Report No. 8

The Criminal Law (Sex Offenders Reporting) Bill 1997

LEGISLATIVE ASSEMBLY OF QUEENSLAND

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

REPORT ON

THE CRIMINAL LAW (SEX OFFENDERS REPORTING) BILL 1997

February 1998

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LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

	REPORTS	DATE TABLED
1.	Annual Report for 1995-96	8 August 1996
2.	Report on matters pertaining to the Electoral Commission of Queensland	8 August 1996
3.	Report on the Referendums Bill 1996	14 November 1996
4.	Report on truth in political advertising	3 December 1996
5.	Report on the Electoral Amendment Bill 1996	20 March 1997
6.	Report on the study tour relating to the preservation and enhancement of individuals' rights and freedoms and to privacy (31 March 1997 - 14 April 1997)	1 October 1997
7.	Annual Report for 1996-97	30 October 1997

	ISSUES PAPERS	DATE TABLED
1.	Truth in political advertising	11 July 1996
2.	Privacy in Queensland	4 June 1997
3.	The preservation and enhancement of individuals' rights and freedoms: Should Queensland adopt a bill of rights?	1 October 1997

	INFORMATION PAPERS	DATE TABLED
1.	Upper Houses	27 November 1997

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

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SECOND SESSION

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CHAIRMAN'S FOREWORD

On 18 November 1997, Mrs Lorraine Bird MLA, Member for Whitsunday, introduced into the Legislative Assembly a Private Member's Bill, the Criminal Law (Sex Offenders Reporting) Bill 1997. On Mrs Bird's motion, the Assembly resolved to refer the Bill to the committee for investigation and report.

The Bill proposes that persons who commit sex offences against children be required to report their personal details and details of their convictions in this regard to the Police. The Bill further provides that the Police Commissioner may keep a sex offenders register which may include, amongst other matters, those personal details. Provision is also made in the Bill for information from that register to be disclosed to certain persons.

Clearly, the Bill raises fundamental issues of competing rights and interests. Determining the appropriate balance between these rights and interests is not an easy task. It requires clear identification of the problem that the legislation is trying to overcome and an assessment as to the proportionality of the proposed legislation in addressing that problem.

The aim of the committee's investigation has been firstly to provide the Parliament with important background material which it believes is necessary to make the above assessments. Therefore, chapters 2 and 3 of this report reflect a substantial amount of research that the committee has conducted about paedophilia and similar legislation in other jurisdictions.

Secondly, the committee has studied the provisions of the Bill itself in some detail should the Parliament decide to proceed with it. In this regard the committee consulted with various peak bodies in relation to the Bill and has incorporated into this report many of their valuable submissions. As a result, the committee has made a number of recommendations as to the content of the Bill as it currently stands.

Unfortunately, the committee's process has been made more difficult by the fact that the Bill was not accompanied by explanatory notes. Hence, the Member for Whitsunday's intended objectives in introducing the Bill are unclear. The information contained in explanatory notes is particularly important when investigating proposed legislation such as this Bill. For this reason the committee has recommended that the requirement to circulate explanatory notes be extended to apply to all Members who present Bills to the Legislative Assembly and not be confined to Bills introduced by Minsters.

The future of the Bill is a matter for the Parliament. However, the committee believes that before the Parliament further considers the Bill, the Member for Whitsunday should clarify the Bill's objectives and consult with the new Queensland Crime Commission. Consultation with the Commission is particularly important given its jurisdiction with respect to paedophilia.

On behalf of the committee I would like to thank Mr Robert Sibley, Barrister-at-Law and Senior Lecturer in Law at the Queensland University of Technology for assisting the committee with its research in relation to the Bill. I would also like to thank Ms Kerryn Newton, Mr David Thannhauser and Ms Tania Jackman of the committee's secretariat for their assistance in the preparation of this report.

Finally, I thank the committee members for their continuing dedication to ensuring that the committee fulfils its jurisdiction in a timely and competent manner.

[Original Signed]

Judy Gamin MLA
Chairman

23 February 1998

ABBREVIATIONS AND ACRONYMS USED IN THIS REPORT

ABCI	Australian Bureau of Criminal Intelligence
DPP	Director of Public Prosecutions
FLP	'Fundamental legislative principle' as defined in s 4 of the *Legislative Standards Act 1992* (Qld)
FOI	Freedom of information
NCA	National Crime Authority
QAMH	Queensland Association for Mental Health
QCC	Queensland Crime Commission
QCCL	Queensland Council for Civil Liberties
QPS	Queensland Police Service

1. INTRODUCTION

1.1 The committee's reference

The Legal, Constitutional and Administrative Review Committee ('the committee') is a statutory committee of the Queensland Legislative Assembly which was established in 1995 pursuant to the *Parliamentary Committees Act 1995* (Qld). According to that Act, the committee has the following four areas of responsibility:

- administrative review reform (including considering legislation about access to information, review of administrative decisions, anti-discrimination and equal opportunity employment);
- constitutional reform;
- electoral reform; and
- legal reform (including recognition of Aboriginal tradition and Island custom under Queensland law and proposed national scheme legislation referred to the committee by the Legislative Assembly).[1]

In addition, the committee is to deal with issues referred to it by the Legislative Assembly or under another Act, whether or not the issue is within its area of responsibility.[2]

On 18 November 1997, Mrs Lorraine Bird MLA, Member for Whitsunday, introduced into the Legislative Assembly the Criminal Law (Sex Offenders Reporting) Bill 1997 ('the Bill') as a Private Member's Bill. On her motion, the Legislative Assembly resolved to refer the Bill to the committee for 'investigation and report to the House by the last week in February 1998'. A copy of the Bill is attached as Appendix A.

In summary, the Bill requires persons who have committed certain sex offences against children to report their personal details and details of their convictions in this regard to the police. The Bill also gives the Police Commissioner the discretion to keep a register of sex offenders which may include, amongst other matters, those details. Further, the Police Commissioner may disclose information from that register to certain persons.

However, as the Bill was not accompanied by an explanatory note the objective of the Bill is unclear. In this regard the committee notes that s 22(1) of the *Legislative Standards Act 1992* (Qld) only requires a Minister who presents a Government Bill to the Legislative Assembly to, before the resumption of the second reading debate, circulate to Members an explanatory note for the Bill. The requirement to circulate an explanatory note does not apply to Private Member's Bills.

[1] sections 9-13.
[2] section 8(2).

Explanatory notes are required to provide important information about Bills to the Parliament including:

- a brief statement of the policy objectives of the Bill and the reasons for them;
- a brief statement of the way the policy objectives will be achieved by the Bill and why this way of achieving the objectives is reasonable and appropriate;
- if appropriate, a brief statement of any reasonable alternative way of achieving the policy objectives and why the alternative was not adopted;
- a brief assessment of the administrative cost to government of implementing the bill, including staffing and program costs but not the cost of developing the Bill;
- a brief assessment of the consistency of the Bill with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency;
- a brief statement of the extent to which consultation was carried out in relation to the Bill; and
- a simple explanation of the purpose and intended operation of each clause of the Bill.[3]

Moreover, if an explanatory note does not include any of the above information it must state the reason for non-inclusion.[4]

Some guidance as to the Honourable Member's reasons for introducing the Bill is provided in her introductory statement to the Parliament and the single-page written statement which she tabled in the House on the same day as introducing the Bill. A copy of these statements appear as Appendix B, and the key assertions made in the single-page statement are the subject of discussion in chapter 2 of this report.

However, the committee's task of investigating and reporting on the Bill has been made more difficult in the absence of the information normally contained in an explanatory note. In particular, the committee and indeed the Parliament has not had the benefit of being informed of: the objectives of the Bill; how the Bill attempts to achieve those objectives; and an explanation as to why the manner in which the Bill seeks to achieve those objectives is reasonable and appropriate.

The importance of this information is clear in assessing proposed legislation such as the current Bill.

Fundamental to a proposal such as that requiring child sex offenders to report to the police is the complex issue of competing interests or rights. Clearly such legislation seeks to protect the

[3] See s 23(1) of the *Legislative Standards Act 1992* (Qld).
[4] See s 23(2) of the *Legislative Standards Act 1992* (Qld).

rights of children who may be the subject of sexual offences. However, consideration must also be given to the rights of those offenders whose names may appear on the register and the rights of their families and associates.

In other words there must be an appropriate balance reached between competing interests, that is, the public interest in criminal law enforcement, public safety and more particularly the protection of children, as opposed to the rights and liberties, such as the right to privacy and freedom of movement, of the offenders covered by the regime.

Many would argue that in the case of sexual offences against children, the rights and interests of children should clearly outweigh the rights and interests of the offenders. However, in a society that respects the rights and liberties of all individuals, regard must also be had to the rights of convicted sex offenders and their families and associates, and the interests of the society in their rehabilitation.

The rights and liberties of individuals is specifically recognised by the 'fundamental legislative principles' (FLPs) set out in s 4 of the *Legislative Standards Act 1992* (Qld). Fundamental legislative principles are stated in that Act to be the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. These principles are not absolute but require that legislation has *sufficient regard to* the rights and liberties of individuals and the institution of Parliament.

Pursuant to the *Parliamentary Committees Act 1995* (Qld), the Queensland Parliament's Scrutiny of Legislation Committee has responsibilities which include considering the application of fundamental legislative principles to particular Bills and particular subordinate legislation by examining all Bills and subordinate legislation. Whilst that committee will presumably report on the current Bill in accordance with its jurisdiction, this committee has also been mindful of the fundamental legislative principles, as defined under the *Legislative Standards Act,* and makes explicit reference to them in this report where appropriate.

Also relevant in the context of this discussion are international instruments which deal with individuals' rights and which Australia has ratified. Articles of the *International Covenant on Civil and Political Rights* relate to such matters as the right to liberty of movement and privacy. On the other hand, conventions such as the *Declaration of the Rights of the Child* and the *United Nations Convention on the Rights of the Child* require state parties to protect children against neglect, cruelty, sexual exploitation and sexual abuse.

Many of the these more specific rights issues are dealt with in more detail in the clause-by-clause analysis of the Bill in chapter 4 of this report. However, suffice to say at this stage that in determining the appropriate balance between the competing interests identified above there must be:

- firstly, an assessment as to the current problem that the proposed legislation is trying to overcome; and

- secondly, an assessment as to whether the 'solution' posed in the proposed legislation is proportionate to overcome the problem so identified.

In this report the committee attempts to provide some important background material necessary for Parliament to make these assessments.

1.2 The committee's investigation process

From the outset the committee has been conscious of the relatively short-time frame it had in which to consider the Bill given the complex subject matter of its content and the intervening Christmas break. The breadth of issues arising in relation to the proposed legislation became more apparent to the committee as it embarked upon background research as to the problem of sex offences being committed against children and the various measures which have been introduced to address this problem. This research included a study of actual and proposed comparative legislation in various international and Australian jurisdictions.

In addition to undertaking this background research, the committee also invited and accepted comment on the Bill from a wide range of peak bodies identified as having an interest in the Bill. These included legal and community organisations, relevant academic faculties and schools, law enforcement bodies, and relevant government departments and agencies.

The committee requested these organisations to submit any comment that they may wish to make to the committee's secretariat by Friday 16 January 1998. A number of submissions containing valuable information were received as a result of this process. This report, particularly chapter 4, summarises many of the pertinent observations made by those organisations. In addition, the committee has taken into consideration comments made in submissions even though they are not specifically referred to in the report as, for example, in the case of confidential submissions.

At its meetings on 27 January 1998 and 18 February 1998, the committee authorised the publication of non-confidential submissions received by the dates of those meetings. It also resolved to table those submissions when it tabled its report in the Legislative Assembly.

A list of those persons and organisations who made non-confidential submissions to the committee is attached as Appendix C.

1.3 The format of this report

To assist the Parliament in its further consideration of the Bill, the committee has not confined its report solely to the terms of the Bill itself. Instead, as the preceding discussion has shown, there is a need to identify the problem the proposed legislation is seeking to overcome and to assess the Bill's proportionality in addressing that problem. Therefore, the committee has sought to provide important relevant information in this regard.

This is not to say that the committee's investigation should be taken to be a definitive assessment of the arguments for and against sex offenders registers. On the contrary, what the committee's report does highlight is the need for further and more detailed research and consultation in relation to proposals of this kind.

On this basis, the format of this report is as follows:

- Chapter 2 - Background information to the introduction of such proposed legislation
- Chapter 3 - Comparative legislation
- Chapter 4 - Comment on the particular provisions of the Bill
- Chapter 5 - Conclusion and recommendation.

The committee trusts that the Parliament will find its report informative and of assistance in its deliberations on the Bill.

2. BACKGROUND INFORMATION

2.1 General

The committee has used as its starting point for investigating the problem that the Bill is trying to overcome, the key assertions made by the Honourable Member in her statement tabled in the Legislative Assembly on 18 November 1997.

These are:

- paedophiles are in a special category because they regard their sexual activities as acceptable and this behaviour increases with time;
- paedophiles mostly are respected people in the community;
- studies show that long term treatment of paedophiles is of little success and the risk of reoffending is numerically high;
- paedophiles show little remorse and are thus dangerous; and
- the existence of paedophilia has been denied in the past.

During the last decade or more there have been attempts by a number of bodies such as state and federal Parliamentary committees, Royal Commissions, the NSW Independent Commission Against Corruption, the Australian Institute of Criminology and the Children's Commission of Queensland to assess the level and effect of paedophilia in Australia. Similar assessments have occurred in the United Kingdom and the United States.

In this background chapter the committee attempts to analyse those and other materials with a view to assessing the above assertions by the Honourable Member.

2.2 Distinguishing child sex offenders and paedophiles

2.2.1 What is a child sex offender?

A child sex offender, in simple terms, is anyone who has committed an offence of a sexual nature where the complainant is a child. Under s1 of the *Criminal Code* an 'adult' means a person of, or above the age of, 18 years. However the *Code* distinguishes in the case of some offences between the age of 18 and the age of 16 before a sexual act involving a child is an offence.[5]

[5] For example, s 208 makes sodomy unlawful in the case of any person under the age of 18 while s 210 makes indecent dealing with any child under the age of 16 illegal and s 215 makes carnal knowledge with a girl under the age of 16 unlawful.

Sexual offences include both those where absence of consent is necessary and those in which consent is simply irrelevant. They may involve a once-only incident or a series of incidents. There may be a closeness in age or a great disparity in age between the child and the offender. The complainant may be related to the offender or a complete stranger. The offence may involve only one offender or multiple offenders.

2.2.2 What is paedophilia?

> *Use of the term paedophile can be very problematic as it is rarely used with any consistency and it means different things to people from different disciplines. The clinical definition of a paedophile is very different from its application in law enforcement, which is different again to its interpretation by the general public.*[6]

The Concise Oxford Dictionary simply defines paedophilia as *sexual love directed towards children.*

According to Butterworths *Australian Criminal Law Dictionary*, a paedophile is:

> *a person who displays sexual desire directed towards children, usually of pre-pubertal or early pubertal age. Some are attracted to only girls, others only to boys, and others are interested in both sexes. Strong feelings of fear and condemnation of both male and female adult sexuality are found. The core complex of the paedophile is characterised by feelings and attitudes of intense longings with annihilation anxiety, narcissistic withdrawal with depression and low self-esteem, and aggression more or less fully converted into sadomasochism.*[7]

Michael Edwards, the Statewide Clinical Coordinator of Sex Offender Programs for the NSW Department of Corrective Services and a Clinical Psychologist, distinguishes paedophiles from other child sex offenders (child molesters). He defines a paedophile as:

> *a person for whom the act or fantasy of the act of sexual contact with pre-pubertal children is the repeatedly preferred method of achieving sexual excitement. More simply stated a paedophile is one whose erotic preference is for pre-pubertal children.....Common usage depicts paedophiles as serial and recidivist sex offenders.*[8]

Edwards goes on to recognise however that while incest offenders are usually not considered paedophiles they are usually recidivist and their assaults often begin when the child is pre-pubescent.[9]

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[6] *Kylie Miller (Senior Analyst in the Strategic Intelligence Unit of the National Crime Authority),* 'Detection and Reporting of Child Sexual Abuse (Specifically Paedophilia): A Law Enforcement Perspective' in James M (ed), *Paedophile Policy and Prevention*, Australian Institute of Criminology Research and Public Policy Series No 12, 1997 at pp 32-33.

[7] Howie R N, Nygh P E and Butt P (eds), *Australian Criminal Law Dictionary*, Butterworths, Sydney, 1997.

[8] Edwards E, 'Treatment for Paedophiles; Treatment for Sex Offenders', in James M (ed), *Paedophile Policy and Prevention*, Australian Institute of Criminology Research and Public Policy Series No 12, 1997 at pp 74-75.

[9] Ibid at p 75.

Commissioner Wood, in his final report on the Royal Commission into the NSW Police Service, canvassed all of the principal definitions[10] and concluded that:

> *It is clear from the foregoing that there is no universally accepted meaning for the expressions 'paedophilia', 'paedophile', or 'paedophile activity' used in the terms of reference, and that even the definition of 'child' may vary according to whether it is based on chronological age, biological age (pre-pubertal), the age of legal majority, the legal age of consent, or statutory prescription.*[11]

Commissioner Wood chose the socio-legal definition *which takes 'paedophiles' to mean those adults who act on their sexual preferences or urge for children, in a manner which is contrary to the criminal laws of the State of New South Wales.*[12]

Thus, there is a divergence of opinion as to the precise definition of a paedophile although there is general agreement that a paedophile is a person whose sexual desire is directed towards children, usually of pre-pubertal or early pubertal age.

2.2.3 'Preferential' vis a vis 'situational' child sex offenders

In his final report, Commissioner Wood also grappled with the numerous 'categories' or 'classifications' of paedophile offenders. These included:

- those in the fourth edition of the American Psychiatric Association's *Diagnostic & Statistical Manual of Mental Disorders* - sadistic offender, regressed offender, fixated offender and others;
- those of Raymond Wyre, UK sexual crime consultant - predatory paedophile, non-predatory paedophile, regressed paedophile, fixated paedophile, inadequate paedophile, inadequate fixated paedophile and parapaedophile;
- those of Special Agent Kenneth Lanning of the FBI - situational offender (with four sub-categories) and preferential offenders (with three sub-categories); and
- those of Dr Mervyn Glasser - secondary paedophiles and primary paedophiles (with two sub-categories).

Of these, the NSW Royal Commissioner was able to find common elements which essentially broke down into considerations of the familial offender and the extra-familial offender.

The Parliamentary Joint Committee on the National Crime Authority cautiously adopted a similar distinction quoting the explanation in the Victorian Government's submission to it as follows:

> *Offenders who commit offences in the family setting are generally considered to be situational child molesters. Situational child molesters may not be driven to offending against the child because of a primary sexual preference for children but*

[10] Parliament of NSW, 1997 Third Session, *Final Report of the Royal Commission Into the NSW Police Service*, Vol IV, The Paedophile Inquiry, August 1997 (Wood Royal Commission) at pp 572-577.
[11] Ibid at p 577 para 1.47.
[12] Ibid at p 578 para 1.52.

> *rather they find themselves in a situation where the child is available, they have power over the child and engage the child in sexual activity.*[13]

However, the Committee sounded this cautionary note:

> *The distinction between situational and preferential child molesters is commonly made in the literature. However, it is by no means universally adopted in Australia or overseas, and the dividing line between the two categories may not always be clear. For example, a preferential molester detected sexually molesting a child may claim to be a situational child molester to avoid further investigation of his or her activities or to avoid admitting his or her true preference. If detected offending in an intra-familial situation, other, possibly long-continuing, sexual offences against children outside the family may go undetected if it is accepted too readily that the offender is a situational molester.*[14]

Similarly NSW Royal Commissioner Wood, when speaking of familial child abuse warned:

> *This form of child abuse is often termed "situational", meaning that the abuse occurs more out of the ease of access and/or as a result of stresses in the environment which act as triggers for offending, than out of primary sexual preference. It should not be overlooked that there are preferential offenders who perpetrate familial abuse, and who may go to great lengths to enter a marital or de-facto relationship in order to have access to children. Nor should it be overlooked that there are offenders who have been able to establish satisfactory adult sexual relationships, but who when placed in close proximity with a child, develop clear paedophilic arousal.*
>
> *Familial abuse, when detected is often "explained" or evaluated from the perspective of family dysfunction. In doing so, complicity by the non-offending parent and the victim is often inferred and the focus is removed from the actual incidence of abuse to broader considerations in which an explanation is sought for the offender "behaving out of character". Failing to isolate the behaviour of the offender in this way can lead to some "preferential" familial offenders being labelled as "situational" offenders and or the incidence of abuse being subsumed by excuses and explanations of why the offence occurred.*[15]

Commissioner Wood included, at footnote 257 in the above quote, a reference by Dr W F Glasser, Consultant Psychiatrist to the Victorian Human Services Department sex offender program, to a survey by 'bel et al in 1988'. This survey of 199 'incest' offenders found that 66% had offended against non-family members.

Hence, child sexual abuse exists both within the family (incestuous or familial) and outside it (extra-familial).[16] The former situation is seen by some as less of a problem than the latter or at

[13] Parliament of the Commonwealth of Australia, Parliamentary Joint Committee on the National Crime Authority, *Organised Criminal Paedophile Activity*, Parliament House, Canberra, November 1995, at p 11.
[14] Ibid at pp 11-12.
[15] Wood Royal Commission, op cit, at p 625.
[16] Williams K, *Textbook on Criminology*, Blackstone Press, 1993 at p 71.

least as not strictly paedophilia.[17] However, it is important to understand that the repeat sex offender may become 'part of the family' though not directly related to its members for the purpose of obtaining access to the child members.

> *..it is not uncommon for such an offender to appear as a cohabitee in a series of families over a period of time, targeting a vulnerable single parent, moving in and allegedly abusing the children, before leaving and repeating the process elsewhere"* Home Office Research Group 1996.[18]

> *It should not be overlooked that there are preferential offenders who perpetrate familial abuse, and who may go to great lengths to enter a marital or defacto relationship in order to have access to children."* The Hon Justice JRT Wood, Royal Commissioner 1997. [19]

> *In terms of the distinction between preferential and situational molesters noted...above, most of the family perpetrators would be situational molesters (i.e not paedophiles), although there have been cases where paedophiles enter into family relationships to gain access to the children."* Parliamentary Committee on the NCA 1995. [20]

> *Offenders who sexually assault children are cunning, devious, manipulative and recalcitrant individuals, according to experts around the world. They will ingratiate themselves into vulnerable families which include children of the age and gender they prefer. They will even marry in order to have access to victims. It is not uncommon for a sex offender to be extremely transient, remaining with a family in one place through the desirable age of the children and then moving on to another unsuspecting family.* Victorian Crime Prevention Committee 1995.[21]

These observations, along with those made above in respect of confusing 'preferential' familial offenders with 'situational' familial offenders, serve as a reminder that the familial sex offender should be accorded careful attention in any co-ordinated scheme to combat child sexual abuse.

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[17] See, for example, Parliament of the Commonwealth of Australia, *Organised Criminal Paedophile Activity*, op cit, at p 18; and Edwards M, 'Treatment for Paedophiles; Treatment for Sex Offenders', in James M (ed) *Paedophilia Policy and Prevention*, op cit, at p 75.

[18] Hughes B, Parker H and Gallagher B, *Policing Child Sexual Abuse: The view from the police practitioner*, London, Home Office Research Group, 1996, as noted in Hebenton B and Thomas T, *Keeping Track? Observations on Sex Offender Registers in the US*, London, Home Office Research Group, Crime Detection and Prevention Series, Paper 83, 1997.

[19] Wood Royal Commission, op cit, at p 625 referring to Lanning K V, *Child Molesters: A Behavioural Analysis for Law-Enforcement Officers Investigating Cases of Child Sexual Exploitation* (2nd Edition), National Centre for Missing and Exploited Children, Quantico, 1987, RCPS Exhibit 2538/2, p 258 and Victorian Parliamentary Crime Prevention Committee, *Combatting Child Sexual Assault: An Integrated Model: First Report upon the Inquiry into Sexual Offences against Children and Adults*, Government Printer, Melbourne 1995, at p 118.

[20] Parliamentary Joint Committee on the National Crime Authority, op cit, at p 18.

[21] Victorian Parliamentary Crime Prevention Committee, *Combatting Child Sexual Assault: An Integrated Model: First Report upon the Inquiry into Sexual Offences against Children and Adults*, op cit, at p 118.

