

Whistleblowers Protection Act 2001
**Investigation into the failure of agencies to
manage registered sex offenders**

February 2011

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Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to section 103 of the *Whistleblowers Protection Act 2001*, I present to Parliament the report of an investigation into the failure of agencies to manage registered sex offenders.



G E Brouwer

OMBUDSMAN

8 February 2011

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Executive summary

Complaint

1. In May 2010 I received an anonymous disclosure under the provisions of the *Whistleblowers Protection Act 2001* which alleged that Victoria Police had, due to an administrative error, failed to inform the Department of Human Services of more than 300 registered sex offenders who were living with, or had unsupervised contact with children. I was informed that as a consequence of the inaction by Victoria Police, hundreds of children may have been exposed to registered sex offenders without any investigation being undertaken to ensure their safety.
2. I determined the disclosure to be a public interest disclosure on the basis that any unreported exposure of a significant number of children to registered sex offenders constituted a substantial risk to public health and safety.

The Sex Offenders Register

3. The *Sex Offenders Registration Act 2004* (the Act) came into effect in Victoria on 1 October 2004. It required the Chief Commissioner of Police to establish and maintain a database to record all persons convicted of sexual offences against children. The purpose of the Sex Offenders Register is to reduce the likelihood of certain offenders who commit sexual offences reoffending; to facilitate the investigation and prosecution of any future offences they may commit; and to prevent them working in child-related employment.
4. The Sex Offenders Register forms the Victorian component of the Australian National Child Offender Register (ANCOR) which is accessible to all police jurisdictions nationally. The Sex Offenders Register is administered by the Sex Offenders Registry (the registry) which is staffed by Victoria Police Officers.
5. The Act introduced a system of proactive surveillance of offenders designed to safeguard the public. It requires that all registered offenders report their personal details to Victoria Police annually. Offenders are also required to inform Victoria Police of any unsupervised contact with a child and when there are changes to their living arrangements that involve children.
6. There are over 2,400 registered sex offenders currently in the Victorian community with others in custody, interstate or overseas.
7. Victoria Police members are instructed to notify the Department of Human Services whenever a registered sex offender reports unsupervised contact with a child. The purpose of notifying the Department of Human Services is to allow it to carry out its obligations under the *Children, Youth and Families Act 2005* and consider the circumstances of the child concerned, taking whatever action may be required to ensure the safety of that child.
8. This investigation, and my earlier report on my *Own motion investigation into the Department of Human Services – Child Protection Program*¹, raise serious concerns regarding the management of registered sex offenders and the protection of their potential victims in Victoria.

¹ Ombudsman Victoria, *Own motion investigation into the Department of Human Services – Child Protection Program*, November 2009.

Failure to act

9. My investigation established that from the commencement of the Sex Offenders Register in October 2004 until March 2010, 899 registered sex offenders reported to Victoria Police that they had contact with at least one child. However, in relation to 376 of these offenders, Victoria Police failed to pass this information on to the Department of Human Services. Victoria Police and the Department of Human Services have informed my office that the offenders concerned had reported contact with over 700 children between 2004 and March 2010.

From the commencement of the Sex Offenders Register in October 2004 until March 2010, 899 registered sex offenders reported to Victoria Police. However, in relation to 376 of these offenders, Victoria Police failed to pass this information on to the Department of Human Services.

10. The exact number of children with whom these offenders may have had contact is difficult to ascertain. In some instances, offenders were found to have been in contact with a greater number of children than he or she had initially disclosed to Victoria Police. As investigations conclude, it is likely that this number will increase.
11. The failure of Victoria Police to report these matters to the Department of Human Services has left children exposed to unacceptable risk. In my view this resulted from a combination of:
- inadequate commitment to the Sex Offenders Register by Victoria Police, partly due to a lack of resources
 - lack of a shared understanding between the Department of Human Services and Victoria Police of the concept of 'risk' and how it should be applied to the Sex Offenders Register
 - lack of understanding by Victoria Police members of the instances in which information may be disclosed under the Sex Offenders Registration Act
 - failure of the key agencies to share responsibility for ensuring the Sex Offenders Register contributed to the protection of children.

