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Registration of paedophiles

by

Marie Swain

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CONTENTS

Executive Summary

Introduction	3
1 Background	3
2 Definitional Issues	7
3 Issues Surrounding Registration	11
4 Arguments for and Against Registration	17
• Arguments for	17
• Arguments against	18
5 Registration in overseas jurisdictions	22
6 Conclusion	26

EXECUTIVE SUMMARY

In light of recent events, both here and overseas, consideration has been given to the establishment of a ***national child sex offender database***, which would serve as the primary database for each of the States and Territories as well as being the principal conduit of information and intelligence exchange on child sex offenders within the Australian law enforcement community. Only police units responsible for investigating child exploitation would have direct access to the database, but intelligence from it would be released to authorised government and non-government third parties that have a duty of care over children. The background to this proposal is discussed on pages 3 to 6.

The first issue to be resolved prior to the establishment of such a database is the scope of its coverage. Will it contain details on paedophiles only? Or will it contain information on anyone convicted of child sex offences, be they intra-familial or extra-familial? Although the term 'paedophile' is used often as a synonym for 'child sex offender', there is a clinical difference. How the term is defined has legal implications for determining whether a crime has been committed, and whether people should be entered onto such a database (pp 7-11).

Given the fact that the creation of a database on a particular category of offender is a novel concept, there are a number of other issues which need to be addressed. These include: what type of registration system should be used; whether information on those 'suspected' of child sex offences should be kept; the extent to which the information is made available; the degree to which past details will be included; and whether any notification requirements will flow (pp11-17).

Those in favour of such registration schemes commonly rely on the following arguments: the public has a right to know; it allows precautionary measures to be taken; law enforcement agencies will be assisted in their investigations; and it has a deterrent effect because offenders know they are being monitored (pp17-18).

Those opposed list the following as reasons not to support such schemes: civil liberties and the right to privacy; they may force offenders underground; they create a false sense of security in the community; they are resource intensive to maintain and as such an inefficient use of State funds; and they could lead to additional litigation as certain aspects would be open to challenge in the courts (pp18-21).

Registration schemes covering sexual offenders generally are already in place in many overseas jurisdictions. While there are numerous differences between the various schemes on a practical level, the fundamental notion of keeping tabs on those who may offend or re-offend in the future is the same. Active notification procedures are also a feature. The experience in the United States and the United Kingdom is discussed on pages 22 to 26.

INTRODUCTION

The current focus on paedophilia is largely a result of the evidence given at the Wood Royal Commission, following the extension to its terms of reference in December 1994. At the same time the issue has emerged on the international level with incidents in Belgium and France being highly publicised. This paper does not attempt to examine the nature of paedophilia or the regulation of inter-generational sex based on a statutory age of consent. Issues relating to consensual relationships, whether between teachers and under-age students (that is, below the statutory age of consent) or clients and under-age prostitutes, be they male or female, are also not considered.

The paper is specifically concerned with the registration of paedophiles or child sex offenders more generally. The first section provides a background to the proposal and some of the inherent definitional difficulties are outlined in section two. Section three flags issues for consideration in the registration debate and section four presents arguments commonly given for and against the establishment of such a scheme. The final section presents examples from overseas jurisdictions where such registration schemes are in place.

1 BACKGROUND

Prior to the paedophile reference given to the Wood Royal Commission, there had been a number of earlier inquiries into paedophilia although these were mainly concerned with the issue as it relates to organized criminal activity rather than an examination of the phenomenon as a more general social issue.

In 1990 the Australian Bureau of Criminal Intelligence (ABCI), a service agency for Australian police forces set up to facilitate the exchange of criminal intelligence, established a national paedophile project. According to Alistair Smith, an analyst with the ABCI, this was as a result of an examination in 1989 into paedophile activity conducted at the behest of the Australasian Police Ministers' Council (APMC) which found: '... organised criminal paedophile activity existed throughout Australia, and that law enforcement efforts were limited by the overwhelming capability of opposing forces, well entrenched and active at many key levels of Australian society.'¹ Since this time the ABCI has maintained a national database of child sex offenders, including suspects, which is utilised by Australian law enforcement agencies. (The coverage of the database and the inclusion of suspects in the register are discussed in detail below.)

In 1994 the National Crime Authority (NCA) was given the task of completing a strategic intelligence assessment of a range of organised crime groups, including paedophile networks and organised paedophile activity. A Report by the Parliamentary

¹ Details contained in a paper, 'National Database of Child Sex Offenders' presented at the *Paedophilia: Policy and Prevention* conference, held in Sydney on 14-15 April 1997.

Joint Committee on the National Crime Authority ² summarized the findings of this Report as follows:

- most sexual offences against children are committed by their relatives and neighbours who are not paedophiles in the strict sense of the term and who do not operate in any organised or networked way.
- while very small paedophile support groups operated openly in Australia in the 1980s there was no evidence that they currently do so.
- there was no evidence to suggest that organised paedophile groups have ever resembled what are traditionally thought of as ‘organised crime’ groups in size, aims, structures, methods, longevity and so forth. Many paedophiles offend in isolation. To the extent that two or more paedophiles group together to commit offences, the numbers involved have almost invariably been very small and the groupings very much ad hoc and on a peer to peer basis.
- more commonly, where there are contacts between paedophile offenders, they consist of loose informal networks of peer to peer contacts.
- there was no evidence of any commercial production of illegal child pornography in Australia. Most of the current illegal material that undoubtedly is possessed by many paedophiles appears to be made by them, obtained by informal trading of home made material amongst paedophiles assisted by informal networking or obtained from overseas.
- there was no evidence of any current organised promotion or arrangement of tours by Australian paedophiles to overseas destinations known to be attractive to them. However, informal networking among paedophiles may assist some tourists going overseas to commit paedophile offences.

One of the recommendations made by the Committee was that:

The Minister for Justice raise with the APMC the issue of how the improved flow of information on paedophile offenders and suspects between Australian law enforcement agencies can best be achieved, and in particular: (i) whether enhancing the ABCI’s database is the most appropriate avenue along which to proceed; and (ii) whether formal agreements between relevant law enforcement agencies on information sharing should be put in place.

Since this time the ABCI has been examining these issues, particularly with a view to

² *Organised Criminal Paedophile Activity*, A Report by the Parliamentary Joint Committee on the National Crime Authority, Parliament of the Commonwealth of Australia, November 1995, pvii.

releasing information outside the sphere of law enforcement. A report entitled 'How the flow of information on paedophile suspects can be enhanced' was produced for consideration at the meeting of the APMC in July 1996. However, the aftermath of events at Port Arthur and the ensuing debate over gun control meant the report was not considered by the APMC until November 1996. In essence this report proposed the establishment of a truly national intelligence database of child sex offenders to be maintained by the ABCI which would involve an open exchange of data between police and government departments in the various jurisdictions. In March 1997, the ABCI convened a meeting of representatives from numerous agencies involved in child sex offence investigation and intelligence to assist in determining what information should be stored on the national database.