2.2.4 The extra-familial paedophile

Commissioner Wood made the following points in Volume IV of his final report about extra-familial child sex offenders:

> *Extra familial abuse is that which is perpetrated on a victim by an individual who is not a natural or defacto relative. The offender in this case could be:*
>
> - *a close friend or acquaintance, particularly someone who goes out of his way to befriend the family and the child;*
> - *a neighbour;*
> - *a teacher, scout or youth leader, a babysitter, priest, minister, coach, instructor, adviser, health care professional or any other person in a position of trust; or*
> - *less commonly, a complete stranger previously unknown to the child.*

Commissioner Wood went on to note:

> *A common belief about extra-familial abuse is that it is the socially isolated and inadequate loner who is the principal offender. This is far from the truth. ...they are usually incapable of getting close enough to them to engage in sexual abuse, let alone to foster and maintain a sexual relationship. Extra familial offenders may indeed be strangers who incite a child to engage in a single sexual act, but it is far more likely that they will be known to the victim and seek to encourage a 'relationship' which may last for months and even years.*
>
> *Several offenders gave evidence to the Commission of the way that this type of relationship is formed. .... Commonly they would win the child over with gifts of money, meals, clothes, trips and even schooling. An essential element for them was the ability to provide the victim with material or emotional support that was lacking in his or her home life. For this reason, well placed offenders are often attracted to children from broken homes or of a lower socio-economic status, and gain pleasure in what they see as 'improving the child's lot' while at the same time achieving sexual gratification.*
>
> *Numerous victims informed the Commission of their experiences at the hands of different offenders which involved:*
>
> - *meeting the offender through a group or while participating in some activity with other children;*
> - *determined and usually successful efforts by the offender to befriend their parents and to assume a position of influence or acceptance within the family;*
> - *visits to the home or place of work of the offender;*
> - *gifts of clothes, toys, sporting equipment, holidays and in some cases an education;*
> - *permission to engage in activities banned or unavailable at home, for example, watching pornographic videos, smoking, drinking and drug taking;*
> - *gradual introduction to masturbation or indecent touching;*

- *escalation of the sexual activity over time;*
- *acceptance of the sexual aspect of the relationship because of the material or emotional gains;*
- *fear of divulging the activity, especially for boys who were frightened of the reactions of people to the nature of the activity; and*
- *considerable distress and feelings of betrayal when the relationship was terminated and/or they were 'replaced' by a younger victim.*

Moreover, Commissioner Wood noted that extra-familial abuse generally ceases when:

- *the offender is no longer attracted to the victim because the victim has passed his preferred age group;*
- *the activity is discovered and further access to the victim is denied and possibly sanctions, including legal sanctions, imposed;*
- *the child's family or the offender move away from an area; or when*
- *the child refuses to participate any further.*[22]

Thus, the extra-familial sex offender is usually known to the child and seeks to establish a long-term 'relationship'. This relationship is formed by a number of means but often an essential element is the ability to provide the child with material or emotional support which they otherwise lack.

2.3 The extent of the problem

2.3.1 General

As with sex offenders generally,[23] the paedophile is often a long-term recidivist who appears difficult to treat and requires long term follow-up.[24] Many offenders do not want treatment.[25] United States research supports the proposition that child sex offenders are highly recidivist. In 1992 it was found that 74% of imprisoned child sex offenders had a previous conviction for a similar offence and that they were the most difficult class of offender to rehabilitate.[26]A second study in 1987 claimed that the average child sex offender molested 117 children during their lifetime.[27]

The Victorian Crime Prevention Committee, as part of its inquiry, analysed and recorded every sexual offence reported and subsequently recorded on a Case Entry File at every Community Policing Squad Office in Victoria for the 1992/93 financial year. There were 3561 sexual

[22] Wood Royal Commission, op cit, at pp 628-631.
[23] Broadhurst R G and Maller R A, 'The Recidivism of Sex Offenders in the Western Australian Prison Population' in *British Journal of Criminology*, Vol 32, No 1, Winter 1992, 54 at p 72.
[24] Edwards, op cit, at p 77.
[25] Ibid at pp 75-76.
[26] Freeman-Longo R and Knopp F, 'State of the Art treatment: outcomes and issues', *Annals of Sex Research*, Vol 5, 1992, at pp 141-160, as reported in Hebenton and Thomas, 1997, op cit at p 22.
[27] Abel G et al, 'Self Reported Sex Crimes', *Journal of Interpersonal Violence*, Vol 2, No 6, 1987, pp 3-25 reported in Hebenton and Thomas, op cit, at p 22.

offences reported to Community Policing Squads of which 2514 (70.6%) involved victims aged 16 years or under. The majority of victims were female with the highest number aged between 11 and 16 years (841) but with 768 between 5 and 10 years and 368 under 5 years. Approximately 25.5% of the victims were male of which 157 were between 11 and 16, 228 between 5 and 10 years and 119 under 5 years.

Of these, 389 were cases of incest, 526 were cases of sexual penetration and 1416 were indecent assaults.

In 31.09% of cases the offender was the child's parent or step parent and 17.9% of cases another relative. Of all cases 34.17% were committed by a family friend or acquaintance and 6.77% were committed by a person in authority such as a teacher, religious leader or coach. In only 6.73% of cases was the offender a stranger.[28]

The committee commented:

> *As figures such as these show, boys too are sexually abused and some recent writers, such as Hunter (1990), have suggested that the sexual abuse of boys is grossly under reported and under recognised. He points to the fact that, even when therapists ask adult clients about 'sexual abuse', those who were victimised seldom report it.*[29]

The Joint Parliamentary Committee on the NCA analysed the statistics of the Australian Institute of Health and Welfare *Child Abuse and Neglect Australia 1993-94*. The statistics cover neglect, emotional and physical abuse as well as sexual abuse. They do not include cases in Queensland or the Northern Territory in which the investigation was carried out by the police rather than the relevant welfare agency. 'Sexual abuse' for this purpose was defined to mean *any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards*.

Of the 4,939 'substantiated' cases of sexual abuse, 74% were female and 26% male. The largest number were in the 14 year old group (455), followed by 13 year-olds (421), 12 year-olds (383) and then 15 year-olds (356). However, over 56% (2667) were under the age of 11 years.

In only 2,873 of the substantiated cases information on the relationship between the offender and victim was available. Of these, in 34.6% of cases the offender was the parent (whether natural, adoptive, step, de facto or foster). In 22.8% of cases the offender was a sibling or other relative and in 27.5% of cases a friend or neighbour. In only 14.9% of cases was the person neither a relative, guardian, friend or neighbour.[30]

The Wood Royal Commission reported as follows:

> *Recent years have seen a greater acknowledgment of the existence and prevalence of child sexual abuse. It is now universally accepted that its incidence is under-reported and that statistics of convictions and reported abuse need to be treated with caution.*

[28] Victorian Parliamentary Crime Prevention Committee Report, op cit, at pp 35-37.
[29] Ibid at p 37.
[30] Parliamentary Joint Committee on the National Crime Authority, op cit, at pp 16-17.

> *While current conviction statistics support the popular belief that females are the main victims of abuse, the Commission has found that not only is Extra familial abuse more common than is popularly believed but there is a high level of abuse perpetrated by adolescents, and a high level of under reporting of abuse against boys possibly attributable in the latter case to shame, and fear that their masculinity or sexuality may be questioned amongst other things.*[31]

The Commission also looked to the statistics of the District Court during 1994 as studied by the Judicial Commission of NSW. This study included offences such as indecent assaults 'or' sexual intercourse with a child under 10, and aggravated indecent assault 'or' homosexual intercourse with a male between 10 and 18. These statistics do not take account of the large number of offences that are dealt with in the Local Courts for which statistical analysis is very difficult and where many of the minor sexual offences are dealt with.[32]

The figures revealed the following:

- offenders were mostly male;
- 46% of proven victims were assaulted by family members; 31 % by an immediate family member, generally the father;
- 54% of proven victims were assaulted by a non-family member (44% by an adult known to the family, 5% by a teacher, clergyman or babysitter and 5% by a stranger);
- 72% of the proven victims were female;
- females were more likely to be abused by a family member in the family home;
- boys were more likely to be abused by a non-family member, known to the family;
- girls were more likely to have suffered prolonged abuse; and
- boys were more likely to have been victims of single incidents.[33]

However, during the hearings of the NSW Royal Commission further figures were released by the NSW Health Department, the Department of Community Services and the Catholic Church. The Health Department figures for 1993/94 indicated that 54.8% of sexual assaults were committed by non-family members. The Department of Community Services figures for 1991/92 and 1994/95 indicated that between 51% and 55% of sexual abuse cases were by non-family members. The Catholic Church found that 56.4% of extra-familial child sexual abuse is perpetrated by friends or strangers.[34]

In the light of these later statistics and the evidence, Commissioner Wood concluded as follows:

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[31] Wood Royal Commission, op cit, at pp 616-617.
[32] Ibid at p 617, footnote 209.
[33] Ibid at p 617 para 3.10.
[34] Ibid at pp 617-618 para 3.11.

3.12 There is an increasing awareness of the existence of males as victims of sexual assault. One expert who gave evidence believed that the ratio was as high as one male to every two females abused. While the Judicial Commission [which analysed the District Court figures for 1994] *did not support this contention, it should be remembered that this study is based on conviction figures only and was conducted prior to the public hearings of the Commission.*

3.13 It is by reason of the concentration on familial abuse, and the failure to comprehend that Extra familial abuse embraces neighbours, family friends, clergy, teachers, coaches, instructors, and other persons who are known to their victims, as well as strangers, that much of the misconception as to the prevalence of abuse has arisen.

3.14 It may be that some confusion about the incidence of child sexual abuse has also arisen out of the fact that physical abuse, emotional abuse and neglect are distinctly familial. According to DCS statistics, in 1994/95 family members accounted for 93% of physical abuse, 95% of emotional abuse and 94% of neglected cases. Any analysis which does not separate sexual abuse from other forms of abuse or relies on anecdotal reports about the incidence of 'abuse' is likely to mistakenly conclude that most sexual abuse is familial.

3.15 In the light of the hearings of this Commission, ***TO CONTINUE TO DEAL WITH CHILD SEXUAL ABUSE ON THE PREMISE THAT MOST SEXUAL ABUSE IS FAMILIAL RISKS MINIMISATION OF THE PROBLEM*** *by failing to recognise:*

- *the variety and complexity of the relationships involved;*
- *the circumstances that familial cases are more likely to proceed to a trial while many minor cases involving strangers such as indecent exposure, are dealt with in local courts (often without a conviction being recorded) making statistical analysis difficult;*
- *the fact that most incidents of child sexual abuse are unreported and that many more are reported to government agencies, such as DCS, than are ever prosecuted;*
- *the attitude of society towards certain types of relationships, for example, viewing a relationship between a male child and an older woman with more acceptance than between a female child and older man;*
- *the different ways in which male and female children deal with the effects of abuse; and*
- *the fact that female victims are more likely to report abuse than males and have generally had more education about the dangers of abuse and access to avenues of reporting.*[35] [Emphasis added.]

The National Crime Authority in Australia reports that in July 1997 a national strategic assessment of organised paedophile activity found that *child sexual offenders (particularly*

[35] Ibid at pp 618-619.

paedophiles) can offend repeatedly against many victims over their lifetime, mostly without detection.[36]

The NCA further states:

> *Significantly, as paedophiles tend to engage in predictable sexual activity, their past history is likely to be a significant indicator of future behaviour.*[37]

NSW Royal Commissioner Wood observed:

> *It would appear from the expert evidence before the Commission and the prosecution statistics referred to above, that Extra familial offenders tend to have many more victims than familial offenders. There was evidence from Mr William Pithers* [Dr Pithers is a US child sexual abuse expert who started the first treatment program for sex offenders in Vermont USA] *that the fixated/preferential offender may have as many as 300 victims over a lifetime, and may welcome the opportunity of sharing victims with friends and associates. Some offenders interviewed by the Commission fitted this description very well.*[38]

The reasons identified by Commissioner Wood for this included:

- *their tendency to have a fixation/preference for a certain age group, which causes them to discard and replace victims as they move out of that age bracket;*
- *their promiscuity and need for frequent and repeated sex with children; and*
- *their tendency to engage in networking with like-minded offenders for peer approval and support, a practice which opens up access to other children who have been recruited into similar activities.*[39]

Kylie Miller, a Senior Analyst in the Strategic Intelligence Unit of the National Crime Authority, wrote of the assessment of the extent of child sexual abuse in Australia in late 1997. This followed the distribution of the NCA's national strategic assessment of organised paedophile activity to law enforcement agencies in July 1997:

> *..only a fraction of child sex offenders come to the notice of law enforcement, and an even smaller proportion are convicted for their crimes. One of the most often asked questions is, how big is the problem? Because it is not possible to estimate the number of paedophiles in Australia, in the following discussion of extent I refer to all child sexual abuse, not just paedophiles. It is extremely difficult to gain a national perspective on the extent of child sexual abuse in Australia, because it is such a hidden phenomenon. Two types of data are collected regarding child sexual abuse:*

[36] Letter from the Acting Chairperson, National Crime Authority to Chairman, Legal, Constitutional and Administrative Review Committee dated 19 January 1998 commenting on the *Criminal Law (Sexual Offenders Reporting) Bill 1987* (Qld).

[37] Id, referring to Abel G G et al, 'Predicting Child Molesters' Response to Treatment', *Annals of New York Academy of Sciences*, 528, 1988, pp 223-224.

[38] Wood Royal Commission, op cit, at p 630 para 3.43.

[39] Ibid at para 3.44.

- *the number of child sexual abuse cases **reported** to authorities; and*
- *research into the **prevalence** of child sexual abuse in the population.*[40]

Ms Miller went on to make the following observations:

- data on the reported incidence of substantiated child sexual abuse is fragmented and cannot be reliably compared across States and Territories;[41]
- statistics of reported incidence should be viewed with caution and as a significant *underestimation*[42]*;* and
- independent research indicates that only between 1 and 10 per cent of child sexual abuse is ever reported. [Miller then lists at least 7 reasons for this.][43]

A more realistic measure of the extent of child sexual abuse can be provided by population prevalence research.[44]

Prevalence statistics indicate that the number of child sexual abuse cases reported to authorities is only a small fraction of the number disclosed in adulthood surveys of childhood experiences, and that — in terms of extent and potential harm — child sexual abuse of both boys and girls constitutes a serious problem in Australia.[45]

2.3.2 Paedophilia in Queensland

The Children's Commission of Queensland in August 1997 reported to the Queensland Parliament on paedophilia in this state. That report, amongst other things, made the following observations.

- The Queensland Police Service (QPS), in its written submission to the Joint Parliamentary Committee on the NCA stated that while the QPS had arrested or identified numerous persons for what could be termed paedophile activities, it appeared that in the main these activities have been on an individual basis. However in evidence before the Committee on 12 July 1995, Det Senior Sergeant Mahon updated this submission by stating that:

  I want to correct that by saying that we have information in recent months, which has changed that view, and, due to that, we are conducting operations in relation to paedophilia on an organised basis.[46]

[40] Miller K, 'Detecting and Reporting of Child Sexual Abuse (Specifically Paedophilia): A Law Enforcement Perspective', in James M (ed), op cit, at p 34.
[41] Id.
[42] Id.
[43] Ibid at pp 34 - 35.
[44] Ibid at p 36.
[45] Id
[46] Det Snr Sgt Mahon, QPS, in a brief opening statement to the Joint Parliamentary Committee on the NCA in: Children's Commission of Queensland, *Paedophilia in Queensland*, 5 August 1997, Queensland Government, at p 43.

Detective Senior Sgt Mahon continued in evidence as follows:

> ***Chair*** *When you say that there is now a view that there is organised paedophilia, how would you use that term "organised"? In the hierarchical organised drug crime sort of structure?*
>
> ***Det Mahon*** *In the Crime Operations Branch in Brisbane, organised crime means two or more persons conspiring and/or acting together in a criminal enterprise on a continuing basis to participate in illegal activities directly or indirectly for gain. We would put some of the paedophile organisations that we have targeted in that category.*
>
> ***Chair*** *You would not put the organisation quite in line, though, with the hierarchical structure that we expect out of the major drug rings, would you?*
>
> ***Det Mahon*** *No, not to that extent at this time.*
>
> ***Chair*** *So it is two or more people acting in concert, basically?*
>
> ***Det Mahon*** *Basically, yes.*
>
> ***Chair*** *In the use by the Queensland Police Service of the word paedophile, how does your organisation define paedophile?*
>
> ***Det Mahon*** *The one that we use for our Child Exploitation Unit–and, thus, throughout the state–is that paedophilia could be defined as the sexual perversion or sexual gratification by an adult whereby children are the desired sexual object or partner. The age, of course, in Queensland is 16 for a consenting person, so under that age we would be looking at paedophile activity.*[47]

The Children's Commission also welcomed the extensive review of QPS responses to child protection issues following the revelations in evidence before the NSW Independent Commission Against Corruption[48] and later the Wood Royal Commission into the NSW Police Service which called into question police accountability and lack of a coordinated approach to target and respond to paedophile activity. This review, named Project Horizon, accepted that it was difficult to state with any degree of certainty the real extent of child sexual abuse as opposed to reported or detected instances, with it being widely recognised that child sexual assault was under-reported.[49]

Project Horizon was reported as determining the following matters.

- On the basis of national statistics, Queensland in 1995 had the second highest number

[47] Ibid at pp 42-43.

[48] The ICAC in NSW was initially charged by the Parliament of NSW on 9 March 1994 with the responsibility of inquiring into paedophilia in NSW. It took evidence and published an interim report in September 1994. After the establishment of the Wood Royal Commission into the NSW Police Service and the inclusion of paedophilia matters in its terms of reference, the ICAC disseminated its materials to the Royal Commission in early 1995 who thereafter took over the inquiry. See Wood Royal Commission, op cit, at pp 566-569.

[49] Children's Commission of Queensland, *Paedophilia in Queensland*, op cit, at 57-60.

of reported sexual offences against children under 16 in Australia.[50]

- QPS statistics suggested that child sexual abuse offences were committed predominantly against females.[51]

- During 1995-96 for the age group up to 14 years there were 1247 victims and four out of five were female. This compared with a ratio of 13% male and 87% female for the Queensland Department of Family Youth and Community Care statistics for 1994-95.[52]

- Investigative experience indicated that 'detected' child sexual abuse was predominantly committed by family members, since intra-familial sexual abuse of children was usually more readily identified and was the form most reported.[53]

- Conversely, the victims of extra-familial sexual abuse, particularly paedophile activity, were far more difficult to identify and complaints of that nature were less likely to be volunteered to police and other agencies. Experience had revealed that in most instances complaints of that nature needed to be solicited.[54]

- The identification of paedophiles was thus found to be difficult, due to the anonymity of the person within the community. They often presented as caring about children and frequently became involved in young people's activities or associations. There was increasing evidence that paedophiles who abused children outside the family also abused children within their families.[55]

The case of Clarence Osbourne was singled out by Project Horizon as illustrative of the ease with which active paedophiles could manipulate children in order to pursue their deviant sexual practices.[56] Such offending displayed inordinate patience and developed loyalty and trust from the victims by providing attention, affection and material possessions to vulnerable young people.[57]

Information available to the QPS and community street workers suggested that there was no organised paedophile activity in Queensland. However, according to Project Horizon, in order to verify that, greater proactive effort needed to be made by authorities, in particular the QPS, with Project Horizon finding: *Whilst this may be the current perception, a paucity of relevant data indicates that we cannot assume such to be the case*.[58]

The work of Project Horizon prompted the Children's Commission to recommend to the Parliament:

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[50] Ibid at p 60.
[51] Id.
[52] Ibid at p 61.
[53] Id.
[54] Id.
[55] Id.
[56] Osbourne, a Brisbane Court and Hansard Reporter, gassed himself in his car in September 1979. A subsequent search of his home by police revealed 2000 sets of files and photographs of boys with whom he had allegedly had contact. Investigations disclosed a startling life history of his involvement with young boys, believed to have been in the order of some 2000 during his lifetime.
[57] Children's Commission of Queensland Report, op cit, at p 62.
[58] Id.

> *…that the completion of the work of Project Horizon continue to be addressed with expedition, with particular attention being given to the crucial role which intelligence can play in combating paedophilia and to the need to address issues of accountability through periodic review of performance of specialised units.*[59]

The Children's Commission also welcomed the QPS announcement on 30 January 1997 of a 20-member operational task force named 'Argos' to target paedophilia.[60] The Commission noted that while the Parliamentary Committee responsible for the NCA observed in July 1997 that *paedophile activity is of major concern to the community and to law enforcement agencies as reflected in the ABCI project Egret*, it accepted the NCA national strategic assessment that paedophile networks do not constitute organised crime and thus the State police were the appropriate bodies to investigate them.

The Queensland Crime Commission and 'criminal paedophilia'

The position as to the most appropriate body to investigate paedophilia and paedophile networks has been altered in Queensland with the passing of the *Crime Commission Act 1997* (Qld). This Act establishes a permanent crime commission to investigate relevant criminal activity referred to it by the Management Committee. Section 9 defines 'relevant criminal activity' as a thing that involves *criminal paedophilia or organised crime or is something that is preparatory to or undertaken to avoid detection or prosecution of criminal paedophilia or organised crime.*

Section 6 defines 'criminal paedophilia' as *activities involving offences of a sexual nature committed in relation to children or offences relating to obscene material depicting children.*

Under s 28, the Queensland Crime Commission is to investigate relevant criminal activity referred to it and gather evidence for the prosecution of persons for offences. Importantly under s 46(7) the Queensland Crime Commission is *taken to have a standing reference from the management committee to investigate criminal paedophilia*.

Under the Act, the Crime Commission is to maintain an effective intelligence service about, *inter alia*, criminal paedophilia and liaise with other law enforcement agencies throughout Australia and overseas. The Police Service and the Crime Commission are to work cooperatively with each other and arrangements may be made for police task forces to help the Crime Commission investigate a matter.

It is likely therefore that the Crime Commission will be principally responsible for the investigation of paedophilia in Queensland but, in cooperation with the Police Service and operations such as Task Force Argos, will continue under the control and direction of the Police Commissioner pursuant to s 30 (2) of the *Crime Commission Act.*

[59] Ibid at p xiv.
[60] Ibid at p 68.

2.4 'Organised' paedophilia and networking

Although often perpetrated by a person acting alone, a more alarming aspect of child sexual abuse involves organised groups of offenders. In *Textbook on Criminology,* Katherine Williams observed of the United Kingdom situation:

> *recent police work has uncovered large numbers of child abusers or paedophiles. They have discovered that such criminals, all of whom have so far been found to be male, work in rings or networks passing on videos of their experiences and even sharing the victims, often young boys, between each other.*[61]

Similarly in the Australian context Colin Thorne notes:

> *A relatively new phenomenon – or one at least previously unnoticed – is the existence of networks of paedophiles operating within this country. Inquiries conducted by a number of police services have given rise to allegations that these networks are involved in the production and distribution of child pornography; sharing successful seduction strategies and personal details of victims and potential victims; organising child-sex tours of third world countries and possibly sponsoring migration of children from overseas. There has also been evidence of these networks receiving protection by corrupt police.....the extent of the networks and their activities have remained relatively unknown.*[62]

In 1985 Sturgess QC was already warning of this situation when presenting his interim report into sexual offences involving children in Queensland.[63]

'Organised crime' vis a vis organised paedophile groups

As has already been noted, the Parliamentary Committee responsible for the National Crime Authority has accepted that paedophile networks do not constitute organised crime.

The Queensland Criminal Justice Commission (CJC) had expressed publicly a view that paedophilia is not within its jurisdiction in 1992[64], 1995[65] and 1997.[66] This is on the basis that it

[61] Williams K, op cit, at pp 71-72.

[62] Thorne C, 'Big Business- Organised Crime', in Hazelhurst K (ed), *Crime and Justice: An Australian Textbook in Criminology,* LBC Information Services, Sydney, 1996, at pp 305-306.

[63] *One of the first questions I wanted an answer to was whether the incidence of sexual offences involving children is greater now than formerly....As it turned out a unanimous opinion was expressed: there had been a very great increase in the incidence of such offences. The offences of which they spoke were of the most serious...sexual intercourse and acts of gross indecency with pre-pubescent children, child pornography, the purchase of acts of sodomy from homeless and helpless boys....All this is not just local crime. In Australia the condition of things in Sydney and Melbourne is notorious. Equally so in the United Kingdom and the United States. In Europe there is published a booklet called 'Spartacus Guide for Gay Men'...Its editor is an Englishman called Stamford. It lists the places where in some 37 countries children may be obtained for sexual intercourse*. In Sturgess QC, *Inquiry Into Sexual Offences Involving Children and Related Matters: Interim Report,* Government Printer, Brisbane, 1986 at p 1.

[64] CJC Report, *Assessment of the Extent of Paedophilia in Queensland,* June 1991, extracted in Children's Commission of Queensland, *Paedophilia in Queensland,* op cit, at p 27.

[65] Children's Commission of Queensland, *Paedophilia in Queensland,* op cit, at p 53.