The failure of Victoria Police to report these matters to the Department of Human Services has left children exposed to unacceptable risk.

12. This indicates a systemic breakdown in the management of registered sex offenders, rather than isolated instances of individuals failing to meet their responsibilities.

13. This failure of Victoria Police to meet its obligations came to light following changes to Victoria Police personnel at the registry in January 2010. Once the problem was identified, Victoria Police and the Department of Human Services put in place measures promptly to investigate the circumstances of the large number of children and families involved.

Differing approaches to risk

14. My investigation revealed that Victoria Police and the Department of Human Services had different approaches to the concept of risk in relation to offenders on the Sex Offenders Register.
15. The Department of Human Services concern in such matters is to consider the risk of harm to individual children with whom an offender may be in contact.
16. However Victoria Police approached the assessment of risk from a law enforcement perspective in terms of the risk of further offences being committed. While these approaches can be complementary, the differing approaches hampered the understanding of each other's roles and responsibilities.

Lack of coordination

17. I am concerned at the lack of coordination between Victoria Police and the Department of Human Services. My report *Improving responses to allegations involving sexual assault*² in 2006 emphasised the need for coordination between agencies to ensure effective responses in this area.
18. The lack of collaboration between key agencies responsible for protecting the community from these offenders also involved Corrections Victoria.
19. As the Department of Human Services reviewed the reports it received from the registry it identified cases where more extensive information regarding the history of an offender was required to complete its assessment of the risk that offender may pose to a child. As many of the offenders had previously been in custody, it was expected that Corrections Victoria files would hold relevant assessment material.
20. My investigators obtained a copy of an Instrument of Authority³ provided by the then Minister for Corrections, to Corrections Victoria (the Commissioner and Deputy Commissioner), dated 26 May 2009 permitting the provision of information sought by the Department of Human Services from Corrections Victoria under the provisions of the Children, Youth and Families Act.
21. Despite the Instrument of Authority, I was informed that Corrections Victoria had not initially provided the Department of Human Services with reports on offenders that it had requested.
22. While Corrections Victoria dispute any delay, I am satisfied that it did not provide the information promptly despite having the Minister's authority which would permit it do so.

² Ombudsman Victoria, *Improving responses to allegations involving sexual assault*, March 2006.

³ A copy of the Instrument of Authority is attached at Appendix 1.

23. As I was concerned that the Minister's authorisation had not been given effect to and that any delay in the provision of information may be hampering the investigation of children's safety, my office raised the matter with the Commissioner, Corrections Victoria and requested an explanation as to why the request had not been complied with. I was advised by the Commissioner in response that arrangements had been made with the Department of Human Services for consent to be sought from sex offenders prior to the release of their information to the Department of Human Services.
24. In a joint response by the Secretary of the Department of Justice (on behalf of Corrections Victoria), Secretary of the Department of Human Services and the Chief Commissioner of Police to preliminary concerns raised during my investigation, the following rationale for this practice was provided:
- The willingness of an offender to participate is influenced by the trust fostered in the offender about how information is controlled, and is premised on the principle that information is released only when necessary and appropriate. Release of all information including reports without obtaining consent from the offender can undermine the participation and engagement of the offender.
25. I find it difficult to accept this rationale. It is also concerning that the Department of Human Services accepted this position. Nor does it explain the delay in the provision of information by Corrections Victoria to the Department of Human Services. However the Department of Human Services has pointed to its extensive stipulations and requirements for Corrections Victoria's provision of detailed and prompt information.
26. The explanation provided by Corrections Victoria for the delay in providing its reports to the Department of Human Services on the most serious of offenders is inadequate and unsatisfactory. This is particularly so given the authorisation of the then Minister for Corrections to facilitate the release of any information sought by the Department of Human Services to assist it in the protection of children.

