.⁴ He also proposed that we examine two specific issues—the meaning of the requirement that registered sex offenders report 'regular unsupervised contact' with children and the power of police officers to test the veracity of the information that registered sex offenders provide.⁵
- 1.5 The Attorney-General has accepted the Ombudsman's recommendation and our terms of reference reflect the matters raised in his report.

Our process

- 1.6 The Commission is required by its terms of reference to deliver a report to the Attorney-General by 4 November 2011.
- 1.7 In order to meet this reporting deadline, we are unable to follow our usual practice of publishing a comprehensive consultation paper that examines the major issues, discusses developments in other jurisdictions and identifies various reform options.
- 1.8 This information paper describes the operation of the Victorian sex offender registration system and contains a number of questions that seek to elicit responses about ways in which it could be improved.

1 Ombudsman Victoria, *Whistleblowers Protection Act 2001—Investigation into the failure of agencies to manage registered sex offenders*, February 2011.

2 *Ibid* 36.

3 *Ibid* 38, rec 10.

4 *Ibid*.

5 *Ibid*.

- 1.9 We have not sought to evaluate the public policy that underpins the legislation or analyse research concerning the effectiveness of sex offender registration schemes in this paper. These matters will be included in our final report.
- 1.10 We seek submissions by 29 July 2011.

2. Overview of Victoria's sex offender registration scheme

Introduction

- 2.1 Victoria's sex offender registration scheme was established by the *Sex Offenders Registration Act 2004* (Vic) which came into effect on 1 October 2004. The legislation, which is exceedingly complex, contains a number of novel drafting practices. It is similar to a New South Wales Act passed in 2000.¹
- 2.2 The legislation establishes a Sex Offenders Register administered by the Chief Commissioner of Police. Inclusion in the Register is a mandatory step following conviction for a range of nominated sexual offences. The courts also have a discretionary power to order a person convicted of any offence to comply with the reporting obligations set out in the Act.
- 2.3 Registered sex offenders must report to Victoria Police at least annually, providing a broad range of information about their identity and movements for a period fixed by the legislation. It is an offence for a registered sex offender to fail to comply with their reporting obligations, or to provide the police with false or misleading information.
- 2.4 The Chief Commissioner is required to maintain the Sex Offenders Register and restrict access to it. In some circumstances, the Chief Commissioner has the power to disclose information in the Register to a government department, a public statutory authority or a court.

Purposes of the scheme

- 2.5 Statements about the purposes of the sex offender registration scheme are found in the legislation and the Minister's second reading speech.
- 2.6 Section 1(1) of the Sex Offenders Registration Act says that the Act has three purposes. They are:
 - To require sex offenders to keep the police informed of their whereabouts and other personal details for a period of time in order to:
 - reduce the likelihood of re-offending, and
 - aid the investigation and prosecution of any future offences that these people may commit.
 - To prevent registered sex offenders from working in child-related employment.
 - To authorise the Office of Police Integrity to monitor how the Chief Commissioner of Police administers the Sex Offenders Register.²
- 2.7 When introducing the legislation in Parliament, the then Minister for Police and Emergency Services emphasised the monitoring role of the scheme.³ He stated that sex offenders were

1 *Child Protection (Offenders Registration) Act 2000* (NSW). The NSW legislation is similar to the *Sex Offenders Act 1997* (UK) c 51.

2 *Sex Offenders Registration Act 2004* (Vic) s 1(1)(a).

3 Victoria, *Parliamentary Debates*, Legislative Assembly, 3 June 2004, 1850 (Andre Haermeyer, Minister for Police and Emergency Services).

unlike other offenders who tend to ‘settle down’, because they may continue to offend throughout their lifetime.⁴ The Minister said that ‘paedophiles, in particular, are notoriously compulsive and recidivist’.⁵ He added that:

Premised, therefore, on the serious nature of the offences committed and the recidivist risks posed by sexual offenders, the bill recognises that certain offenders should continue to be monitored after their release into the community. It evinces Victoria’s commitment to lead the fight against the insidious activities of paedophiles and other serious sex offenders. More particularly, it will put Victoria to the forefront of law enforcement by not only committing to the mandatory registration of child sex offenders but also empowering the courts with a discretion to order the registration of serious sexual offenders who commit sex offences against adult victims.⁶

Inclusion in the Register

- 2.8 All Victorian adults who are convicted of and sentenced for sexual offences involving children⁷ become registered sex offenders.⁸ Registration is a mandatory administrative consequence following conviction of and sentencing for these offences.⁹ There are no exceptions. Upon registration, sex offenders are required to comply with various reporting requirements, which are discussed below.
- 2.9 Two categories of sex offences result in automatic inclusion in the Sex Offenders Register. They are known as Class 1 and Class 2 offences.¹⁰ Class 1 offences are the most serious crimes, generally involving penetrative sex with a child. Class 2 covers a broad range of sex offences involving children, including matters such as indecent assault of a child and possession of child pornography. These offences are listed in the Appendix to this paper.
- 2.10 The class and number of offences of which an adult is convicted determine the length of that person’s reporting obligations as a registered sex offender.¹¹ For instance, an adult who is convicted of two or more counts of sexual penetration of a child under 16 (a Class 1 offence) must comply with the sex offender reporting obligations for the rest of their life.¹² An adult convicted of one count of sexual penetration of a child or two counts of indecent assault of a child must comply with the reporting obligations for 15 years.¹³ The minimum reporting period for an adult is eight years.¹⁴
- 2.11 The courts have a discretionary power to include children convicted of Class 1 and Class 2 sexual offences on the Register. In addition, any person who is convicted of *any* offence may be registered as a sex offender if the sentencing court is satisfied beyond reasonable doubt that ‘the person poses a risk to the sexual safety of one or more persons or of the community’.¹⁵ In these circumstances, the court can make a sex offender registration order requiring the person to comply with the reporting obligations of the Act.¹⁶
- 2.12 Discretionary sex offender registration orders can be made only if the prosecution applies for one within 30 days of sentencing.¹⁷ The length of the reporting obligations depends upon the age of the offender as well as the nature of the offence.¹⁸ For adults, the periods are again eight years, 15 years or life. The reporting period for a person who was a child at the time of the offence is half that which would apply to an adult offender, but no more than seven and a half years.¹⁹

4 Ibid.

5 Ibid.

6 Ibid.

7 The age of the child victims to which the offences apply differs from one offence to another—see the Appendix to this paper for a list of registrable offences.

8 The *Sex Offenders Registration Act 2004* (Vic) requires the retrospective registration of offenders who were subject to a specified sentencing order in respect of a Class 1 or 2 registrable offence immediately before 1 October 2004: see s 3 (definition of ‘existing controlled registrable offender’), and s 6(4). The specified sentencing orders include imprisonment, suspended terms of imprisonment, parole, home detention, drug treatment orders and others.

9 The date of sentencing is used throughout the Act as the date from which various consequences flow, such as inclusion in the Register and the commencement of reporting requirements for people who are not in custody. For ease of communication we refer to ‘conviction’ rather than ‘conviction and sentencing’ throughout this paper, except when the date of sentence as opposed to the date of conviction is significant.

10 The Class 1 offences are listed in sch 1 to the *Sex Offenders Registration Act 2004* (Vic) and the Class 2 offences are listed in sch 2.

11 *Sex Offenders Registration Act 2004* (Vic) s 34.

12 Ibid s 34(1)(c), sch 1.

13 Ibid s 34(1)(b), schs 1–2. The reporting period starts from the date of sentence or from the date of the person’s release from prison (or other government custody) if the person is in custody following conviction and sentencing: *Sex Offenders Registration Act 2004* (Vic) s 33.

14 *Sex Offenders Registration Act 2004* (Vic) s 34(1)(a).

15 Ibid ss 11(2)–(3).

16 Ibid s 11.

17 Ibid s 11(6).

18 Ibid s 34(4).

19 Ibid s 35.

- 2.13 The Act does not explain when or how a registered sex offender's name and other relevant details are included in the Register.
- 2.14 It appears that an offender is included in the Sex Offenders Register from the time a court either imposes a sentence for a Class 1 or Class 2 offence or makes a sex offender registration order following conviction for any other offence. The court must ensure that the Chief Commissioner of Police is provided with the details of the sentence or order as soon as practicable.²⁰
- 2.15 How long a person is included in the Sex Offenders Register—as opposed to how long they must comply with the reporting obligations—is also unclear. At the conclusion of the reporting period, the Chief Commissioner is directed to destroy certain materials obtained from the registered sex offender,²¹ but not any of the information held in the Register itself. The Act does not provide for the registration to expire automatically and nor does it direct the Chief Commissioner to remove the registered sex offender's name from the Register when the reporting period ends.
- 2.16 As at 1 June 2011, 3933 people had been included on the Sex Offenders Register since the scheme began.²² At present, approximately 50 people are added to the Register every month. It is estimated that 5000 people will have been included on the Register by the end of 2012, and 6500 by the end of 2014.²³

Information in the Register

- 2.17 Section 62 of the Sex Offenders Registration Act directs the Chief Commissioner of Police to establish and maintain the Sex Offenders Register.
- 2.18 Registered sex offenders provide Victoria Police with much of the information in the Register as part of their regular statutory reporting requirements. Information from the Register is shared with other law enforcement agencies throughout the country via the Australian National Child Offender Register (ANCOR), hosted by a Commonwealth agency, CrimTrac.
- 2.19 Upon initial registration,²⁴ and thereafter annually,²⁵ registered sex offenders living in the community must provide Victoria Police with a range of information about their personal circumstances, such as full name, date of birth, address, telephone number, email address, internet service provider, living arrangements, employment, interstate and overseas travel and contact with children.²⁶ Registered sex offenders must report some changes to this information, such as a new address, within 14 days of the change,²⁷ while other changes, such as reportable contact with a child, must be reported within one day.²⁸ It is an offence to fail to comply with these reporting obligations or to provide false or misleading information.²⁹ The police are permitted to take and retain fingerprints, finger scans and photographs during the reporting period.³⁰
- 2.20 The Chief Commissioner of Police may apply to the Supreme Court at any time to have a registered sex offender's reporting obligations suspended and, if circumstances change, to have them reinstated.³¹ Registered sex offenders who are required to comply with the reporting obligations for life may apply, after 15 years, for a suspension if they have not committed a registrable offence in the meantime and are not on parole for a registrable offence.³² The court may make an order suspending an offender's reporting obligations only if it is satisfied that the offender 'does not pose a risk to the sexual safety of one or more persons or of the community'.³³

20 Ibid s 51. Although the Act refers to 'registrable offenders' and 'registered offenders', these terms do not convey different points in time in the registration process. Both terms refer to an offender who has been sentenced for a registrable offence, which is a Class 1 or Class 2 offence or an offence that results in the court making a sex offender registration order.

21 *Sex Offenders Registration Act 2004* (Vic) s 30.

22 Information provided to the Commission by the Sex Offenders Registry, Victoria Police.

23 Ibid.

24 *Sex Offenders Registration Act 2004* (Vic) s 14.

25 Ibid s 16.

26 Ibid s 14.

27 Ibid s 17(1).

28 Ibid ss 17(1A), 14(2)(b)–(c).

29 Ibid ss 46, 47.

30 Ibid ss 27–27A.

31 Ibid ss 39A, 44A. The Commission believes that this power has not been used.

32 *Sex Offenders Registration Act 2004* (Vic) s 39.

33 Ibid s 40(2). The standard of proof is not specified.

- 2.21 The Director of Police Integrity is required to monitor the Chief Commissioner's compliance with the obligations to maintain the Register.³⁴ The Director may give the Minister for Police and Emergency Services a copy of any compliance report and must give the Minister a copy of a report if directed to do so.³⁵ The Minister is not required to table any reports from the Director in Parliament or otherwise disclose them to the public.

Interaction with other sex offender legislation

- 2.22 The Sex Offenders Registration Act forms part of a suite of Victorian legislation that seeks to reduce the risk of convicted sex offenders re-offending and to restrict their access to children.
- 2.23 Earlier legislation deals with sentencing for sexual offences. The *Sentencing Act 1991* (Vic) was amended twice, once in 1993 to provide for indefinite sentences and again in 1997 to change sentencing practices for serious violent and sexual offenders.
- 2.24 The more recent legislation introduces post-sentence preventative measures. The Sex Offenders Registration Act, the *Working with Children Act 2005* (Vic) and the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic)³⁶ establish separate preventative schemes. The Sex Offenders Registration Act was the first legislative step in this preventative response to child sex offending, and does not appear to have been designed with a view to complementing the later schemes.

***Sentencing (Amendment) Act 1993* (Vic)**

- 2.25 This Act introduced section 18B of the Sentencing Act, which empowers the County and Supreme courts to impose an indefinite sentence on an offender for a 'serious offence', including a number of sexual offences.³⁷ The court must be satisfied, to a high degree of probability, that the offender is a serious danger to the community by reference to a number of factors including their character, past history and the nature of the offence.³⁸ In determining the question of danger to the community, the court must consider:
- whether the nature of the serious offence is exceptional
 - medical or psychiatric material received by the court, and
 - the risk of serious danger to the community if an indefinite sentence were not imposed.³⁹

***Sentencing and Other Acts (Amendment) Act 1997* (Vic)**

- 2.26 Part 2 of this Act introduced the serious offender provisions that are now found in Part 2A of the Sentencing Act. These provisions characterise certain offenders as serious sexual or violent offenders. The Act provides that an offender is considered a 'serious offender' upon conviction and imprisonment either for a second sexual and/or violent offence, or for persistent sexual abuse.⁴⁰ This means that, in sentencing the offender, the court must regard protection of the community as the principal purpose of the sentence. In order to achieve that purpose, the court may impose a sentence longer than that which is proportionate to the offending.⁴¹ The Act also provides that, unless otherwise stated, each term of imprisonment imposed must be served cumulatively on any other term imposed.⁴²

34 *Sex Offenders Registration Act 2004* (Vic) s 66A.