A Final Report by the ABCI, setting out the proposal for the national database, how it will be implemented, and identifying State, Territory and Commonwealth legislative impediments to sharing information and intelligence with third parties was to be prepared for the July 1997 meeting of the APMC. In May 1997 the Attorney General stated that: 'the New South Wales Government is fully supportive of the objectives of the [national child sex offender database] proposal and will await the findings of the report to be presented to the Australasian Police Ministers Council in July'.³ At this meeting it was determined that issues related to State, Territory and Commonwealth legislative impediments are to be resolved by each jurisdiction, and that any national database to be maintained by the ABCI is dependent on additional funding being made available. Until such time as this is established, discussions on the actual operational details of the database can not progress.⁴

In March 1994 the New South Wales Parliament referred allegations about police protection of paedophiles to the Independent Commission Against Corruption (ICAC) for investigation. Under the Terms of Reference the ICAC was to investigate:

- (a) allegations that some members of the Police Service of New South Wales have by act or omission protected paedophiles from criminal investigation or prosecution, and in particular the adequacy of major investigations undertaken by the police in relation to paedophiles since 1983. However, the Commissioner may investigate any matters he deems necessary and relevant which may have occurred prior to 1983;
- (b) whether the procedures of or the relationships between the Police Service of New South Wales and other public authorities adversely affected police investigations and the prosecution of paedophiles; and
- (c) the conduct of public officials related to the above matters.

³ Hon J Shaw MLC, *NSWPD* (proof), 21 May 1997, p43.

⁴ Information provided to the author by an officer at the ABCI.

The Commission was not required by the Terms of Reference, nor did it have jurisdiction, to investigate paedophile activity generally.⁵ An Interim Report was produced in September 1994 which briefly described some New South Wales police investigations into paedophile activity that it had examined. The work of the ICAC was subsequently handed over to the Royal Commission into the New South Wales Police Service.

In the Final Report on Police Corruption issued by the Royal Commission in May 1997, the following comments were made in relation to the paedophile segment of its inquiry:

A very disturbing picture of neglect, indifference and concealment has emerged during the investigation extending to almost every aspect of the preventative, investigative and prosecution process. Serious deficiencies in the existing structures and procedures for the protection of children by those agencies and institutions responsible for their care have been highlighted, along with an appalling lack of co-ordination of effort or commitment. There was an equally disturbing picture of the breadth and nature of the criminal activity involved.⁶

The Report then outlined a number of reforms which have occurred in this area since the hearings on paedophilia began.⁷ Some of the more significant developments include:

- the creation of the Child Protection Enforcement Agency;
- the endorsement by Government of the Joint Investigative Teams to deal, in particular, with familial sexual abuse;
- the acceptance by the Police Service and other government agencies that existing procedures and protocols for the protection of children from unlawful sexual abuse, were seriously flawed;
- the acceptance, by the several agencies and organisations having particular involvement in the protection of children from sexual abuse, of the need to establish greater access to information concerning known paedophile offenders, and of the need to adopt practices and procedures whereby children will not be placed at risk of sexual abuse; and
- the acceptance by government departments, churches, religious organisations and

⁵ Independent Commission Against Corruption, *Interim Report on Investigation into Alleged Police Protection of Paedophiles*, September 1994, p3.

⁶ Royal Commission into the New South Wales Police Service, Final Report - Volume 1: Corruption, May 1997, p12.

⁷ Ibid, pp13-14.

other similar bodies of the need to adopt revised protocols for the management of allegations of sexual abuse against children, and of the need to abandon those practices which have led to such allegations being concealed, and the offenders being protected or moved elsewhere within those institutions.

The full report of the Wood Royal Commission on its paedophile reference is due for release in August 1997.

2 DEFINITIONAL ISSUES

The most critical aspect of any registration system, which needs to be clearly defined from the outset, is precisely who the system is intended to capture. While references are made to the registration of 'paedophiles', it is apparent from the various reports that this term means different things to different people, and at times is used interchangeably to denote 'a child sexual offender'. Focusing on the importance of the definition is not merely a matter of semantics. How the term is defined has obvious legal ramifications and will affect the scope of those seen as coming within it, and thus those appropriate for inclusion in any registration system. Paedophilia per se is not defined as a crime under New South Wales law. Instead there are a number of sexual assault offences created, according to the age, and in some cases gender, of the victim. Provision is also made for offences where the perpetrator is in a position of authority such as a teacher, and incest exists as a separate offence.

What is a paedophile ?

According to the clinical model, the diagnostic criteria of paedophilia are:

- (i) over a period of at least six months, recurrent intense sexually arousing fantasies, sexual urges or behaviours, involving sexual activity with a pre-pubescent child or children (generally aged 13 or younger);
- (ii) the fantasies, sexual urges or behaviours cause clinically significant distress or impairment in social, occupational or other important areas of functioning; and
- (iii) the person having the fantasies, sexual urges or behaviours is at least 16 years of age, and at least five years older than the child or children in criteria (i).⁸

Psychologists and psychiatrists working in the field say that this definition is not entirely satisfactory as it implies that paedophiles are psychiatrically abnormal whereas this is nearly always not the case. Whether or not a paedophile can be classified as being

⁸ American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* 4th edition (known as DSM IV), Washington, 1994, pp527-528.

mentally ill has wider implications, as can be seen from overseas examples of offenders being detained under mental health legislation after their court imposed sentences have been served. It would appear that the scope of such legislation is being extended to include people who may not be mentally ill but who are nonetheless seen as ‘dangerous’ to permit preventative detention of offenders, particularly child sex offenders.⁹ The rationale behind such a move is that otherwise a future offence upon a child will have to be committed before action can be taken against the person, and that it is inconceivable that the community should just stand back and wait for this to possibly happen. These points were raised in the Debate on the Sex Offenders Bill 1996 (UK):

... If we are indeed of the view that to be a paedophile is to be beyond the pale, if we wish to protect our children, and if we know that paedophilia is a deep-seated instinct, once someone is known to be a paedophile, they are known to be a ticking time-bomb, is there not a case ... for some kind of finding to be permitted to the courts? It would not necessarily rank as a conviction, but might be equivalent to being bound over to keep the peace, which is not a conviction, but which sometimes operates as a deterrent against the bad behaviour of certain ill-disciplined people. Could we not have a finding of being a paedophile, whereby some form of supervision was carried out ... to the extent that, if the framework of good behaviour set out by that supervision was disobeyed, it would be possible for some form of preventative detention to be imposed? If not, we shall always find ourselves being wise after the event.¹⁰

On 23 June 1997 the United States Supreme Court handed down its decision in *Kansas v Hendricks* upholding the validity of a Kansas statute, which permits the State to keep sexual offenders confined in a mental hospital after being released from prison. Hendricks, who had been convicted of sexual offences against children was about to be released from a 10 year prison sentence. The State had moved to have him committed to a mental hospital under its *Sexually Violent Predator Act*, although Hendricks was not considered mentally ill.¹¹ Pursuant to such legislation¹² mental illness is no longer the standard for confining sexual predators in mental hospitals. A much wider definition of ‘mental abnormality’ and ‘personality disorder’ will suffice if children are believed to be in danger once a sexual offender is released.