[66] CJC media release, 19 August 1997.

has concluded that paedophilia cannot be properly described as organised crime for the CJC's then jurisdiction to investigate organised crime. However, the CJC has stated that it will become involved in investigations of paedophilia when there is evidence of corrupt activities.[67]

In this regard the CJC did establish Operation Triton in 1997 to investigate five references that, in general terms, concerned allegations that public officials had been inactive or engaged in the cover up of unlawful activities by paedophiles. (This being a matter within the CJC's 'official misconduct' jurisdiction.) Mulholland QC was appointed to conduct public hearings into the references and began these on 3 November 1997. These were taken over by Mr JP Kimmins[68] who recommenced hearings on 24 November 1997. To date there has been no report on the hearings or the investigation.

The Parliamentary Joint Committee on the National Crime Authority in November 1995 took as a useful definition of 'organised crime' that which has most or all of the following elements:

- the planned commission of serious offences with financial gain as the main motivation for the organisation;
- a division of labour in a hierarchical structure that is relatively stable over time, with profits passing up the hierarchy and orders and planning downwards;
- a willingness to use violence both to enforce discipline within the organisation and to intimidate competitions and other outsiders, and the willingness and cash-flow necessary to corrupt police and other public officials; and
- the use of corporate 'fronts', money laundering and the services of professionals such as lawyers and accountants to assist the organisation to operate successfully.[69]

The Joint Committee concluded:

> *3.19 The Committee received no evidence to suggest that there were any paedophile groups in Australia that were "organised" in this sense. Nor has the Committee received any persuasive evidence that there are links between paedophiles and Australian "organised crime" (whatever that phrase might mean). However, the Committee found that, to the extent that there were associations amongst paedophiles in Australia, they were overwhelmingly of the networking type (see below paragraph 3.20). Organised groups have been found but they have generally been localised.'*
>
> *3.20 A Distinction can be drawn between:*
>
> *"organised groups" which aim to commit specific criminal offences involving particular children; and*

[67] Ibid.

[68] Legislative Assembly of Queensland, Parliamentary Criminal Justice Committee, *Interim Report in Response to Recent Allegations and Comments Regarding the Criminal Justice Commission's Investigation of Matters Concerning Paedophilia*, Report No 42 , November 1997, at pp 8-9.

[69] Parliament of the Commonwealth of Australia, Parliamentary Joint Committee on the NCA, *Organised Criminal Paedophile Activity*, op cit, at pp 26-27.

> *"networks" of paedophiles who maintain contact in order to discuss matters of mutual paedophile interest, to describe their experiences and seduction strategies, to swap information, contacts and perhaps child pornography, and to obtain moral support....If members of the network commit sexual offences against children, they do so acting independently of the network as such, though they may act in concert with someone they have met through the network.*[70]

In submissions to the Joint Committee, the South Australian Police stated that only a few groups had been found in South Australia, the largest having about 11 members. The Western Australian Police [as did the Queensland Police (quoted above)] amended their written submission in oral evidence before the Committee to advise that an incident of organised paedophile activity had since occurred in Western Australia.[71] The other State and Territory police advised that as at July 1995 there was no evidence of organised paedophilia activity.

However the Joint Committee found:

> *Law enforcement agencies generally agreed that loose contact networks of paedophiles existed in Australia. One confidential police study by a State force found just over one third of its sample of paedophiles had been, or were currently, networked with other paedophiles. The Australian Federal Police told the Committee:*
>
> > *'It has been shown, however, that paedophiles do tend to be gregarious with fellow paedophiles, resulting in extensive networking. Such networking is used by paedophiles to identify potential areas of child exploitation and the risks involved, as well as exchanging photographs of children. Available intelligence suggests that networking in Australia is primarily social and informal but, nevertheless, extensive and diverse'.*[72]

The findings of the Wood Royal Commission in NSW tended to confirm these findings.[73]

The Joint Committee on the NCA also examined the extent of public advocacy and support groups for paedophiles in North America, Europe and in Australia.[74] The Australian groups have included the Australian Paedophile Support Group, reformed as Boy Lovers and Zucchini Eaters (BLAZE), and Australasian Man Boy Love Association (AMBLA).[75]

The NSW Royal Commissioner, Justice Wood, described these groups as follows:

> *3.45 There is a group of extra familial offenders who believe, or purport to believe, that sexual relationships between an adult and child are not only acceptable but should be encouraged. They endeavour to justify their activities by arguments that:*
>
> - *children are capable of consenting to sexual relations;*

[70] Ibid at p 27.
[71] Id.
[72] Ibid at p 31.
[73] Wood Royal Commission, op cit, at pp 639-642.
[74] Parliamentary Joint Committee on the National Crime Authority, op cit, at pp 20-26.
[75] Id. See also the coverage of the CJC report into paedophilia in Queensland extracted in Children's Commission of Queensland, *Paedophilia in Queensland*, op cit, at p 30.

- *children have rights, including the right to decide with whom they will associate, and become sexually involved;*
- *in the classical era such relationships were the norm;*
- *such relationships are acceptable if based on love, and are beneficial so far as they bring children into greater maturation, and sexual enlightenment;*
- *they provide the love and support which is lacking within the nuclear family, and they listen to children when their parents do not; and*
- *existing mores and social attitudes are unenlightened.*

3.46 From time to time such groups present spokespeople who advocate the benefits of adult/child love, commonly under the guise of being opponents of abusive relationships. Some have been well organised and enduring, with newsletters, Internet addresses and the like.

3.47 Although these groups deny engaging in illegal or harmful activity, they are, in truth a sham which exist solely to further the sexual interests of their members, to facilitate the exchange of child pornography and to arrange for the sharing of children.[76]

Thus, whilst there may not be 'organised' groups of paedophiles in the 'organised crime' context, there are networks of paedophiles in Australia.

2.5 The prospects of cure or rehabilitation of paedophiles: The rate of recidivism

2.5.1 Adult paedophiles

Unlike many other groups of offenders paedophiles are generally regarded as unlikely to volunteer their condition or accept that it requires treatment. The attitudes and arguments of the paedophilia support groups have been noted above. Some even steadfastly argue that it is society that is wrong and that they are advocates of individual and child rights.[77] Indeed, some argue that they are political prisoners.[78]

As the Acting Chair of the National Crime Authority observed:

> *For example, unlike most other offences in which the offender will usually 'mature' out of criminality as he/she ages, paedophilia is a chronic condition, and a paedophile is just as likely to offend in adolescence, middle-age and old age.*[79]

[76] Wood Royal Commission, op cit, at pp 630-631.

[77] Id.

[78] Ibid at p 631. Footnote 294 on p 631 states: *K.L. Doyle, RCT, 4/7/96, p 28255. Mr Doyle gave evidence about the sex offender inmates at Cooma prison. He explained that the fixated offenders considered themselves political prisoners not prisoners of the social justice system. They have no intention of claiming responsibility for the offence because they did not think that they were wrong. Society was wrong and they saw themselves as the victims of society.*

[79] Letter from the Acting Chairperson, National Crime Authority to Chairman, Legal, Constitutional and Administrative Review Committee dated 19 January 1998, commenting on the Criminal Law (Sexual Offenders Reporting) Bill 1987 (Qld).

The Wood Royal Commission referred to this problem at several points. In the context of the rehabilitation of adolescent offenders, the Royal Commissioner noted:

> *Abuse by adolescents cannot be ignored if society is to address the problem of child sexual abuse since it is now clear that the problem offender very often emerges during childhood. Although many experts believe that adult child sex offenders can never be 'cured' only managed, [Noted at footnote: eg R.K. Wyre; M J Edwards; F Grunseit; A Blaszczynski; W D Pithers] others believe that with appropriate strategies and support, behaviour modification can be achieved.*[80]

For the purposes of treatment, the Royal Commissioner grouped the paedophile offenders into six categories as follows:

- intellectually disadvantaged or brain damaged offender;
- the offender who primarily is orientated to an adult partner who usually as a result of stress or crisis offends against children usually their own. The risk of recidivism is usually regarded to be less [Noted at footnote: Professor Pithers believes that there are some individuals who may never reoffend, but it depends on the circumstances and under further stress without support, the risk of reoffending is higher];
- the offender who sees sexual relationships with children as simply a variant of normal sexuality and who regards the prohibition of that conduct, and the punishment of it, as a wrong against themselves, and who have not the slightest interest in changing the behaviour (fixated paedophile). Considered the hardest to treat and the most likely to reoffend;
- the psychopathic offender, who when driven by frank psychiatric disorder, is capable of sadistic psychosexual crime, but for whom the age or sex of the victim may be more a matter of convenience or opportunity, than any primary orientation (sadistic offender; predatory paedophile); and
- the adolescent offender who may fit into any one of the above categories, but whose offending is harder to define or detect and for who there is thought to be a compelling case for therapeutic intervention.[81]

The Royal Commissioner also noted:

> *19.4 For none, on the evidence received by the Royal Commission, can there be any certainty that the experience or threat of imprisonment will act as an effective deterrent, or that treatment will prevent an offender from reoffending [Noted at footnote: The general consensus is that paedophiles cannot be cured only managed and that offending only ceases while the offender is imprisoned: W Pithers; A Blaszczynski; A S Gray; W F Glaser; N McConaghy]. Clearly however there may need to be some difference in the response of the system, according to the characteristics of the individual*

[80] Wood Royal Commission, op cit, at p 633 para 3.55 and footnote 311.
[81] Ibid at pp 1252-1253.

offender.[82]

The Royal Commissioner then canvassed the treatment regimes available which included aversion therapy, covert sensitisation, imaginal sensitisation, pharmacological methods, family therapy and cognitive behavioural therapy. In respect of the outcome of treatment, the Royal Commissioner observed:

> *19.17 There is ample evidence that conventional forms of punishment, whether they involve imprisonment or supervision in the community, have little value in reducing recidivism. .....*
>
> *19.19 Whether treatment provides any long term benefits in the reduction of recidivism has been questioned, and still remains far from resolved [Noted at footnote: NSW Child Protection Counsel Committee on Sex Offences Committed Against Children, Position Paper, Managing Sex Offenders: a Child Protection Perspective (draft) June 1996, RCPS Exhibit 2146 p 23.].*
>
> *19.20 A number of problems do exist in reaching any firm conclusion in this regard relating to the circumstances that:*
>
> - *there is no completely objective measure in determining whether a treated offender has reoffended; re-arrest or further complaint are more reliable than a self report, but it is also known that the vast majority of offences do not lead either to a complaint or an arrest;*
> - *there are practical difficulties in obtaining adequate sample sizes of treated offenders, and of maintaining them for long term follow up;*
> - *ethical and legal difficulties attach to any study, particularly double blind studies, using control groups whose members either get treatment or an inferior treatment, yet are allowed to remain in the community where they are at risk of reoffending;*
> - *many of the studies undertaken have involved the best motivated subjects, or those for whom a more positive outcome could be predicted from their behaviour characteristics and personal profile; and*
> - *most studies involve offenders in prison who represent only a fraction of the total population of child sexual abusers, and even then constitute a heterogenous group, making predictions for any subgroup very uncertain.*
>
> *19.21 Notwithstanding these difficulties, and the now widely accepted proposition that there can be no promise of a cure for the committed paedophile, some recent work does suggest that generally, treated sex offenders reoffend less, and also less often than their untreated counterparts. Dr William Glaser [Consultant psychiatrist for the Psychosexual Treatment Program, Forensic Psychiatry Services and Health and Community Services Victoria] summarises this work as suggesting, inter alia, that:*
>
> - *programs which are more comprehensive in nature tend to be more successful than those with more limited aims;*

[82] Ibid at p 1253 para 19.4 and footnote 1018.

- *institutional and community based programs appear to produce similar results;*
- *the most effective type of treatments are those which are based on cognitive behavioural principles and/or which use pharmacological measures; and that*
- *there are no consistent predictors of treatment outcome, although motivation for the treatment seems to be very important.*[83]

The Royal Commissioner assessed treatment and management programs throughout NSW, WA, New Zealand, the United States and the United Kingdom.[84] He concluded with a reference to Professor Alex Blaszczynski, Associate Professor and Deputy Director, Psychiatry Research and Teaching Unit, University of NSW:

> *19.130 It was his overall assessment that while no treatment programs can claim to cure, the evidence from existing methodological reviews of the treatment outcome and recidivism rates show that a 'reduction in behaviour following increased control over urges is possible'. Comprehensive individual and group programs administered in either residential or community settings which have a cognitive behavioural orientation seem, in his view, to offer the greatest hope. The skill, he pointed out, was in 'identifying which offenders benefit from which treatment intervention at what time in the phase of their disorder'.*[85]

Commissioner Wood also made this observation:

> *3.100 Exposure is what an offender fears most because of the moral and legal sanctions likely to follow. For most offenders there is no investment in being truthful about an allegation of child sexual abuse. What is almost certain is that the offender will not admit that his or her actions are the result of a sexual preference, or performed for sexual gratification. When faced with exposure, both familial and Extra familial offenders tend to exhibit one or several of the following behaviours: [denial, minimisation, justification, fabrication, illness (feigned or real), sympathy seeking, attack, suicide].*
>
> *Each of these responses, and the relatively high number of cases that are defended, underline the degree of denial and minimisation exhibited by both familial and Extra familial offenders. The nature of the strong underlying sexual urge and the lack of any desire on the part of most fixated or committed paedophiles to moderate their behaviour, means that the risks of recidivism are high.* ***For many familial offenders the problem is not quite so acute, as often the fact of disclosure breaks the connection with the family.....*** *It may be observed that it is extremely difficult to estimate the rate of reoffending by reason of the fact that most incidents go unreported and unpunished. Self reporting is rare.*[86] [Emphasis added.]

[83] Ibid at pp 1257-1258.
[84] Ibid at pp 1260-1281.
[85] Ibid at p 1281.
[86] Ibid at pp 643-644.

Thus, it would seem that punishment has little value in reducing recidivism in child sex offenders. Whether treatment will reduce recidivism is also unresolved. However, there is evidence to suggest that some treated sex offenders reoffend less, and also less often than their untreated counterparts. Research has also shown that offenders do not like to be exposed.

2.5.2 Adolescent sexual offenders and early intervention

In respect of adolescents, the prospects of early intervention appear more encouraging. Commissioner Wood noted:

> *19.87 Current research, confirmed by the evidence of a number of witnesses to the Royal Commission indicates that:*
>
> - *deviant sexual behaviour very often has its beginning during late childhood and adolescence; and*
> - *on very many occasions such conduct is associated with aggressive behaviour, including force, intimidation and threat.*
>
> *19.88* ***There are strong indications that adolescent sexual offending differs from other forms of offending, in that it is a crime which offenders grow into rather than out of***. [Emphasis added.]
>
> *19.89 Clearly there are problems in dismissing or minimising these activities as adolescent adjustment or exploratory behaviour when on the evidence available they are positive indicators of an emerging problem for which early intervention appears to be favourably indicated.*[87]

Similar findings were reached in 1995 by the Victorian Crime Prevention Committee.[88]

> *The committee had the pleasure of meeting with Mr Paul N Gerber, Program Director of the Juvenile Sex Offender Program at the Hennepin Country Home School, Minnesota. Mr Gerber provided a working insight into the adolescent offender and then allowed the Committee to meet with a variety of offenders involved in the residential program.* ***It was obvious during the conversations with Mr. Gerber and the offenders that it was at this point in the offending cycle that change was still possible and that it was with children and adolescents that the cycle could still be broken.*** [Emphasis added.]
>
> *The views expressed by Mr Gerber, regarding the need to break the cycle of offending at an early stage, were echoed by many professionals. Treatment of adolescent sex offenders was highlighted as a priority during most meetings conducted by the Committee.*[89]

Therefore, adolescent sex offending would appear to be different from adult sex offending in that there is more likelihood of treatment breaking the offending cycle with adolescents.

2.6 The effects of sexual assault on children: Do victims of paedophilia in turn become

[87] Ibid at p 1273.
[88] Victorian Parliamentary Crime Prevention Committee, op cit, at pp 251-252.
[89] Ibid at pp 252-253.

paedophiles themselves?

The victims of child sexual abuse suffer a range of problems and dangers apart from the actual incident of abuse. This ranges from exposure to drugs and the risk of sexually transmitted disease to the failure to establish satisfactory adult relationships, psychological and even psychiatric disorders, feelings of rejection when abandoned by the abuser and even suicide.[90]

In addition to this is the real issue of the abused child later turning themselves to crime generally and to sexual abuse of others in particular. There is support for both possibilities in the Wood Royal Commission findings:

> *2.49 Many such offenders claim to have been the victim of child sexual abuse themselves, and to have resorted to a similar form of offending out of learned behaviour, lack of self respect, inability to maintain normal relationships, or other circumstances attributable to their original trauma. While it is difficult to be categorical about the significance of this factor, bearing in mind the possibility that it was offered as an 'excuse' in mitigation of sentence, in some cases there is corroboration of the existence of earlier abuse.*
>
> *2.53 The significance of juvenile detention also cannot be ignored. Studies reveal that a very high proportion of juvenile offenders (all crimes) have been the victim of child sexual abuse, and that there is a significant incidence of sexual assault of children by juvenile offenders.*[91]

The Royal Commissioner notes also that sexual abuse as a child may trigger the behaviour of familial offenders later in life.[92]

Kevin M Wallis is a psychologist who worked with sexual offenders at the Cooma Correctional Centre Sex Offender Assessment Programme in NSW. He has seen over 800 child sexual offenders in a decade. He wrote as follows:

> *In the Sex Offender Assessment Program at Cooma…child molesters are first divided into fixated (primary sexual preference for children) and non-fixated (primary sexual preference for age appropriate relationships)....**Of all the fixated offenders observed in Cooma's sex offender program, only one was not sexually abused in childhood.***

[90] Wood Royal Commission, op cit, at p 637 and the *Tables of Possible Impact of Abuse* (on various age groups of children) at pp 1196 to 1197. See also the Children's Commission of Queensland, *Paedophilia in Queensland*, op cit, at pp 35-36 where, *inter alia*, the devastating effects of child abuse on women in inpatient psychiatric care and children in psychology clinics are documented.

[91] Ibid at p 604 and footnote 174, referring to the 1987 study by R K Oates, Professor of Paediatrics and Child Health at Sydney University, and L Tong, Research Psychologist, of children who had been diagnosed as victims of child abuse at the Children's Hospital, Camperdown. This follow-up study compared the conviction rates of those children who had attained the age of 14 years since the incidence of abuse with the prevalence rate in the general community. 21% of the boys had a conviction compared with the prevalence rate of 3.6% in the community. 6% of the girls had convictions compared with 0.7% prevalence rate in the community. These convictions included break and enter, stealing, armed robbery and assault. See R K Oates and L Tong, 'Sexual Abuse of Children: An Area with Room for Professional Reforms', *Medical Journal of Australia*, Vol 147, December 1987, p 544 at pp 545-546. See also the inclusion of the perpetuation of abuse on younger children in the *Possible Impact of Abuse* on 12 years plus at p 1197 and footnote 78 therein.

[92] Ibid at 625 para 3.29 and footnote 260.

> *The typical offender gains the trust of the child, either by mirroring the interests and age-related behaviour of the victim or by assuming a nurturing, supporting pseudo parent role. The paedophile has a pre-existing fantasy construct based on his own childhood experiences and after selecting a suitable child, he sets out to change the fantasy into reality with the victim playing the role the paedophile once played at a younger age. There is an autoerotic theme in many paedophile encounters.*
>
> *Because the "grooming" of victims by a paedophile is usually a long and complex process of winning friendship and trust, the victims are often unaware that they are being sexually abused. ... The sexual abuse only becomes a reality when there is a congruence between the victim recognising the sexual motives of the paedophile and the paedophile being aware this recognition has occurred.*
>
> *Paradoxically, the physical act of sex tends to destroy the fantasy for the paedophile. The reality of the sexual acts, with their threat of legal consequences and emotional rejection, impinges on the paedophile's fantasy life. Often, the offender then tries, through increased sexual attention and emotional manipulation, to gain the victim's compliance by indoctrinating the victim into paedophilia.* ***In this process, the paedophile moves through a power cycle and another generation of abusers and victims is created***.[93] [Emphasis added.]

Professor Freda Briggs conducted a study of the early childhood and family experiences of convicted child molesters and men who had been sexually abused in childhood but were not offenders. This was funded by the Australian Criminology Research Council and involved, *inter alia,* child sex offenders in NSW, SA and WA. She wrote:

> *In 1992, a study was undertaken which involved the investigation of the early childhood and family experiences of male prisoners who had been convicted of offences against persons (as distinct from offences involving property). Although all of the men declared that they had not been sexually abused in childhood, when they were asked about their early 'sexual experiences', all but one of the convicted child molesters revealed that they had suffered prolonged sexual abuse at the hands of several different adult offenders but that they had not defined that behaviour as abuse for a variety of reasons....*[94]
>
> *The contributors to the study dispensed with some of the wide-spread beliefs about child molesters. Ninety-three per cent of the convicted child molesters had been sexually abused in childhood. The only men who had not been abused were those convicted of offences against adolescents who were slightly below the age of consent. ... Prisoners (88%) were more likely than non-offenders (69%) to have thought that abuse was 'normal' in the early stages and prisoners (69%) were also more likely than non-offenders (17%) to report that they liked some aspects of the abuse. Dislike increased when boys were expected to reciprocate oral sex or submit to anal sex. Many were involved in what they perceived to be caring relationships with paedophiles and when these were the only demonstrably affectionate relationships in their lives, they tolerated painful sex for the sake of the relationship.*[95]

[93] Wallis K M, 'Perspectives on Child Molesters', in Briggs F (ed), *From Victim to Offender: How Child Sexual Abuse Victims Become Offenders,* Allen and Unwin, St Leonards NSW, 1995 at pp 6,8-9.
[94] Ibid at vii.
[95] Ibid at pp xii-xiii.

Therefore, victims often suffer damage beyond the incidence of the abuse. In particular, there is evidence that this extends to later criminal activity by the victim and even, in some cases, child sexual abuse by them thus completing a vicious cycle.

2.7 Summary

In relation to the assertions of the Honourable Member for Whitsunday outlined in section 2.1 of this report, the preceding analysis suggests that the following conclusions are defensible.

- **Paedophiles, *correctly identified*, are in a special category of offender because they often regard their sexual activities as acceptable, and paedophile behaviour does increase with time. [In this context the need for early intervention with child and adolescent offenders is noted above.]**
- **Paedophiles are often respected people in the community and indeed can come from any walk of life.[96]**
- **Studies show that long term treatment of paedophiles is of little success and that the risk of reoffending is numerically high. [The importance of intervention in the case of young paedophiles is again noted.]**
- **Some paedophiles show little remorse and are thus dangerous. Paedophiles who have a real risk of reoffending are of course also dangerous, whether they are remorseful or not.**
- **The true extent of paedophilia has been underestimated in the past. This would appear to be particularly so in the case of extra-familial offenders against male victims.**

Additional general observations which can be made include the following.

- **There is a divergence of opinion as to the precise definition of a 'paedophile' although there is general agreement that a paedophile is a person whose sexual desire is directed towards children, usually of pre-pubertal or early pubertal age.**
- **The victims of paedophiles are particularly vulnerable because of their age.**
- **It is extremely difficult to determine the extent of child sexual abuse in Australia particularly as sexual abuse is under-reported.**
- **Child sexual abuse exists both within the family (familial) and outside it (extra-**

[96] Wood Royal Commission, op cit, at p 611. As Commissioner Wood observed *many alleged offenders appear to be anything but law breakers, often hold down important positions, and sometimes appear to be shining examples of dedication to the well-being of children,* and at p 612 *a risk inevitably exists in an area of criminality where the stakes of arrest and conviction are high and many of the offenders are wealthy, well placed, respected citizens, that they will be vulnerable to extortion at the hands of police and others, or amenable to corrupt arrangements-each of which can significantly impair the investigation process*.

familial) and some sex offenders may seek to become 'part of a family' in order to gain access to child members.

- **Child sex offenders can be classed as 'preferential' or 'situational', the latter meaning that the sexual abuse occurs more as a result of easy access to children rather than preference. Offenders who commit sex offences in the family setting are generally considered to be 'situational'. However, these two classifications can be confused and therefore familial sex offenders should be accorded careful attention in any coordinated scheme to combat child sexual abuse.**

- **The extra-familial sex offender is usually known to the child and seeks to establish a long-term 'relationship'. This relationship is formed by a number of means but often an essential element is the ability to provide the child with material or emotional support which they otherwise lack.**

- **There is a high rate of extra-familial abuse and an increasing awareness of the existence of males as victims of sexual assault.**

- **The Queensland Crime Commission together with the QPS's Task Force Argos have specific roles in relation to targeting paedophilia in Queensland.**

- **Whilst there may not be 'organised' groups of paedophiles in the 'organised crime' context, there are 'networks' of paedophiles in Australia.**

- **There is a high rate of recidivism amongst child sex offenders.**

- **Punishment seems to have little value in reducing recidivism.**

- **Whether treatment will reduce recidivism is unresolved. However, there is evidence to suggest that some treated sex offenders reoffend less, and also less often than their untreated counterparts. Research has also shown that offenders do not like to be exposed.**

- **Adolescent sex offending is however different and there is more likelihood of success in treatment.**

- **The damage to the victim beyond the incidence of the abuse is often horrendous. There is evidence that this extends to later criminal activity by the victim and even, in some cases, child sexual abuse by them thus completing a vicious cycle.**

3. COMPARATIVE LEGISLATIVE INITIATIVES

3.1 The United States of America

3.1.1 State initiatives

Individual states in America have had 'tracking' legislation in respect of sexual offenders in place for many years.[97] For example, California and Arizona have had such legislation for over 50 years. All states now have registration requirements. However, there are considerable differences at present between the various state requirements.[98]

Registration Requirements

Most states apply registration to convicted sex offenders. Some states extend this to offenders found to have committed an offence by judicial decision (which includes a finding of **'**not guilty by virtue of unsoundness of mind'[99]**)**. One state extends the reporting condition to those charged with a sex offence.