35 *Ibid* s 66D.

36 This Act replaced the *Serious Sex Offenders Monitoring Act 2005* (Vic).

37 For the purposes of indefinite sentences, 'serious offence' means murder, manslaughter, child homicide, defensive homicide, causing serious injury intentionally, threats to kill, rape, assault with intent to rape, incest, sexual penetration of a child under 16, abduction or detention, abduction of a child under the age of 16, kidnapping, armed robbery, sexual penetration of a child under the age of 10, sexual penetration of a child aged between 10 and 16, various historical offences and conspiracy, incitement or attempt to commit any of these offences: *Sentencing Act 1991* (Vic) s 3 (definition of 'serious offence').

38 *Sentencing Act 1991* (Vic) s 18B(1).

39 *Ibid* s 18B(2).

40 *Ibid* s 6B(2). Sexual offences are defined in the *Sentencing Act 1991* (Vic) sch 1 cl 1.

41 *Sentencing Act 1991* (Vic) s 6D(a)–(b)

42 *Ibid* s 6E.

Working with Children Act 2005 (Vic)

- 2.27 The Working with Children Act regulates child-related employment. Its primary purpose is to assist in protecting children from sexual or physical harm by ensuring that people who work with, or care for, them have their suitability to do so checked by a government body.⁴³
- 2.28 Anyone wanting to engage in child-related paid or volunteer work must apply to the Department of Justice for a working with children check and an assessment notice.⁴⁴ Employers, volunteer organisations and employment agencies must not engage anyone in child-related work without a current assessment notice.⁴⁵
- 2.29 Under the Working with Children Act, registered sex offenders are prohibited from applying for a working with children check and assessment notice.⁴⁶ Anyone who has a current assessment notice or is applying for one and subsequently becomes a registered sex offender must notify the Secretary of the Department of Justice, their employer, and any agency with which the offender is listed.⁴⁷
- 2.30 The Sex Offenders Registration Act also prohibits registered sex offenders from applying for or working in any 'child-related employment',⁴⁸ which includes a very broad range of occupations and volunteer undertakings, such as working in schools and assisting at school crossings.⁴⁹

Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic)

- 2.31 Offenders who have served custodial sentences for certain sex offences and present an unacceptable risk of harm to the community may be subject to ongoing detention and supervision under the *Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic)* (Serious Sex Offenders Act).⁵⁰ This Act came into force on 1 January 2010 and repealed the *Serious Sex Offenders Monitoring Act 2005 (Vic)*. Despite the repeal of the 2005 Act, extended supervision orders made under that Act continue to apply and any review of those orders comes under the new Serious Sex Offenders Act.⁵¹
- 2.32 The Serious Sex Offenders Act permits the Secretary of the Department of Justice⁵² to apply to the sentencing court⁵³ for a post-release supervision order and the Director of Public Prosecutions to apply to the Supreme Court for a detention order for a period of up to three years.⁵⁴
- 2.33 Before making a supervision order, the court must be satisfied 'by acceptable, cogent evidence' and 'to a high degree of probability'⁵⁵ that 'the offender poses an unacceptable risk of committing a relevant offence if a supervision order is not made and the offender is in the community'.⁵⁶
- 2.34 The court usually has extensive psychiatric or psychological assessment reports, obtained by the Department of Justice and the respondent's solicitors, which address the risk of the offender committing further sexual offences.
- 2.35 Supervision orders include core conditions, such as not committing a relevant offence and not leaving Victoria without the permission of the Adult Parole Board.⁵⁷ The court may also impose a number of other conditions, including where the offender may reside.⁵⁸ The period of a supervision order is not to exceed 15 years,⁵⁹ but an order may be renewed by the court on application of the Secretary of the Department of Justice.⁶⁰

43 *Working with Children Act 2005 (Vic)* s 1(1).

44 *Ibid* s 33(1). From 1 December 2010, the assessment notice is a Working with Children Check Card—see *Working with Children Regulations 2006 (Vic)*.

45 *Working with Children Act 2005 (Vic)* s 35.

46 *Ibid* s 39A.

47 *Ibid* s 20(2)(c).

48 *Sex Offenders Registration Act 2004 (Vic)* s 68.

49 *Ibid* s 67.

50 *Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic)* ss 1(1)–(2).

51 *Ibid* ss 3–4.

52 *Ibid* ss 7, 9.

53 In practice, this is usually the County Court. The application for a supervision order is made to the sentencing court if the sentencing court was either the County or Supreme Court, or to the County Court if the sentencing court was the Magistrates' Court: *ibid* s 7(3).

54 *Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic)* ss 33, 35.

55 *Ibid* s 9(2). For these purposes, an offender can be deemed to pose an unacceptable risk of committing a relevant offence even if the likelihood of them committing a relevant offence is less likely than 'more likely than not': s 9(5).

56 *Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic)* s 9(1).

57 *Ibid* s 16.

58 *Ibid* ss 15–17.

59 *Ibid* s 12(1).

60 *Ibid* s 28.

- 2.36 The Supreme Court can make a detention order only if satisfied that ‘the offender poses an unacceptable risk of committing a relevant offence if a detention order is not made and the offender is in the community’.⁶¹ In determining whether there is an unacceptable risk, the Court must consider those matters that are relevant when deciding whether to make a supervision order.⁶² A detention order causing the offender to be detained in prison⁶³ can be made for a period of up to three years.⁶⁴ However, the Supreme Court can renew a detention order on the application of the Director of Public Prosecutions.⁶⁵ If the Court concludes that a detention order is inappropriate, it may make a supervision order in respect of the offender.⁶⁶
- 2.37 As at 1 June 2011, there were 40 offenders on supervision orders under the Serious Sex Offenders Act and six on interim supervision orders. A further 23 offenders were on extended supervision orders under the earlier legislation, the *Serious Sex Offenders Monitoring Act 2005* (Vic).⁶⁷ The Commission understands that no detention orders have been made.
- 2.38 The manner in which the Serious Sex Offenders Act and the Sex Offenders Registration Act interact is unclear on the face of either statute. The Sex Offenders Registration Act specifies that if a registered sex offender who is subject to a detention or supervision order wants to apply for a change of name, the application must be made in accordance with the Serious Sex Offenders Act.⁶⁸ The Commission believes that a small number of people who are the subject of a supervision order under the Serious Sex Offenders Act are not included on the Sex Offenders Register.⁶⁹

National law enforcement initiatives

- 2.39 Victoria’s sex offender registration scheme forms part of a national approach to monitoring the activities of people convicted of sexual offences involving children. All Australian states and territories have broadly similar laws based on model legislation. Victoria’s scheme applies to offenders registered under equivalent legislation in other Australian jurisdictions who move to or visit Victoria from interstate.⁷⁰ Similarly, the reporting obligations of offenders registered under Victoria’s scheme effectively accompany them when they move to another Australian jurisdiction.
- 2.40 Information about sex offenders was first collected and made available to police forces nationally by the Australian Bureau of Criminal Intelligence, which was established by the Australian Police Ministers Council in 1981 to facilitate the exchange of criminal intelligence between law enforcement agencies.⁷¹
- 2.41 During the 1990s, a series of reviews and public inquiries considered the merits of a national registration system of child sex offenders:
- In May 1995, the Parliament of Victoria Crime Prevention Committee proposed that Victoria Police establish and maintain a register of all convicted adult sex offenders and recommended that the Attorney-General and Police Minister urge their interstate counterparts to extend the registration program nationally.⁷²
 - Later that year, the Commonwealth Parliamentary Joint Committee on the National Crime Authority said the Australasian Police Ministers Council should consider how to improve the flow of information about paedophile offenders and suspects between Australian

61 Ibid s 35(1).

62 Ibid s 35(2). For these purposes, an offender can be deemed to pose an unacceptable risk of committing a relevant offence even if the likelihood of them committing a relevant offence is less likely than ‘more likely than not’: s 35(4).

63 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 42.

64 Ibid s 40(1).

65 Ibid s 45.

66 Ibid s 36(4).

67 Information provided to the Commission by Corrections Victoria. NB this para contained incorrectly transcribed statistics in an earlier version of this paper.

68 *Sex Offenders Registration Act 2004* (Vic) s 70J.

69 This is possible because some ‘relevant offences’ in respect of which a detention or supervision order may be made under the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic), are Class 3 and 4 offences for the purposes of the *Sex Offenders Registration Act 2004* (Vic): *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) sch 1; *Sex Offenders Registration Act 2004* (Vic) s 11, schs 3–4. An offender sentenced for a Class 3 or 4 offence is included on the Sex Offenders Register only if the prosecution applies for a sex offender registration order and the sentencing court exercises its discretion to make such an order: *Sex Offenders Registration Act 2004* (Vic) s 11. If a sex offender registration order was not made when the offender was sentenced, or within 30 days after the sentence was imposed, the offender will not be registered.

70 *Sex Offenders Registration Act 2004* (Vic) ss 9, 12(1).

71 The Australian Bureau of Criminal Intelligence was replaced in January 2003 by the Australian Crime Commission—see *Australian Crime Commission Act 2002* (Cth). The Australian Police Ministers Council was later expanded to become the Australasian Police Ministers Council. In 2006, the Australasian Police Ministers Council was renamed the Ministerial Council for Police and Emergency Management—Police.

72 Crime Prevention Committee, Parliament of Victoria, *Combating Child Sexual Assault, An Integrated Model* (1995) 260–2, recs 105–6.

law enforcement agencies and, in particular, whether enhancing the Australian Bureau of Criminal Intelligence's database was the most appropriate way to proceed.⁷³

- In August 1997, the Wood Royal Commission into the New South Wales Police Service suggested that consideration be given to 'the establishment of a suitable mechanism for the central collection of intelligence concerning paedophile activity'.⁷⁴

CrimTrac

- 2.42 In July 2000, the Commonwealth Minister for Justice and Customs and the state and territory police ministers⁷⁵ signed an intergovernmental agreement to establish CrimTrac as a central agency for national law enforcement information systems.⁷⁶
- 2.43 CrimTrac does not have a legislative base. It is a Commonwealth executive agency established under section 65 of the *Public Service Act 1999* (Cth), operating within the Commonwealth Attorney-General's portfolio. A board of management comprising all Australian police chiefs and a nominee of the Commonwealth Government who is a senior official in the Attorney-General's department oversees its activities.⁷⁷ At a formal level, the intergovernmental agreement and the Standing Council on Police and Emergency Management continue to govern CrimTrac's role and operations.
- 2.44 In its 2001–02 annual report, CrimTrac 'recommended' work on a National Child Sex Offender System.⁷⁸ The project had been suspended while functions were transferred to CrimTrac from other national police information sharing bodies.⁷⁹ The National Child Sex Offender System was designed to improve information sharing between state and territory law enforcement agencies in relation to child sex offenders.
- 2.45 CrimTrac's role has expanded over time and its systems have become more sophisticated. It now hosts a broad range of criminal justice databases. It remains responsible for providing national access to information about child sex offenders, and the National Child Sex Offender System has evolved into the Australian National Child Offenders Register (ANCOR).
- 2.46 CrimTrac's annual report reveals that in 2009–10 it employed 198 people and had revenue of \$59.3 million.⁸⁰

The Australian National Child Offenders Register (ANCOR)

- 2.47 In November 2003, the Australasian Police Ministers Council formally approved the establishment of ANCOR,⁸¹ which became operational on 1 September 2004.⁸² ANCOR is a national database of information about registered offenders that is collected under the registration schemes of each Australian state and territory. CrimTrac describes it as 'a web-based system designed to assist police to register, case manage and share mandatory information about registered persons as required by legislation'.⁸³ This 'legislation' is the registration legislation in each Australian jurisdiction.

Legislation in other states and territories

- 2.48 Shortly before ANCOR became operational, the Australasian Police Ministers Council agreed on model sex offender registration legislation.⁸⁴ All Australian states and territories now have legislation governing the registration of sex offenders, although it is not uniform.⁸⁵

73 Joint Committee on the Australian Crime Committee, Parliament of Australia, *Organised Criminal Paedophile Activity* (1995) [4.14].
74 New South Wales, Royal Commission into the New South Wales Police Service, *The Paedophile Inquiry: Final Report* (August 1997) vol 5, 1240.
75 *Intergovernmental Agreement for the Establishment and Operation of CrimTrac* (2000).
76 *Ibid.*
77 CrimTrac, *About Us* <http://www.crimtrac.gov.au/about_us/index.html>.
78 CrimTrac, *Annual Report 2001–02* (September 2002) 30.
79 *Ibid.*
80 CrimTrac, *Annual Report 2009–10* (2010) 16, 70.
81 CrimTrac, *Annual Report 2004–05* (2005) 31. \$1 million of the Commonwealth's \$50 million CrimTrac funding was allocated to ANCOR: at 31.
82 CrimTrac, *Annual Report 2004–05* (2005) 31.
83 CrimTrac, *ANCOR—Australian National Child Offender Register* <http://www.crimtrac.gov.au/systems_projects/AustralianNationalChildOffenderRegisterANCOR.html>.
84 NSW Ombudsman, *Review of the Child Protection Register: Report under s 25(1) of the Child Protection (Offenders Registration) Act 2000* (May 2005) ii, 5.
85 *Child Protection (Offenders Registration) Act 2000* (NSW); *Child Protection (Offender Reporting and Registration) Act 2004* (NT); *Child Protection (Offender Reporting) Act 2004* (Qld); *Community Protection (Offender Reporting) Act 2004* (WA); *Community Protection (Offender Reporting) Act 2005* (Tas); *Crimes (Child Sex Offenders) Act 2005* (ACT); *Child Sex Offenders Registration Act 2006* (SA).