Lawyers for Hendricks argued: that the ‘mental abnormality’ clause in the statute created

⁹ For a more detailed discussion of dangerous offenders refer to the forthcoming Parliamentary Research Service *Briefing Paper* by H Figgis and R Simpson on the topic.

¹⁰ Hon D Mellor, Member for Putney, House of Commons Parliamentary Debates, 27 January 1997. Information taken from the Internet at: <http://www.parliament.the-stationery-office.co.uk/pa/cm/cmhome.htm>.

¹¹ Press Release by the American Civil Liberties Union, ‘Supreme Court Upholds Kansas ‘Sexual Predator’ Law’, 23 June 1997 at Internet: <http://www.aclu.org/news>.

¹² Apart from Kansas similar laws have been enacted in at least six States, including Arizona, California, Illinois, Minnesota, Washington and Wisconsin.

too low and too vague a standard for committing a person and so was a violation of due process; that the law subjected Hendricks to double jeopardy; and that it violated the Constitution's ex post facto clause, which forbids the enactment of new laws that extend punishment for past crimes. None of these arguments were accepted by the court which found that the Kansas law's standard for what constitutes dangerousness was as strict as the standards in many other laws, and that since the law was a version of a 'civil commitment' statute, Hendricks' confinement could not be considered punishment because in constitutional terms, punishment arises from criminal proceedings not civil ones.¹³ It was, said Justice Thomas writing for the majority, similar to 'involuntarily confining persons afflicted with an untreatable, highly contagious disease'.¹⁴ The American Civil Liberties Union commenting on the decision said that while society should be protected from sexual predators, the Supreme Court had sanctioned a law that sacrifices the most basic fundamental freedoms to that cause.¹⁵

Not all child sex offenders fit the description of a paedophile as set down in the DSM IV clinical model. Moreover a distinction is sometimes drawn between paedophiles and situational child sex offenders. The working definitions used by the National Crime Authority reflect such an approach.¹⁶ For its purposes the NCA defines 'paedophiles' as adults who prefer and seek sexual activity with children rather than adults. It makes no distinction between sexual activity with pre-pubescent or post-pubescent children, but uses as its benchmark the statutory age of consent in each Australian State and Territory. 'Situational child sex offenders' are described as offenders who prefer adult sexual partners but who, at times of stress or convenience, may engage in sexual activity with children. It should be kept in mind, however, that no matter what the relationship between the victim and offender, child sexual abuse is a crime.

Amongst the general public, the term 'paedophile' is often used as a simple description of a person found guilty of sexually abusing a young child. Part of the common stereotype of paedophiles is that they are portrayed as being strangers, lurking in areas where children are present such as playgrounds and parks. However, numerous studies and surveys have shown that by far the most common incidence of child sexual assault happens to young girls by males known to them, particularly family members. This finding was again reflected in a report which examined 501 child sexual assault matters finalised in the NSW District Court in 1994: almost 75% of the victims were female,¹⁷

¹³ 'Throwing away the key', *Time*, 7 July 1997, p25.

¹⁴ 'US sexual predators might be locked up for life', *The Canberra Times*, 26 June 1997.

¹⁵ American Civil Liberties Union, Press Release, 'Supreme Court Upholds Kansas 'Sexual Predator' Law', 23 June 1997 at Internet: <http://www.aclu.org/news>.

¹⁶ Kylie Miller, Senior Analyst with the National Crime Authority in a paper 'Detection and Reporting of Paedophilia: a Law Enforcement Perspective' given at the *Paedophilia: Policy and Prevention* conference held in Sydney in April 1997.

¹⁷ This finding is consistent with the figure of 74% of child sexual assault victims being female reported by R Kreisfeld and J Moller in 'Injury amongst women in Australia', *Australian Injury Prevention Bulletin*, No 12 May 1996 and that of 76% reported by G Angus and G

of whom most had been abused by family members, very frequently their fathers, or by those known to them.¹⁸

It should also be pointed out that paedophiles do not fit a neat stereotype and cannot be typified by age, class, profession, race, religion or family status. However, Miller states that ‘an understanding of the preferences and modes of operation of paedophiles may assist in their detection and in the detection of further victims’.¹⁹ She lists the common characteristics of paedophiles as being:

- overwhelmingly male;
- having multiple victims;
- usually, but not exclusively, extra-familial offenders;
- a long term and persistent pattern of behaviour;
- often preferring boys;
- generally reporting an attraction to children of a particular age range (and once a child has reached the upper age limit they are often discarded);
- a tendency to collect extensive quantities of paedophile related material including child pornography and child erotica; and
- sophisticated methods and well planned techniques to access, groom and abuse victims. Paedophiles actively seek access to children and frequently place themselves in positions where they can obtain legitimate, unrestricted and unsupervised access to children. Whether this be via their occupation, a volunteer position, children’s leisure activities, the neighbourhood or by infiltrating a family as a friend or as a partner to a single mother.

While many psychologists and psychiatrists state that paedophiles are not more likely to be homosexual than heterosexual,²⁰ research shows that girls are more likely to be

Hall in *Child Abuse and Neglect Australia 1994-95*, Australian Institute of Health and Welfare, 1996.

¹⁸ Gallagher P and Hickey J, *Child Sexual Assault: An Analysis of Matters Determined in the District Court of New South Wales During 1994*, Judicial Commission of New South Wales, No 15, 1997, pxi.

¹⁹ Miller K, op cit, p2.

²⁰ In the recent study undertaken by the Judicial Commission of New South Wales details on the marital status of the 501 alleged offenders revealed that 43.3% were married or in a de facto relationship; 14.1% were separated/divorced; 1.9% were widowed; 31% were never married, and nothing was known for the remaining 9.7%. *Child Sexual Assault*, op cit, p15.

sexually abused in their own home over a prolonged period of time by men they know, whereas boys are more likely to be victims of single assaults, being sexually abused by strangers outside the home.²¹ Concern has been expressed by some that the use of the term ‘paedophile’ during the Wood Royal Commission proceedings and the media coverage which followed, has misleadingly created the notion that paedophiles are, almost by definition, homosexual males preying on young boys.²² One of the explanations for why this may have occurred is that in the extended terms of reference the Commission was to examine whether paedophiles or pederasts²³ had been protected by police from criminal investigation or prosecution. In this way the terms came to be used interchangeably, and the equation drawn that ‘paedophiles’ and ‘pederasts’ were one and the same thing. In actual fact they are not. According to James ‘paedophilia, like child molestation, can involve incestuous, same sex, opposite sex, or both sex, victims.’²⁴

It can be seen from this varying use of the term ‘paedophile’ that the question of which child sex offenders should be captured by a registration system needs to be addressed from the outset. Whether sufficient attention has been paid to this issue to date is open to debate. An illustration of this point was provided in Smith’s paper on the database maintained by the ABCI where he remarks: ‘as most police jurisdictions now shy away from the term paedophile, for the purposes of this paper I will generally use the phrase ‘child sex offender’. He goes on to say: ‘... the ABCI has maintained a national database of child sex offenders ...’ It is not clear from this description whether only details on paedophiles are kept, and if so, which definition of paedophile is being used, or whether the register is made up of anyone found guilty of child sexual assault, and if this is the case, whether details on both intra-familial and extra-familial child sexual assault offenders are kept.