The explanation provided by Corrections Victoria for the delay in providing its reports to the Department of Human Services on the most serious of offenders is inadequate and unsatisfactory.

27. The practice of seeking the permission of the registered sex offender before the release of information on cases where children may have been at risk, demonstrates that Corrections Victoria has opted to place the rights of registered sex offenders over the rights of vulnerable children that may be at risk of harm.

The practice of seeking the permission of the registered sex offender demonstrates that Corrections Victoria has opted to place the rights of registered sex offenders over the rights of vulnerable children.

28. I consider it unacceptable that the safety and protection of children was caught up in bureaucratic procedures that prolonged the process of providing critical information.
29. In my view the Department of Human Services should not have accepted the explanation provided by Corrections Victoria and should have sought to ensure the authorisation of the then Minister for the release of information was complied with without further delay.

Charter of Human Rights

30. The failure of Victoria Police, the Department of Human Services and Corrections Victoria to work together effectively in relation to the Sex Offenders Register to advance the protection of vulnerable children is incompatible with the obligations of all Victorian public sector agencies under the *Charter of Human Rights and Responsibilities Act 2006*. For example, section 17 provides that 'every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child'.

The storage and use of information

31. The information held electronically by the registry is also required to be entered by registry staff onto the electronic database for ANCOR so that information is accessible nationally. My officers were informed that the two electronic information systems for the registry and ANCOR are incompatible and information cannot be automatically and electronically transferred from one to the other.
32. I note that the failure of Victoria Police to provide the required reports was not detected by the Department of Human Services. Indeed the Department of Human Services case management system (CRIS), which I criticised in my 2009 report *Own motion investigation into the Department of Human Services – Child Protection Program*⁴, does not provide the degree of reporting functionality that would allow the department to do so.
33. The Department of Human Services has now advised that from March 2011 the CRIS system will enable the tracking and analysing of reports from the registry.

Problems with the legislation

34. The following limitations of the Sex Offenders Registration Act are also of concern:
 - no definition for what constitutes 'unsupervised contact' between a registered offender and a child
 - ambiguity of the requirement for reports to be made by Victoria Police when children may be exposed to registered offenders
 - limitations in relation to the sharing of information between Victoria Police, Corrections Victoria and the Department of Human Services
 - specification of a time frame of three days of unsupervised contact with a child to be reported by a registered sex offender

⁴ Ombudsman Victoria, *op. cit.*

- no provision that permits Victoria Police to establish the veracity of information provided by registered sex offenders such as entering a home to establish whether a registered sex offender is living with children
- concerns expressed about the wholesale disclosure of information to the Department of Human Services and whether it can be justified under section 64(2)(b) of the Act by reference to chapter 4 of the Children Youth and Families Act.

35. Given these limitations and the lack of a definition of what constitutes 'unsupervised contact', I consider that there still exists a risk of misinterpretation of the obligations on offenders to disclose contact with children and for Victoria Police to report on this.
36. The risk posed to children by registered sex offenders exists from the moment unsupervised contact occurs. While the legislation remains as it is with the requirement of a three day time frame for unsupervised contact to be reported, Victoria Police policy should guide its members to report the instances of any contact with children regardless of the number of days that have transpired.
37. On the basis of the evidence obtained by my office, I consider that the current legislative arrangements require review and I have recommended accordingly.
38. The Chief Commissioner of Police, the Secretary of the Department of Justice (responsible for Corrections Victoria), the Secretary of the Department of Human Services and the Director, Police Integrity have all acknowledged my concerns about the limitations of the Sex Offenders Registration Act. They also support my proposals for change.

