



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: RBG601647

14 May 2012

The Hon. Greg Smith SC MP
Attorney General and Minister for Justice
Level 31
Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Attorney General,

The impact of the Child Protection Register and the Working with Children Check on juvenile offenders

The Law Society's Juvenile Justice Committee has asked that I write to you in relation to the Child Protection Register and the Working with Children Check.

The Committee considers that juveniles are significantly disadvantaged in relation to the law's treatment of sex offences for two main reasons. Firstly, because all sexual contact with a child under 16, even consensual contact, is an offence even where both parties are under 16. Secondly, an offence involving two juveniles is automatically 'aggravated' because it is designated as a 'child sex offence' which places the offence in a more serious category, attracting higher penalties. In addition, child sex offences attract the provisions of the Child Protection Register established under the *Child Protection (Offenders Registration) Act 2000*, even where the offender and the victim are both children.

The Child Protection Register was set up ostensibly to track paedophiles. The Register unfairly and inaccurately identifies child offenders as 'paedophiles' even where they are the same or similar age as the victim, because it is based solely on the age of the victim and disregards the age of the offender. Any sexual intercourse with a child, even where both persons are children and there is consent is a 'class 1' offence attracting the most serious provisions of the Register. This includes providing police with many details such as accommodation, car registration, employment, any children they live with or have potentially unsupervised contact with, their telephone service and internet providers, email addresses, DNA profile, and being subject to all of the other restrictions and reporting requirements in place for registered persons.

The Committee submits that children and young people should not be on the Child Protection Register. Children and young people should be treated differently to adults, taking into account their lower level of intellectual and emotional maturity. The life-long effects of being on the Register, described above, are in conflict with obligations under the Convention on the Rights of the Child – in particular that the well-being of children is

prioritised and that any response is proportionate to the young person's circumstances and to the offence (Article 40.4).

In its 2010 report '*Spent convictions for juvenile offenders*' the Legislative Council Standing Committee on Law and Justice concluded that the evidence does not warrant continuing to treat juvenile sexual offences differently from other juvenile offences for the purposes of the spent convictions scheme.

The Committee supports the recommendations to allow convictions to become spent; however this will not stop the automatic inclusion of the juvenile's name on the Child Protection Register as a child sex offender. Even if the conviction were allowed to become spent under a new regime, the person would continue to be 'flagged' as a 'prohibited person' on any 'working with children check' under the *Commission for Children and Young Person Act 1988*. A person in this situation is excluded under this Act from making a review application because the offence was an offence involving sexual intercourse with a child even though the person was a child at the time.

A key proposal in the 2011 '*Report on the Review of the NSW Commission for Children and Young People Act 1998*' is the implementation of a new model for the Working With Children Check including broader appeal rights.

The Committee urges the Government to implement legislative amendments so that children and young people cannot be registered on the Child Protection Register, to allow juvenile sexual offences to become spent under the spent conviction scheme and to expand the appeal rights for a person refused a working with children clearance.

The Committee also supports an amendment to section 38 of the *NSW Commission for Children and Young People Act 1998* to ensure that matters where the court has heard evidence and reached a finding of 'not guilty' are not matters reported by police as part of their records disclosure.

The Committee would be happy to elaborate on any of the issues raised in this letter and looks forward to receiving your response.

Yours sincerely,



Justin Dowd
President