- 2.49 Mandatory registration forms part of the sex offender registration schemes in most Australian jurisdictions. In Victoria, mandatory registration applies only to adults convicted of sex offences against children. In other states and territories, conviction for child homicide, kidnapping and other offences also results in mandatory registration.⁸⁶
- 2.50 Tasmania is the only state that allows some judicial discretion in relation to the registration of child sex offenders. A person convicted of a registrable offence in Tasmania must be placed on the register 'unless the court is satisfied that the person does not pose a risk of committing a reportable offence in the future'.⁸⁷
- 2.51 All Australian jurisdictions give courts a discretionary power to order that people convicted of offences other than child sexual offences be placed on the Register.⁸⁸ The court can make a registration order on its own initiative in the Northern Territory, Queensland, Western Australia and Tasmania.⁸⁹ An application by the prosecution is required in New South Wales, the Australian Capital Territory and South Australia, as it is in Victoria.⁹⁰ Most jurisdictions only allow a registration order to be made at the time of sentencing.⁹¹ The exceptions are Victoria and New South Wales, where the application for an order can be made within a few weeks of sentencing.⁹²
- 2.52 In all states and territories, except Tasmania, the court can make a registration order if it is satisfied that the offender poses a risk to the 'sexual safety' of children, people, or the community generally.⁹³ It is not necessary, in any jurisdiction, to identify a particular class of children or persons who are at risk.⁹⁴ In Tasmania, the court must be satisfied that there is a risk the offender will commit a registrable offence in future.⁹⁵ Only the Victorian legislation requires the court to be satisfied beyond reasonable doubt that the person poses a risk to sexual safety;⁹⁶ the other jurisdictions do not specify what standard of proof is required.
- 2.53 Generally, when a registered sex offender who is required to comply with reporting obligations under the registration scheme in one jurisdiction moves to or visits interstate, they will be deemed to be a 'corresponding registered offender'.⁹⁷ This means that they will still be a registered offender if they move interstate and will be subject to that new state or territory's reporting requirements.
- 2.54 The length of a registered sex offender's reporting period depends upon the type and number of offences for which they were convicted and their age at the time of the offence. The correlation between reporting periods and offences varies across jurisdictions, but the possible duration of a reporting period for an adult is consistently eight years, 15 years or the rest of the offender's life.⁹⁸ In all jurisdictions except South Australia, the reporting period for juvenile offenders is half of the

86 NSW, NT, Qld, and WA require mandatory registration when a person is convicted of child homicide. NSW requires mandatory registration when a person is convicted of kidnapping a child; the ACT and SA require mandatory registration when a person is convicted of kidnapping or abducting a child in connection with a child sexual offence. The ACT and SA require mandatory registration when a person is convicted of child homicide where the murder occurred in addition to a sexual offence against the child.

87 *Community Protection (Offender Reporting) Act 2005* (Tas) s 6.

88 *Child Protection (Offenders Registration) Act 2000* (NSW) s 3; *Child Protection (Offender Reporting and Registration) Act 2004* (NT) s 13; *Child Protection (Offender Reporting) Act 2004* (Qld) s 9, pt3; *Community Protection (Offender Reporting) Act 2004* (WA) s 9; *Community Protection (Offender Reporting) Act 2005* (Tas) s 7; *Crimes (Child Sex Offenders) Act 2005* (ACT) s 17; *Child Sex Offenders Registration Act 2006* (SA) s 9.

89 *Child Protection (Offender Reporting and Registration) Act 2004* (NT) s 13(6); *Child Protection (Offender Reporting) Act 2004* (Qld) s 13(5)(a); *Community Protection (Offender Reporting) Act 2004* (WA) s 13(6); *Community Protection (Offender Reporting) Act 2005* (Tas) s 7(4).

90 *Child Protection (Offenders Registration) Act 2000* (NSW) s 3D(2)(c); *Crimes (Child Sex Offenders) Act 2005* (ACT) s 18; *Child Sex Offenders Registration Act 2006* (SA) s 9(5).

91 *Child Protection (Offender Reporting and Registration) Act 2004* (NT) s 13(5); *Child Protection (Offender Reporting) Act 2004* (Qld) s 13(4)(b); *Community Protection (Offender Reporting) Act 2004* (WA) s 13(5); *Community Protection (Offender Reporting) Act 2005* (Tas) ss 6(2), 7(3); *Crimes (Child Sex Offenders) Act 2005* (ACT) s 17(1); *Child Sex Offenders Registration Act 2006* (SA) s 9(1).

92 In NSW, the time limit is 21 days within sentencing: *Child Protection (Offenders Registration) Act 2000* (NSW) s 3E. In Vic, it is 30 days: *Sex Offenders Registration Act 2004* (Vic) s 11(6).

93 *Sex Offenders Registration Act 2004* (Vic) s 11(3); *Child Protection (Offender Reporting and Registration) Act 2004* (NT) s 13(3); *Child Protection (Offender Reporting) Act 2004* (Qld) s 13(2); *Community Protection (Offender Reporting) Act 2004* (WA) s 13(2); *Crimes (Child Sex Offenders) Act 2005* (ACT) s 16; *Child Sex Offenders Registration Act 2006* (SA) s 9(3); *Child Protection (Offenders Registration) Act 2000* (NSW) s 3D(2). NSW is the only state that defines 'sexual safety' and defines it as a risk that the offender will engage in a Class 1 or 2 offence against a child in the future: *Child Protection (Offenders Registration) Act 2000* (NSW) s 3H(1).

94 *Sex Offenders Registration Act 2004* (Vic) s 11(4); *Child Protection (Offender Reporting and Registration) Act 2004* (NT) s 13(4); *Child Protection (Offender Reporting) Act 2004* (Qld) s 13(3); *Community Protection (Offender Reporting) Act 2004* (WA) s 13(3); *Crimes (Child Sex Offenders) Act 2005* (ACT) s 16(2); *Child Sex Offenders Registration Act 2006* (SA) s 9(4); *Child Protection (Offenders Registration) Act 2000* (NSW) s 3H(2).

95 *Community Protection (Offender Reporting) Act 2005* (Tas) s 7(1).

96 *Sex Offenders Registration Act 2004* (Vic) s 11(3).

97 *Child Protection (Offenders Registration) Act 2000* (NSW) s 3C; *Child Protection (Offender Reporting and Registration) Act 2004* (NT) s 8—there is no requirement in NT that a person would still be required to report in the former jurisdiction; *Child Protection (Offender Reporting) Act 2004* (Qld) s 7; *Community Protection (Offender Reporting) Act 2004* (WA) s 7; *Community Protection (Offender Reporting) Act 2005* (Tas) s 11; *Crimes (Child Sex Offenders) Act 2005* (ACT) s 11; *Child Sex Offenders Registration Act 2006* (SA) ss 7–8.

98 *Child Protection (Offenders Registration) Act 2000* (NSW) s 14A; *Child Protection (Offender Reporting and Registration) Act 2004* (NT) s 37; *Child Protection (Offender Reporting) Act 2004* (Qld) s 36; *Community Protection (Offender Reporting) Act 2004* (WA) s 46; *Community Protection (Offender Reporting) Act 2005* (Tas) s 24; *Crimes (Child Sex Offenders) Act 2005* (ACT) s 16; *Child Sex Offenders Registration Act 2006* (SA) s 9(3).

applicable period for an adult offender.⁹⁹ Offenders who are required to report for life may apply to a court—or in New South Wales, the Administrative Decisions Tribunal—after 15 years to have their reporting obligations suspended.¹⁰⁰ Offenders with shorter reporting periods are unable to apply to have the length of their reporting obligations reduced.

- 2.55 In each Australian jurisdiction, the head of the police force maintains the Register.¹⁰¹ The extent to which the operations of the registration scheme are externally monitored and reviewed varies between jurisdictions.
- 2.56 The New South Wales legislation required the Ombudsman to report to the Minister for Police on the operation of the Act after two years,¹⁰² and the Minister for Police to report to Parliament on the police objectives of the Act as soon as possible after receiving the Ombudsman's report.¹⁰³ Both of these reports have been completed.¹⁰⁴
- 2.57 Several other jurisdictions have review requirements that involve reporting to Parliament,¹⁰⁵ while some do not deal with review at all.¹⁰⁶ The monitoring provisions in the Australian Capital Territory and Victoria¹⁰⁷ are limited to checking that the police comply with their statutory obligations concerning maintaining and securing access to the Register.¹⁰⁸

Effects of the scheme

- 2.58 The Sex Offenders Registration Act establishes a mandatory and universal registration scheme that seeks to monitor the activities of child sex offenders when they return to the community after completing their sentences. The scheme is universal in two respects: it applies to all people convicted of sexual offences involving children and the same reporting requirements apply to all registered sex offenders. It applies to a very broad range of offences.
- 2.59 The courts do not have the power to determine which convicted sex offenders require monitoring or to devise individualised reporting requirements that seek to monitor the activities of a particular offender. Research indicates, however, that sex offenders do not re-offend more often than other serious offenders and that there are identifiable characteristics of 'high risk' offenders that could possibly be useful predictors of recidivism.¹⁰⁹ The Commission will investigate whether some form of individualised judicial decision making about both inclusion in the Register and the content of reporting obligations is desirable.
- 2.60 The universal operation of the scheme has caused the Sex Offenders Register to grow very quickly, with more than 20,000 registrants anticipated in the first 30 years of the scheme.¹¹⁰ The Commission will investigate the resource implications of this growth, especially for Victoria Police and the Department of Human Services.
- 2.61 The scheme appears to have become a significant source of child protection notifications to the Department of Human Services. The Commission will examine whether information provided as part of the sex offender registration scheme provides the Department of Human Services with useful advice about possible child abuse.

99 *Child Protection (Offenders Registration) Act 2000* (NSW) s 14B; *Child Protection (Offender Reporting and Registration) Act 2004* (NT) s 38; *Child Protection (Offender Reporting) Act 2004* (Qld) s 37; *Community Protection (Offender Reporting) Act 2004* (WA) s 47; *Community Protection (Offender Reporting) Act 2005* (Tas) s 25(2); *Crimes (Child Sex Offenders) Act 2005* (ACT) s 89. Juvenile offenders who would otherwise have been required to report for life must report for 7.5 years instead.

100 *Child Protection (Offenders Registration) Act 2000* (NSW) s 16; *Child Protection (Offender Reporting and Registration) Act 2004* (NT) s 41; *Child Protection (Offender Reporting) Act 2004* (Qld) s 41; *Community Protection (Offender Reporting) Act 2004* (WA) s 52; *Community Protection (Offender Reporting) Act 2005* (Tas) s 28(1); *Crimes (Child Sex Offenders) Act 2005* (ACT) s 96; *Child Sex Offenders Registration Act 2006* (SA) s 37.

101 *Child Protection (Offenders Registration) Act 2000* (NSW) s 19; *Child Protection (Offender Reporting and Registration) Act 2004* (NT) s 64; *Child Protection (Offender Reporting) Act 2004* (Qld) s 68; *Community Protection (Offender Reporting) Act 2004* (WA) s 80; *Community Protection (Offender Reporting) Act 2005* (Tas) s 43; *Crimes (Child Sex Offenders) Act 2005* (ACT) s 117; *Child Sex Offenders Registration Act 2006* (SA) s 60.

102 *Child Protection (Offenders Registration) Act 2000* (NSW) s 25 (repealed).

103 *Child Protection (Offenders Registration) Act 2000* (NSW) s 26.

104 NSW Ombudsman, *Review of the Child Protection Register: Report under s 25(1) of the Child Protection (Offenders Registration) Act 2000* (May 2005); NSW Ministry for Police, *Review of Child Protection (Offenders Registration) Act 2000* (November 2007).

105 *Child Protection (Offender Reporting and Registration) Act 2004* (NT) s 93; *Community Protection (Offender Reporting) Act 2004* (WA) s 115(1); *Community Protection (Offender Reporting) Act 2005* (Tas) s 52.

106 *Child Protection (Offender Reporting) Act 2004* (Qld); *Child Sex Offenders Registration Act 2006* (SA).

107 *Sex Offenders Registration Act 2004* (Vic) s 66A, pt 4.

108 *Crimes (Child Sex Offenders) Act 2005* (ACT) s 6(2)(h).

109 Karen Gelb, *Recidivism of Sex Offenders* (Research Paper, Sentencing Advisory Council, January 2007).

110 This estimate made by the monitor of the Register, the Director of Police Integrity, is quoted in the Ombudsman's report: Ombudsman Victoria, *Whistleblowers Protection Act 2001—Investigation into the failure of agencies to manage registered sex offenders*, February 2011, 24.

- 2.62 The scheme also appears designed to give convicted child sex offenders and the community important messages. It seeks to inhibit re-offending by making convicted sex offenders aware of the fact that they are being monitored and to reassure the community that the police are aware of some of the activities of these people. Both points were emphasised by the New South Wales Minister for Police in 2000 when introducing the Bill upon which the national registration scheme was based. The Minister said that the scheme would ‘better convey to the offender that police are aware of them’ and ‘provide child abuse victims and their families with an increased sense of security’.¹¹¹ The Commission will investigate whether this scheme is an effective means of achieving these goals.