3 ISSUES SURROUNDING REGISTRATION

One of the first issues which needs to be addressed is whether a register of child sex offenders should be an official or unofficial one.

Unofficial registration systems: Examples of informal registers are the books published

²¹ Ibid, pxi.

²² Watson L, ‘Child sexual abuse v Consensual Teenage Sexual Activity?’, Buchanan D, ‘Homosexual Paedophilia and the NSW Police Royal Commission’, and Puplick C, ‘Paedophilia: the discrimination dimension’, papers given at the *Paedophilia: Policy and Prevention* conference, April 1997.

²³ ‘Pederasty’ is defined in the Australian Concise Oxford Dictionary as ‘anal intercourse between a man and a boy’.

²⁴ James M, ‘Paedophilia’, *Trends and Issues*, Australian Institute of Criminology, Vol 57, June 1996, p2.

by Deborah Coddington, first in New Zealand and then in Australia,²⁵ which contain lists of those convicted of sex offences against children, giving details such as their name, address at time of the offence, current whereabouts, occupation, the nature of the offence, and their sentence. The information was collected largely from newspaper reports, with some material provided by certain court registries. The argument behind such publications is that the information is in the public domain, and in any event that the community's right to know far outweighs the individual's right to privacy.

Apart from the more general reasons given below for opposing registration schemes, some additional difficulties with informal or unofficial systems are:

- the chance of error, particularly mistaken identity, because of limited access to accurate records. For instance a newspaper article may give an incorrect first name to a person convicted of child sex offences. If this incorrect name is then published in a list of known child sex offenders, anyone with this name risks being confused with the actual offender. Publication of such misinformation could give rise to defamation actions being laid.
- the fact that in some court cases names of offenders are suppressed while in others they are not means only some offenders are singled out for inclusion in such a publication.
- certain convictions may have been overturned, judgments set aside or quashed since publication of the book, leaving some people included who shouldn't be.
- it sets a precedent for collecting information and making it publicly available on other classes of people who may be perceived as posing a threat to the community such as those convicted of stealing or drug offences.
- the likelihood that the term 'paedophile' will continue to be used without any clear definition being given.
- unofficial publications available in the general domain may also be used by paedophiles themselves as a source of contacts.
- publications such as these can encourage vigilantism, causing members of the community to take the law into their own hands.

Two newspapers, one distributed in Townsville, the other in Wollongong, earlier this year published the names and details of local men identified in Coddington's book.

Official registration schemes: The national database on child sex offenders established by the ABCI is an example of an official registration scheme. This database, which includes names of suspected offenders, is currently available only to Australian law

²⁵ Coddington D, *The Australian Paedophile and Sex Offender Index*, 1996.

enforcement agencies. In recent times proposals have been made not only to extend the scope and coverage of this database but those to whom it would be made available. While only police units responsible for investigating and prosecuting child sex offenders would have direct access to the database, it has been suggested that authorised third parties may have relevant information released to them.²⁶

Consideration is being given to including in the updated national database: the names of all child sex offenders, including suspects, intra-familial offenders and those noted for the possession of child pornography. The justification for including those suspected or charged but never found guilty of an offence appears to be 'paedophiles are not like the general criminal population and need to be treated differently'.²⁷ While it is true that a number of factors put the prosecution and bringing to justice of paedophiles apart from other crimes,²⁸ the implications of ignoring a fundamental tenet of our criminal justice system, namely that a person is innocent until proven guilty, need to be thoroughly examined.

The possibility of using the database, or a separate index created from it, to screen potential candidates for employment is also being examined. Presumably this would only be applicable in employment areas where access to children was a feature. In the Report prepared by the ABCI in May 1996, it was originally envisaged that the sharing of information outside the law enforcement sphere would extend only to other government agencies. The view now appears to be that non-government agencies should also be provided with this information, in appropriate circumstances, to ensure that child sex offenders do not avoid detection by moving into the private sector. The example is given of the educational area, which is made up of government, independent and catholic schools. If information on prospective employees could only be obtained by government schools, it is possible that unsuitable people may be employed by independent and catholic schools who do not have this formal checking mechanism available to them.

Other aspects raised by the ABCI include the following:

- should the checks become mandatory when applying for employment (or voluntary work) where there is access to children? How far should this extend - babysitters, school bus drivers, school gardeners, sports coaches?

²⁶ Details on the ABCI database are taken from the paper by Smith A, op cit.

²⁷ Ibid, p5.

²⁸ It is widely acknowledged that many instances of child sexual assault go unreported, and that of those reported, only a small percentage result in conviction. This fact is attributed to the legal process and the difficulty facing children in giving evidence in such cases. In the 501 child sexual assault cases finalised in the NSW District Court in 1994, 65.1% were convicted of at least one charge. This is a lower conviction rate than for offences overall - 75.6% of persons charged in the higher courts in 1994 were convicted of at least one charge. *Child Sexual Assault*, op cit, p11.

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- should consent from the individual seeking employment (or voluntary work) be obtained prior to the check taking place ?
 - how would the principles of ‘user pays’ and ‘cost recovery’ be applied ? Presumably attempts would be made to recoup the cost of staff conducting checks from those organizations wishing to screen prospective employees.

The need to allow for an appeals process is recognized and the ABCI is working with the Federal Attorney General’s Office and the Federal Privacy Commissioner to ensure all legal and privacy issues are adequately addressed. The final recommendations and plan for implementation were considered by the APMC in July 1997, where it was decided that each jurisdiction would need to resolve the legislative impediments regarding the sharing of information and intelligence with third parties, and that any national database to be maintained by the ABCI would depend on additional funds being made available. Until such time as this was established, discussions on the actual operational details of the database can not progress.

Other formal registration schemes include:

- State and Territory Ministers of Education agreed in March 1997 that reciprocal arrangements would be put in place to allow every teacher applying for a job in another State or Territory to face background checks, and that information would be exchanged between the jurisdictions under different categories. These would include information about people who had a criminal record of a sexual offence against a child, a person subject to allegations who had been placed on a list ‘not to be employed’ or on medically retired lists. Under another category, States would be warned about teachers who remain employed, but have had a warning or penalty imposed following allegations of improper conduct of a sexual nature between the teacher and a student. A mechanism would also be developed to permit non-government schools to check potential new teachers against records held in other States.²⁹ Regulations under the Teaching Services Act have been amended to permit records of unproven allegations to be kept confidentially by the Department of School Education’s case management unit.³⁰
- The draft *Health Services Bill 1997* contained somewhat similar provisions for vetting potential offenders against children in relation to employment in the NSW Health Service.³¹

In the United Kingdom, the Department of Education and Employment maintains a list

²⁹ ‘Interstate teachers face molesters’ ban’, *Sydney Morning Herald*, 16 June 1997.