Types of Offences

There are also substantial variation on the types of offenders who are included on the register. Alabama registers all adult sex offenders. Arkansas only registers adult offenders convicted of a second or subsequent offence against a complainant under 18 years. Illinois registers both adult and juvenile offenders whose victim is under 18 years.[100]

Register Details

There are, however, also several broad similarities between them including[101]:

- maintenance of the registry is generally overseen by a state agency;
- local law enforcement agencies are responsible for collecting information and forwarding it to the agency;
- information obtained includes name, address, fingerprints, photograph, date of birth, criminal records, place of employment, vehicle registration, and in some states, DNA samples;

[97] The submission received by the committee from the Queensland Children's Commissioner contains a deal of research concerning the various US state 'tracking' laws.

[98] See Hebenton B and Thomas T, "'Tracking' Sex Offenders" in *Howard Journal of Criminal Law*, Vol 35, No 2, May 1996 at pp 106-107.

[99] The Criminal Law (Sex Offenders Reporting) Bill 1997 applies to persons acquitted of certain defined offences on the ground of unsoundness of mind. Refer to chapter 4 of this report for further discussion on this point.

[100] Hebenton and Thomas, 1996, op cit, at pp 106-107.

- time frames for registering range from 'immediately' to 30 days, and the duration of registration ranges from five years to life and is typically ten years or longer;
- most states rely on offenders to notify new addresses; and
- in most states access to registers is restricted to law enforcement, but *in some states* citizens can obtain a list of offenders registered in their community.

Notification Programs

Some states have passed notification measures which are directed at two audiences (as distinct from the overseeing agency). These are the police (and other law enforcement agencies) and the victims and witnesses connected to specific offenders.

In Washington State and Oregon the program is extended to let police notify the public of the presence of convicted sex offenders in the community. This has taken the form of front page news articles, leafleting neighbourhoods and requiring the offender to carry special bumper stickers.[102]

3.1.2 Federal government initiatives

United States federal legislative initiatives have introduced a steady process of convergence to a more standardised practice.[103]

The 1994 *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act*[104] requires all states to enact registration laws and details the procedures intended to provide a cohesive uniform system throughout the USA. Essentially the Act requires a person who is convicted of a 'criminal offence against a minor' or of a 'sexually violent offence' to register within 10 days a current address for 10 years following release (ss a 6 A). Also, a 'sexually violent predator' is required to register within 10 days and until a determination is made by the sentencing court on the advice of a panel of experts that he or she is no longer a sexually violent predator (ss a 6 B). The court or the prison service is required to obtain fingerprints and photographs if not already taken prior to release (ss b 1 A).

'Criminal offences against a minor' means any criminal offence of kidnapping, false imprisonment or criminal sexual conduct towards a minor including solicitation etc, any conduct that by its nature is a sexual offence against a minor and any attempt thereat (ss a 3 A).

A 'sexually violent offence' is aggravated or other sexual abuse as either described in the US Code or any State Criminal Code (ss a 3 B). A 'sexually violent predator' is a person who is convicted of a sexually violent offence and who suffers from a mental abnormality or

[101] Id.
[102] Id.
[103] Hebenton B and Thomas T, *Keeping Track? Observations on Sex Offender Registers in the US* in Paper 83, 1997 at p 7.
[104] H.R. 3355 Violent Crime Control and Law Enforcement Act of 1994 sec. 170101.

personality disorder that makes them likely to engage in predatory sexually violent offences (ss a 3 C). The 1994 Act, as introduced, also provided that the information in the register was to be private data except for disclosure to law enforcement agencies, government agencies and *the designated State law enforcement agency may release relevant information that is necessary to protect the public concerning a specific person required to register, except that the identity of a victim…shall not be released.* (ss d).

In 1996 *Megan's Law*[105] amended the *Wetterling Act* to require states to enact laws that allow public access to, or dissemination of, the registration information *that is necessary to protect the public concerning a specific person required to register*.

The US Attorney-General has issued guidelines (Federal Register, 1997) to try to ensure uniformity of purpose. The guidelines set out broad minimum standards for compliance with *Megan's Law*. What is clear is that the *Wetterling Act* only sets minimum standards and individual states are still free to enact or retain more stringent requirements in respect of both the class of offender and in respect of the length of registration and frequency of verification of the register.

However, in the case of release of information from the register all states must enact legislation that allows members of the public to gain *access that is necessary for the protection of themselves or their families*.[106]

The US Attorney-General's guidelines provide:

> *States do, however, retain discretion to make judgements concerning the circumstances in which, and the extent to which, the disclosure of registration information to the public is necessary for public safety purposes and to specify standards and procedures for making these determinations....States are also free under the Act to make judgements concerning the degree of danger posed by different types of offenders and to provide information disclosure for all offenders (or only offenders) with certain characteristics or in certain offence categories.*[107]

The 1996 *Pam Lycher Sexual Offender Tracking and Identification Act* establishes the long-term goal of a permanent National Sex Offender Registry at the Federal Bureau of Investigations (FBI). States are required to forward registry information to the FBI database, including updates and verification, and the database is to create a flagging system which will notify states as offenders relocate. States must report offenders who cannot be located and if the FBI database also cannot locate the person, that person will be classified as in violation of the Act and a warrant may be issued for their arrest.

Bill Hebenton is Lecturer in Criminology at Manchester University and Terry Thomas is Senior Lecturer in Social Work at the Leeds Metropolitan University. Together they carried out field work in the USA in 1995 and 1996 to look at the implementation and experience of

[105] H.R. 2137, 2nd Session, 104th Congress.

[106] Office of the Federal Attorney-General, Department of Justice, *Proposed Guidelines for Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Act,* RIN 1105-AA50, Washington DC.

[107] Id.

community notification and sex offender registers in the US. They were asked by the UK Home Office Police Research Group to supplement this data and look at issues connected with the practical questions of operating a register. In their report they said this of the background to the implementation of sex registers in the US:

> *In the USA a large and increasing number of prison inmates are sexual offenders.... They grew not only in number but also as a proportion of a hugely expanding state prison population: 6.9 % of 300,000 inmates in 1980 to just under 10% of 906,000 in 1994. Although community inpatient and outpatient treatment programmes have grown, few imprisoned sexual offenders receive treatment because of insufficient resources at state level (Prentky 1997). Furthermore there has been insufficient research to establish consistent estimates of recidivism or identify which treatment is effective for sub-groups (types) of sexual offenders (Prentky 1997). At the same time media coverage of a series of highly publicised violent sexual crimes committed by released sexual offenders has greatly heightened the public's determination to take action to prevent such individuals from committing new offences (Bedarf 1995). This is the context within which the registration has evolved over the last five years.*[108]

3.1.3 Gauging the success of the US registration legislation

A number of positive statements have been made as to the success of the US registration legislation. For example, S W Boys Smith, Director of Police Policy, Home Office stated in November 1997:

> *Despite this diversity, however, it appears that they [the state registration laws] are viewed by both the public and the police as playing a useful part in managing the risk of sex offending.* [109]

On the evaluation of the registration legislation, Hebenton and Thomas said this:

> *It is clear from our field work in Washington and New Jersey that police, as well as legislators, do see the creation of a registration scheme as assisting their work in the investigation, prevention and deterrence of offending. However, as Matson and Lieb (1996) note, most registration laws were enacted in the last two to three years and have not been systematically evaluated.....A survey of local police [by the California Department of Justice]...revealed 85% of officers surveyed believed that the registration system was effective in keeping track of the residence of offenders*[110]
>
> ...
>
> *In the USA the impact of registration also has to be seen in the context of wider disclosure of information from the register, usually through the alerting of schools, community groups and the local public. Disclosure can be seen as a preventive mechanism, allowing the community to maintain surveillance or adopt specific preventive actions.*[111]

[108] Hebenton and Thomas, 1997, op cit at p 33.
[109] Ibid at iii.
[110] Ibid at pp 22-23.
[111] Ibid at p 25.

The authors then detailed a 1995 study in Washington State of sexual offenders subject to the highest level of community notification released from Washington prisons between March 1990 and December 1993 compared to a similar group of offenders released before the notification laws were implemented. Although the difference in the re-arrest rates for offences and the rate of sexual recidivism for the two groups was not statistically significant the disclosure group were re-arrested for new offences much more quickly than the other group and most were arrested in the same police area where they had had to disclose there whereabouts. Of this Hebenton and Thomas observed:

> *On these last two findings, the authors of the study speculate that this earlier 're-arrest' data may be attributable to police targeting and surveillance tactics. Our interviews with Washington police provide strong qualitative support of this interpretation.....*
>
> *Regrettably, however there has been very little research carried out which looks at either recidivism or detection rates following the introduction of registration and /or disclosure programmes.*[112]*.....This lack of research has, in our view, to be seen in the light of the general political and legislative background against which state registration schemes emerged. Federal government involvement is now likely to lead to a greater emphasis on evaluation of schemes and assessment of any related implementation issues.*[113]

3.2 The United Kingdom

In the United Kingdom the *Sex Offenders Act 1997* received Royal Assent on 21 March 1997 and the requirement of reporting commenced in September 1997.

3.2.1 Purposes of the Sex Offenders Act 1997 (UK)

The purpose of the UK *Sex Offenders Act* is to ensure that the existing National Criminal Records (which, when the Act was introduced, only contained offenders' last known addresses) was 'fully up to date'. It was also envisaged that this updated information might then help police not only to identify suspects once an offence has been perpetrated, but could also help them to prevent crimes, and might act as a deterrent to potential re-offending.[114]

According to Hebenton and Thomas:

> *…the number of recorded sexual offences in England and Wales has been rising steadily since the mid 1980s, with a similar rate to recorded crime in general: about 4% per annum. Despite a fall in 1995 of about 5%, numbers of sexual offences appear to be on the increase again although they have not reached the level pre 1995....While there has been a dramatic rise in recorded sexual offences, the number of convictions for these offences has remained relatively static. Indeed, as Marshall (1994) and others note, the proportion of recorded offences resulting in a conviction*

[112] Ibid at p 26.
[113] Ibid at p 34.
[114] Ibid at p 3.

> *or caution has fallen sharply over the same period. In keeping with recent years, the most recently published figures...indicate that a substantial number of offenders are cautioned for sexual offences.*[115]

As the Queensland Children's Commissioner points out to the committee, the *Sex Offenders Act* was introduced as part of an overall strategy in combating sex offenders. Other elements of this strategy at the time included: the second part of the Act which makes it an offence for UK residents to commit certain sex acts against children abroad; the Crime (Sentences) Bill which provides for automatic life sentences for those convicted for second time of a serious sex offence; the Protection from Harassment Bill which legislates against stalking; the Sexual Offences (Protected Material) Bill which regulates against access to victim statements in sex offence cases; and the Criminal Evidence (Amendment) Bill which extends police powers to obtain DNA tests for all convicted sex offenders still serving a sentence.[116]

3.2.2 The provisions of the Sex Offenders Act 1997 (UK)

Under the *Sex Offenders Act* a person is required to notify the nearest police station, either in person or in writing, of their current address within 14 days of:

- being convicted of a 'sexual offence'; or
- being found not guilty of a 'sexual offence' by reason of insanity; or
- being cautioned for a 'sexual offence' after admitting it.[117]

The requirement to notify is also retrospective in that it applies to such persons who: have been convicted but not dealt with yet; are already serving a sentence; are already subject to supervision; or are already in a hospital having been found not guilty by reason of insanity but found to have done the act charged [s 1((2) and (3)].

The person continues to be subject to the requirement for varying periods that depend on the sentence of imprisonment but range from indefinite through to 10 years, 7 years and 5 years [s 1(4)]. It is an offence for the person to fail, without a reasonable excuse, to comply with the notification requirements. The offence carries a fine of (currently) 5000 pounds or imprisonment for 6 months or both [s 3(1)].

The reporting requirement also applies to young offenders but the periods of 10, 7 and 5 years are halved if the offender is under 18 years [s 4(2)].

The sexual offences to which the Act applies are included in Schedule 1 of the Act and include: rape; intercourse with a girl under 16; incest by a man; buggery; indecency between men; indecent assault on a man or woman; assault with intent to commit buggery; causing or

[115] Ibid at p 1.
[116] See the second reading speech to the Sex Offenders Bill by Minister of State, Home Office (Mr David Maclean, House of Commons, *Hansard Debate*, 27 January 1997, Column 23.
[117] See ss 1-2.

encouraging prostitution of, or intercourse with, or indecent assault on a girl under 16; indecent conduct towards young children; and offences in relation to child pornography.

Some of these offences do not require notification where the offender was under a particular age (for example, 20 in the case of buggery or intercourse with a girl above 13 years) or where the victim was over 18 (for example, incest, buggery, indecent assault).

Notably, the Act is not confined in its application to sex offences committed against children but also applies to certain serious sex offences committed against adults where the offender has been sentenced to imprisonment for a term of 30 months or more.

3.2.3 Disclosure of information on the register

The Act does not deal specifically with the issue of disclosure or dissemination of the information obtained pursuant to the notification requirements.

The current address of the sex offender will be held in the police central database called Phoenix which has always contained the criminal records of individuals. It is therefore only available to the police and those bodies with whom the police have access agreements. The *Police Act* contains provisions for the issue of criminal record certificates from a criminal records agency. There presently are sources of information available from the Department of Health and through the Secretary of State for Education to protect children from persons who seek posts with substantial unsupervised access to children.[118]

In a consultation document, *Sentencing and Supervision of Sex Offenders*, the UK government discussed wider public access to information from the criminal records database:

> *the government would wish to allow access to this information for those who wished to use it for the purpose of protecting children, so far as this is feasible, although the danger of misidentification is such that the criminal records should only be accessed by the police and a very limited number of other agencies.*[119]

3.2.4 Privacy issues and the public interest in limited disclosure: R v The Chief Constable of North Wales ex parte AB

In *R v The Chief Constable of North Wales ex parte AB*[120] the North Wales Police (NWP) had developed a policy document in 1997 which required them to assess the risks of known paedophiles and, if they considered it in the public interest, to communicate information about such people on a 'need to know' basis. A married couple were convicted of sexual offences against a number of children and sentenced to 11 years jail which they served. They moved to a caravan park and the local police became concerned that a number of children may gather there during the Easter Holidays. They approached the couple privately and suggested that they move which they refused to do. The police then told the park owners, acting pursuant to

[118] Baber M, *The Sex Offenders Bill*, Research Paper 97/11, Home Affairs Section, House of Commons Library, 24 January 1997 at pp 28-30.
[119] Cited in Baber, Ibid at p 30.
[120] (1997) 3 WLR 724.

the policy, and subsequently the park owners revoked the couple's licence to remain and they left.

The couple sought to judicially review the decision and sought an order that the policy was unlawful, constituted harassment and was in breach of the *European Convention for the Protection of Human Rights and Fundamental Freedoms.* A two-member Divisional Court in the Queen's Bench Division dismissed the application.

The Secretary of State had submitted to the court that such a policy should observe the following three important principles.

(1) There is a general presumption that information should not be disclosed. Such a presumption is based on a recognition of: the potentially serious effect on the ability of convicted people to live normal lives; the risk of violence to such persons; and the risk that disclosure might drive such persons underground.

(2) There is a strong public interest in ensuring that police are able to disclose information about offenders where that is necessary for the prevention or detection of crime or for the protection of young or other vulnerable people.

(3) Each case should be considered carefully on its particular facts assessing: the risk posed by the individual offender; the vulnerability of those who may be at risk; and the impact of disclosure on the offender. In making such disclosure the police should normally consult other relevant agencies such as social services and the probation service.[121]

Lord Bingham, giving judgement for the court said this:

> *I accept the first of these principles as an important and necessary principle underlying such a policy. When, in the course of performing its public duties, a public body (such as a police force) comes into possession of information relating to a member of the public, being information not generally available and potentially damaging to that member of the public if disclosed, the body ought not to disclose such information save for the purpose of and to the extent necessary for performance of its public duty or enabling some other public body to perform its public duty.....This principle does not in my view rest on the existence of a duty of confidence owed by the public body to the member of the public, although it might well be that such a duty of confidence might in some circumstances arise. The principle, as I think, rests on a fundamental rule of good public administration, which the law must recognise and if necessary enforce.*
>
> *It is plain, however, that the general rule against disclosure is not absolute. The police have a job to do. That is why they exist....*
>
> *It seems to me to follow that if the police, having obtained information about an individual which it would be damaging to that individual to disclose, and which should not be disclosed without some public justification, consider in the exercise of a careful and bona fide judgement that it is desirable or necessary in the public*

[121] Ibid at p 732.

> *interest to make disclosure, whether for the purpose of preventing crime or alerting members of the public to an apprehended danger, it is proper for them to make such limited disclosure as is judged necessary to achieve that purpose.*
>
> *I regard the third principle set out above also as being necessary and important. It would plainly be objectional if a police force were to adopt a blanket policy of dissemination of information about previous offenders regardless of the facts of the individual case or the nature of the previous offending or the risk of further offending. While it is permissible for a public body to formulate rules governing its general approach to the exercise of a discretion…. it is essential that such rules should be sufficiently flexible to take account of particular or unusual circumstances, and in a situation such as the present, where the potential damage to the individual and the potential harm to members of the community are so great and so obvious, it could never be acceptable if decisions were made without very close regard to the particular facts of the case. The consultation of other agencies, assuming time permits, is a valuable safeguard against partial or ill considered conclusions.*[122]

3.2.5 Gauging the success of the UK notification requirements

The notification requirements under the *Sex Offenders Act* only commenced in September 1997. Therefore, the prospects of evaluation so far are remote. There does not as yet appear to be any published data on the detection or conviction rates for sexual offenders in the UK.

Since the Act was passed the Home Office has published a Research Finding that attempts to assess the number of men in England and Wales with convictions for a range of sexual offences.[123] This suggests that 125,000 men in the 1993 population aged 20 years or over had a conviction for an offence that would have been registrable had the *Sex Offenders Act* been in force when they were convicted. Of these, 25,000 would have been registered for life and 10,000 had been convicted in the preceding 10 years. Of the 110,000 offenders convicted of an offence against a child approximately 100,000 would have been registered. This includes 15,000 for life and another 5,000 who were last convicted in the ten years preceding 1993 and would have been required to register for up to ten years.[124]

3.3 Recommendations relating to registration legislation from Australian inquiries

3.3.1 The Parliamentary Joint Committee on the National Crime Authority

In 1995 the Parliamentary Joint Committee on the NCA received submissions from a number of organisations that some sort of national register of paedophiles be kept. Some of these submissions canvassed a register including persons in respect of whom paedophilia was

[122] Ibid at pp 732-733.
[123] Marshall P, *The Prevalence of Convictions for Sexual Offending,* Home Office Research Finding No 55, London.
[124] Ibid at p 4.

suspected (as opposed to convicted) and including access to the register by persons other that police (such as those having care of children, including parents).[125]

The Joint Committee had reservations about the scope of the proposals put to it including: the cost effectiveness of such a register; appropriate regard for the rights of registered persons; a register's impact on rehabilitation of offenders legislation; the range of offences that should be covered; the inclusion of persons who were merely suspected paedophiles; and who would have access to the register.

Thus, the Joint Committee did not recommend such a register be established although it observed:

> *4.29 Subject to these sorts of considerations, and resolution of the not insignificant questions of who is to pay for and maintain a national register, the Committee broadly supports an improved method of recording those convicted of child-sex offences. The obvious avenue to explore is the scope for utilising the existing database held by the Australian Bureau of Criminal Intelligence.*[126]
>
> ...
>
> *4.35 While the Committee appreciates the good intentions behind those advocating a register which includes entries based on allegations, it does not believe such entries should be permitted. It regards the risk to the persons against whom allegations are made as outweighing any benefits their inclusion on a register might achieve.*[127]

3.3.2 Victorian Parliamentary Crime Prevention Committee

The Victorian Parliamentary Crime Prevention Committee in its May 1995 report to the Victorian Parliament recommended that all convicted sex offenders be registered with the Victorian Sex Offenders Registry for life, observing:

> *Given the high recidivism rate of sex offenders and their propensity to reoffend over their lifetime, the State must take whatever steps necessary to reduce the incidence of sexual assault and protect the community. The real threat sex offenders and paedophiles pose to the community will require the State to apply effective long term monitoring strategies.*[128]

The essential features of the recommended scheme were:

- lifetime registration for adults within 10 days of release or commencement of community service;

[125] Report by the Parliamentary Joint Committee on the National Crime Authority, op cit at pp 64-65. The submission came from the National Association for Prevention of Child Abuse and Neglect (NAPCAN) and was supported by other organisations such as End Child Prostitution in Asian Tourism, World Vision Australia and Victims of Crime Assistance League.
[126] Ibid at p 68.
[127] Ibid at p 70.
[128] Victorian Crime Committee, *Combating Child Sexual Assault*: *An Integrated Model*, op cit at p 260.

- adolescent offenders registration for 5 years for summary offences and until 21 years for indictable offences;
- to include both those released from custody and those serving sentences in the community;
- offenders to appear in person before the Registry;
- information to include name, date of birth, address, employment, physical description, fingerprints, DNA sample and photograph;
- Corrections and Courts to advise the Registry when persons are convicted and when they are released;
- written notification of change of address within 10 days;
- interstate offenders moving to Victoria to register;
- failure to register or providing false information an indictable offence; and
- Victoria Police to establish and maintain the register.[129]

The Committee concluded:

> *The Registration of sex offenders as a management tool is considered essential in the long term reduction in sex offending rates. Victoria police will be the primary user of the registration system and should therefore have intimate involvement in its establishment and management.*[130]

The Committee also recommended that the Attorney-General and the Police Minister lobby for an extension of the sex offender registration program nationally, noting:

> *The Committee acknowledges that some limitations will be placed on the effectiveness of a State registration program and that the true potential of registration will only be achieved through a national program. The Attorney General and the Police Minister should lobby other State Ministers as well as the Federal Government to initiate a national program as a matter of urgency.*

3.3.3 Royal Commission into the NSW Police Service

Commissioner Wood received a number of submissions in support of establishing a system for the registration of convicted or suspected child sex offenders, including submissions from the Australian Law Reform Commission and Australian Human Rights Commission.[131] After reviewing the US and UK legislation dealt with above, Commissioner Wood recommended

[129] Ibid at pp 261-262.
[130] Ibid at p 262.
[131] Wood Royal Commission, op cit at p 1218 and footnote 929, listing the various submissions.

that consideration be given to the introduction of a system for the compulsory registration with the Police Service of all convicted child sex offenders, to be accompanied by requirements for notification of change of name and address and for verification of the register (following consultation with the DPP, Police Service, Corrective Services and the Privacy Committee).[132]

At page 1226 of the Commission's final report the Commissioner said this:

> *18.94 For the reasons identified, the Commission does not favour the introduction of legislation which would provide for registration and community notification along the lines of Megan's Law. … Rather, it sees the solution in a more controlled and co-ordinated system for the storage and release upon a needs basis of information concerning convicted or suspected paedophiles, [as outlined later].*
>
> *18.95 The Commission has less concern in relation to registration requirements of the UK kind, which already occurs de facto, to some extent, in the course of probation and parole supervision. There would be some merit in its further consideration, following consultation with the ODPP, the Police Service, Corrective Services and the Privacy Committee to identify:*
>
> - *its potential efficacy for law enforcement in monitoring offenders (including the provision of post release supervision);*
> - *the extent to which it might add value to existing provisions for the recording of convictions and of criminal intelligence;*
> - *the extent of the resources needed;*
> - *identification of the classes of offenders who should be subject to ongoing registration and reporting provisions (which might be confined either to repeat offenders, or those involved in more serious offences);*
> - *suitable privacy safeguards; and*
> - *any practical difficulties in securing its application to offenders entering the State from other countries or from interstate.*
>
> *18.96 The Commission, however, cautions that registration legislation of this kind, would be of limited value unless it formed part of a uniform national system.*

Commissioner Wood also supported the creation of a national index or register of paedophiles, having regard to the mobility of paedophiles and their potential for recidivism.[133]

[132] Ibid at p 1248.
[133] Ibid at p 1243.