Questions

Purposes

1. To what extent does the Sex Offenders Registration Act fulfil its stated purposes?
2. Should the Sex Offenders Register be a primary source of information to the Department of Human Services about child protection concerns?
3. Does the Sex Offenders Registration Act establish an effective scheme for monitoring the activities of convicted child sex offenders who are likely to re-offend?

Inclusion in the Sex Offenders Register

4. Should inclusion in the Sex Offenders Register be an automatic administrative consequence of a person being convicted of and sentenced for a Class 1 or Class 2 offence?
5. Should the court have a discretionary power to decide whether to order that a person who is convicted of some or all of the Class 1 or Class 2 offences be placed in the Sex Offenders Register? What criteria should govern the exercise of any discretionary power?
6. Should an order placing a person in the Sex Offenders Register be a matter that the court can take into account when sentencing a person for a Class 1 or Class 2 offence?
7. Should it continue to be possible for a court to order that a person convicted of any offence be placed in the Sex Offenders Register if the court is satisfied that the offender poses a risk to the sexual safety of any other person?

Duration of reporting obligations

8. Should the duration of a registered sex offender’s reporting obligations continue to be automatically determined by a legislative classification of offences?
 9. Should the court have a discretionary power to determine the length of the reporting period? What criteria should govern the exercise of any discretionary power?
 10. Are the current provisions in the Sex Offenders Registration Act for suspending the reporting obligations of sex offenders adequate?
 11. Should the Chief Commissioner of Police or some other statutory official have the power to apply to a court for an order extending a registered sex offender’s reporting obligations?
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3. Information in the Sex Offenders Register

Introduction

- 3.1 The information in the Sex Offenders Register is collected from both the registered sex offender and other sources.¹ The information comprises:
- 'Reportable information', which is the information that registered sex offenders are required to provide during the reporting period.²
 - Other information specified in or permitted by section 62(2) of the Sex Offenders Registration Act. This includes information about all registrable offences committed by the person; the date they were sentenced for those offences; consequential periods of imprisonment; and any other information the Chief Commissioner considers appropriate to include in the Register.³
- 3.2 Although many of the details collected about sex offenders and recorded on the Sex Offenders Register are also collected about other offenders and shared among police forces through CrimTrac,⁴ only sex offenders are subject to a statutory requirement to report the information to the police regularly.

Collection of reportable information

Initial report

- 3.3 Offenders sentenced for registrable offences in Victoria must report the following information to an authorised member of Victoria Police⁵ (usually a compliance manager) within seven days of being sentenced or, if they receive a custodial sentence, within seven days of being released from custody:⁶
- name(s) by which they are known
 - any other name(s) by which they have been known in the past, and the period for which they were known by that name
 - date of birth

1 *Sex Offenders Registration Act 2004* (Vic) s 62(2).

2 The term 'reportable information' is used at s 66 of the *Sex Offenders Registration Act 2004* (Vic), and is defined for the purpose of that section at s 66(5).

3 *Sex Offenders Registration Act 2004* (Vic) s 62(2).

4 For example, the CrimTrac National Police Reference System enables police forces to share information about people of interest including: name and alias information; identity information including photographs; warnings; warrants; offence histories; protection/violence orders; bail information; firearms involvement; missing persons; unidentified persons and bodies; escapees; and a flag showing if the person is a registered sex offender. There are plans to extend the information to include telephone numbers, email and internet addresses. See CrimTrac, *Annual Report 2009–10* (2010).

5 *Sex Offenders Registration Act 2004* (Vic) s 23(3).

6 *Ibid* ss 14–15.

- address of each place they reside for at least 14 days (whether consecutive or not) in any 12 month period or, if homeless, the localities in which they can generally be found
- telephone number
- email address
- name and business address of internet service provider
- internet, instant messaging, chat room or other user names or identities used through the internet or other electronic communication services
- names and ages of any children with whom they usually live or have unsupervised contact for at least three days (whether consecutive or not) in any 12 month period
- employment details, including work under an employment contract, as a self-employed person or sub-contractor, any practical training as part of an educational or vocational course, or work as a volunteer or for a religious organisation, for at least 14 days (whether consecutive or not) in any 12 month period
- details of affiliations with any clubs or organisations that have child membership or child participation in their activities
- details of any motor vehicle they own or drive on at least 14 days (whether consecutive or not) in any 12 month period
- details of any existing or former tattoos or permanent distinguishing marks
- details of any requirement to register and report under corresponding sex offender legislation
- details of any periods of government custody since they were either sentenced or released from custody for the registrable offence
- if they travel interstate at least once a month on average, or plan to do so, the reason, frequency and destinations of the travel⁷
- passport number and country of issue of each passport held.

3.4 The details that registered sex offenders must report in Victoria have increased since the *Sex Offenders Registration Act 2004 (Vic)* came into operation on 1 October 2004. In 2007, the Act was amended to require registered sex offenders to provide information that assists law enforcement agencies to identify and monitor offenders' online and telephone communications.⁸ In 2009, the Act was amended to require registered sex offenders to report information about names and identities used online and passport details.⁹

3.5 As at 1 June 2011, 3933 people had been registered as sex offenders in Victoria since the scheme began. Of these, 2659 were living in the community. The remainder were in custody or deceased, had moved interstate or overseas, or were no longer required to report for some other reason.¹⁰ Of the registered sex offenders living in the community, 635 must report for the rest of their lives, 1121 must report for a total of 15 years, and 861 must report for a total of eight years.¹¹ Twenty-six registered sex offenders were minors at the time they committed the offence, and the reporting period in each case is seven and a half years.¹²

3.6 The Director of Police Integrity has estimated that 20,000 offenders will be registered in the first 30 years of the scheme and more than two-thirds of them will be required to report for 15 years or life.¹³

7 This requirement is set out twice, in similar terms, at both s 14(1)(l) and s 21 of the *Sex Offenders Registration Act 2004 (Vic)*.

8 Section 14(1) of the *Justice and Road Legislation Amendment (Law Enforcement) Act 2007 (Vic)* inserted s 14(1)(da), (d) and (dc) into the *Sex Offenders Registration Act 2004 (Vic)*. These provisions require the offender to provide their telephone number, email address and name and business address of internet service provider.

9 Sections 42(1) and 42(3) of the *Justice Legislation Further Amendment Act 2009 (Vic)* inserted s 14(1)(dd) and (m) into the *Sex Offenders Registration Act 2004 (Vic)*.

10 Information provided to the Commission by the Sex Offenders Registry, Victoria Police. The other reasons for which an offender is not required to report include: awaiting retrial; conviction/sentence/registration order quashed; incorrectly registered; reporting period completed; and reporting obligations suspended.

11 Ombudsman Victoria, *Whistleblowers Protection Act 2001—Investigation into the failure of agencies to manage registered sex offenders* (February 2011) 13.

12 Information provided by the Sex Offenders Registry, Victoria Police.

13 Ombudsman Victoria, above n 11, 24.

Ongoing reporting obligations

- 3.7 Registered sex offenders must provide Victoria Police with the reportable information they provided in the initial report every year for the duration of the reporting period.¹⁴ They must also report any changes to that information within the following periods:
- Details of any children with whom the offender generally resides or has 'regular unsupervised contact'¹⁵—within one day of the change.¹⁶
 - Changes to any of the other details—within 14 days of the change.¹⁷
- 3.8 Registered sex offenders who intend to travel interstate for two weeks or more, or leave the country for any period, must inform Victoria Police beforehand about the dates and destinations of the travel, where they will be living, and the approximate date of their return to Victoria, if applicable.¹⁸ Such reports must be made at least seven days before leaving Victoria¹⁹ and any subsequent changes to these details must be reported as soon as practicable.²⁰

The role of compliance managers

- 3.9 The Chief Commissioner approves compliance managers²¹ within Victoria Police to receive reports from registered sex offenders.²² They conduct the initial interview with registered sex offenders and each annual review thereafter.²³
- 3.10 Compliance managers must submit all information to the Sex Offenders Registry, the administrative unit within Victoria Police that manages the Sex Offenders Register, following interviews with registered sex offenders.²⁴ They are also responsible for verifying information about changes to registered sex offenders' personal details or travel plans, and must notify the Sex Offender Registry of a breach of reporting obligations if an offender does not make their annual report and cannot be located.²⁵ The Victoria Police Manual requires compliance managers to notify the Department of Human Services if a registered sex offender reports that they have unsupervised contact with children.²⁶ The duties of compliance managers are in addition to their general police duties.

Notification of obligations

- 3.11 When a court imposes a sentence for a registrable offence, it must give the offender written notice of the reporting obligations²⁷ and the reporting period.²⁸ The offender must also be given written notice of the reporting obligations and the consequences of failing to comply with them upon release from custody.²⁹ Should the reporting period subsequently change, the Chief Commissioner must ensure that the offender is notified of this in writing.³⁰

14 *Sex Offenders Registration Act 2004* (Vic) ss 16, 23(1)(b).

15 The meaning of 'regular unsupervised contact' is discussed in Chapter 4 of this information paper.

16 *Sex Offenders Registration Act 2004* (Vic) ss 14(2)(b)–(c), 17(1A). The change is deemed to occur once the person has resided with a child, or had unsupervised contact with a child, for at least 3 days (whether consecutive or not) in any period of 12 months: *Sex Offenders Registration Act 2004* (Vic) s 17(2).

17 *Sex Offenders Registration Act 2004* (Vic) s 17(1A). A change to the offender's place of work is deemed to occur once the person is employed there for at least 14 days (whether consecutive or not) in any period of 12 months. Similarly, a change to the details of the motor vehicle they generally drive is deemed to occur once the person drives it on at least 14 days (whether consecutive or not) in any period of 12 months: *Sex Offenders Registration Act 2004* (Vic) ss 14(2)(d)–(e), 17(2).

18 *Sex Offenders Registration Act 2004* (Vic) s 18(2).

19 *Ibid* ss 18(1)–(2). If it is impracticable for the registered sex offender to make the report 7 days before leaving, they must report to the Chief Commissioner at least 24 hours before leaving: *Vic* s 18(3).

20 *Sex Offenders Registration Act 2004* (Vic) s 19.

21 Victoria Police, *Victoria Police Manual: Procedures and Guidelines*, 'Registered sex offenders', provided by Victoria Police 11 May 2011, 1. Compliance managers are usually investigators, but senior sergeants, sergeants and officers in charge of police stations may also be trained for the role. Uniform officers who have been trained may be compliance managers for low to medium risk offenders.

22 *Sex Offenders Registration Act 2004* (Vic) s 23(3); Victoria Police, above n 21, 2.

23 Victoria Police, above n 21, 2–3.

24 *Ibid* 2.

25 *Ibid* 3.

26 *Ibid* 2.

27 *Sex Offenders Registration Act 2004* (Vic) ss 50(1)–(3). The sentencing court is 'the supervising authority' for the purposes of reg 18 of the *Sex Offenders Registration Regulations 2004* (Vic).

28 *Sex Offenders Registration Act 2004* (Vic) s 50(5).

29 *Ibid* ss 50(1)–(2). Depending on the circumstances, it can be the sentencing court, the Secretary of the Department of Justice, the Secretary of the Department of Human Services or the Chief Commissioner of Police who is responsible for giving this notice: *Sex Offenders Registration Act 2004* (Vic) s 50(3); *Sex Offenders Registration Regulations 2004* (Vic) table A.

30 *Sex Offenders Registration Act 2004* (Vic) s 52.

- 3.12 Similarly, registrable offenders entering Victoria who have not previously been given notice of their reporting obligations, and those in Victoria who become corresponding registrable offenders because they are registered under an equivalent law in another jurisdiction, must also be notified by the police as soon as practicable.³¹
- 3.13 A failure to provide written notice as required by the Act does not, of itself, affect the offender's reporting obligations.³² However, in proceedings for failing to comply with an obligation, it is a defence to establish that, at the time, the offender had not received notice and was unaware of the obligation.³³

Enforcement

- 3.14 It is an offence for a registered sex offender to fail to comply with any reporting obligation without a reasonable excuse.³⁴ The penalty was originally 240 penalty units or imprisonment for two years. In 2007, the penalty was increased to five years imprisonment.³⁵ When introducing the amending legislation into Parliament, the then Minister for Police and Emergency Services said the increase was necessary because 'failure to report changes in personal details is a serious matter and is often an indicator of further offending'.³⁶
- 3.15 A court may consider the following factors when determining whether a registered sex offender had a reasonable excuse for not complying with a reporting obligation:
- the registered sex offender's age
 - whether the registered sex offender has a disability that affects their ability to understand or comply with the obligation
 - whether the form of notification given to the registered sex offender about the reporting obligation was adequate in the circumstances
 - any other matter the court considers appropriate.³⁷
- 3.16 Providing false or misleading information is also an offence.³⁸ The maximum penalty is 240 penalty units or imprisonment for two years.³⁹
- 3.17 The police rely on common law powers to investigate possible offences under the Sex Offenders Registration Act and can exercise their powers of arrest under the *Crimes Act 1958* (Vic)⁴⁰ if the offender breaches the reporting obligations.

Verification of reportable information

Supporting information

- 3.18 Registered sex offenders must make their initial and annual reports in person at a police station.⁴¹ They must also present themselves in person to report changes to where they live as well as when reporting any new, altered or removed tattoos or other permanent distinguishing marks.⁴²
- 3.19 When providing a report in person, the registered sex offender must provide proof of identity by presenting a driver licence or other identifying documentation as specified in the regulations, and a passport-style photograph.⁴³ This requirement may be waived if the police member

31 Ibid s 50(1)–(2); *Sex Offenders Registration Regulations 2004* (Vic) table A.

32 *Sex Offenders Registration Act 2004* (Vic) s 55.

33 Ibid s 46(3).

34 Ibid s 46(1).

35 *Justice and Road Legislation Amendment (Law Enforcement) Act 2007* (Vic) s 16.