Background

Registration of offenders

39. The *Sex Offenders Registration Act 2004* (the Act) came into effect in Victoria on 1 October 2004. It required the Chief Commissioner of Police to establish and maintain a database to record all persons convicted of sexual offences against children. The purpose of the Sex Offenders Register is to reduce the likelihood of certain offenders who commit sexual offences reoffending; to facilitate the investigation and prosecution of any future offences they may commit; and to prevent them working in child-related employment.
40. The Sex Offenders Register forms the Victorian component of the Australian National Child Offender Register (ANCOR) which is accessible to all police jurisdictions nationally. The Sex Offenders Register is administered by the Sex Offenders Registry (the registry) which is staffed by Victoria Police Officers.
41. The Act introduced a system of proactive surveillance of sex offenders designed to safeguard the public. In his second reading speech to introduce the Sex Offenders Registration Bill on 3 June 2004 the then Minister for Police and Emergency Services described the importance he envisaged the Sex Offenders Register would have in ensuring community safety⁵:

The results of sexual assault are often devastating. No-one is immune. Not only does it impact on victims, their families and friends, but it also extends into the wider community.

Sex offenders come from every occupation and socioeconomic level, but unlike others who tend to 'settle down', these offenders may continue to offend throughout their lifetime. This is why, in the prison statistics, sex offenders reoffend within all age groups.

Paedophiles, in particular, are notoriously compulsive and recidivist.

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

In requiring specified sex offenders to keep police informed of relevant personal information for a period of time after their release into the community, the bill will reduce the likelihood of their reoffending and assist in the investigation and prosecution of future offences.

5 Victorian Parliamentary Debates (Hansard), Legislative Assembly, 3 June 2004, page 1,850.

42. The length of time an offender is placed on the Sex Offenders Register is determined by a court during sentencing and may be for a period of eight years, 15 years or life depending on the severity and circumstances of the individual's offending history. Offenders convicted of relevant offences committed since 1 October 2004 have been recorded on the Sex Offenders Register. Since its inception, there have been 3,604 offenders required by a court to be registered. There are currently over 2,400 registered sex offenders in the Victorian community with the remainder in custody, interstate or overseas.
43. In a joint response to my preliminary concerns by the Secretary of the Department of Justice (on behalf of Corrections Victoria), the Secretary of the Department of Human Services and the Chief Commissioner of Police on 25 November 2010, the following additional figures were provided:
- ... of these 2462 registrants, 22.54% (555) are on the sex offender register for life, with a majority, 44.5% (1097) registered for 15 years and approximately 32% (786) registered for 8 years [sic].
44. After the court orders a sex offender to be placed on the Sex Offenders Register it notifies the registry of its decision. The registry then notifies local police who assign a case manager for the offender, generally a member of the local Criminal Investigation Unit.
45. The Act requires that all registered offenders report to their Victoria Police case manager:
- their personal details on an annual basis
 - when unsupervised contact with a child occurs
 - when there are changes to their living arrangements that involve children
 - changes in premises or household where an offender resides
 - change of employment
 - change of motor vehicle.
46. Unsupervised contact with a child is defined within the Act as contact with a child for at least three days in a twelve month period whether consecutive or not. Under the Act, the registered offender is required to report such changes to Victoria Police within one day of this change occurring.
47. Victoria Police case managers are responsible for reporting information disclosed to them by the offender to the registry so that it may be included on the offender's file and then also entered and stored on the ANCOR database. The Victoria Police case manager is also required to notify the Department of Human Services when a registered sex offender reports unsupervised contact with a child.
48. Victoria Police members are guided by the *Victoria Police Manual – Guidelines for Registered Sex Offender Reporting* which directs that if a registered offender discloses that they have unsupervised contact with children, the case manager is to notify the Department of Human Services. Until June 2010, Victoria Police were also informed by the guideline *Concept of Operations in Case Management of Registered Sex Offenders – July 2006* which stated:

'Specifically, police must assess the potential for abuse of children where registered sex offenders have access to children when residing in the community'.