³⁰ Hon J Aquilina, *NSWPD* (proof), 15 April 1997, p30.

³¹ ‘Anger at probe into workers’ past crimes’, *Sydney Morning Herald*, 4 March 1997.

of barred persons, known as List 99. The Secretary of State for Education and Employment has the power to bar a person for a variety of reasons, ranging from misconduct to medical grounds, from employment by a local education authority, school or further education establishment as a teacher or in any other capacity that would involve regular contact with children or young people up to the age of 18. As such, List 99 is not a list of sex offenders nor is everyone on the list perceived to be a danger to children. Anyone convicted after 31 October 1995 of a sexual offence against a child under 16 is barred automatically. Employers within the education service must check to ensure that they do not appoint someone who is barred.³² The Department of Health operates on an advisory basis a consultancy service whereby local authorities and private and voluntary agencies can check the suitability of people they wish to employ in a child care post.³³

Some of the issues to be considered prior to establishing an official registration system include the following:

- whether the clinical definition of paedophilia should be the sole determinant of registration ? If so, how will those defined as paedophiles be identified ?
- if the term 'paedophile' is defined for the purposes of registration to mean those who commit sexual offences on children under the statutory age of consent, consideration needs to be given to differences which may exist between States and Territories, or between consenting homosexual and heterosexual sex. The importance of recognising these differences is that people may be labelled as criminal for committing what in one jurisdiction is described as an unlawful act, which may have been legally permissible elsewhere. For example, in Western Australia the age of consent for homosexual sex is 21, whereas in New South Wales it is 18. Does this mean a man found guilty of having sex with a 19 year old in Western Australia, who is currently living in New South Wales should be entered onto a national database for child sexual offenders ?
- the fact that the DSM IV definition of a paedophile covers those who have an attraction towards, and fantasies about children, who may not translate these feelings into action. By contrast the provisions under the Crimes Act dealing with child sexual offences applies to behaviour and actions, whether attempted or realized. James points to this feature as the essential difference between paedophiles and child molesters:

It is quite possible to be one, but not the other, or neither, or both.
In other words, a person can be a paedophile without ever having sexually molested or abused a child, and can sexually molest a

³² Information taken from *the Sex Offenders Bill*, Research Paper 97/11, by Mary Baber of the House of Commons Library, p29.

³³ Ibid.

child without being a paedophile. And, conversely, it is possible for 'normal' males to have paedophilic fantasies without acting on them in any illegal manner.³⁴

- should all categories of child sex offenders, whether intra-familial or extra-familial, be included in the register ?
- should a record be kept of those suspected of being a paedophile or a child sex offender ? Should details of matters reported but not subsequently dealt with, or where a conviction has not been entered, be kept ?
- whether the onus will be on individual offenders to 'register' with law enforcement agencies or whether monitoring and collection of data will be done routinely by a central agency such as the ABCI. Many of the American statutes place the onus on the offender to register with local police within a certain time of moving into a community.
- whether the registration system will be retrospective. Given the nature of child sex offending it is common to find multiple offences committed over a lifetime. This feature has been said to necessitate the capturing of data going back many years, not just storing information on those currently in gaol, on parole, or before the courts in relation to child sex offences. The implications are, however, that those found guilty of an offence will never be able to escape their past, even more so in the case of those found guilty of an act previously seen as criminal which is no longer so described. Illustrations of this are provided by the recent experience in the United States, where many people arrested by police in the 1940s and 1950s for minor homosexual offences are having their police files re-opened and their names added to sexual offender registers. Critics of these new laws say they have resulted in the registration of offenders whose actions were far different from those of the violent predators the laws were intended to cover. They say States are erring on the side of caution because no bureaucrat wants to be known as the one who failed to register a potential child molester or sex killer.

³⁵

Moreover, imposing the 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. As a general principle, it is presumed that except in relation to procedural matters, changes in the law should not take effect retrospectively. However, this principle may be rebutted and in exceptional circumstances retrospective application of particular statutes may be permitted.

³⁴ James M, op cit, p2.

³⁵ 'Sex offenders haunted by past indiscretions', *Sydney Morning Herald*, 8 March 1997.

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- issue of community notification. In the United States not only are details of sex offenders kept on registers, but there are legislative requirements for communities to be notified of their presence. This raises the question of whether information on a database would only be used to respond to inquiries about particular individuals in specified circumstances, or whether details would be made more widely available to groups such as employers, schools, local communities and the like. A report assessing the different approaches taken in the United States was being prepared for consideration by the New South Wales government, but no legislative changes were expected to occur prior to the release of the Wood Royal Commission Report on its paedophilia reference.³⁶

4 ARGUMENTS FOR AND AGAINST REGISTRATION

The rationale, as expressed in one United States statute, for requiring registration by those found to have committed sexual offences, be they against adults or children, is as follows:

- (i) sex offenders pose a high risk of re-offending after release from custody;
- (ii) protecting the public from sex offenders is a primary governmental interest; (iii) the privacy interests of persons convicted of sex offences are less important than the government's interest in public safety; and (iv) release of certain information about sex offenders to public agencies and the general public will assist in protecting the public safety.³⁷

*Arguments for:*³⁸

- (i) The public's right to know

According to this view, the public has a right to know that an offender is living in their community, so they can take precautionary measures, particularly in relation to the protection of children. Access to a register or release of information by law enforcement or other authorised agencies would assist citizens in achieving this end.

- (ii) Creating a register assists law enforcement in investigation

³⁶ 'Tough new laws on sex offenders', *Sunday Telegraph*, 30 March 1997.

³⁷ Alaska Statute §12.63.010.

³⁸ Some of the information in this section is taken from 'Sex Offender Registration: A Review of State Laws' by the Washington State Institute for Public Policy, July 1996. Internet address: <http://www.wa.gov/wsipp/reports/regsrtn.html>. While reference is made to sex offenders generally, the arguments are equally applicable to child sex offenders.

Once created the register would become a tool that law enforcement could use to solve crimes, or ideally, to prevent them. If a sex offence is committed and no suspect is located, the register could be used to identify potential suspects who live in the area, or who have a pattern of similar crimes.

- (iii) It deters sex offenders from committing new offences

Another intended effect of registration is psychological. Once registered, offenders know they are being monitored, and thus will be discouraged from re-offending. It has also been suggested that a registration requirement may deter potential first-time sex offenders. Many registration schemes contain details of allegations which have been made, including those investigated and dismissed, and matters which have gone to court and been unsuccessful. The arguments for such an approach are: that in a number of cases the system itself is to blame for the lack of success in securing convictions in this area rather than the innocence of the accused;³⁹ and that in order to detect patterns of behaviour, details of all allegations against a particular person need to be kept.