36 Victoria, *Parliamentary Debates*, Legislative Assembly, 19 July 2007, 2462–3 (Bob Cameron, Minister for Police and Emergency Services).

37 *Sex Offenders Registration Act 2004* (Vic) s 46(2).

38 Ibid s 47.

39 Ibid.

40 *Crimes Act 1958* (Vic) s 458.

41 *Sex Offenders Registration Act 2004* (Vic) ss 23(1)(a)–(b).

42 Ibid ss 23(1)(c)–(d).

43 Ibid s 26(1); *Sex Offenders Registration Regulations 2004* (Vic) reg 11.

receiving the report takes the offender's fingerprints or a finger scan, or is otherwise satisfied as to the offender's identity.⁴⁴

- 3.20 The police may require further documentation to verify the information provided. Payslips must be produced to substantiate employment details, and registration papers or other documentation must be provided to show that the offender owns or generally drives a particular motor vehicle.⁴⁵
- 3.21 Victoria Police may retain copies of the documents and any fingerprints, finger scans and photographs for the duration of the offender's reporting period. These documents must be destroyed at the end of that period.⁴⁶
- 3.22 This supporting information is not included on the Sex Offenders Register unless the Chief Commissioner considers it appropriate to do so.⁴⁷ It is separate from any photographs, fingerprints, DNA samples and other personal details the police may have collected when investigating and prosecuting any offences, which can be retained and used for operational purposes.

Police powers

- 3.23 Police officers may take the registered sex offender's fingerprints or a finger scan if they are not reasonably satisfied of the offender's identity after examining the identifying material that the offender has provided.⁴⁸ The fingerprints or finger scan of a child registered sex offender may be taken only if the child is accompanied by a parent or guardian or, if neither is available, an independent person.⁴⁹
- 3.24 The police may also photograph the offender and, for this purpose, may require the offender to expose any part of the body on which there are tattoos or permanent distinguishing marks.⁵⁰ The police cannot require some parts of the body to be exposed⁵¹ and the photography cannot occur where members of the public are present.⁵² If practicable, the photographer and any other police officers present must be of the same sex as the offender.⁵³ The offender is entitled to be accompanied by a support person of their own choosing.⁵⁴ A child offender must be accompanied by a parent or guardian or, if neither is available, an independent person.⁵⁵
- 3.25 If the offender refuses to cooperate voluntarily, reasonable force may be used to obtain a fingerprint or finger scan or take a photograph.⁵⁶ If practicable, the person who uses the reasonable force must be a police officer of the same sex as the offender.⁵⁷
- 3.26 The powers to photograph the offender's distinguishing marks and use reasonable force to expose any hidden from view were conferred by amendments to the Sex Offenders Registration Act in 2005.⁵⁸ When introducing the amending bill to Parliament, the then Minister for Police and Emergency Services said these changes were in accordance with approaches recommended and agreed by the Australasian Police Ministers Council.⁵⁹ He said they would enable Victoria Police to keep accurate identifying information about registered sex offenders, which would facilitate the investigation and prosecution of any future offences.⁶⁰
- 3.27 The Sex Offenders Registration Act does not give the police any other special powers to verify the information provided by registered sex offenders. In his recent report, the Ombudsman drew attention to the fact that the Act contains:

44 *Sex Offenders Registration Act 2004* (Vic) s 26(2).

45 *Sex Offenders Registration Regulations 2004* (Vic) reg 12.

46 *Sex Offenders Registration Act 2004* (Vic) s 30.

47 *Ibid* s 62(2)(g).

48 *Ibid* s 27.

49 *Ibid* s 27. 'Independent person' is not defined in the Act.

50 *Sex Offenders Registration Act 2004* (Vic) s 27A.

51 *Ibid* s 27A(2). A registrable offender cannot be required to expose their genitals, the anal area of their buttocks or, in the case of females or transgender people who identify as females, their breasts.

52 *Sex Offenders Registration Act 2004* (Vic) s 29(3)(a).

53 *Ibid* ss 29(3)(b)–(4).

54 *Ibid* s 29(5).

55 *Ibid*.

56 *Ibid* s 28(2).

57 *Ibid* s 28(3).

58 *Sex Offenders Registration (Amendment) Act 2005* (Vic).

59 Victoria, *Parliamentary Debates*, Legislative Assembly, 5 May 2005, 948 (Tim Holding, Minister for Police and Emergency Services).

60 *Ibid*.

no provision that permits Victoria Police to establish the veracity of information provided by registered sex offenders such as entering a home to establish whether a registered sex offender is living with children.⁶¹

- 3.28 Although there are no special entry or arrest powers under the Sex Offenders Registration Act, police have common law and statutory powers to conduct lawful inquiries into a registered sex offender's activities and investigate possible offences under the Act or any other offences.⁶² As failing to meet the reporting obligations under the Sex Offenders Registration Act is an indictable offence, the police have powers of arrest and entry under the *Crimes Act 1958* (Vic).⁶³

Questions

Content of reports

12. Should all registered sex offenders continue to have the same reporting obligations that are automatically determined by the legislation?
 13. Should the court have a discretionary power to determine the content of a registered sex offender's reporting obligations? What criteria should govern the exercise of any discretionary power?
 14. Should the Chief Commissioner of Police have additional powers which would permit police officers to test the truth of any report provided by a registered sex offender? If yes, what should those powers be and in what circumstances should they be available?
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61 Ombudsman Victoria, above n 11, 11.

62 Victoria Police, above n 21, 16.

63 *Crimes Act 1958* (Vic) ss 459–459A.

4. Management, use and disclosure of information in the Register

Introduction

- 4.1 The *Sex Offenders Registration Act 2004* (Vic) contains some limited provisions dealing with the management, use and disclosure of information in the Register. Part 4 of the Act deals with the Chief Commissioner's obligation to maintain and secure the Register, and the circumstances in which the information in it may be disclosed.

Access to the Register

- 4.2 The Chief Commissioner of Police is responsible for maintaining the Sex Offenders Register.¹ The Chief Commissioner is obliged to ensure that only authorised people have access to the Register and that 'personal information'² in the Register is disclosed only in accordance with the Act. By implication, only the Chief Commissioner can give any person authority to access the Register and the personal information in it cannot be disclosed to any person other than as permitted by the Act.
- 4.3 The Chief Commissioner is expressly authorised to disclose information held in the Register to another public official in two instances. Section 63(1A) of the Act permits the Chief Commissioner to notify the Registrar of Births, Death and Marriages of a registered sex offender's name, date of birth and address.³ Section 63(2) permits the Chief Commissioner to provide the Secretary of the Department of Justice with this information for the purposes of administering the *Working with Children Act 2005* (Vic).
- 4.4 Section 63(2) of the Act requires the Chief Commissioner to develop guidelines that must 'attempt to restrict access to the personal information in the register to the greatest extent that is possible without interfering with the purpose of this Act'.⁴ The Act does not expressly limit or define the people who the Chief Commissioner may authorise to access the Register other than in one instance: access to information about a protected witness must be authorised by the person responsible for the day-to-day operation of the witness protection program.⁵

Disclosure of personal information

- 4.5 It is an offence under section 64(1) of the Act for anyone authorised to have access to the Sex Offenders Register to disclose any personal information in it to anyone else. This offence is punishable by fine of 240 penalty units or imprisonment for two years.⁶
- 4.6 Disclosure of personal information in the Register is permitted in some circumstances, however. This is done by creating exceptions to the general offence in section 64(1) of the Act. The Chief Commissioner and any person authorised to have access to the Register are permitted to

1 *Sex Offenders Registration Act 2004* (Vic) s 62(1).

2 This term is defined in the Act to mean 'information about an individual whose identity is apparent or can reasonably be ascertained from the information': *Sex Offenders Registration Act 2004* (Vic) s 3 (definition of 'personal information').

3 Inserted by the *Sex Offenders Registration (Amendment) Act 2005* (Vic) s 20(2).

4 *Sex Offenders Registration Act 2004* (Vic) s 63(1).

5 *Ibid* s 65.

6 *Ibid* s 64(1).

disclose personal information to three nominated public bodies—a government department, a public statutory authority or a court—for three purposes only:

- for ‘the purpose of law enforcement or judicial functions or activities’, or
- ‘as required by or under any Act or law’, or
- ‘if the Chief Commissioner or a person authorised to have access to the Register believes on reasonable grounds that to do so is necessary to enable the proper administration of the Act’.⁷

Use and disclosure for law enforcement purposes

Use by Victoria Police

- 4.7 The Sex Offenders Registration Act contains little guidance about how the Chief Commissioner of Police may use the information stored in the Register or share it with other people and organisations.
- 4.8 The Act does not regulate internal police use of information in the Register other than to permit the Chief Commissioner to authorise access to the Register and require him to make guidelines about accessing and disclosing personal information on it.
- 4.9 The Chief Commissioner’s guidelines for disclosure of information from the Register, which form part of the Victoria Police Manual, state that the Registrar is responsible for the disclosure of information held in the Register and must only disclose the minimum amount of information necessary to achieve the purpose of the disclosure.⁸ The Registrar assesses all such requests, even if they are from members of Victoria Police.⁹ Compliance managers who receive requests for disclosure of information relating to a registered sex offender are to direct such requests to the Registrar, even if the compliance manager has access to the information.¹⁰ Compliance managers may only disclose information about a registered sex offender if the Registrar has approved the disclosure.¹¹
- 4.10 The Law Enforcement Assistance Program (LEAP) database, which stores details of family incidents, missing persons and all crimes brought to the notice of Victoria Police, contains flags that identify registered sex offenders.¹² Any police member who consults LEAP when interacting with a registered sex offender will become aware of that person’s inclusion in the Register.¹³ The Victoria Police Manual classifies a registered sex offender’s ‘registered status’ as personal information subject to the Chief Commissioner’s Guidelines for disclosure.¹⁴
- 4.11 The Sex Offenders Registration Act recognises that Victoria Police have access to information collected under corresponding legislation in other jurisdictions. Section 63(3) extends the Chief Commissioner’s responsibilities to protect and control access to
- any information from any register maintained under a corresponding Act that is accessible by the Chief Commissioner of Police, regardless of whether or not that information is physically part of the Register.

7 Ibid s 64(2).

8 Victoria Police, *Victoria Police Manual: Procedures and Guidelines*, ‘Registered sex offenders’, provided by Victoria Police 11 May 2011, 8. The Registrar is the Victoria Police member authorised by the Chief Commissioner to maintain the Sex Offenders Register and lead the Sex Offenders Registry. In particular, the Registrar has day-to-day responsibility for the disclosure of information held in the Register. This is an administrative arrangement. The *Sex Offenders Registration Act 2004* (Vic) assigns responsibility for the Register only to the Chief Commissioner and does not refer to a separate position of Registrar.

9 Victoria Police, above n 8, 8.

10 Ibid.

11 Ibid 8–9.

12 Ibid 7.

13 Ibid.

14 Ibid.

Risk assessment

- 4.12 Registered sex offenders are assessed for risk of re-offending at their initial interview with police.¹⁵ Compliance managers conduct the risk assessment, categorise the offender from low to very high risk, and forward the risk assessment results to the Sex Offenders Registry.¹⁶
- 4.13 Victoria Police assess a registered sex offender's risk of re-offending by considering both 'static' factors—such as offending history, familial relationships, intellectual disability—and 'dynamic' factors, such as mood and substance abuse issues.¹⁷ However, the Victoria Police Manual acknowledges that, due to resource constraints, compliance managers may not always be able to consider changeable risk factors.¹⁸
- 4.14 Police strategies for managing registered sex offenders, including monitoring activities and the development of 'offender management plans', will depend upon the offender's risk rating as determined by this process.¹⁹

Disclosure to other police forces in Australia

- 4.15 Information from the Sex Offenders Register is placed on the Australian National Child Offender Register (ANCOR), hosted by CrimTrac. Registrars of sex offender registries in all jurisdictions have access to ANCOR. If the police in one jurisdiction are seeking additional information about an offender who has been registered in another, and the information is unavailable on another CrimTrac database, they request it direct from the relevant police force.
- 4.16 The Act does not refer to ANCOR or expressly authorise the Chief Commissioner to release information on the Sex Offenders Register to CrimTrac or other Australian police forces. However, the Chief Commissioner is permitted to disclose information in the Register to some public bodies 'for the purpose of law enforcement'.²⁰

Use and disclosure for child protection purposes

- 4.17 The Act does not directly refer to using personal information in the Sex Offenders Register for child protection purposes, nor does it expressly permit the Chief Commissioner to disclose information in the Register to child protection authorities.
- 4.18 The Ombudsman's first three recommendations in his recent report to Parliament concern sharing information in the Sex Offenders Register with the Department of Human Services.²¹ The Ombudsman recommended that Victoria Police, the Department of Human Services and Corrections Victoria develop a governance model for the Sex Offenders Register that promotes greater collaboration in preventing sexual abuse of children.²² He also recommended that Victoria Police conduct regular audits to ensure that information in the Register about an offender's unsupervised contact with a child has been reported to the Department of Human Services and that Victoria Police, the Department of Human Services and Corrections Victoria develop a protocol about the sharing of information about registered sex offenders.²³
- 4.19 Even though information is collected about registered sex offenders' unsupervised contact with children, there is no evidence to suggest that the Sex Offenders Registration Act was designed to operate as a direct source of information to the Department of Human Services about child protection. There is no mention of this matter in the purposes listed in section 1 of the Act or in the Minister's second reading speech.
- 4.20 One of the Ombudsman's major findings, however, concerned the failure of Victoria Police to report personal information in the Sex Offenders Register to the Department of Human

15 Ibid 11.

16 Ibid.

17 Ibid.

18 Ibid.

19 Ibid.

20 *Sex Offenders Registration Act 2004* (Vic) s 64(2).