On the issue of dissemination of warnings, Commissioner Wood also advocated a system similar to that referred to above in the case of *R v Chief Constable of North Wales Ex parte AB*. He was also of the view that, in the event of privacy legislation being introduced into NSW, it was essential that the legitimate needs of law enforcement, and of the screening of employees working in close contact with children, be taken into account.[134]

[134] Ibid at p 1245.

4. THE QUEENSLAND PROPOSAL - THE CRIMINAL LAW (SEX OFFENDERS REPORTING) BILL 1997

4.1 Overview of the Bill

The Bill introduces a scheme somewhat along the lines of the *Sex Offenders Act 1997* (UK).

The key aspects of the Bill are as follows.

- Adult persons who have been convicted of a 'serious sex offence' or 'an offence relating to obscene material depicting children' and have been sentenced to imprisonment for 6 months or more, are required to personally report to a police station within 7 days of release from custody and provide their name, address, date of birth and details of their conviction.

- The same requirements are imposed on sex offenders entering Queensland for a period of 14 days or more.

- These persons must also advise the Police Commissioner of any change in name or address or of any further convictions regarding offences of the defined type by personally reporting to a police station.

- Failure to comply with these requirements without a reasonable excuse results in the offender being liable to a maximum penalty of 30 penalty units (currently $2250.00).

- The same requirements apply to anyone acquitted of an offence of the defined type on the ground of unsoundness of mind.

- The requirements apply retrospectively to convictions (and to acquittals on the ground of unsoundness of mind) that happened within 10 years before the commencement of the Act.

- The period for which the child sex offender is subject to the reporting requirements is determined by the length of the sentence imposed, and is either 2.5 times the term of imprisonment the offender is sentenced to serve, or an indefinite period in the case of a sentence for life imprisonment. An indefinite reporting period also applies to a person acquitted of a defined offence on the ground of unsoundness of mind.

- The Police Commissioner is given a discretion to keep a register of child sex offenders which may include their name, address, date of birth, identifying particulars including prints, and anything else the Commissioner considers appropriate.

- The Police Commissioner may disclose information in the register only to a chief executive of a government department, a law enforcement agency, the Children's Commissioner or an entity prescribed by regulation.

The committee has already recorded that, as part of its process, it invited comment on the Bill from a number of bodies. The committee also accepted comment from other persons and organisations.

The responses received by the committee varied in their attitude to the Bill.

A minority of submissions supported the concept of such legislation. Other submissions, whilst not either expressly supporting or opposing the Bill, made a number of comments or suggestions as to the Bill's specific contents. In particular, the Children's Commissioner provided the committee with a substantial amount of information regarding sex offender registration legislation in various states of the United States.[135]

A number of submissions also expressed fundamental objection to the Bill including the Commissioner of Police, the Queensland Council for Civil Liberties, the Bar Association, the Queensland Law Society and the Queensland Branch of the International Commission of Jurists. Many of these pointed to the difficulty in balancing the rights of sex offenders against those of the victims and the community.

4.2 The committee's overall view on the Bill

Ultimately the question as to whether the Queensland Parliament passes the Bill is a matter for the Queensland Parliament and not this committee. The committee makes no overall recommendation to the Parliament in this regard. However, should the Parliament decide that legislation of this nature is necessary and/or desirable in order to achieve the objectives intended of it by the Honourable Member who introduced the Bill, then the committee does have some significant concerns regarding aspects of the proposed legislation as it currently stands. In the rest of this chapter the committee addresses the Bill on a clause by clause basis and highlights those concerns.

Incorporated in this discussion is reference to non-confidential submissions made to the committee. Even though not specifically referred to, confidential submissions have also been taken into account in this process. Where appropriate, the committee concludes its discussion and analysis of consultation with its observations, conclusions and recommendations.

4.3 The specific provisions of the Bill

4.3.1 Lack of objects clause

The committee noted at the outset of this report that the Bill was not accompanied by explanatory notes and thus there is no explanation as to its objectives. In addition, there is no clause in the Bill which attempts to identify its purpose or objectives. The only indication in this regard is the long title of the Bill which states that it is: *An Act to require the notification*

[135] Although it is important to note that not all of the sex offender registration legislation in the various states of the United States applies solely to persons convicted of sex offences against *children*.

of information to the police by persons who have committed certain sexual offences, and for other purposes.

Similar legislation has been passed in other jurisdictions to achieve one or a combination of purposes such as assisting with the investigation of offences, deterring the commission of further offences and protecting that section of the community at risk from sex offenders.

As already noted, the absence of a stated purpose of the legislation makes scrutiny of such a Bill difficult. It was also a matter criticised by many who made comments to the committee.

The Queensland Corrective Services Commission notes that the Bill *fails to describe or explain the overall purpose of this notification of information by offenders in enhancing the response of the criminal justice system to the needs of both victims and offenders.*[136]

The Queensland Community Corrections Board is of the view that 'legislation of this nature' ought to give effect to the following policies:

> *(1) Providing processes by which parents or guardians of young children may be warned against known paedophiles.*
>
> *(2) Allowing police to quickly inform themselves of known paedophiles living in a particular locality in the event of a sexual offence being committed there against a child.*
>
> *(3) Permitting persons who have previously committed sexual offences against children and who have genuinely reformed to live down their past without harassment.*[137]

The Queensland Homicide Victims' Support Group submits that the Bill:

> *…fails to describe or explain the overall purpose of this 'notification of information' by offenders in enhancing the response of the criminal justice system to the needs of both victims and offenders. Is the Act intended to be simply a further means of monitoring offenders, an attempt to deter offenders from re-offending, or perhaps to assist police in their investigations of alleged child sexual abuse? It is not clear how the information provided by offenders to police is going to be utilised.*[138]

The Queensland Council for Civil Liberties also criticises the Bill in this respect as does Legal Aid Queensland who *assumed* [for the purposes of their submission] *that the Bill is intended to introduce a mechanism to assist police in the investigation of sex offences which may involve persons previously convicted of such offences*.[139]

The Queensland Association for Mental Health believes the aim of the Bill to be as follows:

> *QAMH is keenly aware of the consequences of childhood sexual assault for a*

[136] Queensland Corrective Services Commission submission, 17 February 1998, at p 1.
[137] Queensland Community Corrections Board submission, 22 December 1997 at p 1.
[138] Queensland Homicide Victims Support Group submission, 15 January 1998 at p 1.
[139] Legal Aid Queensland submission, 13 January 1998 at p 1.

> *person's on-going mental health and their risk of developing a mental illness at some stage in their life. Consequently, QAMH supports the need to develop strategies to prevent this assault and provide survivors with some reassurance that the perpetrator will not re-offend. It is our understanding that this is the aim of the current Bill and this aim has our support.*[140]

The Commonwealth Privacy Commissioner notes that the Bill was silent on the purpose of collecting the reported information, what the information will be used for, and for what purposes it may be disclosed to third parties.

Recommendation 1 - The committee recommends that the Private Member who introduced the Bill clarifies the intended purpose or objectives of the Bill and that an appropriate objects clause be inserted in the Bill.

4.3.2 Clause 1: Short title of the Bill

A number of comments were made to the committee that, because the Bill only deals with reporting by child sex offenders, it should more properly be titled the Criminal Law (Child Sex Offenders Reporting) Bill 1997. In particular, both the National Crime Authority and the Australian Bureau of Criminal Investigation made this observation.

The committee believes that the title of the Bill should be amended, however, it is concerned that a reference to 'child sex offenders' in the title is ambiguous.

Recommendation 2 - The committee recommends that the short title of the Bill be amended to the Criminal Law (Sexual Offences Against Children: Offenders Reporting) Bill 1997. [clause 1]

4.3.3 Clause 3: Meaning of "sex offender"

The definition of 'sex offender' is found in clause 3(1) of the Bill and contains a number of key terms. The committee addresses each of these in turn.

4.3.3.1 Meaning of "an adult"

Clause 3(1) of the Bill refers to a 'sex offender' being an 'adult'. 'Adult' is not defined in the Dictionary to the Bill. Therefore, presumably it has the meaning in s 1 of the *Criminal Code*, that is, a person of or above the age of 18 years.

The issue arises as to whether the Bill should also apply to juvenile offenders.

As has already been noted, the *Sex Offenders Act* (UK) applies to some offenders under the age of 18 years (although in these cases, with the exception of those subject to an indefinite reporting period, the reporting periods are halved).[141] The Victorian Parliamentary Crime

[140] Queensland Association of Mental Health submission, 20 January 1998 at p 1.
[141] See s 4 (2) of the Sex Offenders Act 1997 (UK).

Prevention Committee also recommended that certain adolescent sex offenders should be required to register with its proposed Victorian Sex Offenders Registry.[142]

Legislation in a number of states of the United States also imposes reporting conditions on juvenile sex offenders. In Appendix 2 to his submission, the Children's Commissioner notes that 27% of these state statutes cover juvenile sex offenders.

The Queensland Homicide Victims' Support Group submits that the Bill ought to include juvenile offenders as statistics from the Children's Court would support that there is a concerning increase in the number of offences of a sexual nature committed by juveniles against children.

However, in this regard the committee refers to research and inquiry findings noted in chapter 2 which suggest that intervention in the case of child and adolescent offenders offers the most hope in rehabilitating child sex offenders.[143] The committee notes that extending the requirement to report to juvenile offenders could unduly work against rehabilitation.

Recommendation 3 - The committee recommends that at this stage the Bill remain limited to sex offenders who are 'adults'. [clause 3(1)]

4.3.3.2 Meaning of "convicted … and sentenced"

Clause 3(1) provides that a 'sex offender' is an adult who has been convicted of, and sentenced to, 6 months imprisonment or more (or acquitted on the ground of unsoundness of mind) of a 'serious sex offence'. Thus, there is no attempt to include persons who are merely *suspected* of committing offences.

The Queensland Police Service (QPS) criticises the register for only relating to *convicted* offenders and not allowing for the maintenance of information concerning *suspected or admitted* offenders who, for a variety of reasons, have not been convicted of an offence yet whom *police consider...pose a more serious risk to the community than those who have been convicted*.[144]

The QPS notes that a national register is currently being considered by the Australian Police Ministers' Council and these considerations extend to a much wider class of offender. It is also noted that the ABCI collects intelligence on paedophiles in Australia including presumably suspected paedophiles.

However, in this regard the committee believes it is important to draw a distinction between intelligence databases kept by law enforcement agencies for dissemination among law enforcement agencies and sex offender registers, the information from which may be disseminated beyond such agencies.

[142] Although the committee recommended that the reporting period be shorter in the case of adolescent sex offenders. Refer to paragraph 3.3.2 of this report.
[143] Refer specifically to paragraph 2.5.2 of this report.
[144] Queensland Police Service submission, 28 January 1998 at p 2.

With respect to sex offender registers, the committee again notes the reservations of Commissioner Wood and the Parliamentary Joint Committee on the NCA in relation to registers of *suspected* paedophiles.[145]

The committee also notes that the possibility of the UK sex offenders legislation applying to persons *suspected* of child abuse was raised during debate on the then Bill. However, the notion was rejected at least 'at that stage' on the basis that the then focus should be more properly on convicted abusers as some of the most dangerous abusers fell within that category.[146]

Recommendation 4 - The committee recommends:

- **that the application of the Bill remain limited to sex offenders *convicted* and *sentenced* in relation to the defined offences; and**

- **that the Bill should not apply to persons *suspected* of committing the defined offences. [clause 3(1)(a)]**

4.3.3.3 Meaning of "a term of imprisonment of at least 6 months"

The Bill applies to those offenders who have been convicted of one of the listed offences and sentenced to serve a term of imprisonment of *at least 6 months for the offence*. In the absence of an explanatory note, there is no evident reason as to why 6 months was chosen. The view was expressed to the committee that this period was not appropriate.

The Queensland Community Corrections Board submits that many dangerous offenders are caught in the early stages and are sentenced to less than 6 months imprisonment yet require as much future watching as those who have committed offences leading to 6 months imprisonment. The Board does not indicate how this should be remedied.

On the other hand, the Queensland Council for Civil Liberties refers to the pronouncements of the Court of Appeal in recent years that normally child sex offenders should go to jail, and submits that if regard is had to comparative sentences a person who is sentenced to 6 months jail would generally be a person who has committed the most minor of sexual transgressions with a child.[147]

The Bill also presently makes no provision for an order by a court that a person be exempted from its provisions.

The Minister for Families, Youth and Community Care suggests that, in the interests of the rehabilitation of offenders, first-time perpetrators of less serious offences be excluded from the Bill where the sentencing court has a strong basis for believing that reoffending is unlikely. However, in this regard the committee refers to its discussion in chapter 2 on the likelihood of rehabilitation of offenders.

[145] Refer to paragraphs 3.3.1 and 3.3.3 of this report.
[146] House of Commons, *Hansard Debates*, 27 January 1997, Column 37.
[147] Qld Council for Civil Liberties submission, 27 January 1998 at p 3.

Further, the Director of Public Prosecutions points out that under s 144 of the *Penalties and Sentences Act 1992* (Qld) if a court sentences an offender to imprisonment for 5 years or less it can order that the term of imprisonment be suspended in whole or in part. The question that arises is: has the person been sentenced to serve the full sentence or only serve that part [if any] remaining after the order for suspension?

The Queensland Corrective Services Commission also notes that clarification as to whether 'term of imprisonment' includes a suspended term of imprisonment is required.

Recommendation 5 - The committee recommends that:

- **clarification be sought from the Private Member who introduced the Bill as to why the period of 6 months imprisonment was selected for use in the definition of 'sex offender';**

- **consideration be given to whether the Bill should be amended to allow the court to exempt a first-time offender from the provisions of the Bill; and**

- **the drafting of the Bill be clarified with respect to the meaning of 'term of imprisonment', particularly with respect to the effect of suspended sentences. [clause 3(1)(a)]**

4.3.3.4 Meaning of "a serious sex offence in relation to a child"

Clause 3(1) refer to 'a serious sex offence in relation to a child'. 'Serious sex offence' is defined in the Dictionary of the Bill as any of the following offences committed in relation to a child:

(a) rape;

(b) unlawful sodomy;

(c) attempted sodomy;

(d) an offence against any of the following sections of the *Criminal Code*:

- s 210-Indecent treatment of children under 16.

- s 213-Owner etc. permitting abuse of children on householder's premises. This focuses on the offences of unlawful sodomy, indecent treatment of children under 16 or carnal knowledge of a girl under 16. The prescribed ages of the children therefore are 18 years in the case of sodomy and 16 years in the other cases.

- s 215-Carnal knowledge of a girl under 16 years but not sodomy.

- s 217-Procuring a person who is not an adult to engage in carnal knowledge. (The relevant age of the victim is 18 years.)
- s 218-Procuring sexual acts by coercion. (The relevant age of the victim is 18 years.)
- s 221-Conspiracy to induce unlawful carnal knowledge by false pretence. (The relevant age of the victim is 18 years.)
- s 222-Incest. (The relevant age of the victim is 18 years.)
- s 229B-Maintaining a sexual relationship with a child, that is, three separate acts. (The relevant age of the victim is 18 years in the case of sodomy and 16 years otherwise.)
- s 229G-Procuring another to engage in prostitution. (The relevant age of the victim is 18 years.)

The definition extends to acts that, if committed in Queensland, would constitute such offences.

Some submissions to the committee identified the need for 'child' to also be defined. However, the Bill defines 'serious sex offence' by reference to the Queensland *Criminal Code* offences and includes an act that, if committed in Queensland, would be an offence as defined. Thus, to be an offence in Queensland, violation of the Queensland age limits in the offences would have to occur.

However, the committee notes that a number of offences which would also appear to be 'serious sex offences' against children have not been included in the definition of this term. It is not immediately apparent why the following *Criminal Code* offences are not included in the definition of 'serious sex offence':

- s 219 - Taking a child for immoral purposes;
- s 337 - Sexual assault;
- s 349 - Attempted Rape; and
- any attempt to commit any of the nominated offences.

These would also appear to be serious sex offences against children. Therefore, the committee believes that consideration needs to be given to their inclusion in the definition of 'serious sex offence'.

Recommendation 6 - The committee recommends that the definition in the Bill of 'serious sex offence' (in relation to a child) include the following *Criminal Code* offences:

- **s 219 - Taking a child for immoral purposes;**
- **s 337 - Sexual assault;**
- **s 349 - Attempted Rape; and**
- **any attempt to commit any of the nominated offences. [clause 3(1)(a)]**

4.3.3.5 Meaning of "an offence relating to obscene material depicting children"

A sex offender can be a person convicted and sentenced to serve a term of imprisonment of at least 6 months for a 'serious sex offence' in relation to a child *or* 'an offence relating to obscene material depicting children'.

'Obscene material depicting children' is defined in the Dictionary as including:

(a) child abuse computer games under the *Classification of Computer Games and Images Act 1995* (Qld);

(b) a child abuse publication or photograph under the *Classification of Publications Act 1991* (Qld); and

(c) a thing that, if possessed in Queensland, would be either (a) or (b) above or a child abuse film under the *Classification of Films Act 1991* (Qld).

The Australian Institute of Criminology submits that the rapidly emerging issues associated with child pornography transmitted via the Internet have not been addressed in enough detail. They offer no suggestions as to how this matter can be clarified.

Recommendation 7 - The committee recommends that consideration be given to whether the definition of 'obscene material depicting children' for the purposes of the definition of 'sex offender' adequately addresses issues associated with child pornography transmitted via the Internet. [clause 3(1)(a)]

4.3.3.6 Persons acquitted of a defined offence "on the ground of unsoundness of mind"

Like the *Sex Offenders Act* (UK), persons who have been acquitted of a defined offence on the ground of unsoundness of mind are included in the definition of 'sex offender'. Unlike the UK Act, there is no specific requirement that the jury find that the person of unsound mind did the act charged. Such a finding would, however, be implicit in any such verdict. Because the words 'acquitted' are used in the Bill it would only be following a jury verdict that the provisions of the Bill would be enlivened.

Applying the provisions of section 27 of the *Criminal Code*, 'acquitted' on the ground of unsoundness of mind requires a finding by a jury, that the person is not criminally responsible for an act or omission because at the time of doing the act or omission they have been deprived of one of their capacities due to mental disease or natural mental infirmity. Section 647 of the *Criminal Code* provides that a jury must find specifically in relation to unsoundness of mind if they acquit on that basis whereupon the person is ordered into strict custody to be dealt with pursuant to Part 4 of the *Mental Health Act 1974* (Qld).

However, most persons of unsound mind are not dealt with by a jury but rather the matter is referred to the Mental Health Tribunal to determine if the person is suffering from unsoundness of mind. If such a determination is made, the same consequences flow in terms of an order that they be placed in strict custody and subject to the monitoring and review of the Patient Review Tribunal. They are not however 'acquitted'.

Thus, only a fraction of the persons who commit sex offences against children and are of unsound mind at the time will be subject to the reporting conditions of the Bill.

In addition, all child sex offenders of unsound mind are subject to a carefully prescribed system of monitoring and review under Part 3 of the *Mental Health Act*. Pursuant to this Part an offender can only be released, including on leave of absence, when one of the tribunals has found that the person can be released having regard to the interests of the patient's own welfare and the protection of other persons. Part 4 of the *Mental Health Act* places highly restrictive controls on a person with mental illness, while maintaining the focus on the mental well-being and clinical needs of the patient.

The Director of Public Prosecutions highlights the fact that if persons of unsound mind are to be required to report under the Bill then the definition needs to be extended from *acquitted* on the ground of unsoundness of mind to that which will include the persons who do not seek a jury verdict but proceed through the Mental Health Tribunal for a determination that they are of unsound mind which, the committee has been advised, includes the vast majority of people.

Justice Dowsett of the Mental Health Tribunal expresses concerns about the inclusion of persons acquitted on the grounds of unsound mind on the basis that it was inconsistent with principle and lacks any factual justification. Justice Dowsett further stated:

> *There is no basis for assuming that <u>all</u> such persons pose a continuing threat of re-offending. An important object of the regime established by the Mental Health Act is to determine whether a patient poses such a risk and to protect the community when there is such a risk.*

The Queensland Council for Civil Liberties is also critical of the Bill in this respect.

The Director of Policy, Complaints and Community Relations of the Anti-Discrimination Commission of Queensland, though generally of the view that the Bill is not anti-discriminatory, points to the inclusion of persons 'acquitted on the ground of unsoundness of mind' as potentially in breach of the *Anti-Discrimination Act 1991*. This is on the basis that 'unsoundness of mind' would appear to meet the definition of 'impairment' in the Act. Section 7(1) prohibits discrimination on the basis of 'impairment' which is defined to include 'a

condition, illness, or disease that impairs a person's thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour'.

In the Director's view the Bill does not appear to justify the inconsistencies brought about by exposing one group of persons, namely those acquitted on the basis of 'unsoundness of mind' and [not] those acquitted for other reasons. Thus, the Bill proposes to subject one category of acquitted persons, namely those with an impairment, to 'differential treatment' which may fall within the definition of discrimination.

The Queensland Association for Mental Health adds its weight to the submission that the Bill is discriminatory against persons of unsound mind, suggesting that it is contrary to the United Nations *Principles for the Protection and Treatment of Persons with a Mental Illness* and the *Declaration of the Rights of Disabled Persons*. It also notes that under s 36 of the *Mental Health Act* there is an ongoing review by the Patient Review Tribunal of a patient which includes consideration of issues of public safety. These arguments were endorsed by Queensland Advocacy Incorporated.

Legal Aid Queensland is also highly critical of the inclusion of these persons as sex offenders. The Chief Executive Officer underlines the fact that such persons are required to report indefinitely and as such are likely to be more detrimentally affected than other persons.

> *...there will be many circumstances in which the charge resulting in this onerous reporting requirement is such that, had the offender not been found of unsound mind but had pleaded guilty to the offence, they would not have received a sentence which would result in any reporting mechanism at all.*[148]

Recommendation 8 - The committee recommends that consideration be given to whether persons acquitted on the ground of unsoundness of mind should be covered by the Bill. As part of this consideration, regard should be had to whether the requirement that only those acquitted on the ground of unsoundness of mind (and not acquitted for other reasons) is discriminatory.

If such persons are to be included then, the committee also recommends that consideration be given to whether the definition of 'sex offender' should only include persons *acquitted* on the ground of unsoundness of mind. [clause 3(1)(b)]

The committee makes further comment as to the physical and mental capacity for such persons to conform with the reporting conditions in paragraph 4.3.5.2.

4.3.3.7 Meaning of "a person in relation to whom an order under the Criminal Law Amendment Act 1945 was in force immediately before commencement"

Under s 18 of the *Criminal Law Amendment Act 1945* (Qld) a judge may order that a person who is convicted of an offence of a sexual nature committed in relation to a child under 16 years be detained at Her Majesty's Pleasure. This may be in addition to, or in lieu of, any punishment imposed for the offence. However the judge can only do so if satisfied on all the

[148] Legal Aid Qld, op cit at p 2.

evidence (which must include that of two medical practitioners one of whom is a psychiatrist), that the offender is *incapable of exercising proper control over* [their] *sexual instincts.*

In addition, even if the judge is satisfied that the offender on such evidence is capable of exercising such control but that his or her mental condition is such that they require care, supervision and control in their interests or for the protection of others, the judge may order detention in an institution either at Her Majesty's Pleasure or for a particular period.

Under s 19, (whether or not an order has been made under s 18) the judge may also order that the child sexual offender report his address and any changes of address within 48 hours to the police for such period as is specified in the order. Such an order shall not be made by the judge unless satisfied that *a substantial risk exists that the offender will thereafter commit any further offence of a sexual nature upon or in relation to a child under the age of 16 years.* The offender is entitled to be heard on any application.

It is an offence not to report as ordered carrying a penalty of 20 penalty units (currently $1500.00) or 6 months imprisonment.

Any such reporting order expires automatically when the provisions of the *Criminal Law (Rehabilitation of Offenders Act) 1986* (Qld) come into effect which is generally 10 years after conviction for an adult. Thereafter, convictions cannot be disclosed or used to assess a person’s fitness for admission to a profession occupation or calling or any other purpose.

Pursuant to s 20 of the *Criminal Law Amendment Act* the Attorney-General may disclose the fact of an order under s 19 and details of the sexual offence to any person the Attorney is satisfied has a *legitimate and sufficient interest in obtaining the information*.

In his submission, the Attorney-General argues that the power under s 19 above is more effective than the blanket reporting conditions in the Bill because it allows focus on the offenders who are a substantial risk as opposed to including all offenders with the risk that the register becomes factually inaccurate and tokenistic.

The Law Society also submits that s 19 above is a much more acceptable option than the blanket reporting requirements of the Bill. However, the Society does point out that such applications are not often utilised.