- (iv) It establishes legal grounds to hold known offenders

Where offenders are required to register themselves, registration laws create legal grounds to hold sex offenders who do not comply with registration and are later found in suspicious circumstances. For example, if a convicted sex offender is observed loitering around a playground, and when stopped by the police is found not to have registered, the offender can be charged and prosecuted for failure to register. Law enforcement representatives often argue that registration laws, thus, prevent crimes because the police can intervene before a potential victim is harmed. In the United States, some States have passed a registration law without expecting a high rate of voluntary compliance, but still anticipate a law enforcement benefit.

- (v) victims may derive satisfaction from either the process of having offenders named or from knowing that offenders are being actively monitored.⁴⁰

Arguments against:

- (i) Civil liberties

Registration programs are inconsistent with the goals of a society committed to protecting individual liberties and are seen as a violation of offenders' rights. Released

³⁹ The ICAC presented a list of factors adversely affecting the reporting, investigation and prosecution of child sexual abuse. These ranged from inadequate police resources and facilities, and inefficient police procedures, to criteria used in the decision to prosecute, incompatibility of questioning required by courts and that suitable for children, to attitudes to children and children's evidence, *Interim Report on Investigation into Alleged Police Protection of Paedophiles*, op cit, pp9-19.

⁴⁰ Bailey P, 'Paedophiles in black and white ... or not ? ', *Australian Lawyer*, Vol 32 No 4, p3.

sex offenders have paid their debt to society and should not be subjected to further punishment. It is recognized, however, that there will be circumstances where the balance between the individual's right to privacy and the public's right to know will lean towards the public interest. This is so in Commonwealth and State 'spent conviction' legislation which allow a person to live down an old conviction for a minor offence, by lawfully withholding such information. However, all these schemes acknowledge that there are some circumstances where this right is not justified and where information about a prior conviction should be made known. Specifically, all such schemes in Australia require that where an individual is seeking a position which would place them in the care or supervision of children or young people, all convictions for offences of a sexual nature or offences of violence must be disclosed.⁴¹ Moreover, it is important to note that convictions for most serious offences are not protected by spent convictions schemes, and as a result most convictions for offences against children would not receive any protection and offenders would continue to have to disclose such convictions in any context.

While Australia has signified its adherence to the general principle that unfair discrimination on the basis of criminal record in employment and occupation is an infringement of human rights,⁴² these rights need to be balanced against Australia's obligations under the Convention for the Rights of the Child 1990, which places paramount importance on the best interests of the child being considered when actions and decisions concerning children are taken.

Those in favour of registration argue that those convicted of such offences, by their very actions, have infringed the freedoms and rights of their victims and in so doing have forfeited civil liberties and rights enjoyed by other members of the community. In justifying the publication of *The Australian Paedophile and Sex Offender Index*, Coddington was reported as saying: 'The public need to know who paedophiles are, how they operate, where they live and how they get access to kids. I'd say the rights of a child to be unmolested override their right to privacy.'⁴³

(ii) Offender motivation

By forcing sex offenders to register, society sends a message to these individuals that they are not to be trusted, that they are bad and dangerous people. Such a message can work against efforts to rehabilitate offenders and inadvertently encourage antisocial behaviours. The offender can use the law to rationalize further crimes: 'if society thinks I'm a permanent threat, I guess I am and there's nothing I can do to stop myself'. While it would appear to be generally accepted that sex offenders are unlikely to be 'cured',

⁴¹ *Criminal Records Act 1991*, sections 7 and 15.

⁴² Through the *Human Rights and Equal Opportunity Commission Act 1986* (Cwlth), which gives effect to Australia's commitment to ILO Convention No 111, the Discrimination (Employment and Occupation) Convention, 1958.

⁴³ 'Legacy of a little girl', *Sydney Morning Herald*, 4 February 1997.

research suggests that their behaviour can be controlled. The National Institute of Justice, the research arm of the US Department of Justice, declared earlier this year that: 'a cure for sex offending is no more available than is a cure for epilepsy or high blood pressure. But there is some evidence that the condition can be managed'.⁴⁴ Dr William Glaser, a consultant psychiatrist to the Psychosexual Treatment Program in Victoria, stated in a paper delivered to the *Paedophilia: Policy and Prevention* conference that: 'modern treatment techniques are spectacularly successful. Carefully designed studies now claim a long-term recidivism rate of 6%, compared with the 35% found in untreated control groups'.⁴⁵

For this reason it is argued that treatment programs are essential, particularly in the case of adolescent offenders, with such programs being made available in gaols for those given custodial sentences, which would be continued on release. Similarly those found guilty of offences who are not sentenced to gaol terms, should be ordered to attend treatment programs. Although treatment programs are criticised by some as an unfair use of resources (money is spent on offenders instead of on victims), the point has been made that the cost of keeping offenders in gaol is usually higher than the cost of a treatment program and furthermore, in the majority of cases, those convicted of child sexual assault will be released back into the community and therefore it is necessary to reduce the likelihood that they may re-offend.

Provisions have been made in the United Kingdom to extend the supervision of all sex offenders following their release from prison for a minimum of 12 months, and this period of supervision is extendable up to ten years at the court's discretion. Such a move allows a greater degree of monitoring than merely placing a name on a register.⁴⁶

It is claimed that registration laws may encourage sex offenders to evade the attention of law enforcement by going underground. Some sex offenders, will choose not to comply with the law, changing their identity and concealing their whereabouts, making the investigation of sexual assaults more difficult. This it is argued will not only make it more difficult for police to keep track of them but also put them beyond the reach of professionals such as counsellors and psychologists who may be able to help them.

(iii) Public safety

Registration creates a false sense of security. Citizens may rely too heavily on the register, not realizing that the majority of sex offenders never appear on registration lists. The reasons for this are many: only a small proportion of sex crimes are reported and an even smaller number result in convictions; many offenders plea bargain to non-sexual

⁴⁴ Tharp M, 'Tracking sexual impulses', *US News & World Report*, 7 July 1997, pp34-35.

⁴⁵ 'Paedophilia: the Public Health Problem of the Decade', paper presented at the *Paedophilia: Policy and Prevention* conference, April 1997, p10.

⁴⁶ *Crime (Sentences) Act 1997* (UK).

offences; sex offender registration laws may apply to limited categories of offenders; and many offenders would have been convicted prior to the introduction of the register. In addition, not all offenders register. For these reasons, only a small percentage of sex offenders actually appear on any list. From a policing point of view in the situation where an unregistered person commits a crime, much time may be wasted checking the register while the trail leading to the offender 'goes cold'.

Registration of sex offenders implies that these offenders are the most dangerous, whereas other types of offenders present similar or greater risks. How helpful is it for someone to know that a convicted sex offender lives next door, as compared to knowing that a neighbour is a convicted murderer, drug dealer or armed robber? Apparently in the case of Megan Kanka, the young girl raped and murdered by a convicted child sex offender living with two other convicted child sex offenders opposite the family, there was local knowledge about this household as a result of a newspaper article but the Kanka family was not aware of this information.⁴⁷

Registration may encourage a vigilante mentality. Where the registration list is public, citizens may threaten and take action against offenders. The harassment may also be extended to family members of offenders.