21 Ombudsman Victoria, *Whistleblowers Protection Act 2001—Investigation into the failure of agencies to manage registered sex offenders*, February 2011, 37, recs 1–3.

22 Ibid rec 1.

23 Ibid recs 1–2.

Services, which has a range of child protection responsibilities.²⁴ The Ombudsman found that ‘between October 2004 and March 2010 Victoria Police failed to report to the Department of Human Services 376 registered sex offenders who had reported contact with over 700 children’.²⁵

- 4.21 It appears that the Ombudsman was referring to reports made to Victoria Police by registered sex offenders that they were living in the same household as, or having ‘regular unsupervised contact’ with, a child.
- 4.22 The Ombudsman identified features of the Sex Offenders Registration Act that contributed to the police not routinely providing the Department of Human Services with all of the reports it had been receiving of unsupervised contact with children. These features included:
- No definition of what constitutes ‘unsupervised contact’ between a registered sex offender and a child, and concerns about the length of any contact that must be reported.
 - Ambiguity about police powers and obligations to disclose reports of unsupervised contact to the Department of Human Services, and limitations on sharing information between Victoria Police, Corrections Victoria and the Department of Human Services.²⁶

We discuss these features in turn below.

Unsupervised contact with a child

- 4.23 Registered sex offenders must report the names and ages of any children who live in the same household, or with whom they have ‘regular unsupervised contact’.²⁷ While the meaning of ‘regular’ is defined,²⁸ neither the term ‘contact’ nor its ‘unsupervised’ nature is explained in any way.
- 4.24 In ordinary usage, ‘contact’ can be physical or non-physical. It may refer to touching someone or communicating with them.²⁹ Contact may be in person or over a distance, brief or long, regular or intermittent.
- 4.25 Our terms of reference require the Commission to consider whether ‘unsupervised contact’ should include non-physical contact. Arguably, the Act is only presently concerned with actual or possible physical contact with a child rather than contact with a child at a distance by use of devices such as the internet or a telephone.
- 4.26 Section 14(1)(e) of the Sex Offenders Registration Act requires registered providers to report
- the names and ages of any children who generally reside in the same household as that in which he or she generally resides, or with whom he or she has regular unsupervised contact.

Both circumstances are opportunities to share the same physical space with a child in private.

- 4.27 The point at which a registered sex offender has ‘regular’ unsupervised contact with a child is when the contact has occurred for at least three days in any 12 month period.³⁰ A registered sex offender is similarly considered to ‘generally’ reside with a child if the shared living arrangements have existed for at least three days in any 12 month period.³¹ It is unclear how the three days are calculated—whether by full calendar day, any part of a calendar day or accumulated hours. It would be particularly challenging to apply the three-day threshold to non-physical contact, such as by communicating in an online chat room, or speaking on the telephone. Further complications would arise when the interaction is not instantaneous, such as when sending or receiving emails or text messages.

24 *Children, Youth and Families Act 2005* (Vic) s 16.

25 Ombudsman Victoria, above n 21, 33.

26 *Ibid* 10–11.

27 *Sex Offenders Registration Act 2004* (Vic) s 14(1)(e).

28 *Ibid* s 14(2)(c).

29 There are various other meanings, depending on the context, which are plainly not relevant. For example, the Macquarie Dictionary includes definitions that are specific to electricity, mathematics, medicine and sociology: *Macquarie Dictionary* 4th ed (2005) 316.

30 *Sex Offenders Registration Act 2004* (Vic) s 14(2)(c).

31 *Ibid* s 14(2)(b).

- 4.28 No such ambiguity applies to the meaning of ‘contact’ when it is used in the provisions that prohibit registered sex offenders from engaging in child-related employment. ‘Contact’, for this purpose, 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.³²

When unsupervised contact must be reported

- 4.29 The Ombudsman has proposed that Victoria Police advise the Department of Human Services of any contact that a registered sex offender has with children regardless of the number of days that have transpired.
- 4.30 The Act originally required unsupervised contact to be reported within 14 days of the contact occurring. While registered sex offenders still have 14 days to report most changes to their personal details to police,³³ the time frame to report unsupervised contact with a child or residing with a child was reduced to three days in 2007,³⁴ and to one day in 2009.³⁵ It was reduced to one day to ‘increase registrants’ accountability with respect to their unsupervised access to children’.³⁶

Authority to disclose information in the Register for child protection purposes

- 4.31 The Act does not give Victoria Police clear authority to advise the Department of Human Services of every instance of unsupervised contact with a child that is reported by a registered sex offender, or any other matters on the Sex Offenders Register that might be of interest to child protection authorities.
- 4.32 While the Department of Human Services falls within one of the three categories of bodies that may receive information held on the Register,³⁷ regular reporting of every instance of a registered sex offender’s unsupervised contact with a child does not appear to fall within any of the three purposes for which personal information can be disclosed. It is difficult to argue that reports of this nature are ‘for the purpose of law enforcement’,³⁸ ‘as required by or under any Act or law’³⁹ or ‘to enable the proper administration of the Act’.⁴⁰
- 4.33 In response to concerns expressed by the Ombudsman that the Department of Human Services had not been informed of reports by registered sex offenders that they lived with children, or had regular unsupervised contact with them, Victoria Police developed interim operational guidelines directing police members to inform the Department of all contact between registered sex offenders and children.⁴¹
- 4.34 If there is any legal basis for sharing information about registered sex offenders with the Department of Human Services, it appears to be the mandatory reporting provisions in the *Children, Youth and Families Act 2005* (Vic).
- 4.35 Any person who is concerned about a child’s wellbeing may make a report directly to the Department of Human Services.⁴² Certain people—including police officers, doctors and school teachers—are ‘mandatory reporters’.⁴³ These people must report to the Department of Human

32 Ibid s 67 (definition of ‘contact’).

33 *Sex Offenders Registration Act 2004* (Vic) s 17(1).

34 *Justice and Road Legislation Amendment (Law Enforcement) Act 2007* (Vic) s 15(2).

35 *Justice Legislation Further Amendment Act 2009* (Vic) s 43; *Sex Offenders Registration Act 2004* (Vic) ss 17(1)–(1A), 14(2)(b)–(c).

36 Victoria, *Parliamentary Debates*, Legislative Assembly, 11 August 2009, 2580 (Bob Cameron, Minister for Police and Emergency Services).

37 It is a ‘government department’.

38 *Sex Offenders Registration Act 2004* (Vic) s 64(2)(a).

39 Ibid s 64(2)(b).

40 Ibid s 64(2)(c).

41 Ombudsman Victoria, above n 21, 30.

42 *Children, Youth and Families Act 2005* (Vic) s 28.

43 Ibid s 182(1).

Services believes that they hold on reasonable grounds that a child is in need of protection from physical or sexual abuse and that the child's parents are unlikely to protect the child from that harm.⁴⁴

4.36 Police and other mandatory reporters are required to report as soon as reasonably practicable after forming the belief that a child is in need of protection, and after each occasion on which they become aware of further grounds for the belief.⁴⁵ Failure to comply with mandatory reporting obligations is an offence.⁴⁶

4.37 The Ombudsman referred to concerns expressed by the Chief Commissioner of Police about not having specific authority to make reports about a registered sex offender's unsupervised contact with a child to the Department of Human Services. The Ombudsman quotes the Chief Commissioner as saying:

I believe that information sharing on registered sex offenders between agencies needs to be mandated in legislation to ensure there is no room for various interpretations or ambiguity about how the sharing of information on registered sex offenders relates to matters of privacy and human rights. I don't believe a protocol will provide the degree of certainty, protection and longevity that is needed.⁴⁷

Questions

15. Should the Chief Commissioner of Police have an express power to give some or all information in the Sex Offenders Register to CrimTrac for national law enforcement purposes?
 16. Should the Chief Commissioner of Police have an express power to give some or all information in the Sex Offenders Register to the Secretary of the Department of Human Services for child protection purposes?
 17. Should the Chief Commissioner of Police have an express power to give some or all information in the Sex Offenders Register to any other public body or official for any other purpose?
 18. Should registered offenders continue to be required to report 'unsupervised contact' with a child? If so, should the legislation contain guidance about what is meant by this term? Should registered sex offenders be required to report 'unsupervised contact' with a child before it occurs rather than after it has occurred? If reporting were required in advance of contact, should it be before the first contact, a subsequent contact, or at any other point in time?
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44 Ibid s 184(1).

45 Ibid.

46 Ibid.

47 Ombudsman Victoria, above n 21, 32.

5. Protections for registered sex offenders

- 5.1 The *Sex Offenders Registration Act 2004* (Vic) contains some provisions that seek to protect the interests and rights of registered sex offenders.

Charter rights

- 5.2 The Sex Offenders Registration Act imposes limits upon three rights recognised and protected by the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter). They are:
- the right to move freely within Victoria, enter and leave it, and choose where to live¹
 - the right of every person not to have their privacy, family, home or correspondence arbitrarily or unlawfully interfered with or their reputation unlawfully attacked²
 - the right to freedom of association with others.³
- 5.3 The Charter permits limitations of rights that are reasonable and proportionate.⁴ One of the matters that may be considered when determining whether limits placed on a person's rights are reasonable and proportionate is the rights of others. The Charter recognises the right of children to protection that is in their best interests and which they require as children.⁵

Freedom of movement and association

- 5.4 The Sex Offenders Registration Act affects the freedom of registered sex offenders to travel in Australia and overseas, live anywhere in the community, and associate and communicate with children. While registered sex offenders are not prevented from engaging in these activities, they must report them to the police. They may be imprisoned for up to five years if they do not meet their statutory obligations to keep the police informed of their movements and of some of their associations with children.
- 5.5 The police may monitor their activities whether or not they are suspected of being unlawful. In addition, their employment choices and personal relationships are curtailed by the prohibition on working with children in either a paid or a voluntary capacity.
- 5.6 It is open to argument that these limitations upon a registered sex offender's freedom of movement and association are a reasonable and proportionate response to the need to protect children from sexual abuse.

1 *Charter of Human Rights and Freedoms Act 2006* (Vic) s 12.

2 *Ibid* s 13.

3 *Ibid* s 16.

4 *Ibid* s 7(2).

5 *Ibid* s 17(2).

Privacy

- 5.7 The Sex Offenders Registration Act also interferes with a registered sex offender's right to privacy, as they are required to report a broad range of personal details to Victoria Police on an ongoing basis. The Charter stipulates that laws may not arbitrarily interfere with a person's privacy.⁶
- 5.8 In Victoria, government departments and statutory authorities must comply with privacy legislation when collecting, storing, using and disclosing personal information. The *Health Records Act 2001* (Vic) protects personal health information, and the *Information Privacy Act 2000* (Vic) protects all other types of personal information.
- 5.9 Victoria's privacy legislation limits the personal information that may be collected, requires it to be collected fairly and kept securely, and allows it to be used only for a purpose specified in the legislation or as required or authorised by another law.⁷ It also ensures that the person about whom the personal information is collected can request access to it and have it corrected if it is wrong.⁸ There are exceptions from the rules for law enforcement agencies, including Victoria Police.⁹
- 5.10 Any other legislation that is inconsistent with the privacy rules overrides them to the extent of the inconsistency.¹⁰ Accordingly, provisions in the Sex Offenders Registration Act on the collection, use and disclosure of personal information that differ from the corresponding provisions in privacy legislation prevail over them.
- 5.11 The Sex Offenders Registration Act establishes, or preserves, a number of privacy-related rights for registered sex offenders. These include:
- a right to privacy and support when reporting¹¹
 - a right of access to and a copy of the reportable information that they have provided¹²
 - a right to ask the Chief Commissioner to amend any of that information if it is incorrect.¹³
- 5.12 Section 24 of the Sex Offenders Registration Act enables a registered sex offender to report in private and be accompanied by a support person of their own choosing. A parent, guardian or independent person must accompany a registered sex offender who is a child.¹⁴
- 5.13 Under privacy legislation, the person about whom personal information has been collected from any source has the right to seek access to it and correct it if necessary.¹⁵ The police may claim an exemption from this rule if they believe on reasonable grounds that non-compliance is necessary for law enforcement or community policing functions.¹⁶
- 5.14 The Sex Offenders Registration Act ensures that the police must provide registered sex offenders with access to at least some of the personal information held about them on the Sex Offenders Register. Section 66 specifies that, on the request of the registered sex offender, the Chief Commissioner must provide the offender with a copy of all the reportable information in the Register about the offender as soon as practicable. The registered sex offender has the right to ask to have any of this information amended and the Chief Commissioner must comply with the request if satisfied that the information is incorrect.¹⁷

6 Ibid s 13.

7 *Information Privacy Act 2000* (Vic) IPP 1, IPP 2, IPP 4 ; *Health Records Act 2001* (Vic) HPP 1, HPP 2, HPP 4

8 *Information Privacy Act 2000* (Vic) IPP 6; *Health Records Act 2001* (Vic) HPP 6.

9 *Information Privacy Act 2000* (Vic) s 13, IPP 2.1(g), IPP 6.1(i), IPP 6.1(j); *Health Records Act 2001* (Vic) HPP 2.2(j), HPP 6.1(i), HPP 6.1(j).

10 *Information Privacy Act 2000* (Vic) s 6; *Health Records Act 2001* (Vic) s 7.

11 *Sex Offenders Registration Act 2004* (Vic) s 24.