49. The Concept of Operations in Case Management of Registered Sex Offenders was updated by Victoria Police in June 2010 to provide more detailed instructions to its members on the requirement to report to the Department of Human Services following the issues identified in this report coming to light.
50. As well as internal procedural obligations to inform the Department of Human Services when an offender discloses contact with children, the *Children, Youth and Families Act 2005* requires members of Victoria Police, as mandated professionals, to notify the Department of Human Services if, in the course of carrying out their duties, they form a belief on reasonable grounds that a child is in need of protection.
51. A report is generally made to the regional office of the Department of Human Services closest to the home address of the registered offender.
52. The Act is silent on what process or action should be undertaken by Victoria Police once a registered offender has disclosed unsupervised contact with a child and that information has been recorded on the registry.
53. The purpose of the Act is to require certain offenders who commit sexual offences to keep police informed of their whereabouts and other personal details for a period of time to reduce the likelihood that they will re-offend and to facilitate the investigation and prosecution of any future offences that they may commit.
54. The Act also provides that offender information held on the Sex Offenders Register may only be released for law enforcement or judicial functions; to comply with any Act or law; or if it is believed on reasonable grounds that to do so is necessary for the proper administration of the Act (section 64).

The role of the Department of Human Services

55. When the Department of Human Services (the department) is informed by Victoria Police that a registered offender has disclosed contact with a child it is required to assess the safety of that child.
56. The seriousness with which any report involving a registered sex offender is treated by the department is reflected in specific instructions it has provided to its child protection workers on how to respond to such reports. Departmental staff are instructed⁶:

In the absence of compelling evidence that would demonstrate ongoing safety for the subject child, a report received from ANCOR must be classified as a protective intervention report and proceed directly to investigation.

57. This practice instruction was introduced by the department on 11 February 2010 and stemmed from recommendations I made in my November 2009 report 'Own motion investigation into the Department of Human Services – Child Protection Program'.⁷

⁶ Department of Human Services, *Protecting Victoria's Children – Child Protection Manual*, 11 February 2010.

⁷ Ombudsman Victoria, *Own motion investigation into the Department of Human Services – Child Protection Program*, November 2009.

58. Prior to the implementation of the practice instruction, reports received by the department were initially considered by the Intake team at the relevant child protection office which would determine whether an investigation was required.
59. An investigation by the department may lead to a Protection Application being made to the Children's Court if the department has assessed that a child requires protection. A range of Protection Orders may be granted by the Children's Court including those which provide for the department to supervise children while they remain in the care of their parents or for the children to be placed in out of home care. The court may impose conditions on an order such as instructions for the parents to undertake specific counselling or for all contact between child and parent to be supervised.

Charter of Human Rights and Responsibilities Act

60. The *Charter of Human Rights and Responsibilities Act 2006* (the Charter) came into effect in Victoria on 1 January 2008. The Charter is designed to protect and promote human rights and places obligations on all public authorities to act in a way which is compatible with the human rights listed in the Charter.
61. The Charter recognises that children have the right to protection as vulnerable members of the community. Section 17 of the Charter provides that 'every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child'.

The role of the Office of Police Integrity

62. Access to the information held on the Sex Offenders Register is restricted. Section 63 of the Sex Offenders Registration Act states:

The Chief Commissioner of Police must ensure –

 - a) that the Register, or any part of the Register, is only accessed by a person, or a class of person, who is authorised to do so by the Chief Commissioner of Police; and
 - b) that personal information in the Register is only disclosed... in accordance with this Act.
63. Pursuant to section 66A of the Sex Offenders Registration Act, the Director, Police Integrity is required to monitor compliance by the Chief Commissioner of Police in relation to the access and release of information held on the Sex Offenders Register.
64. The Sex Offenders Registration Act does not stipulate the frequency or manner in which the Office of Police Integrity fulfils its monitoring role. The Office of Police Integrity has developed policy and procedures in this respect. The Director, Police Integrity advised that he will be reporting to the Minister for Police and Community Services both on his inspection and other issues shortly.