Schedule 1 to the Bill proposes to omit s 19 and 20 of the *Criminal Law Amendment Act 1945*.

The existence of the provisions of this Act again raise the issue as to the purpose of the Bill. However, the committee does note that ss 18-20 of the Act will only apply in the case of offences of a sexual nature committed in relation to a child under the age of 16 years. The relevant ages of the child victims in relation to the Bill have already been noted in paragraph 4.3.3.4 as ranging from 16 to 18 years.

Recommendation 9 - The committee recommends that the provisions of the Bill be carefully considered in light of the existing provisions of the *Criminal Law Amendment Act 1945* (Qld) and, in particular, s 19 of that Act which provides that in certain

circumstances a judge may order that a child sex offender report their address (and any changes of address) within 48 hours to the police for such period as is specified in the order. [clause 3(1)(c)]

4.3.3.8 Lack of specification as to sex offences committed within and/or outside the family

The Bill as drafted does not differentiate between familial and extra-familial sex offenders. Many of the criticisms of the Bill suggest that the definition of 'sex offender' is inadequate in this regard.

For example, the Queensland Council for Civil Liberties notes that there is no attempt to distinguish between sexual offences committed within the home and those committed by strangers on children.

The Domestic Violence Resource Centre also states:

> *As up to 77 per cent of crimes of sexual violence are perpetrated by a male family member or a male in a position of trust, we would strongly submit that these men also be subject to registration as they may hold employment positions in the community which enable greater access to children other than those in their family or immediate circle.*[149]

The Bar Association of Queensland asserts that:

> *Most offenders confine their activities to within the family, and in such cases usually represent no risk to strangers-yet within the family their activities will obviously be known and those who need to take precautions will take precautions...the legislation treats all offenders identically and pays no regard to the circumstances, relationships relating to or backgrounds of, particular offences.*[150]

The Association submits that should the legislation proceed it be limited to persons who offended outside the family.

A number of other submissions also refer to the fact that most offences are committed by family members or those known to the family.

However, in considering this issue the committee refers the research and findings in chapter 2 of this report. In particular, the research and findings about the misidentification of 'fixated' or 'preferential' sexual offenders as 'situational familial' offenders and the mounting evidence that paedophiles will become part of families (even by marriage) to get to the children, must not be lost sight of. The research referred to in chapter 2 also shows that in the case of incest offenders (the *prima facie* 'situational familial' offender) a significant percentage were found to have also sexually abused other children outside the home.

Recommendation 10 - The committee recommends that care should be taken in drawing a clear line between offences committed within the home and those committed by

[149] Domestic Violence Resource Centre submission, 8 January 1998 at p 2.
[150] Bar Association of Queensland submission, 19 December 1997 at p 2.

strangers on children. Research shows that the modus operandi of some sex offenders makes it almost impossible to draw such clear distinctions. [clause 3] -

4.3.3.9 Clause 3 (2): Retrospective requirements of reporting

Clause 3(2)(b) provides that the term 'sex offender' in s 3 (1)(a) or (b) attaches to convictions or acquittals on the grounds of unsoundness of mind that *happened within 10 years before the commencement of this section.*

The only retrospective operation of the UK Act is to attach the same reporting conditions to persons who are serving a sentence for a sex offence or doing community service or are on parole or are detained in a hospital having been found not guilty but insane.

There is a general principle and a general presumption in statutory construction that, in the absence of express contrary intention and with the exception of certain procedural matters, changes in the law should not have retrospective operation. The rationale for this is explained by *Bennion on Statute Law*:

> *A person is presumed to know the law, and is required to obey the law. It follows that he should be able to trust the law. Having fulfilled this duty to know the law, he should then be able to act on his knowledge with confidence. The rule of law means nothing else. It follows that to alter the law retrospectively, at least where that is to the disadvantage of the subject, is a betrayal of what law stands for. Parliament is presumed not to intend such betrayal.*[151]

Article 15 of the *International Covenant on Civil and Political Rights* also provides that:

> *1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.*
>
> *2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed was criminal according to the general principles of law recognised by the community of nations.*

In the UK consultation paper, *Sentencing and Supervision of Sex Offenders*, the UK government discussed the issue of retrospectivity. That paper reveals that an important factor to the UK government in deciding the boundaries of the notification requirement was the ease with which offenders could be notified that they were subject to such requirements.

[151] *Bennion on Statute Law*, Third Edition at p 151, cited in Baber, op cit, at p 7.

The paper notes:

> *It is necessary to consider for how long the requirement to register should apply and whether it should apply to those convicted of any of the qualifying offences before the passage of the legislation. A separate question, if so, is how far back the obligation should extend.*
>
> *If the requirement applied only to those convicted of a qualifying offence after the introduction of the requirement, there would be no doubt as to whether the offender were aware of the requirement, as he could be made aware of it at court. It follows that any failure to notify a subsequent change of address would be culpably negligent.* ***However, without some element of retrospectiveness it could be some time before those who need to use the records could be confident that the addresses were up to date. In short, there might be no benefit for many years. This would clearly be undesirable.***
>
> ***As the purpose of the requirement to register would be to provide better protection for the public which is needed now, there therefore appears a strong argument for concluding that it should in some respects be retrospective. On the other hand, seeking to impose this proposed requirement retrospectively would create an obligation in respect of a past conviction for a sex offence which did not exist at the time of conviction. In principle, in all but the most exceptional circumstances, new laws speak only as to the future. Retrospectiveness runs contrary to this rule.*** *It may also provide impossible to contact previously convicted sex offenders in order to inform them of the new requirement, and this would seriously reduce the effectiveness of the system. These practical objections do not apply to previously convicted sex offenders who have regular contact with the criminal justice agencies, including those who are still in custody or under supervision in the community. It would probably be possible in practical terms to extend the requirement to register to them.*[152] [Emphasis added.]

The fact that there is a *presumption* against retrospectivity means that it may be rebutted by direct statement in the legislation, as is the case with the current Bill.

Some of the state sex offender legislation in the United States does have retrospective operation. In Appendix 2 of his submission the Children's Commissioner states that 13% of these statutes apply retrospectively.

However, the issue of retrospectivity is also canvassed in the context of the fundamental legislative principles. Section 4(3)(g) of the *Legislative Standards Act 1992* (Qld) provides that whether legislation has *sufficient regard to* rights and liberties of individuals depends on whether, for example, the legislation *does not adversely affect rights and liberties, or impose obligations, retrospectively*.

As noted in chapter 1 of this report, the fundamental legislative principles are not absolute, the relevant phrase being whether legislation has *sufficient regard to* rights and liberties of individuals. Therefore, it is a question as to whether there is sufficient justification for the

[152] Cited in Baber, op cit, at p.10.

retrospective operation in this instance. This inconsistency with the fundamental legislative principles should have been explained in an explanatory note to the Bill.

In addition, the committee notes that although in law all citizens are taken to know the law and ignorance of its provisions is no excuse (pursuant to s 22 of the *Criminal Code*), retrospective operation of the legislation could present practical and administrative difficulties in informing persons of their obligations to report.

The retrospectivity of the Bill has attracted much criticism in the submissions.

The Queensland Association for Mental Health also argues that the retrospectivity is in breach of s4(3)(g) of the *Legislative Standards Act 1992* which requires that legislation not adversely affect rights and liberties or impose obligations retrospectively. Moreover it submits that retrospectivity in the criminal law has no place in a parliamentary democracy based on the rule of law and that this provision should be rejected.[153]

The Queensland Council for Civil Liberties describes it as a fundamental tenet of the criminal law that a person should not be penalised years after a particular event by a subsequent change in the law. The Queensland Homicide Victims' Support Group and the Queensland Corrective Services Commission also ask: how practically is it intended that the large number of offenders over the previous ten years be informed of their obligations under the Bill?

Queensland Legal Aid submits that the Bill should not have retrospective operation because it will have the punitive effect of punishing many who have long since completed their sentences and hopefully have been rehabilitated into society. They submit that if it must apply then those affected should be informed of their responsibilities in order that they do not unwittingly breach the provisions of the Bill.

The Queensland Branch of the International Commission of Jurists submits that this provision breaches Article 15 of the *International Covenant on Civil and Political Rights* by retrospectively imposing a harsher and additional penalty to that which was applicable at the time when the person was originally convicted.

Recommendation 11 - The committee recommends that careful consideration be given to the retrospective operation of the Bill which is in contravention of s 4(3)(g) of the *Legislative Standards Act 1992* (Qld). [clause 3(2)(b)]

4.3.3.10 Clause 3: Should the sentencing courts decide whether an offender is to report?

As the Bill currently stands, it does not grant the sentencing judge any discretion with respect to the reporting requirement. The requirement is automatic upon conviction or acquittal of the defined offences.

The inflexibility of this provision has been criticised by some. The Queensland Council for Civil Liberties and the Bar Association both urge that the question of whether a person's name should be included on a register should be one for the sentencing court. The Council submits

[153] Queensland Association for Mental Health, op cit, at p 3.

that it is at the time of sentence that a person's potential to reoffend can be properly assessed. They submit that such procedures are already employed under the *Penalties and Sentences Act 1992* (Qld) in respect of the declaration of a dangerous offender liable to an indefinite sentence.

The Council further argues that the offender should have the opportunity of being heard in the transparent forum of a court room. In this regard, it is noted that the offender is presently given the right to be heard in proceedings under the *Criminal Law Amendment Act 1945* when it is asserted that the offender cannot exercise proper control over their sexual instincts.

The Bar Association submits that the requirement to give notice be made part of the sentencing process and that the sentencing judge have a discretion as to the period that it should apply for up to set maximums. They also submit that there should be an opportunity to approach the court to seek a review of the order if the person's circumstances change.

The Queensland Community Corrections Board also submits that the reporting conditions and the length of reporting period should be assessed on a case by case basis and thus by a sentencing judge or magistrate. They suggest that it may be appropriate that at a certain level of criminality reporting conditions become mandatory under the Bill. They do not suggest how this level of criminality should be expressed.

To be weighed against these comments is the research noted in chapter 2 of this report regarding recidivism, the likelihood of rehabilitation and the success of treatment programs with sex offenders.

If the Parliament decides that the sentencing courts should determine whether a child sex offender is to be subject to the reporting requirements, then appropriate subsequential modifications would have to be made to the Bill. For example, the definition of 'sex offender' in clause 3(1) would have to be revisited, or structural changes would have to be made to the Bill to reflect this fundamental definitional change.

Recommendation 12 - The committee recommends that consideration be given to whether the application of the provisions in the Bill should be a matter to be determined by the sentencing court. [clause 3]

4.3.4 Clause 4: Courts to advise Police Commissioner of convictions

Clause 4 requires the registrars of the Supreme, District and Magistrates Courts to notify the Police Commissioner if a person is convicted, or acquitted on the grounds of unsoundness of mind, of a defined offence immediately after the conviction or acquittal.

The establishment of the necessary systems in order to give effect to this requirement will of course involve some cost. As the committee has already noted, an explanatory note should have contained a brief assessment of the administrative cost to government of implementing the Bill including staffing and program costs. The committee has not been in a position to conduct such an analysis.

The Police Commissioner points to major implications both for the police and the Department of Justice in that there are presently few systems in place that enable the courts to give direct advice to the police, and that to facilitate the exchange of information would require the installation of new infrastructure.

The Queensland Homicide Victims' Support Group also expresses the view that the Bill will increase the workload of court staff throughout the state.

The Queensland Corrective Services Commission notes:

> *Implementation of the procedures will be resource intensive for court staff and police officers throughout the state. The question must be asked whether the increased workload can be justified when compared with the benefit for the community as a result of this initiative.*[154]

The committee believes that the issue of costs should be kept within the context of the overall balance to be achieved in the legislation. Part of this consideration must also include other costs to the community which may result if the Bill does not proceed.

The other matter that will need to be addressed, if persons acquitted on the grounds of unsoundness of mind are to include persons dealt with by the Mental Health Tribunal, is notification procedures from the Tribunal to the police. This could be achieved by extending the definition of 'court' to include the Mental Health Tribunal.

Recommendation 13 - The committee recommends that:

- **a cost analysis as to the systems required for notification between the courts and the Police Commissioner should be undertaken; and**

- **further, if the Parliament determines that persons 'acquitted on the ground of unsoundness of mind' are to include persons dealt with by the Mental Health Tribunal, then it must address notification procedures from the Tribunal to the police. The committee recommends that this could be achieved by extending the definition of 'court' to include the Mental Health Tribunal. [clause 4]**

The issue as to the physical problems that persons of unsound mind may have in reporting is dealt with further in paragraph 4.3.5.2 of this report.

4.3.5 Clause 5: Requirement on sex offenders to advise Police Commissioner of their presence in Queensland

Clause 5 requires a sex offender who is subject to a reporting condition under s 7 and who is in Queensland and not in custody, to notify the Police Commissioner of their presence in Queensland by personally reporting to the nearest police station and giving their name, residential address, date of birth, the details of conviction(s) or acquittal(s) that makes them a sex offender and anything else that may be prescribed by regulation. This must be done within

[154] Queensland Corrective Services Commission, op cit, at p 3.

seven days of discharge from custody or entering Queensland (temporarily or to take up residency) unless the offender has a 'reasonable excuse'.

'Temporarily' is a period of not less than fourteen days or, in a period of one year, two or more periods taken together that are not less than fourteen days. Failure to comply attracts a maximum penalty of 30 penalty units (currently $2250).

4.3.5.1 The requirement to report and international declarations, covenants and conventions

The Queensland Branch of the International Commission of Jurists takes the view that the requirement to report after release from prison by all sex offenders is in breach of Article 11 of the *Universal Declaration of Human Rights*. They submit that Article 11, which provides that every person charged with a criminal offence is presumed to be innocent until proven guilty has a corollary to it, namely that persons not yet charged are entitled to the same presumption. The requirement to report and register is, in their view, a suggestion that those persons have a propensity to commit an offence quite separate from that for which they have been previously dealt with in accordance with law. As such it is contrary to the requirements imposed by Article 11.

Article 12 of the *International Covenant on Civil and Political Rights* provides that every person within the boundaries of a nation state shall have the *right to liberty of movement and freedom to choose his residence, and that such right shall not be subject to any restrictions except* ***for purposes of national security, public order, public health or morals or the rights and freedom of others.*** [Emphasis added.] In their view these exceptions do not save the proposed Bill because there is no evidence that 'Megan's Law' enactments have the effect of preserving 'public order, public health or morals or the rights and freedom of others'.

On the contrary the Branch submits it will have the opposite effect by increasing the risk of reoffending and even swift apprehension does not act to protect the child victims, merely to punish offenders. It also undermines, in their submission, re-integration and treatment programs for paedophiles and is highly likely to increase violence and vigilantism against post release sex offenders. They also point to Articles 10 (3) (the prison system shall have a central aim of reformation and social rehabilitation) and 17 (no-one shall be subjected to arbitrary and unlawful interference with their privacy) of the Covenant and submit they are not advanced by the Bill.

The Jurists are mindful of Principle 9 of the *Declaration of the Rights of the Child* (that is, *children should be protected against all forms of neglect, cruelty and exploitation*) but still are of the view that: *the entire spirit of the Sex Offenders Reporting Bill remains a matter of some considerable concern.*[155]

In addition to Principle 9 of the *Declaration of the Rights of the Child,* the committee notes that Australia is a party to the *United Nations Convention on the Rights of the Child,* Article 34 of which requires State Parties to undertake *to protect the child from all forms of sexual*

[155] Queensland Branch of the International Commission of Jurists submission, 15 January 1998 at p 8.

exploitation and sexual abuse. For these purposes, State Parties are required to, in particular, take all appropriate national, bilateral and multilateral measures to prevent:

(a) the inducement or coercion of a child to engage in any unlawful sexual activity;

(b) the exploitative use of children in prostitution or other unlawful sexual practices; and

(c) the exploitative use of children in pornographic performances and materials.

In addition, the committee notes that the signatories to the Convention adopted a Declaration and Agenda for Action at the World Congress Against Commercial Sexual Exploitation of Children in Stockholm in August 1996 which set guidelines for national and international action regarding such issues as child prostitution, child sex tourism and the exploitation of children in pornography, particularly via new technologies such as the Internet.[156]

The committee also notes that in *R v Chief Constable of North Wales Ex parte AB*[157] it was argued that in disclosing the fact of the presence of two convicted child sex offenders to the owners of a caravan park (who immediately revoked the offender's park licence) the police had breached Article 8 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms.* This Article protects the right of respect for a person's private and family life, his home and his correspondence.

> *There shall be no interference by a public authority except... such as is necessary in a democratic society in the interests of ...public safety...for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

In his judgement in this case Lord Bingham CJ said this:

> *I am prepared to accept (without deciding) that disclosure by the N.W.P of personal details concerning the applicants which they wished to keep to themselves could in principle amount to an interference by a public authority with the applicant's exercise of the right protected by the article. It would, however, seem to me plain that the disclosure which the N.W.P made was within the exception specified in the article, provided that the disclosure was made in good faith, and in the exercise of a careful professional judgement, and provided that the disclosure was limited to that reasonably judged necessary for the public purpose which the N.W.P sought to protect.*[158]

It is also noted that legislation in the United States, which not only provides for the collection of information but provides for its disclosure in certain circumstances, had, at least until the 1996 amendments to the *Jacob Wetterling Act*, survived challenges on constitutional grounds.

> *The majority of courts that have dealt with the issue have held that systems like those contemplated by the Jacob Wetterling Act do not violate released offender's*

[156] Extracted from Wood Royal Commission Report Vol IV, op cit, at pp 576 and 587.
[157] [1997] 3 WLR 724.
[158] Ibid at p 736.

constitutional rights. Janet Reno, United States Attorney-General.[159]

Thus, with due respect to the submission by the Queensland Branch of the International Commission of Jurists, on balance there are strong arguments that:

- the restriction that the requirement to report places on the 'right of liberty of movement and freedom to choose residence' as set out in Article 12 of the ICCPR, may fall within the 'public order, public health or morals or the rights and freedoms of others' exception to that article ; and

- a number of international covenants and declarations also clearly support measures to prevent and protect children from sexual cruelty and exploitation.

Conclusion 1 - The committee notes that a number of international declarations, conventions and covenants are relevant to the requirement of child sex offenders to report and register. What is clearly required is a careful and just balancing of the obligations in fulfilling competing international conventions which seek to protect the rights of different groups. [clause 5]

4.3.5.2 Meaning of "not in custody"

The requirement to report applies to persons who, amongst other matters, are 'not in custody'. The issue arises as to what this term means.

Persons who are acquitted by a jury on the grounds of unsoundness of mind are, pursuant to s 39 of the *Mental Health Act,* generally taken from initial strict custody and admitted to a security patients' hospital. Such patients cannot leave the hospital without leave.

The committee therefore makes two observations.

- Firstly, these people are not in prison and therefore may not strictly be 'in custody'. If so, this would result in physical difficulties for them in complying with the reporting requirements.
- Secondly, these people most likely will lack the mental capacity to conform with the reporting conditions at that time in any event.

It is probably the intention of the Bill that such persons have to report upon release from the security patients' hospital. However, this will have to be clarified in the Bill. In addition, if the reporting requirements are extended to persons admitted to a security patients' hospital following a determination of the Mental Health Tribunal, it will also have to be made clear how and when they are to commence reporting.

The Queensland Homicide Victims' Support Group raises a more general inquiry as to the meaning of 'in custody' and submits that it requires definition. They ask whether it refers to

[159] US Dept of Justice, Office of the Attorney General, *Proposed Guidelines for Megan's Law and Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Act*, Washington DC, RIN 1105-AA50 p 4 of 13.

the meaning of custody as used by the Queensland Corrective Services Commission ('secure v open v supervision') or some more general meaning.

The Queensland Corrective Services Commission also submits that the term 'not in custody' needs to be clarified as to:

- *Whether prisoners who are on home detention would report (these persons are in custody). To ensure consistency, it would seem appropriate to include prisoners released to the community on home detention.*

- *Whether persons in Police custody would also be subject to reporting conditions.*[160]

Clearly, therefore a number of matters have to be clarified with respect to this clause of the Bill.

Recommendation 14 - The committee recommends that the Bill be amended to clarify what precisely is meant by 'not in custody', that is, is the Bill intended to apply to those who are in police custody, home detention, prison or in a security patients' hospital?

The committee also recommends that should:

- **the Bill apply to persons who are *acquitted* of a defined offence on the ground of unsoundness of mind but who are detained in a security patients' hospital; or**

- **the Parliament determine that the reporting requirements should extend to persons admitted to a security patients' hospital following a determination of the Mental Health Tribunal;**

then further consideration be given to how these persons are to report and when these persons are to commence reporting. [clause 5(1)(c)]

4.3.5.3 Personally reporting at the nearest police station

Clause 5(2) requires a sex offender to notify the Police Commissioner of his/her presence in Queensland by 'personally reporting at the police station nearest the offender's residential address'. The Director of Public Prosecutions submits that the term 'the nearest police station' requires definition otherwise problems will arise with prosecutions for breaches. He identifies some alternatives such 'as the crow flies', or 'by the shortest distance the offender has to walk'.

The Department of Families, Youth and Community Care submits that allowing written notifications would more likely achieve compliance with the Act.

The Domestic Violence Resource Centre submits that offenders should have to 'notify at all times in all geographical locations'.

[160] Queensland Corrective Services Commission submission, op cit at p 2.

The committee notes that under s 2(5) of the *Sex Offenders Act 1997* (UK) an offender is able to give notification by attending any police station in his local area and giving an oral notification to any police officer or by sending a written notification to any such police station.

This provision would seem to be a reasonable compliance regime and may avoid the difficulties identified by the Director of Public Prosecutions.

Recommendation 15 - The committee recommends that consideration be given to a compliance regime modelled on s 2(5) of the *Sex Offenders Act 1997* (UK) rather than the current requirement for offenders to personally report to the police station nearest their residential address. [clause 5(2)]

4.3.5.4 The details to be reported

Clause 5(2) currently provides that the details a sex offender must report include their name (and any aliases used), residential address, birth date and details of the conviction(s), or acquittal(s) on the ground of unsoundness of mind, that makes them a sex offender. This is similar to the *Sex Offenders Act* (UK) which requires persons subject to the notifications requirements of that Act to notify the police of their name (and any aliases used), home address, and date of birth.[161]

The definition of 'residential address' in the Bill is inclusive in that it only states that the term includes, for a sex offender who enters Queensland temporarily, the address at which the offender is staying while the offender is in Queensland. 'Home address' is defined in the UK Act as a person's sole or main residence in the UK or, where a person has no such residence, premises in the UK which he regularly visits. Therefore, the definition of 'residential address' would appear to be a matter which requires further consideration.

Clause 5(2) of the Bill further requires that sex offenders must also report *anything else that may be prescribed under a regulation.* Thus, this potentially allows for sex offenders to be required to provide a very wide range of other details, such details being determined by regulation. At least this would seem to include the additional matters which the Police Commissioner may, under clause 8(2), keep on his/her register. These include identifying particulars including, for example, fingerprints and palmprints and anything else the Commissioner considers appropriate.

The Children's Commissioner notes that the quality and quantum of information required by the relevant legislation in the United States jurisdictions is quite comprehensive, whereas the requirements of the UK Act and the Bill are scant in comparison. The Commissioner observes that the information required by various United States' jurisdictions might assist in forming a regulation. A summary of the data required in the various US states is contained in Appendix 4 of the Commissioner's submission.

The committee believes that the details which offenders are required to provide is a matter which should be more appropriately dealt with by primary rather than subordinate legislation.

[161] See s 2 of the *Sex Offenders Act 1997* (UK).

In this regard the committee also refers to the fundamental legislative principles as set out in the *Legislative Standards Act*, particularly:

- s 4(3)(a) which states that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation *makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review*; and
- s 4(5)(c) which states that whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation *contains only matter appropriate to subordinate legislation.*

The Queensland Association for Mental Health agrees that this clause is potentially in breach of the fundamental legislative principles.

Mr Nigel Waters, a Privacy Consultant, submits that the ability for the details to be provided to include 'anything else prescribed by regulation' has potential for abuse and that it would be better to debate and confirm the limits of the information in the Parliament.

The Queensland Branch of the International Commission of Jurists raise the same concerns.

The federal Privacy Commissioner expresses concern that this may give rise to unsubstantiated information entering the register which may in turn be disclosed to third parties. She raises the concern that such unsubstantiated information should be accessible to the offender with right of dispute and amendment by them. (Privacy aspects associated with the Bill are dealt with further later in this chapter.)

The committee does however commend the inclusion of the requirement in clause 5 (4) that a police officer who receives the prescribed details from a sex offender must acknowledge receiving those details in an approved form and give a copy of the form to the sex offender.

Recommendation 16 - The committee recommends that further consideration be given to the definition of what constitutes a person's 'residential address'.