12 Ibid s 66(1).

13 Ibid ss 66(3)–(4).

14 Ibid s 24(1)(b).

15 *Information Privacy Act 2000* (Vic) IPP 6.

16 Ibid s 13. In practice, requests for access to personal information held by government agencies, including Victoria Police, are made under the *Freedom of Information Act 1982* (Vic), which sets out a number of grounds on which police information may be exempt from being released.

17 *Sex Offenders Registration Act 2004* (Vic) ss 66(3)–(4).

- 5.15 The right of access is limited to information that the registered sex offender has been required to provide under the reporting obligations. It does not extend to information held on the Sex Offenders Register that has been collected from other sources. Access to this other information may be available to the registered sex offender under the *Freedom of Information Act 1982* (Vic) but is not guaranteed.

Question

19. Are there adequate protections for registered sex offenders in the Act?
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6. Accountability and review

- 6.1 The Sex Offenders Registration Act contains one accountability and review mechanism.
- 6.2 The Director of Police Integrity monitors compliance with Part 4 of the *Sex Offenders Registration Act 2004* (Vic). Part 4 sets out the Chief Commissioner's responsibilities to establish and maintain the Sex Offenders Register and control access to the information it contains. It also enables registered sex offenders to seek a copy of all the reportable information in the Register about themselves and seek to have that information corrected if necessary.
- 6.3 The Director and authorised staff of the Office of Police Integrity may enter police premises in order to inspect and copy documents that contain, or relate to, the Sex Offenders Register.¹ The report of any such inspections or of compliance with Part 4 may be given to the Minister for Police and Emergency Services, and a copy must be given to the Chief Commissioner.² Any reports to the Minister do not have to be made public.

Question

20. Are the current accountability and review mechanisms in the Act adequate?
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¹ *Sex Offenders Registration Act 2004* (Vic) s 66C(1).
² *Ibid* s 66D.

7. Management, use and disclosure of other information about registered sex offenders

- 7.1 Public entities, such as Corrections Victoria and the Department of Human Services, hold information about registered sex offenders that is not in the Sex Offenders Register and not managed in accordance with the *Sex Offenders Registration Act 2004* (Vic). The management, use and disclosure of this information is governed by a range of other Acts.

Information held by Corrections Victoria

- 7.2 Corrections Victoria, which is a Department of Justice service agency, operates Victoria's adult corrections system, including prisons and Community Correctional Services.
- 7.3 The *Corrections Act 1986* (Vic) restricts the disclosure of information obtained through the corrections system.¹ Generally, people who hold positions within Corrections Victoria must not record, disclose, communicate or make use of confidential information except to the extent necessary to perform official duties, powers or functions of their position.²
- 7.4 However, confidential information, including information about the classification or personal affairs of a prisoner,³ may be disclosed or communicated in accordance with the written authority of the Minister for Corrections.⁴ The Act does not limit the people to whom the Minister can authorise disclosure. This authorisation power was used to permit Corrections Victoria to disclose assessment reports relating to registered sex offenders to the Department of Human Services, as discussed in the Ombudsman's report.⁵
- 7.5 Further, the Minister may authorise Corrections Victoria staff to disclose information relating to the personal affairs of a prisoner or concerning the investigation of a possible breach of the law by a prisoner by placing it on a database that members of Victoria Police can access.⁶ The authority may also permit Corrections Victoria staff to access information from a police database.⁷

Information held by the Department of Human Services

- 7.6 The Department of Human Services obtains a large amount of information through the reports it receives about children who may be at risk of harm and the investigations it undertakes.⁸ The *Children, Youth and Families Act 2005* (Vic) contains many confidentiality provisions protecting the identity of people who make reports to the Department of Human Services, but few provisions relate to the use and disclosure of information contained in such reports.

1 *Corrections Act 1986* (Vic) ss 30, 91.

2 *Ibid* s 30(2).

3 *Ibid* ss 30(1)(a), (d).

4 *Ibid* s 30(3)(b). A slightly different provision exists in relation to information obtained through community corrections: s 91(2).

5 Ombudsman Victoria, *Whistleblowers Protection Act 2001—Investigation into the failure of agencies to manage registered sex offenders*, February 2011, 22, Appendix 1.

6 *Corrections Act 1986* (Vic) ss 30(3)(daa), (4), 91(3). There is a reciprocal provision in the *Police Regulation Act 1958* (Vic): s 127A(1B).

7 *Corrections Act 1986* (Vic) ss 30(4), 91(3); *Police Regulation Act 1958* (Vic): s 127A(1B); Explanatory Memorandum, Criminal Justice Legislation (Miscellaneous Amendments) Bill 2002 (Vic) cl 8.

8 The reporting provisions in the *Children, Youth and Families Act 2005* (Vic) are briefly discussed in Chapter 4 of this information paper.

- 7.7 There are provisions in the Children, Youth and Families Act that allow the Secretary of the Department of Human Services (and her delegates) to share information about a child or family with a community service, a service agency or an ‘information holder’—including members of the police force—when a report that a child is in need of protection is received.⁹
- 7.8 The Children, Youth and Families Act also provides that when the Department of Human Services conducts an investigation into a report that a child may be at risk of harm, information arising from the investigation must not be disclosed to anyone other than:
- a court
 - the child or child’s parents
 - the Secretary of the Department of Human Services¹⁰
 - the Chief Commissioner of Police
 - a person in connection with a Victorian Civil and Administrative Tribunal review
 - a person or member of a class of persons to whom disclosure is authorised in writing by the Chief Commissioner of Police or Secretary of the Department of Human Services.¹¹
- 7.9 The same limitations apply to disclosure of the ‘protective intervention report’, which comprises the details and results of the investigation.¹² On request, the Secretary of the Department of Human Services is required to submit the protective intervention report to a member of police who is investigating the subject matter of the report.¹³
- 7.10 If the Children’s Court requires more information in order to determine a protection application, it may order the Secretary of the Department of Human Services to prepare a protection report.¹⁴ The Children, Youth and Families Act and the Children’s Court specify to whom information in this report can and cannot be disclosed.¹⁵
- 7.11 The Children, Youth and Families Act also provides that the Secretary of the Department of Human Services ‘may disclose to an interstate officer any information that has come to his or her notice in the performance of duties or exercise of functions under this Act’ if it is necessary for the interstate officer to carry out functions under a child welfare law or interstate law.¹⁶

Information held by other agencies

- 7.12 The *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) (Serious Sex Offenders Act) permits the Secretaries, employees and contractors of the Department of Justice, Department of Health and Department of Human Services, and members of the Adult Parole Board, to divulge ‘any information’ obtained by them if it would enable the recipient of the information to fulfil functions under that Act, the Sex Offenders Registration Act or other named acts.¹⁷
- 7.13 The second reading speech for the bill indicated that the disclosure powers were to have broad application:
- It is intended that the broad powers are exercised flexibly, so that concerns about the privacy of individuals does not override the core purpose of this bill, which is the protection of the community.¹⁸

9 See, eg, *Children, Youth and Families Act 2005* (Vic) ss 35(1)(b), 3 (definition of ‘information holder’). Disclosure is only permitted under these provisions if it is for the purpose of seeking advice on or assessing a risk to a child, or seeking advice on or determining which community-based child and family service or service agency is an appropriate body to provide assistance for the child or family of the child: s 35(2).

10 However, the Secretary’s role of receiving information arising from an investigation and many of the Secretary’s other functions under the Act are delegated to other employees of the Department of Human Services: *Children, Youth and Families Act 2005* (Vic) s 17; *Instrument of Delegation*, signed 26 August 2009.

11 *Children, Youth and Families Act 2005* (Vic) ss 205(2)(b), 206(2).

12 *Ibid* s 206(1).

13 *Ibid* s 207(1).

14 *Ibid* s 553. Again, this function is delegated to other employees of the Department of Human Services: *Children, Youth and Families Act 2005* (Vic) s 17; *Instrument of Delegation*, signed 26 August 2009.

15 *Children, Youth and Families Act 2005* (Vic) ss 552, 556.

16 *Ibid* s 26.

17 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 189(1) (emphasis added). The other named acts are the *Disability Act 2006* (Vic), the *Housing Act 1983* (Vic), the *Mental Health Act 1986* (Vic) and the *Working with Children Act 2005* (Vic).

18 Victoria, *Parliamentary Debates*, Legislative Assembly, 12 November 2009, 4037 (Bob Cameron, Minister for Corrections).

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- 7.14 The disclosure provision under the Serious Sex Offenders Act is broader than that in the Sex Offenders Registration Act,¹⁹ as it applies to ‘any information’ obtained by relevant persons, not just personal information in the Register. In addition, different limits on disclosure apply. Disclosure is permitted under the Serious Sex Offenders Act if it is necessary to enable someone to fulfil their functions under one of the named Acts,²⁰ whereas under the Sex Offenders Registration Act disclosure must be for one of three identified purposes.²¹
- 7.15 Neither the Sex Offenders Registration Act nor the Serious Sex Offenders Act deals with the interaction between the two disclosure provisions or specifies which should apply if both are engaged.

Questions

21. Should other government agencies be required or permitted by legislation to give the Chief Commissioner of Police information about a registered sex offender for inclusion in the Sex Offenders Register? If so, what type of information?
22. Should Corrections Victoria be required or permitted by legislation to give the Secretary of the Department of Human Services information about a sex offender that is acquired during any treatment programs undertaken by the offender when in custody or on parole?
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19 *Sex Offenders Registration Act 2004* (Vic) s 64.
20 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 189.
21 *Sex Offenders Registration Act 2004* (Vic) ss 64(2)(a)–(c).

Questions

Purposes

1. To what extent does the Sex Offenders Registration Act fulfil its stated purposes?
2. Should the Sex Offenders Register be a primary source of information to the Department of Human Services about child protection concerns?
3. Does the Sex Offenders Registration Act establish an effective scheme for monitoring the activities of convicted child sex offenders who are likely to re-offend?

Inclusion in the Sex Offenders Register

4. Should inclusion in the Sex Offenders Register be an automatic administrative consequence of a person being convicted of and sentenced for a Class 1 or Class 2 offence?
5. Should the court have a discretionary power to decide whether to order that a person who is convicted of some or all of the Class 1 or Class 2 offences be placed in the Sex Offenders Register? What criteria should govern the exercise of any discretionary power?
6. Should an order placing a person in the Sex Offenders Register be a matter that the court can take into account when sentencing a person for a Class 1 or Class 2 offence?
7. Should it continue to be possible for a court to order that a person convicted of any offence be placed in the Sex Offenders Register if the court is satisfied that the offender poses a risk to the sexual safety of any other person?

Duration of reporting obligations

8. Should the duration of a registered sex offender's reporting obligations continue to be automatically determined by a legislative classification of offences?
9. Should the court have a discretionary power to determine the length of the reporting period? What criteria should govern the exercise of any discretionary power?
10. Are the current provisions in the Sex Offenders Registration Act for suspending the reporting obligations of sex offenders adequate?
11. Should the Chief Commissioner of Police or some other statutory official have the power to apply to a court for an order extending a registered sex offender's reporting obligations?

Content of reports

12. Should all registered sex offenders continue to have the same reporting obligations that are automatically determined by the legislation?
13. Should the court have a discretionary power to determine the content of a registered sex offender's reporting obligations? What criteria should govern the exercise of any discretionary power?
14. Should the Chief Commissioner of Police have additional powers which would permit police officers to test the truth of any report provided by a registered sex offender? If yes, what should those powers be and in what circumstances should they be available?

Management, use and disclosure of information in the Register

15. Should the Chief Commissioner of Police have an express power to give some or all information in the Sex Offenders Register to CrimTrac for national law enforcement purposes?
16. Should the Chief Commissioner of Police have an express power to give some or all information in the Sex Offenders Register to the Secretary of the Department of Human Services for child protection purposes?
17. Should the Chief Commissioner of Police have an express power to give some or all information in the Sex Offenders Register to any other public body or official for any other purpose?
18. Should registered offenders continue to be required to report 'unsupervised contact' with a child? If so, should the legislation contain guidance about what is meant by this term? Should registered sex offenders be required to report 'unsupervised contact' with a child before it occurs rather than after it has occurred? If reporting were required in advance of contact, should it be before the first contact, a subsequent contact, or at any other point in time?

Protections for registered sex offenders

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

Accountability and review

20. Are the current accountability and review mechanisms in the Act adequate?

Management of other information about registered offenders

21. Should other government agencies be required or permitted by legislation to give the Chief Commissioner of Police information about a registered sex offender for inclusion in the Sex Offenders Register? If so, what type of information?
22. Should Corrections Victoria be required or permitted by legislation to give the Secretary of the Department of Human Services information about a sex offender that is acquired during any treatment programs undertaken by the offender when in custody or on parole?

Appendix

List of registrable offences

Registrable offences result in the offender becoming a registered sex offender. They are divided into four classes and listed in Schedules 1 to 4 respectively of the *Sex Offenders Registration Act 2004* (Vic).

Class 1 and Class 2 offences are sexual offences involving children (except for the one offence of bestiality in Class 2). They result in the mandatory registration of adult offenders and the registration of child offenders where the court makes a sex offender registration order.

Class 3 and Class 4 offences are sexual offences committed by a serious sexual offender against someone other than a child. A serious sexual offender, for the purposes of the Sex Offenders Registration Act, is someone who has been sentenced for two or more of the offences listed in the schedules.¹ Class 3 and Class 4 offences may result in registration if the sentencing court is satisfied, beyond reasonable doubt, that the offender poses a risk to the sexual safety of others or the community and consequently makes a sex offender registration order.

An offence that is not listed in a schedule may still result in registration under a sex offender registration order if the sentencing court is satisfied, beyond reasonable doubt, that the offender poses a risk to the sexual safety of others or the community.