Investigation

Public interest disclosure

65. In May 2010 I received an anonymous disclosure concerning the management of information received by Victoria Police in the course of its administration of the Sex Offenders Register.
66. The disclosure alleged that Victoria Police had failed to inform the Department of Human Services of more than 300 registered sex offenders who were living with, or had unsupervised contact with children. I was informed that there may have been hundreds of children exposed to registered offenders without any investigation being undertaken to ensure their safety.
67. I determined the disclosure to be a public interest disclosure on the basis that the unreported exposure of children to registered offenders constituted a substantial risk to public health and safety.
68. On 28 May 2010, in accordance with section 50 of the *Whistleblowers Protection Act 2001*, I informed the Chief Commissioner of Police of my determination and my intention to conduct an investigation into the allegations pursuant to part 5 of the Act. During the course of my investigation I also informed the Secretary of the Department of Human Services and the Secretary of the Department of Justice that I was conducting the investigation because of the involvement of their respective departments in the matter.
69. During my investigation, the Secretary of the Department of Human Services, the Secretary of the Department of Justice and the Chief Commissioner sought a meeting with me to discuss their views on the limitations of the Sex Offenders Registration Act. The meeting occurred on 27 September 2010 and following the meeting, I invited them to submit a written response to my office detailing their comments on the various structural and other problems they had identified.
70. A joint response was submitted to me on 25 November 2010 in which they commented on their view of the legal and operational issues stemming from the Sex Offenders Registration Act. Where applicable, I have incorporated these views into my report.

Investigation methodology

71. My investigation involved:
 - interviews with staff of the Sex Offenders Registry, the Department of Human Services, Corrections Victoria and experts in the field of offender behaviour
 - examination of the reports provided by the Sex Offenders Registry to the Department of Human Services
 - review of policy and procedural documentation from Victoria Police and the Department of Human Services
 - examination of case files and documentation held by the Department of Human Services.

Failure to act by Victoria Police

72. The failure by Victoria Police to inform the Department of Human Services of contact between registered offenders and children was discovered during a review conducted at the registry in January 2010. The review was conducted following a restructure at the registry and was undertaken in order to identify any work practices that could be improved.
73. The review led to registry staff identifying that there may have been instances where police had failed to inform the Department of Human Services after registered offenders had disclosed contact with a child. The Acting Officer in Charge commenced at the registry in January 2010 and conducted the initial review. He told my investigators:

... we were asked to put up what we thought might be primary concerns in relation to practices and good management and the one that I highlighted from my perspective as being the primary concern was...there may be instances within our records where sex offenders have had access to children, declared access to children, and Victoria Police as per its old policy, had not notified DHS ... However that couldn't be reviewed unless we actually could get a handle on the figures and that's where the audit process ... came about.
74. These concerns led to an audit of all files held by the registry dating back to its commencement in October 2004.
75. On 23 February 2010 Victoria Police alerted the Department of Human Services that there may have been instances where police had failed to make a report regarding children known to be in contact with registered offenders. Victoria Police advised the Department of Human Services that it intended to conduct an audit of all registry files to identify these instances where a report had not been made despite a disclosure from a registered offender.
76. The audit of the files held by the registry was undertaken between 6 March and 31 March 2010. The audit found that since the inception of the Sex Offenders Register, 899 registered offenders were recorded as having disclosed contact with a child to their case manager. Of those disclosures, Victoria Police failed to report 376 (or nearly 42 per cent) to the Department of Human Services. These unreported instances dated back to a registered offender who disclosed contact with a child in 2005. In one instance, one child was reported to have been exposed to contact with two separate offenders.
77. Victoria Police assesses the level of risk of committing further offences of each registered offender using the categories of high to very high, medium and low. The level is based on the offender's criminal history, victimology and likelihood of further offending. The number of offenders involved in this matter in each category is represented in the table following.