(iv) Effect on victim

If made public, a list of registered sex offenders may inadvertently disclose the identity of victims. In cases of intra-familial sex offences, a list of offenders identifies some victims by family, if not by name. Such a violation of privacy may compound a victim's trauma.

(v) Efficiency

Rather than expend public funds on registration, the State should direct its resources toward other criminal justice activities. A list of all convicted sex offenders, including names, addresses and other information, is expensive to create and maintain. If sufficient resources are not made available to police to enable them to cope with the administrative burden of compiling and maintaining the register, the effectiveness of the scheme may be reduced. Others argue that public funds would be better spent on such areas as treatment of incarcerated sex offenders, intensive supervision of a small group of the most serious sex offenders or to provide assistance to victims of sexual abuse.

(vi) Legal challenges

Under our system of justice, on completion of the sentence imposed, an offender has the opportunity to re-integrate into the community. Information about the offence is still on the public record and can be taken into account in any future sentencing decisions should the person re-offend. It is also available through official systems where criminal

⁴⁷ 'Naming names', *Sydney Morning Herald*, 19 February 1997.

history checks are conducted in circumstances where such information is deemed relevant, for example, where persons are being employed in positions of trust with children. If information about convicted offenders is made more widely available within the community, it could operate to extend the punishment already received by the offender. The result being that a person who has served his/her sentence is doubly punished and can be subjected potentially to a lifetime of persecution, victimisation and possible violence.

The wide availability of information about previous offences may also be prejudicial to a fair trial. Our justice system has determined that the guilt or innocence of an individual should be determined by the merits of the case. Any history of prior offending is deemed relevant at the sentencing stage. It is a fundamental principle that a fair trial would be prejudiced by widespread knowledge flowing through to jurors of any previous crimes committed by the accused.⁴⁸

(vii) Miscellaneous

The American experience has shown that where registers are available for public inspection there is an impact on property values. The presence of a sex offender can drive down house prices in a neighbourhood and estate agents have introduced contractual requirements which demand that tenants must declare if they have been told of any sex offenders living in the area.⁴⁹

5 REGISTRATION IN OVERSEAS JURISDICTIONS

United States

All fifty states have sex offender registration laws, some more recent than others.⁵⁰ The catalyst for much of the recent legislation was the murder of Megan Kanka, a seven year old girl, raped and strangled by a man who had prior convictions for child sexual offences, living in a house opposite Megan's family in Hamilton Township, New Jersey. On 31 October 1994, just 3 months after Megan's death, the governor of New Jersey signed 'Megan's law' which permits the police to notify neighbours if a sex offender deemed potentially dangerous lives or works nearby.

Under the *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act 1994*, States in America are required to enact statutes or regulations requiring those considered to be 'sexually violent predators' or who are convicted of

⁴⁸ Waters N, 'Implications for civil liberties and implications for privacy laws', paper presented at the *Paedophilia: Policy and Prevention* conference, April 1997.

⁴⁹ 'Constant vigil ensures molesters never escape their past', *The Times*, 19 December 1996.

⁵⁰ California has the nation's oldest sex offender registration law, enacted in 1944. Of the 50 States with such laws, all but four were enacted after 1984. Since 1991, 38 have passed laws and a total of 15 have been amended.

sexually violent offences, to register with appropriate law enforcement agencies following release from prison. States which fail to establish registration schemes may have Federal grant money reduced. The need to track the movement of sex offenders from State to State has given rise to a nationwide central repository that contains the location, and other identifying information, of all registered sex offenders throughout the country. The *Pam Lyncher Sexual Offender Tracking and Identification Act 1996*, will implement such a registry, allowing the Federal Bureau of Investigation (FBI) to track sex offenders when they move. The law directs the FBI to establish a national database of sex offenders within the next three years.⁵¹

In most States the requirement to register applies to convicted offenders; in some it applies to individuals found to have committed a sexual offence by judicial decision (such as those found not guilty by reason of insanity); in one State, Minnesota, the requirement has been extended to those charged with sexual offences. There is also considerable variation between States on which types of offender to include in a register: some States register all adult offenders; some only adult offenders whose victims were under 18, others only adult offenders convicted a second or subsequent time and whose victim is under 18.

A number of broad similarities do exist, however, between the various registration schemes:⁵²

- maintenance of the register is generally overseen by a State agency;
- local law enforcement is generally responsible for collecting information and forwarding it to the administering State agency;
- typical information contained in the register includes: offender's name, address, fingerprints, photograph, date of birth, social security number, criminal record, place of employment, vehicle registration and in some States, DNA profiles;
- offenders in different States have varying time frames for registration, ranging from 'immediately' to 30 days. The duration of the registration requirement varies from 5 years to life, and is typically 10 years or longer.
- most States rely upon offenders to notify authorities of new addresses, typically within 10 days; and
- 16 States restrict access to registers to law enforcement and related investigative authorities. The remaining States allow broader access, ranging from criminal

⁵¹ 'Sex offender registration: National Requirements and State Registries', Washington State Institute of Public Policy, December 1996 taken from the Internet: <http://www.wa.gov/wsipp/reports/regsrtn.html>

⁵² Heberton B and Thomas T, 'Tracking Sex Offenders', *The Howard Journal*, Vol 35 No 2, May 1996, pp97-112.

background checks for agencies hiring individuals to work with children, to full public access and community notification. California and New York operate '900' telephone numbers that the public may call to determine if a specific individual is registered. In New York, the public may call to inquire whether a named individual is a registered sex offender. California only allows calls relating to child sexual offenders. In both States the caller must have specific identifying information about the individual in question.⁵³

Concurrent with registration laws, some States have passed notification legislation designed to protect communities against convicted offenders. In the Federal version of Megan's law, which was signed by President Clinton on 17 May 1996, the requirements of the *Jacob Wetterling Act* were strengthened. This law requires States not only to notify local law enforcement agencies when a convicted sex offender moves into a neighbourhood, but also to make that information available to the community. It would appear that forty States to date have enacted notification legislation.⁵⁴ There are three categories of notification legislation in the United States:

- (i) broad community notification which allows for the wide release of sex offender information to the public. In some States notification is given by sending out 'flyers'; requiring offenders to place special bumper stickers on their vehicles; using the local press or television channels; and in some cases information is available on the Internet.
- (ii) notification to organizations and individuals at risk, such as victims and witnesses. Here information is released based on the need to protect an individual or vulnerable organization from a specific offender. Some States allow victims and witnesses to enrol in a programme which lets them know where the offender is located during their imprisonment and when and where release occurs. Other States require prison and parole agencies to inform local police when an offender believed to be dangerous is released from prison and intends to reside in a specific community.
- (iii) access to registration information which grants access by citizens or organizations to sex offender information through local law enforcement agencies.