Additional Class 1, 2, 3 and 4 offences may be prescribed by regulation. To date, this has not occurred.

The lists of offences in schedules 1 to 4 are summarised below. The Sex Offenders Registration Act refers to both current and some historical offences. This appendix contains a list of the offences as they currently exist at law.

Class 1 offences

Many of the offences listed in schedule 1 can be committed against either adults or children but, to be a Class 1 offence, the offence must have been committed against a child.

Crimes Act 1958 (Vic)

Provision	Offence
s 38	Rape
s 44	Incest: an act of sexual penetration with a person whom the perpetrator knows to be his or her child or other lineal descendant or step-child
s 45(1)	Sexual penetration of a child under the age of 16
s 48(1)	Sexual penetration of a 16- or 17-year-old child by a person in a position of care, supervision or authority
s 51(1)	Sexual penetration of a person with a cognitive impairment by a person who provides medical or therapeutic services

s 51(2)	Sexual penetration of a person with a cognitive impairment by providers of special programs
s 38A	Compelling sexual penetration
s 47A	Persistent sexual abuse of a child under the age of 16
s 49A	Facilitating sexual offences against children
	An offence against a provision of the Crimes Act repealed or amended before 1 October 2004 the elements of which would have constituted the elements of any of the above offences
s 60AC	Aggravated sexual servitude against a person under the age of 18

Crimes Act 1914 (Cth)

Provision	Offence
s 50 BA	Sexual intercourse with a child under the age of 16 outside Australia ²
s 50BB	Inducing a child under the age of 16 to engage in sexual intercourse with a third party outside Australia ³
s 50DA	Benefiting from an offence involving child sex tourism ⁴
s 50DB	Encouraging an offence involving child sex tourism ⁵

Criminal Code Act 1995 (Cth)

Provision	Offence
s 270.6	Causing a child to enter or remain in sexual servitude

Other

Provision	Offence
	Any offence under a law of a foreign jurisdiction that, if it had been committed in Victoria, would have constituted an offence of a kind listed in Schedule 1
	An offence an element of which is an intention to commit an offence of a kind listed in schedule 1
	An offence of attempting, or of conspiracy or incitement, to commit an offence of a kind listed in schedule 1
	An offence that, at the time it was committed, was a Class 1 offence for the purposes of this Act or, in the case of an offence committed before 1 October 2004, was an offence of a kind listed in schedule 1 ⁶

Class 2 offences

Many of the offences listed in schedule 2 can be committed against either adults or children, but to be a Class 2 offence, the offence must have been committed against a child (except for the offence of bestiality).⁷

Crimes Act 1958 (Vic)

Provision	Offence
s 39	Indecent assault
s 40(1)	Assault with intent to rape

² This section of the *Crimes Act 1914* (Cth) has been repealed: *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cth) pt 1. The offence is now covered by *Criminal Code Act 1995* (Cth) s 272.8(1).

³ This section of the *Crimes Act 1914* (Cth) has been repealed: *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cth) pt 1. The offence is now covered by *Criminal Code Act 1995* (Cth) s 272.8(2).

⁴ That is, an offence against pt IIIA of the *Crimes Act 1914* (Cth). This part has been repealed: *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cth) pt 1. The offence is now covered by *Criminal Code Act 1995* (Cth) s 272.18.

⁵ That is, an offence against pt IIIA of the *Crimes Act 1914* (Cth). This part has been repealed: *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cth) pt 1. The offence is now covered by *Criminal Code Act 1995* (Cth) s 272.19.

⁶ The law in Vic in relation to sexual offences has changed significantly over a number of decades and some historical offences have been renamed or no longer exist at law. The purpose of this provision is to ensure that the historical offences are brought within the ambit of the *Sex Offenders Registration Act 2004* (Vic), where the substance of the historical and current offence are the same. Schedule 1 of the *Sex Offenders Registration Act 2004* (Vic) lists a number of references in the *Sentencing Act 1991* (Vic) to offences that no longer exist at law.

⁷ As noted above, the effect of including bestiality in both Class 2 and 4 is unclear, because an offence involving a child being forced to engage in an act of bestiality would fall within the Class 1 offence of compelling a victim to take part in an act of bestiality: *Crimes Act 1958* (Vic) s 38A.

s 47(1)	Indecent act with a child under the age of 16
s 49(1)	Indecent act with a 16- or 17-year-old child
s 51(2)	Indecent act with a person with a cognitive impairment by providers of medical or therapeutic services
s 52(2)	Indecent act with a person with a cognitive impairment by providers of special programs
s 53	Administration of a drug to a person with the intention of engaging in sexual penetration or an indecent act with that person (or facilitating another person to do so)
s 54	Owner, occupier or manager of premises inducing or knowingly allowing a child under the age of 17 to enter or remain on the premises for the purpose of taking part in an unlawful act of sexual penetration
s 55	Taking a child away or detaining a child against their will with the intention of getting married to that child or taking part in an act of sexual penetration with that child, or with the intention that the child should marry or take part in an act of sexual penetration with another person
s 56	Abducting a child from their lawful carer with the intention that the child should take part in an act of sexual penetration outside marriage
s 57	Procuring a child to take part in an act of sexual penetration by threats, intimidation or any fraudulent means
s 58	Procuring a person under 16 years old to take part in an act of sexual penetration or an indecent act
s 59	Bestiality: offences involving sexual penetration of or by an animal ⁸
s 60AE	Aggravated deceptive recruiting for commercial sexual services, where the offence is aggravated because it was committed against someone under the age of 18
s 60B(2)	Loitering near a school, kindergarten or childcare centre without reasonable excuse after having been found guilty of an offence of a sexual nature
s 68(1)	Production of child pornography
s 69	Inviting, procuring, causing or offering a minor to be in any way concerned in the making of child pornography
s 70(1)	Knowingly possessing child pornography
s 70AC	Inviting, procuring, causing or offering a minor to be in any way concerned in a sexual performance involving payment of the minor or any other person
s 76	Burglary where the offender entered the building as a trespasser with the intent to commit a sexual or indecent assault on a child
s 77	Aggravated burglary where the offender entered the building as a trespasser with the intent to commit a sexual or indecent assault on a child

Sex Work Act 1994 (Vic)

Provision	Offence
s 5(1)	Causing or inducing a child to take part in an act of sex work, whether as the sex worker or client
s 6(1)	Receiving payment knowing that it or any part of it has been derived, directly or indirectly, from sexual services provided by a child
s 7(1)	Entering into or offering to enter into an agreement under which a child is to provide sexual services
s 11(1)	Owner, occupier or manager premises allowing a child to remain on the premises for the purpose of taking part in an act of sex work, whether as the sex worker or client

Classification (Publications, Films and Computer Games) (Enforcement) Act 1995 (Vic)

Provision	Offence
s 57A	Knowingly using an online information service to publish or transmit child pornography

Other

Provision	Offence
	An offence against a provision of an Act amended or repealed before 1 October 2004 of which the necessary elements at the time it was committed consisted of elements that constitute any of the offences referred to above

Crimes Act 1914 (Cth)

Provision	Offence
s 50BC	Sexual conduct involving a person under the age of 16 outside Australia ⁹
s 50BD	Inducing a child under the age of 16 to be involved in sexual conduct with a third party outside Australia ¹⁰

Criminal Code Act 1995 (Cth)

Provision	Offence
s 270.7	Deceptive recruiting for sexual services
s 271.4	Trafficking children into or out of Australia
s 271.7	Domestic trafficking in children
s 474.19(1)	Using a carriage service to access, transmit or solicit child pornography
s 474.20(1)	Possessing, controlling, producing, supplying or obtaining child pornography material with the intent to commit an offence under s 474.19
s 474.22(1)	Using a carriage service to access, transmit or solicit child abuse material
s 474.23(1)	Possessing, controlling, producing, supplying or obtaining child abuse material with the intent to commit an offence under s 474.22
s 474.26	Using a carriage service to procure a person under 16 years of age with the intention of engaging in sexual activity
s 474.27	Using a carriage service to groom persons under 16 years of age

Customs Act 1901 (Cth)

Provision	Offence
s 233BAB	Intentional importation of child pornography or child abuse material

Other

Provision	Offence
	Any offence under a law of a foreign jurisdiction that, if it had been committed in Victoria, would have constituted an offence of a kind listed in schedule 2
	An offence an element of which is an intention to commit an offence of a kind listed in schedule 2
	An offence of attempting, or of conspiracy or incitement, to commit an offence of a kind listed in schedule 2
	An offence that, at the time it was committed, was a Class 2 offence for the purposes of this Act or, in the case of an offence committed before 1 October 2004, was an offence of a kind listed in schedule 2 ⁹

⁹ This section of the *Crimes Act 1914* (Cth) has been repealed: *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cth) pt 1. The offence is now covered by *Criminal Code Act 1995* (Cth) s 272.9(2).

¹⁰ The law in Vic in relation to sexual offences has changed significantly over a number of decades and some historical offences have been renamed or no longer exist at law. The purpose of this provision is to ensure that the historical offences are brought within the ambit of the *Sex Offenders Registration Act 2004* (Vic) where the substance of the historical and current offence are the same. Schedule 3 of the *Sex Offenders Registration Act 2004* (Vic) lists a number of references in the *Sentencing Act 1991* (Vic) to offences that no longer exist at law.

Class 3 offences

Many of the offences listed in schedule 3 are similar to the Class 1 offences, but committed against adults rather than children.

Crimes Act 1958 (Vic)

Provision	Offence
s 38	Rape
s 44	Incest: an act of sexual penetration with a person whom the perpetrator knows to be their child or other lineal descendant or step-child
s 51(1)	Sexual penetration of a person with a cognitive impairment by a provider of medical or therapeutic services
s 52(1)	Sexual penetration of a person with a cognitive impairment by a person who provides special programs
s 38A	Compelling another person to take part in an act of sexual penetration
	An offence against a provision of the Crimes Act repealed or amended before 1 October 2004 the elements of which would have constituted the elements of any of the above offences

Other

Provision	Offence
	Any offence under a law of a foreign jurisdiction that, if it had been committed in Victoria, would have constituted an offence of a kind listed in schedule 3
	An offence an element of which is an intention to commit an offence of a kind listed in schedule 3
	An offence of attempting, or of conspiracy or incitement, to commit an offence of a kind listed in schedule 3
	An offence that, at the time it was committed, was a Class 3 offence for the purposes of this Act or, in the case of an offence committed before 1 October 2004, was an offence of a kind listed in schedule 3 ¹¹

Class 4 offences

Many of the offences listed in schedule 4 are similar to the Class 2 offences, but committed against adults rather than children.

Crimes Act 1958 (Vic)

Provision	Offence
s 39	Indecent assault
s 40(1)	Assault with intent to rape
s 51(2)	Indecent act with a person with a cognitive impairment by providers of medical or therapeutic services
s 52(2)	Indecent act with a person with a cognitive impairment by providers of special programs
s 53	Administration of a drug to a person with the intention of engaging in sexual penetration or an indecent act with that person (or facilitating another person to do so)
s 55	Taking a person away or detaining a person against their will with the intention of getting married to that person or taking part in an act of sexual penetration with that person, or with the intention that the person should marry or take part in an act of sexual penetration with another person

¹¹ The law in Vic in relation to sexual offences has changed significantly over a number of decades and some historical offences have been renamed or no longer exist at law. The purpose of this provision is to ensure that the historical offences are brought within the ambit of the *Sex Offenders Registration Act 2004* (Vic), where the substance of the historical and current offence are the same. Schedule 3 of the *Sex Offenders Registration Act 2004* (Vic) lists a number of references in the *Sentencing Act 1991* (Vic) to offences that no longer exist at law.

s 57	Procuring a person to take part in an act of sexual penetration by threats, intimidation or any fraudulent means
s 59	Bestiality: offences involving sexual penetration of or by an animal ¹²
s 60AB	Sexual servitude: causing another person to provide sexual services by use of force, threat, unlawful detention, fraud, misrepresentation or enforcing an excessive debt
s 60AD	Deceptive recruiting for commercial sexual services
s 76	Burglary where the offender entered the building as a trespasser with the intent to commit a sexual or indecent assault
s 77	Aggravated burglary where the offender entered the building as a trespasser with the intent to commit a sexual or indecent assault
	An offence against a provision of the Crimes Act repealed or amended before 1 October 2004 the elements of which would have constituted the elements of any of the above offences

Other

Provision	Offence
	Any offence under a law of a foreign jurisdiction that, if it had been committed in Victoria, would have constituted an offence of a kind listed in schedule 4
	An offence an element of which is an intention to commit an offence of a kind listed in schedule 4
	An offence of attempting, or of conspiracy or incitement, to commit an offence of a kind listed in schedule 4
	An offence that, at the time it was committed, was a Class 4 offence for the purposes of this Act or, in the case of an offence committed before 1 October 2004, was an offence of a kind listed in schedule 4 ¹³

¹² As noted above, the effect of including bestiality in both Class 2 and 4 is unclear, because an offence involving a person being forced to engage in an act of bestiality would fall within the Class 1 offence of compelling a victim to take part in an act of bestiality: *Crimes Act 1958* (Vic) s 38A.

¹³ The law in Vic in relation to sexual offences has changed significantly over a number of decades and some historical offences have been renamed or no longer exist at law. The purpose of this provision is to ensure that the historical offences are brought within the ambit of the *Sex Offenders Registration Act 2004* (Vic) where the substance of the historical and current offence are the same. Schedule 4 of the *Sex Offenders Registration Act 2004* (Vic) lists a number of references in the *Sentencing Act 1991* (Vic) to offences that no longer exist at law.