Further, the committee notes that the details which sex offenders must provide to the Police Commissioner include 'anything else that may be prescribed under a regulation'. The committee is concerned that this potentially allows for a very wide range of details to be prescribed by 'regulation'. The committee recommends that the procedure whereby further details are to be added to the list in clause 5(2) is a matter more appropriately dealt with by primary rather than subordinate legislation. [clause 5(2)(e)]

4.3.5.5 A "reasonable excuse"

An offender is liable to penalty if he/she fails to give the required details to the police unless that person has a 'reasonable excuse'. However, there is no attempt in the Bill to define *what* is a 'reasonable excuse' or *who* makes that determination.

The Queensland Council for Civil Liberties submits that the total failure of the Bill to list what might amount to a reasonable excuse is a major gap and they question if the concern of an offender about retribution would constitute a reasonable excuse.

Similarly, the Queensland Corrective Services Commission notes that both clauses 6 and 7 refer to 'reasonable excuse' but it is not clear what is meant by that phrase nor who must be satisfied as to the reasonableness of the excuse.

Such a provision in an Act is not unusual. In considering those words as they appear in s 86 of the NSW *Independent Commission Against Corruption Act* the court observed in *ICAC v Cornwall* (1993) 116 ALR 97:

> *The words "reasonable excuse" do not equate with "lawful excuse":* Von Doussa v Owens (No 1) *(1982) 30 SASR 367 per Mitchell J at 379....It is unnecessary and undesirable to endeavour to state with any precision the circumstances that might constitute a reasonable excuse. It is essentially a question of fact when it otherwise arises for consideration although in a particular case there might be a question of law concerning the boundaries of discretionary judgment available to the tribunal of fact:* R v Mossop *(unreported CCA NSW 12th December 1991.....In* Corporate Affairs Commissioner (NSW) v Yuill *(1991) 172 CLR 319 at 336 Brennan J said:*
>
> *"Reasonable excuse" more aptly refers to any physical or practical difficulties in complying with a requirement under s295.*

However, the committee queries whether in legislation of this nature, some further clarification as to what the Bill means by 'reasonable excuse' is required. The committee is concerned that without this clarification, a wide interpretation of 'reasonable excuse' could result in the proposals in the Bill (including the completeness and accuracy of the register) being effectively undermined.

These comments equally apply to the other uses of this term in the Bill.

Recommendation 17 - The committee commends the inclusion of 'reasonable excuse' provisions in the Bill. However, the committee recommends that consideration be given to whether further statutory clarification needs to be accorded to the meaning of 'reasonable excuse'.

4.3.5.6 *Meaning of "within 7 days after the offender is discharged"*

Clause 5(3) requires a sex offender to give the details noted above to the police within 7 days after the offender is 'discharged' from custody.

In respect of the requirement to report within 7 days, the committee notes the Children's Commissioner's research which states that the time frames in ss 4-6 of the Bill are commensurate with the time frames in other jurisdictions.

However, with respect to the term 'discharged' the Queensland Corrective Services Commission notes:

> *"Discharge" in clause 5(3) is given a specific meaning in corrective services legislation. It does not include release on parole, extended leave etc. The intention therefore of 'discharged' requires clarification to distinguish between persons discharged from supervision obligations and those still subject to corrective services supervision.*[162]

Recommendation 18 - The committee recommends that consideration be given to amending the Bill so as to clarify the meaning of 'discharged' from custody. [clause 5 (3)]

4.3.5.7 Ignorance of the law and reporting by international and interstate visitors

The requirement for sex offenders who enter Queensland 'temporarily' to report has already been noted. However, a number of issues arise in terms of the practicality of this requirement. For example, how are offenders to know of the requirement to report? Again the committee notes that the *Criminal Code* provides that ignorance of the law is no excuse.

In this regard the committee also refers to the already-noted comments by the Victorian Crime Committee and the Wood Royal Commission as to the preference for such registers, if implemented, to be done on a national basis.[163]

The Queensland Council for Civil Liberties submits that the requirement for interstate and international visitors to report to the nearest police station would be particularly harsh in that, in the absence of advertising campaigns or notices to incoming passengers and motorists, visitors are unlikely to know of such a 'unique and unusual' law, yet ignorance of the law is no excuse.

The Director of Public Prosecutions also submits that the requirements of clause 5 (5) in respect of two or more periods in Queensland in one year is taking reporting too far. He gives an example of three visits by an offender which triggers the reporting requirements yet the offender has by then left Queensland.

Thus, there needs to be some mechanism by which sex offenders are notified of their requirement to report. This applies particularly in the case of persons caught by the retrospective operation of the legislation and interstate and international visitors to Queensland who will be subject to the reporting requirements. Further study as to how various of the jurisdictions in the United States have approached this problem may prove useful.

The committee also believes that there needs to be some simplification of the requirement to report for sex offenders temporarily entering Queensland.

Recommendation 19 - The committee recommends that there be some mechanism by which sex offenders are notified of their requirement to report.

[162] Queensland Corrective Services Commission submission, op cit, at p 2.
[163] Refer to paragraphs 3.3.2 and 3.3.3 of this report.

In addition, the committee recommends that consideration be given to simplifying the reporting requirement in relation to sex offenders temporarily entering Queensland by deleting clause 5(5)(b) relating to broken periods totalling 14 days. [clause 5(5)]

4.3.5.8 Adequacy of the penalty

The penalty for non-compliance with the notification requirements in clause 5 is a maximum of 30 penalty units, which is currently $2250. As already noted:

- the penalty for non-compliance with the notification requirements or providing false information in the *Sex Offenders Act* (UK) is £5000 or 6 months imprisonment or both; and
- the penalty for not reporting as ordered under the *Criminal Law Amendment Act 1945* (Qld) is currently $1500 or 6 months imprisonment.

The Children's Commissioner also provided the committee with research on the penalties for non-compliance with reporting conditions in overseas jurisdictions. The Commissioner notes that:

> *The overseas jurisdictions provide for a varying range of penalties depending on the classification of the offence. The penalties range from small fines to imprisonment. The Bill on the other hand takes a broad brush approach and provides for what could be considered as a minor deterrent, 30 penalty units. Given the thrust of the Bill, this penalty provision of 30 penalty units places the non-reporting by serious sex offenders marginally above the serious traffic offence range. It therefore begs the question - is it a deterrent?*

The Queensland Police Service submits that the penalties for non compliance are inconsequential given the serious offences of which the persons have been convicted.

The Queensland Homicide Victims' Support Group also question the deterrent effect of a total fine, presently, of $2250.00 for a breach of the Act as does the Department of Families, Youth and Community Care.

The Queensland Corrective Services Commission notes that the only way an offender would be imprisoned for failure to comply with the Bill is if they were in default of the fine.

The completeness and accuracy of the information provided by sex offenders to the police is obviously vital to the overall effectiveness of the regime proposed by the Bill. Therefore, the committee believes that there must be must be a sufficient deterrent for non-compliance. In addition, there must also be penalties for offenders who knowingly provide false information to the police.

Recommendation 20 - The committee recommends that, in light of the need for any proposed register to contain complete and accurate information, consideration be given to:

- **the appropriateness of a maximum penalty of 30 penalty units for non-compliance with the notification requirements; and**
- **extending the penalty to apply to a sex offender who knowingly gives false information. [clause 5(2) and (3)]**

4.3.6 Clause 6: Advising of changes of particulars

Clause 6 requires a sex offender to notify changes of particulars within seven days, unless that person has a 'reasonable excuse' for non-compliance. The clause also requires a sex offender to notify of an intention to leave Queensland between fourteen and three days before intended departure.

The Department of Families, Youth and Community Care suggests that the notification requirements in respect of departure from Queensland is too stringent with no exception for short visits and as such is unlikely to encourage compliance. Mr Nigel Waters agrees that it is disproportionately harsh.

The Director of Public Prosecutions suggests that sub-clauses 4 and 5 be amalgamated to read:

> *If the sex offender intends to leave Queensland the sex offender, unless he or she has a reasonable excuse, must personally report at the police station nearest the offender's residential address and give a police officer at the station notice in the approved form not more than 14 days or less than 3 days before the offender intends to leave Queensland. Maximum penalty - 30 penalty units.*

The committee's observations as to the meaning of 'not in custody', personally reporting at the nearest police station, the definition of 'residential address', what constitutes a 'reasonable excuse' and the appropriateness and adequacy of the penalty as already noted in relation to clause 5, also apply in relation to clause 6.

Recommendation 21 - The committee recommends that consideration be given to the practicalities of the notification requirement in relation to sex offenders leaving Queensland for short periods. [clause 6(5)]

4.3.7 Clause 7: Period of reporting requirements

Clause 7 provides that in the case of an offender sentenced to 6 months or more but less than life, the reporting requirements lasts for 2.5 times the term of imprisonment. In the case of life imprisonment, and acquittal on the ground of unsoundness of mind the period is indefinite.

A person who is the subject of an order under the *Criminal Law Amendment Act 1945* is required to report for the longer of either the period that they are already ordered to report for, or the period to which the offender is subject as outlined above.

4.3.7.1 The length of the reporting period

In the absence of an explanatory note, it is difficult to determine how the reporting periods in the Bill have been calculated.

Section 1(4) of the *Sex Offenders Act* (UK) provides that sex offenders are subject to the reporting requirement for varying periods depending on the sentence of imprisonment. The range includes:

- for persons sentenced to imprisonment for life or for a term of 30 months or more and persons who, in respect of the offence or finding, have been admitted to a hospital subject to a restriction order - an indefinite period;
- for persons sentenced to imprisonment for a term of more than 6 months but less than 30 months - 10 years;
- for persons sentenced to imprisonment for a term of 6 months or less and for persons who, in respect of the offence or finding, have been admitted to a hospital without being subject to a restriction order - 7 years; and
- for persons of any other description - 5 years.

Section 1(5) of the UK Act also makes provision for calculation of the reporting period in the case of certain offenders who, in respect of two or more sexual offences to which the Part of the Act applies, have been sentenced to consecutive or partly concurrent terms of imprisonment.

Clause 7(4) of the Bill provides how the 'term of imprisonment' is calculated, including in the case of concurrent and cumulative sentences. Although, in this regard the Queensland Corrective Services Commission notes that it is not clear whether the calculation of a reporting period in clause 7 (4)(b)(ii) is to be only implemented where a prisoner is expressly denied parole.

The Commission also notes that:

> *The reporting period does not take account of whether the sex offender who is returned to custody for unrelated offences, must still report on discharge. The Bill needs to clarify what happens when a sex offender leaves the State (for a lengthy period) and subsequently returns to Queensland. The issue of whether the reporting period is held in abeyance or not warrants clarification.*[164]

[164] Queensland Corrective Services Commission, op cit, at p 2.

With respect to the length of the reporting period, the Children's Commissioner enumerates in Appendix 6 of his submission the duration of registration requirements in sex offender registration legislation in the various US states and notes that the trend in those jurisdictions is to set the registration period according to the seriousness of the offence and punishment imposed by the courts. The Commissioner states that clause 7 provides for the temporal conditions on reporting and is consistent with the approach in overseas jurisdictions.

The committee believes that any assessment as to the length of reporting periods should logically take into account research into matters such as rehabilitation and treatment of sex offenders. Reference has been made to this research in chapter 2.

The Queensland Council for Civil Liberties expresses the view that the period of 2.5 times the sentence is completely arbitrary.

Mr Nigel Waters, while supporting in principle thresholds under the Act would like to hear argument in support of the thresholds including the 6 month's sentence and the formula of 2.5 times.

The Queensland Homicide Victims' Support Group points out that the imposition of life imprisonment for a sexual offence is unlikely to ever be imposed and hence that part of the provision will never be applicable. However, the committee notes that this is not necessarily reason alone to delete it. The maximum penalty for a number of the offences in the Dictionary is life imprisonment. The courts have held that the maximum penalty should be imposed for the worst category of case not the worst imaginable example of the offence.

The Domestic Violence Resource Centre submits that the formula for reporting does not address the ongoing nature of sexual offences against children. Equally the Queensland Community Corrections Board submits that the period may not be long enough pointing out that paedophilia is a persistent condition and will be practised until late in life. The Board states:

> *To make an offender sentenced to imprisonment for 6 months subject to a reporting condition for only 15 months in many cases would not adequately deal with the mischief with which the community is rightly concerned.*[165]

The National Crime Authority submits that offenders should be recorded on the sex offenders register for a much longer, even indeterminate, period and points to its national strategic assessment of paedophilia which found that child sex offenders can offend repeatedly against many victims over their lifetime, mostly without detection.

Recommendation 22 - Clearly, there is a wide range of views on the length of period a sex offender should be required to report. The committee recommends that further consultation be conducted in this regard.

[165] Queensland Community Corrections Board submission , op cit, at p 2.

The committee also recommends that consideration be given to:

- **the clarity of clause 7(4)(b)(ii) of the Bill which relates to sex offenders convicted of more than one serious sex offence and sentenced to serve cumulative terms of imprisonment; and**

- **whether, in some circumstances, the reporting period may be held in abeyance. [clause 7]**

4.3.7.2 The time the reporting periods commence

Clause 7 does not specify when the reporting period actually commences.

The Queensland Homicide Victims' Support Group asks when the period begins. In particular the group queries whether it commences on the date of the order of the court, or the date of completion of the sentence or on the date of conviction?

The Bar Association submits that the applicable date should be the date of the offence not the date of conviction as many offences do not come to light for long periods during which the offender may not have offended further.

Recommendation 23 - The committee recommends that consideration be given to clarifying in the Bill the time from when the reporting period is to commence. [clause 7(1)]

4.3.7.3 Persons acquitted on the ground of unsoundness of mind

Clause 7(2) provides that a sex offender acquitted on the ground of unsoundness of mind of a serious sex offence in relation to a child (or an offence relating to obscene material depicting children) is subject to an indefinite reporting period.

Several submissions have already been noted on the inclusion at all of such persons. The further issue is whether it is to discriminate against persons acquitted on the ground of unsoundness of mind by requiring them to report indefinitely. Many mentally ill offenders will recover completely or sufficiently to allow their release into the community. The offence that they have committed may have attracted a relatively short period of imprisonment had they been found guilty or pleaded guilty as a person of sound mind.

The Queensland Association for Mental Health submits that this discrimination is clearly at odds with both the Commonwealth *Anti-Discrimination Act 1992* and the Queensland *Anti-Discrimination Act 1992*. In their view an application to strike down the provision could be made to the Human Rights and Equal Opportunity Commission and then to the Federal Court.

In addition to this aspect of the clause potentially breaching anti-discrimination legislation, the committee again notes s 4 of the *Legislative Standards Act* which states that the fundamental legislative principles include requiring that legislation has sufficient regard to the rights and

liberties of individuals. Without further justification, this clause would arguably not have the requisite 'sufficient regard'.

Recommendation 24 - The committee recommends that further consideration be given to the apparent discriminatory nature of the requirement that sex offenders acquitted on the ground of unsoundness of mind be subject to an indefinite reporting period. [clause 7(2)]

4.3.8 Clause 8: The sex offenders register

Clause 8 provides that the Police Commissioner *may* keep a register of sex offenders. Further, it provides that this register *may* contain in relation to a sex offender their name and aliases, address, date of birth, identifying particulars and *anything else the commissioner considers appropriate***.**

The Commissioner must remove a sex offender's name and other details from the register immediately after the offender stops being subject to a reporting period under clause 7.

The Commissioner *may disclose* information in the register only to the following persons:

(a) the chief executive of a department of government;

(b) any law enforcement agency either within or outside Queensland;

(c) the Children's Commissioner; or

(d) *an entity prescribed by regulation.*

4.3.8.1 The purpose of the sex offenders register

The committee found in consultation a variety of interpretations as to why there would need to be a sex offenders register. The Bill fails to articulate the purpose of taking and keeping details about sex offenders on a register.

In this regard, the federal Privacy Commissioner notes that the Bill is not only silent on the purpose of collecting the information, but is also silent on:

- whether the offenders will be informed of the purpose of collection;
- what mechanisms are available for an offender to view information on the register and take steps to have it amended;
- what the information will be used for; and
- for what purpose it may be disclosed to third parties.

In her submission the Privacy Commissioner also points out that the purpose of collection is an essential element in the structure of Information Privacy Principles such as that which apply

to Commonwealth government departments and agencies under the *Privacy Act 1988* (Cth). For example, these principles require:

- that collection is limited to that which is *necessary* for the purpose of collection;
- the individual should be informed of the purpose of collection; and
- the information should not be used for any purpose other than the original or directly related purpose.

In the federal Privacy Commissioner's view the Bill should contain:

- access and amendment rights of individuals to their information on the register;
- penalties for unauthorised disclosure or misuse of the information;
- records of disclosures of the information to third parties;
- tighter restriction on disclosure to third parties in terms of the purposes for which they can use the information; and
- requirements that the third parties who receive information from the register have appropriate measures in place to protect the information against improper use or disclosure.

Similarly, in the view of the Queensland Association for Mental Health, the failure to spell out the purpose of the register prevents proper guidelines regarding what constitutes improper use of the information contained in the register.

The Children's Commissioner also points out that there is no provision in the Bill for verification of the contents of the register as is the case in some US legislation.[166] Mr Alford submits that this is a major hiatus and could render its application ineffective in certain instances.

The *Jacob Wetterling Act* now requires now that all states include verification procedures. This is achieved in that Act by requiring an annual verification by the offender responding to a form sent to the last registered address.

The committee agrees with the comments of the Children's Commissioner and has already noted that measures must be put in place to ensure that the register is accurate and complete if it is to have any value.

The committee also notes that Queensland currently does not have privacy legislation equivalent to the *Privacy Act 1988* (Cth). The committee believes that explicit privacy protection must be given to the information that will be kept in the register given its high level

[166] In this regard the Children's Commissioner notes that only 47% of the US state statutes concerning sex offender registration require verification of offenders' addresses.

of sensitivity. The fact that there is no legal requirement protecting the privacy of information in the register, highlights the need for certain information privacy principles to be contained either in the Bill or in separate privacy legislation. The committee is currently conducting an inquiry into privacy in Queensland, the report on which will address some of these concerns.

This issue is addressed again in paragraph 4.3.8.5 of this report.

Recommendation 25 - The committee recommends:

- **that the Bill specifically states the purpose in keeping the sex offenders register; and**

- **that consideration be given to the serious privacy issues which arise with respect to the handling and integrity of personal information recorded on the sex offenders register. This is particularly a concern given that Queensland currently does not have privacy legislation and/or a privacy guardian or advocate such as exists at the Commonwealth level. [clause 8]**

4.3.8.2 The Police Commissioner may keep a register

Clause 8(1) as currently drafted gives the Police Commissioner a discretion to keep a register. However, it is apparent that the intention is that a register shall be kept. Clause 8(2) also provides what the register 'may' contain, as opposed to what it 'must' contain. Therefore, it would appear that the clauses should be cast in mandatory terms in respect of both the keeping of a register and the things that it is to contain.

However, it is relevant to note in this regard that the *Sex Offenders Act* (UK) does not make provision for the keeping of a register. During debate on the Bill it was explained that it was not intended to create a separate register. Instead, it was envisaged that information collected was to be stored on the Phoenix database on the police national computer and be accessible to all police forces as well as the National Criminal Intelligence Service.[167]

The Police Commissioner expresses concern about the resource implications of keeping the register. He also expresses some concern that the police are to act as parole officers and this is a duplication of the functions of the Queensland Corrective Services Commission because parolees must report their whereabouts to the Commission. However, in this regard the committee notes that the Bill is intended to apply to all sex offenders not just those on parole.

Nevertheless, a question for resolution is whether a central agency other than the Queensland Police Service should maintain the register. As discussed in chapter 2, the Queensland Crime Commission will have jurisdiction to investigate paedophile activities in Queensland. The QCC is also to maintain an effective intelligence service about paedophilia and to liaise with other law enforcement agencies throughout Australia and overseas. Even if the police collect the information it may be that the register should be the responsibility of the Crime Commission.

Recommendation 26 - The committee recommends that consideration be given to:

[167] House of Commons, *Hansard Debate*, 25 February 1997, Column 225.

- **whether the requirement in respect of both the keeping of a register and the things that it is to contain should be cast in mandatory rather than discretionary terms; and**

- **whether the Queensland Crime Commissioner is a more appropriate officer to be responsible for keeping the register. [clause 8(1)]**

4.3.8.3 Meaning of "anything else the Police Commissioner considers appropriate"

The Bill allows the Police Commissioner to stipulate further details about a sex offender that have to be kept on the register. For example, clause 8(2) does not currently include photographs, therefore the Commissioner may consider it appropriate that the register include photographs.

However, this aspect of the clause has attracted much criticism from a number of submissions. In this regard, the committee notes that these additional details are not required to be prescribed by regulation. Therefore, the matters the Police Commissioner so prescribes will not be subject to the possibility of disallowance by Parliament.

Potentially, the provision could be in breach of the fundamental legislative principles in s 4 of the *Legislative Standards Act.* In particular, the committee notes that s 4(3)(a) provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation *makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review*.

Recommendation 27 - The committee recommends that the wide power granted to the Police Commissioner to determine what details the register may contain be curtailed. Therefore, the committee recommends that clause 8(2) should be amended to specifically list what details about a sex offender the register may contain, with any future additional details to be added only by legislative amendment. [clause 8(2)(e)]

4.3.8.4 Removal of information from the register

Clause 8(3) provides that the Police Commissioner must remove a sex offender's name and other details from the register immediately after the offender stops being subject to a reporting period under clause 7.

As already noted, the point in time at which the period of reporting commences must be clarified so that the Police Commissioner can know when it expires in order to comply with the mandatory removal of particulars.

The DPP notes that the penalty for failure to comply by the Commissioner is not provided for and thus the general offence provision of s 204 of the *Criminal Code* would make the Commissioner liable on conviction to imprisonment for one year. He submits that the issue of penalty needs to be addressed.

Recommendation 28 - The committee recommends that consideration be given to whether the Police Commissioner should be subject to a penalty for failing to comply with the requirement to remove a sex offender's name and other details immediately after the offender stops being subject to a reporting period. [clause 8(3)]

4.3.8.5 Control of disclosure to third parties

The persons to whom the Police Commissioner may disclose information in the register are listed in clause 8(4). These persons include: the chief executive of a department of government; a law enforcement agency within Queensland or outside Queensland; the Children's Commissioner and 'an entity prescribed under a regulation'. (The last of these is discussed in the paragraph below.)

As already noted a number of concerns have been expressed to the committee as to the lack of control over the way that information so provided is to be used and to whom the information might be forwarded, particularly in relation to information provided to government departments. The Children's Commissioner himself notes that the provision appears to be broad and that it would be apposite to issue guidelines to the administering agency (the Police Commissioner) for its proper administration. In this regard the Children's Commissioner also refers the committee to guidelines published by the UK Home Minister to the police setting out how and when information concerning sex offenders should be disclosed.

Mr Nigel Waters wonders at the need to disclose to all government departments and submits that there needs to be clear constraints on:

- what the recipient organisations are able to use the information for;
- to whom they can disclose it; and
- sanctions for breaches of these conditions.

The Chief Executive Officer of Legal Aid Queensland and the Bar Association strongly agree as does the Queensland Branch of the International Commission of Jurists.

The DPP included examples in other legislation of the way in which conditions have to be satisfied in respect of the disclosure of information to other entities.

The Bar Association observe that the information has the capacity and potential to be severely misused if it falls into the wrong hands.

Both the Queensland Council for Civil Liberties and the NCA point to the lack of definition of 'department of government' in the Bill. The NCA asks is it limited to Queensland departments or could it be given a wider interpretation.

The committee agrees that there needs to be further restrictions on the control of disclosure to third parties. As the federal Privacy Commissioner notes, legislation such as the *Privacy Act* (Cth) contains principles which, amongst other matters, regulate the disclosure of certain information. However, Queensland currently has no equivalent privacy legislation.

Until such time as Queensland may introduce privacy legislation, the situation might be remedied by inserting in the Bill a regime regulating the use and disclosure of the sensitive information contained in the register. The committee notes that such a regime was proposed in the former Sports Drug Testing Bill 1996 (Qld) which provided for details as to competitors' positive drug test results to be entered into a register.[168] Clauses 18 (Notification of entries in, and removal from, register), 21 (Chief executive may ask for register detail) and 23 (Confidential information) of that Bill - along with corresponding comments made by the Scrutiny of Legislation Committee in its Alert Digest No 1 of 1995 - may provide some guidance in this regard.

Recommendation 29 - The committee recommends that the provisions relating to the control of disclosure of information from the register be further clarified particularly as to:

- **what recipients may use the information for;**
- **to whom they can disclose the information; and**
- **sanctions for breach. [clause 8(4)]**

4.3.8.6 Disclosure to an entity prescribed under a regulation

Clause 8(4)(d) also allows the Police Commissioner to disclose information in the register to 'an entity prescribed under a regulation'.