Sex offender registration laws which also entail community notification have been challenged as anti-constitutional under the headings of invasion of privacy and cruel and unusual punishment. Both arguments have been lost in favour of the protection of society argument and the argument that notification is a form of civil 'regulation' rather than punishment. As yet, the United States Supreme Court has not ruled on the constitutionality of such legislation.

⁵³ 'Sex offender registration: A review of State laws', op cit, p12.

⁵⁴ 'Sex Offender Community Notification: A review of laws in 32 States', and 'Sex Offender Community Notification Update', Washington State Institute of Public Policy, taken from the Internet: <http://www.wa.gov/wsipp/reports/html>.

*Evaluation of registration and notification laws*⁵⁵

Most State registration laws have been enacted only recently, and have not been evaluated. However, California and Washington State have produced written evaluations. A 1988 study by the California Department of Justice found that adult sex offenders released from prison in 1973 and 1981 had compliance rates of 54% and 72%, respectively. In 1991, Washington's compliance rate was 76%. As of July 1996, 81% of sex offenders required to register had done so. This compliance rate was much higher than predicted.

It is further argued that high rates of voluntary compliance are not essential for registration laws to have law enforcement benefits. When a complete list of released sex offenders, who should have registered is routinely produced by the State prison system, law enforcement agencies have the choice of actively pursuing those not in compliance, or reserving non-compliance charges for offenders whose behaviour draws the attention of law enforcement. In several Washington State counties, local authorities conduct background checks on all released sex offenders and use the information, regardless of compliance, as an investigative tool.

The 1988 California study also examined recidivism rates of released sex offenders, and the extent to which registration actually assists in the investigation of sex crimes. A 15 year follow up study was conducted of sex offenders first arrested in 1973. Nearly half (49%) of this group were re-arrested for some type of offence between 1973 and 1988, and 20% were re-arrested for a sex offence. Those whose first conviction was rape had the highest recidivism rate. Based on the responses of 420 criminal justice agencies, the California study found that a large proportion of criminal justice investigators believed the registration system was effective in locating released or paroled sex offenders and apprehending suspected sex offenders. Approximately 50% of the respondents believed that registration deterred offenders from committing new sex crimes.

A Washington study conducted between March 1990 and December 1993 compared a group of sex offenders who were subject to notification laws, with a similar group of sex offenders who were released prior to the implementation of such laws.⁵⁶ The study found that the notification group (19%) had a lower rate of recidivism than the comparison group (22%). This difference was not seen to be statistically significant. Moreover, there were no significant differences in the rates of general recidivism between the groups. The results of this study seemed to suggest that 'community notification appears to have no effect upon the recidivism rates of sexual offenders and, therefore, does not enhance public protection.'⁵⁷

⁵⁵ 'Sex Offender Registration: A Review of State Laws', op cit, p14.

⁵⁶ Shram D and Milroy C, 'Community Notification: A study of offender characteristics and recidivism', Washington State Institute for Public Policy, 1995, Internet: <http://www.wa.gov/wsipp/reports/chrrec.html>.

⁵⁷ Ibid.

United Kingdom ⁵⁸

The *Sex Offenders Act 1997* requires certain sex offenders (not restricted to child sex offenders) to provide information (such as name, home address, date of birth and so on) to the police within fourteen days of having been convicted, found guilty but insane or under a disability (such as to make a person unfit to be tried), or having been cautioned in respect of an offence to which they have admitted. They are also obliged to notify the police of any changes in these details within fourteen days of the change. Failure to do so is an offence subject to a fine or imprisonment of up to six months.

There have been criticisms raised about extending the registration requirement to people cautioned by police constables rather than being convicted or otherwise dealt with by the courts. The main objections are: cautions are not public information; they may be offered in informal situations where individuals consent to them without the benefit of legal advice or representation; they are intended to act as a warning; if an offence is serious enough to warrant notification the use of cautions in such a situation is inappropriate; attaching a sentencing and punitive function to cautions may undermine their potential as a useful sanction, leading to fewer cautions being accepted and greater recourse to the courts.

The sentence or order imposed on a sex offender will affect the period for which notification requirements will remain in force. The more serious the offence, the longer the period. For example, anyone sentenced to a gaol term of more than 30 months will be required to provide notification details indefinitely, whereas for a person sentenced to imprisonment for more than 6 months but less than 30 months, the notification period will be 7 years. For offenders under the age of 18, all the periods specified are halved.

The provisions for sex offender registration are distinct from procedures for checking a person's criminal record set out in Part V of the Police Act 1997. Under these provisions, for a fee, individuals will be able to obtain information about their criminal records, and in specified circumstances and with the consent of the individual this information will also be provided, to bodies registered with the Criminal Records Agency. Three types of certificates can be issued: (i) a *criminal conviction certificate*, issued only to individuals, will state whether they have convictions recorded in central police records, which are not spent under the *Rehabilitation of Offenders Act 1974* (ROA); (ii) a *criminal record certificate*, which will be available for occupations which are not exceptions to the ROA. A joint application will be made by the individual and organisation which is seeking the check. Information will be provided from central police records about spent and un-spent convictions and about cautions; (iii) an *enhanced criminal record certificate*, will be restricted to those working on a regular, unsupervised basis with children; for certain licensing purposes; and, prior to appointment, judges and magistrates. It will include the information contained in a criminal record certificate, plus information from local police records. Where relevant, non-conviction information might be supplied. Unauthorised disclosure of information will be an offence, and

⁵⁸ This information is taken from *The Sex Offenders Bill*, Research Paper 97/11, op cit.

access to information by the wider community is not permitted. The registration proposals are also distinct from those permitting public access to the register of sex offenders or otherwise notifying the public of the presence of convicted sex offenders in the community.

6 CONCLUSION

At present much information on an offender's past is kept by law enforcement agencies. However, specific databases on particular categories of offenders are not generally maintained. As such the proposal for a national database to monitor child sex offenders is novel and calls for close and careful examination. While the rationale for keeping tabs on child sex offenders can be easily understood, it is important nonetheless that all facets and ramifications of the proposal are thoroughly considered. These include:

- the scope of coverage of such a database (will it include only paedophiles as defined according to the DSM IV, or anyone convicted of a child sexual offence whether that person fits the clinical model of a paedophile or not? will details on people suspected of committing offences be kept ?);
- the creation of a precedent for databases on other categories of offenders (should a more general database be kept on those committing any sexual offence ?);
- the degree to which such a database will have any practical effect (will it lead to an actual decrease in the incidence of child sexual assault ?);
- the ability for people to ensure that what is recorded is accurate and that provision is made for a mechanism to have any incorrect data rectified;
- the extent to which the information is made available; and
- the degree to which any notification schemes will flow from such a register.

Ultimately an assessment will need to be made as to whether such a database will assist in the prevention of sexual offences against children, and if so, whether the need to provide greater protection to one of the most vulnerable groups in our community, outweighs the need to protect the civil liberties and the right to privacy of those who have served their sentences. The findings and recommendations of the Wood Royal Commission on its paedophile reference may assist in this process.