The regulation-making power is contained in clause 10 of the Bill.

The Queensland Council for Civil Liberties argues that this is thoroughly objectionable and could later see by regulation the power to disclose given in respect of child care centres, scout groups and all sorts of groups who have contact with children.

Mr Nigel Waters argues that it leaves too much discretion with the Executive, giving rise to later pressure to introduce disclosure to the community.

The committee again notes that the category of persons to whom the Police Commissioner can disclose information from the register is potentially wide. Although this category can only be expanded by regulation, the committee believes that additional persons/organisations to whom disclosure can be made should be a matter for primary and not subordinate legislation.

[168] The Sports Drug Testing Bill 1995 Bill was introduced in the Assembly by Hon Tom Burns MLA on 7 September 1995. The Bill lapsed and was re-introduced by Hon M Veivers on 7 August 1996. The Bill was subsequently withdrawn on 11 July 1997.

In this regard, the provision would appear to be in breach of the fundamental legislative principles in s 4 of the *Legislative Standards Act.* In particular the committee notes that:

- s 4(3)(a) provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation *makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review*; and

- s 4(5)(c) provides that whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation *contains only matter appropriate to subordinate legislation.*

Recommendation 30 - The committee notes that the Police Commissioner may disclose information in the register to 'an entity prescribed under a regulation'. The committee recommends that the Bill should be amended so that information from the register can only be disclosed to persons (additional to those specified) who are added to that list by legislative amendment. [clause 8(4)(d)]

4.3.8.7 Disclosure of information from the register by and to other persons not mentioned in the Bill

As the Bill currently stands, only the Police Commissioner can disclose information in the register and only to the persons listed in clause 8(4).

The Queensland Community Corrections Board submits that the Attorney-General should be given power to release particulars of the information contained in the register to persons who, he is satisfied, possess a proper interest in having the information made available to them including some members of the public in certain circumstances.

Under s 20 of the *Criminal Law Amendment Act 1945* the Attorney-General may inform any person of the fact of a reporting order under s 19 of that Act and give details of the offence *if the Attorney-General is satisfied that the person has a legitimate and sufficient interest in obtaining the information*. The Attorney-General may impose such conditions to that disclosure as he or she thinks fit and failure to comply with those conditions is an offence making the person liable on summary conviction to a maximum fine of 10 penalty units.

The lawful disclosure by the North Wales Police in the case of *R v Chief Constable of North Wales ex parte AB* has been noted earlier. This case upholds, under common law principles, the disclosure by police under guidelines set by the police themselves quite independently of any legislative regime.

Recommendation 31 - The committee recommends that consideration be given to the issue of whether persons other than the Police Commissioner should be able to disclose information from the register, and whether the recipients of that information should be a wider class of persons than currently listed in clause 8(4). [clause 8(4)]

4.4 Consequential amendments - Schedule 1 to the Bill

Schedule 1 of the Bill provides for consequential amendments to the *Criminal Law Amendment Act 1945* (Qld), the *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) and the *Freedom of Information Act 1992* (Qld). The committee discusses each of these consequential amendments in this paragraph.

4.4.1 The Criminal Law Amendment Act 1945 (Qld)

Schedule 1 of the Bill proposes to omit sections 19, 20 and 21 of the *Criminal Law Amendment Act*. The central features of this Act have already been noted in paragraph 4.3.3.7. In summary they are as follows.

- Section 19 provides that, in certain circumstances, a court may order that a child sexual offender report his address and any changes of address within 48 hours to the police for such period as is specified in the order.

- Section 20 allows disclosure by the Attorney-General of the fact that a person is subject to an order made under s 19 and the offence of a sexual nature of which the person subject to the order has been convicted, where the Attorney-General is satisfied that the person has a legitimate and sufficient interest in obtaining the information.

- Section 21 states that prosecutions for offences relating to failure to comply with a reporting order under s 19 or the conditions imposed by the Attorney-General on information given by him/her pursuant to s 20, shall be upon the complaint of a person authorised in writing in that behalf by the Attorney-General or a person belonging to a class so authorised.

Recommendation 32 - The committee has already noted in paragraph 4.3.3.7 support in submissions for retention of s 19 of the *Criminal Law Amendment Act 1945* (Qld) as opposed to the blanket reporting provisions in the Bill. The committee recommends that further consideration be given to these submissions.

4.4.2 The Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld)

The *Criminal Law (Rehabilitation of Offenders) Act 1986* makes provision in relation to the rehabilitation of persons convicted of certain offences. In particular, s 6 of the Act provides that where a 'rehabilitation period' has expired in relation to a conviction recorded against any person, neither that person nor any other person, shall disclose the conviction. However, this is subject to certain exceptions contained in ss 6 and 7.

'Rehabilitation period' is defined in s 3 of the Act to be ten years in the case of an adult and five years in the case a child. The only convictions in relation to which a rehabilitation period is capable of running are convictions upon which the offender is not ordered to serve any period in custody or the offender is ordered to serve a period not exceeding 30 months in custody.

Schedule 1 of the Bill proposes to amend s 7 by providing that s 6 does not apply in relation to a sex offender *subject to a reporting period* under the Criminal Law (Sex Offenders Reporting) Act 1997.

Pursuant to s 8 of the Act where a rehabilitation period has expired in relation to a conviction recorded against any person, that person can lawfully claim that they have not suffered the conviction. Schedule 1 of the Bill proposes to amend s 8 by stating that it does not apply in relation to a sex offender *subject to a reporting period* under the Criminal Law (Sex Offenders Reporting) Act.

Further, s 9 of the Act states that a person or authority charged with assessing a person's fitness to be admitted to a profession, occupation or calling shall disregard any conviction that is part of the person's criminal history in relation to which the rehabilitation period has expired subject to certain exceptions. Schedule 1 of the Bill proposes to amend s 9 by providing that it does not apply in relation to a sex offender *subject to a reporting period* under the Criminal Law (Sex Offenders Reporting) Act.

The committee notes that the amendment by schedule 1 to ss 7-9 of the Act seem to be superfluous. The rehabilitation period under the Act is 10 years. However, this provision only applies to convictions where the sentence has not exceeded imprisonment for 30 months. In the case of sex offenders who have been convicted and sentenced for a 'serious sex offence in relation to a child' or 'an offence relating to obscene material depicting children' and who have been sentenced for a period of 30 months, the reporting period under clause 7 of the Bill is 2.5 times that term, that is, 75 months. This is less than the 10 year rehabilitation period under the Act.

With respect to persons who are sex offenders because they have been acquitted on the ground of unsoundness of mind, the Act will not apply because they have not been convicted.

Recommendation 33 - The committee recommends that consideration be given to the necessity for the consequential amendments to the *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) by the Bill. These consequential amendments appear to be superfluous as currently drafted.

4.4.3 The Freedom of Information Act 1992 (Qld)

Schedule 1 of the Bill also seeks to insert into schedule 1 of the *Freedom of Information Act 1992* (the 'FOI Act') the phrase 'Criminal Law (Sex Offenders Reporting) Act, section 8(4)'. It will be recalled that clause 8(4) of the Bill provides for persons to whom the Police Commissioner can disclose information in the sex offenders register.

This amendment is relevant to s 48 of the FOI Act which provides that matter is 'exempt matter' if its disclosure is prohibited by an enactment mentioned in schedule 1, unless the disclosure is required by a compelling reason in the public interest.

In this regard the Information Commissioner advises as follows:

> *Basically, there are two methods which Parliament may use to prevent disclosure of*

a particular class of information under the Freedom of Information Act 1992 Qld (the FOI Act): s 11 of the FOI Act or s 48 of the FOI Act.

The proposal contained in the Criminal Law (Sex Offenders Reporting) Bill 1997 is to make use of s 48 of the FOI Act to prevent disclosure of details from a proposed Sex Offenders Register by making s 8(4) of the Bill a qualifying secrecy provision for the purposes of s 48(1).

It is worth noting that use of s 48 does not provide a guaranteed way of preventing disclosure of information under the FOI Act. Firstly, s 48 allows a person concerned to obtain access to information that concerns their own personal affairs. Use of s 48, then, would permit a person whose name and details are on the Sex Offenders Register to obtain access to that information because of s 48(2).

Secondly, matter can be disclosed under s 48 if required by a compelling reason in the public interest. It is possible that some difficult questions could emerge as to whether disclosure of information from the Sex Offenders Register to a particular applicant could be required by a compelling reason in the public interest, e.g., where a principal of a school wishes to know whether there are any persons on the Register resident in the area surrounding a school. There could be occasions when it is difficult to predict the outcome of the application of the public interest balancing test within s 48.

Thirdly, s 48 means that a secrecy provision in schedule 1 takes effect according to its own terms. Section 8(4) of the Bill is not a strong secrecy provision. The provision limits disclosure by the Commissioner of Police only, and not some other recipient of information from the Sex Offenders Register. For example, there is no bar provided by s 8(4), to disclosure of information from the Sex Offenders Register that might be received by the Children's Commissioner. If an FOI access application was made to the Children's Commissioner, then s 48 would not apply, because s 8(4) of the Bill is only a bar to disclosure by the Commission of Police.

The alternative method of preventing disclosure of particular information under the FOI Act is s 11, which allows the FOI Act not to apply to certain bodies or parts of bodies, or to whatever class of information is described in s 11. The operation of s 11 is final, in the sense that there is no public interest balancing test which could require disclosure of information in some cases.[169]

The Information Commissioner raises some very important points. The committee believes that generally information kept by the Police Commissioner in a sex offenders register should not be the subject of a freedom of information request.

However, as already noted the federal privacy commissioner submits that the Bill should contain access and amendment rights of individuals to personal information kept about them. The procedure utilising s 48 would allow a person to obtain information about their own personal affairs. However, the committee has difficulties with the procedure under this provision in two aspects for the reasons noted by the Information Commissioner.

[169] Information Commissioner submission, 9 February 1998, at pp 1-2.

Firstly, it permits disclosure if required by a compelling reason in the public interest. As the Information Commissioner notes, it could be difficult to predict the outcome of an application of the public interest balancing test in s 48.

Secondly, the committee has difficulties with clause 8(4) itself. As already noted this provision does not prohibit the disclose of information that might be provided to the persons in clause 8(4). The Information Commissioner notes that this means that if an FOI application was made to, for example, the Children's Commissioner then s 48 would not apply because clause 8(4) of the Bill is only a bar to disclosure by the Police Commissioner.

The alternative procedure is to exempt the *FOI Act* from applying to information on the sex offenders register via listing that information in s 11. However, the effect of this alternative would be to deny persons the right to access and amend information on the register concerning their personal affairs.

Recommendation 34 - The committee recommends that the proposed interrelationship between the Bill and the *Freedom of Information Act 1992* (Qld) be further considered, particularly given the need for persons to be able to access and, if necessary, amend their own personal information contained in the register.

4.5 Overall comment on the Bill

Highlighted in this chapter are specific matters raised in the Bill which the committee believes require further consideration if the Parliament determines that legislation of this nature is to proceed.

A final observation that the committee would make concerns its earlier comments regarding the *Sex Offenders Act* (UK) being part of an overall strategy to combat sex offenders. Queensland has also addressed the problem of sex offenders to some extent with:

- the *Criminal Law Amendment Act 1945* (Qld);
- the Queensland Crime Commission which has specific jurisdiction in relation to paedophilia;
- recent amendments to the *Penalties and Sentences Act 1992* (Qld) which allow a court to impose an indefinite sentence on offenders convicted of violent offences; and
- evidentiary reforms with respect to children giving evidence.

The committee believes that the Bill needs to be considered in the context of these other measures and not in isolation from them.

Another important matter which the committee believes needs to be taken into account in overall consideration of the Bill is the likelihood that sex offenders will take action to change their identity in order to avoid the reporting requirements. This was a matter specifically raised by the Queensland Corrective Services Commission.

5. CONCLUSION AND SUMMARY OF RECOMMENDATIONS

This report documents the results of the committee's investigation into the Criminal Law (Sex Offenders Reporting) Bill 1997. In this report the committee has attempted to provide important information to assist the Parliament in making an informed assessment as to the problem which this proposed legislation is trying to overcome and the appropriateness of the manner in which it is sought to be addressed.

As noted at the outset of this report, an explanatory note to the Bill would have assisted the committee greatly in the conduct of its task. Whilst some of the information contained in this report would have ordinarily been contained in an explanatory note, the committee has not been in a position to provide all of such information. For example, the committee cannot speak for the Honourable Member as to her policy objectives in introducing the Bill and the consultation which she carried out in relation to it. Nor has the committee been able to assess the administrative cost to government of implementing the Bill.

Nevertheless, the committee does believe that its investigation and reporting process has been of value.

In chapter 2 the committee summarises leading research as to the extent of the problem of sex offences being committed against children both generally and in Queensland in particular, the prospects of rehabilitation for these offenders and the effects of sexual assault on children.

In chapter 3 the committee details its research as to the existence and operation of comparative legislation to the Bill.

This analysis reveals that the current Bill more closely resembles the *Sex Offenders Act 1997* (UK) than the so-called 'Megan's Law' of the United States in that, like the UK legislation, the Bill does not propose public access to the register or otherwise provide for the public to be notified of the presence of convicted sex offenders in the community. Unfortunately, given the limited time of operation of each of these legislative initiatives, it is difficult to evaluate their effectiveness.

Whilst there have been some proposals for the keeping of sex offenders registers in some Australian jurisdictions, to date no other Australian jurisdiction has enacted legislation comparative to that proposed in the Bill.

Most recently the Royal Commission into the NSW Police Service considered that there may be some merit in further consideration of registration requirements of the UK kind in NSW, however, the Commission stated that this should only occur following consultation with the DPP, the Police Service, Corrective Services and the Privacy Committee to identify:

- its potential efficacy for law enforcement in monitoring offenders (including the provision of post release supervision);
- the extent to which it might add value to existing provisions for the recording of

convictions and of criminal intelligence;

- the extent of the resources needed (that is, cost);
- identification of the classes of offenders who should be subject to ongoing registration and reporting provisions (which might be confined either to repeat offenders, or those involved in more serious offences);
- suitable privacy safeguards; and
- any practical difficulties in securing its application to offenders entering the State from other countries or from interstate.

The Commission also cautioned that registration legislation of this kind would be of limited value unless it formed part of a uniform national system.

The committee has carried out some consultation with respect to the Bill in which many of the above issues were addressed. The issues so addressed have been canvassed in this report. However, significantly the committee has been unable to consult with the recently established Queensland Crime Commission.

The responsibilities of the QCC specifically include:

- investigating 'criminal paedophilia', that is, activities involving offences of a sexual nature committed in relation to children or offences relating to obscene material depicting children;
- maintaining an effective intelligence service database on criminal paedophilia; and
- liaising with, providing information to, and receiving information from other law enforcement agencies throughout Australia and overseas about criminal paedophilia.

Therefore, the committee believes that extensive consultation with the QCC is essential at least in relation to the above issues in the case of the current proposal.

In addition, in chapter 4 the committee details some of its significant concerns with particular provisions in the Bill as it currently stands. The committee believes that these must be further considered and/or addressed if legislation of this nature is to proceed.

The future of the Bill is ultimately an issue for the Parliament. However, the committee believes that it has highlighted in this report a number of important matters which require further investigation before any final assessment as to the Bill's overall merit can be made.

Recommendation 35 - The committee recommends that the Premier as the Minister responsible for the *Legislative Standards Act 1992* (Qld) consider amending that Act to extend the requirement to circulate explanatory notes to apply to all Members who present Bills to the Legislative Assembly.

The committee also recommends that before further consideration is given to the Criminal Law (Sex Offenders Reporting) Bill 1997, the Private Member who introduced the Bill:

- **clarifies to the Parliament the objectives of the Bill; and**
- **conducts further consultation on the Bill with the Queensland Crime Commission.**

If, whether before or after those matters are attended to by the Private Member, the Parliament determines to proceed with the Bill, then the committee draws the Parliament's attention to its specific conclusions and recommendations regarding the provisions in the Bill as it currently stands. In summary, these conclusions and recommendations are as follows.

The committee also recommends that consideration be given to:

- the clarity of clause 7(4)(b)(ii) of the Bill which relates to sex offenders convicted of more than one serious sex offence and sentenced to serve cumulative terms of imprisonment; and

- whether, in some circumstances, the reporting period may be held in abeyance. [clause 7] 76

Recommendation 23 - The committee recommends that consideration be given to clarifying in the Bill the time from when the reporting period is to commence. [clause 7(1)] 76

Recommendation 24 - The committee recommends that further consideration be given to the apparent discriminatory nature of the requirement that sex offenders acquitted on the ground of unsoundness of mind be subject to an indefinite reporting period. [clause 7(2)] 77

Recommendation 25 - The committee recommends:

- that the Bill specifically states the purpose in keeping the sex offenders register; and

- that consideration be given to the serious privacy issues which arise with respect to the handling and integrity of personal information recorded on the sex offenders register. This is particularly a concern given that Queensland currently does not have privacy legislation and/or a privacy guardian or advocate such as exists at the Commonwealth level. [clause 8] 79

Recommendation 26 - The committee recommends that consideration be given to:

- whether the requirement in respect of both the keeping of a register and the things that it is to contain should be cast in mandatory rather than discretionary terms; and

- whether the Queensland Crime Commissioner is a more appropriate officer to be responsible for keeping the register. [clause 8(1)] 80

Recommendation 27 - The committee recommends that the wide power granted to the Police Commissioner to determine what details the register may contain be curtailed. Therefore, the committee recommends that clause 8(2) should be amended to specifically list what details about a sex offender the register may contain, with any future additional details to be added only by legislative amendment. [clause 8(2)(e)] 80

Recommendation 28 - The committee recommends that consideration be given to whether the Police Commissioner should be subject to a penalty for failing to comply with the requirement to remove a sex offender's name and other details immediately after the offender stops being subject to a reporting period. [clause 8(3)] 81

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Appendix A: Criminal Law (Sex Offenders Reporting) Bill 1997

Appendix B: Statements by Mrs Lorraine Bird MLA, Member for Whitsunday

Extract from Hansard, 18 November 1997 at pp 4252-4253

CRIMINAL LAW (SEX OFFENDERS REPORTING) BILL

…

Referral of Bill to Legal, Constitutional and Administrative Review Committee

Mrs BIRD (Whitsunday) (10.09 a.m.): I move—

> *"That so much of Standing and Sessional Orders be suspended to enable the Bill to be referred to the Legal, Constitutional and Administrative Review Committee for investigation and report to the House by the last week in February 1998."*

It gives me great pleasure to introduce this Private Member's Bill, the Criminal Law (Sex Offenders Reporting) Bill 1997. The Bill introduces, for the first time, a notification requirement for persons imprisoned for more than six months for sex offences against children. The requirements encompass a time of 14 days for a committed offender to personally report to the Police Commissioner through the nearest police station and register their name, address and other information as required. The Bill places a requirement on the discharged offender to also personally advise of any changes, including interstate or international leave. Offenders entering Queensland for not less than 14 days will be required to personally register within seven days of arrival. If interstate offenders enter Queensland on more than one occasion in 12 months for a combined period of not less than 14 days, they will also be subject to notification. In all cases, the police officer will acknowledge receiving the details with an approved form.

The Bill sets out a requirement for the registrar of the court to notify the commissioner about child sex convictions of six months or more. In the case of acquittals on the grounds of diminished responsibility and unsoundness of mind, the requirements will be the same. The Bill outlines the reporting period for offences of sodomy, rape, child prostitution, maintaining a sexual relationship with a child, incest, carnal knowledge, procurement of children for carnal knowledge and prostitution and indecent dealing with a child or children. The Bill also includes the offences of depicting children in obscene publications, photographs and computer games. Audio material must eventually be included and I appeal to the Government to amend existing legislation so that this can be done. Failure to comply with the notification requirements will bring about severe penalties.

The register will be the responsibility of the Commissioner of Police, who will ensure that information is removed immediately the offender has completed the notification time. The Commissioner also has the disclosure responsibility. Chief executives of the departments of Government, law enforcement agencies and the Children's Commissioner may receive information from the register to assist them in further protecting the public. However, the Commissioner of Police may, at his discretion, limit the type and amount of information that is released. The retrospectivity clause of 10 years, which is outlined in the Bill, will assure the public that they are protected from sex offenders who have committed serious crimes and who are at risk of reoffending. I seek leave to table an additional short statement.

Leave granted.

Appendix C: Submissions Received

	SUBMISSION RECEIVED FROM
1.	Mental Health Tribunal
2.	Bar Association of Queensland
3.	Queensland Community Corrections Board
4.	Queensland University of Technology - School of Social Science
5.	Domestic Violence Resource Centre
6.	The Director of Public Prosecutions
7.	Children's Commission of Queensland
8.	Australian Institute of Criminology
9.	Legal Aid Queensland
10.	International Commission of Jurists
11.	Queensland Homicide Victims' Support Group
12.	Anti-Discrimination Commission Queensland
13.	Mr Nigel Waters, Privacy Consultant
14.	Queensland Advocacy Incorporated
15.	National Crime Authority
16.	Queensland Law Society Inc.
17.	Queensland Association for Mental Health Inc.
18.	Hon D Beanland MLA, Attorney-General and Minister for Justice
19.	Federal Privacy Commissioner
20.	Hon K Lingard MLA, Minister for Families, Youth and Community Care
21.	Queensland Council for Civil Liberties
22.	Queensland Police Service
23.	CONFIDENTIAL
24.	Australian Bureau of Criminal Intelligence
25.	Information Commissioner
26.	Hon R Cooper MLA, Minister for Police and Corrective Services and Minister for Racing (on behalf of the Queensland Corrective Services Commission)

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

48TH PARLIAMENT

SECOND SESSION

MEETING ATTENDANCE RECORD						
MEETING DATE	DARRYL BRISKEY	FRANK CARROLL	JUDY GAMIN	KEN MCELLIGOTT	GLEN MILLINER	FIONA SIMPSON
4 APRIL 1996	✓	✓	✓	✓	✓	✓
17 APRIL	✓	✓	✓	✓	✓	✓
29 APRIL	✓	✓	✓	✓	✓	✓
2 MAY	✓	✓	✓	✓	✓	✓
16 MAY PM	✓	✓	✓	✓		✓
16 MAY PM	✓	✓	✓	✓	✓	✓
11 JULY AM	✓	✓	✓	✓	✓	✓
11 JULY PM	✓	✓	✓	✓	✓	✓
25 JULY		✓	✓	✓	✓	✓
6 AUGUST AM	✓	✓	✓	✓	✓	✓
6 AUGUST PM	✓	✓	✓	✓	✓	✓
30 AUGUST AM	✓	✓	✓	✓	✓	✓
30 AUGUST PM	✓	✓	✓	✓	✓	✓
10 SEPTEMBER	✓	✓	✓	✓	✓	✓
8 OCTOBER	✓	✓	✓	✓	✓	✓
31 OCTOBER	✓	✓	✓	✓	✓	✓
13 NOVEMBER	✓	✓	✓	✓	✓	✓
14 NOVEMBER AM	✓	✓	✓	✓	✓	✓
14 NOVEMBER PM	✓	✓	✓	✓	✓	✓
14 NOVEMBER PM	✓	✓	✓	✓	✓	✓
28 NOVEMBER	✓	✓	✓	✓	✓	✓
5 DECEMBER	✓	✓	✓	✓	✓	✓
30 JANUARY AM 1997	✓	✓	✓	✓	✓	✓
30 JANUARY PM		✓	✓	✓	✓	✓
20 MARCH	✓	✓	✓		✓	✓
26 MARCH		✓	✓	✓	✓	✓
7 MAY	✓	✓	✓	✓	✓	✓
5 JUNE	✓	✓	✓	✓	✓	✓
10 JULY	✓	✓	✓	✓	✓	✓
21 AUGUST AM	✓	✓	✓	✓	✓	✓
21 AUGUST PM	✓		✓	✓	✓	✓

MEETING ATTENDANCE RECORD						
MEETING DATE	DARRYL BRISKEY	FRANK CARROLL	JUDY GAMIN	KEN MCELLIGOTT	GLEN MILLINER	FIONA SIMPSON
28 AUGUST	✓	✓	✓	✓	✓	✓
9 OCTOBER	✓	✓	✓	✓	✓	✓
20 OCTOBER	✓	✓	✓	✓	✓	✓
30 OCTOBER	✓	✓	✓	✓	✓	✓
5 NOVEMBER		✓	✓		✓	✓
20 NOVEMBER	✓	✓	✓	✓	✓	✓
21 NOVEMBER	✓	✓	✓	✓	✓	✓
26 NOVEMBER	✓		✓	✓	✓	✓
23 DECEMBER	✓	✓	✓	✓	✓	✓
1998 27 JANUARY	✓	✓	✓		✓	✓
18 FEBRUARY	✓	✓	✓		✓	✓
23 FEBRUARY	✓	✓	✓	✓	✓	✓