Table 1: Number of offenders and Victoria Police category	
Category	Number of offenders
High to very high	20
Medium	155
Low	201

78. The following criminal histories of several of the offenders demonstrate the risk they pose to children:
- A male offender who followed a 12 year boy to an empty house and forced the child to commit an indecent act. The offender was convicted of an indecent act with a child under 16 and false imprisonment.
 - A male offender who approached a 15 year old girl at a bus stop and forced her to accompany him to a nearby park where he sexually assaulted her. The offender was convicted of sexual penetration of a child under 16 years.
 - A male offender who tutored children in his home was charged with an indecent act with a child under 16 and false imprisonment of that child. The offender took indecent photographs of the 12 year old child after he had forced her to remove her clothing.
 - An offender who was convicted of the sexual penetration and assault of his partner's seven year old child.

The response from the Department of Human Services

79. The Department of Human Services (the department) can receive reports from any person concerning the welfare of children in Victoria. For example, in 2008-09 the department received a total of 42,851 reports from all sources leading to 11,217 investigations.⁸ The failure by Victoria Police to report children exposed to registered sex offenders in the instance subject to this investigation led to an increase of 739 investigations required to be undertaken by the department.
80. My November 2009 report *Own motion investigation into the Department of Human Services – Child Protection Program*⁹ identified that the department is struggling to meet its operational responsibilities. The need to respond to this influx of reports requiring investigation was a considerable additional challenge to the child protection system.
81. On 7 April 2010, Victoria Police and department staff met to establish a taskforce to respond to the reports.

⁸ Table 15A.50 of the *Report on Government Services 2010*, Productivity Commission.

⁹ Ombudsman Victoria, *op. cit.*

82. The taskforce agreed to a coordinated response to ensure all reports were thoroughly considered by the department. Because of the time that was required to process such a large number of reports, a system of prioritisation was developed so that the circumstances of children exposed to the highest risk offenders were reported and responded to first.
83. The following response was agreed to by both the department and Victoria Police:
- Category One Assessments (Very High and High Risk offenders) to receive a response from a joint agency taskforce within very tight timelines
 - Category Two Assessments (Medium Risk offenders) to be responded to through regional response groups
 - Category Three Assessments (Low Risk offenders) to be responded to through normal department intake processes.
84. A Principal Practitioner took a leadership role in the department's response to the sudden influx of these reports. The role of the Principal Practitioner is to provide expert consultation on complex cases and provide assistance to child protection workers to prepare for court and to have a strong research and training focus.
85. This Principal Practitioner attended the initial meeting with Victoria Police on 7 April 2010. She subsequently told my investigators that she was concerned to ensure that the children potentially at risk from the most serious of the offenders were responded to promptly by the department. The Principal Practitioner recalled her initial response at this meeting as:
- ... I said, I don't think we can sit on this until the audit is finished. I think we need to actually respond to those at least, you know that are high or very high ... We talked about needing a coordinated approach, so having a point of contact so we could keep track of these cases. So very quickly we got into an organisational space of saying we need the regions to be on side. We need to have in place resources for clinical consultation ...
86. In conjunction with Victoria Police, the department drew on staff from its After Hours Child Protection Emergency Service, regional and central offices to respond to the Category One Assessments.
87. Over the weekend of 9 – 11 April 2010 the circumstances of 40 children identified as possibly at risk from the 20 very high or high risk offenders were investigated.
88. Following the initial response to the most serious of the reports, the remaining reports were referred on a case by case basis to each relevant regional office of the department to respond to. Each report, consisting of a cover sheet with offender and child name and address, the Victoria Police Law Enforcement Assistance Program (LEAP) record for the offender and the Victoria Police summary of charges against the offender, was sent to the relevant coordinator in each region. The police were required to confirm the details of each offender and the children concerned before forwarding a report to the department. A staff member from the department was assigned to work with registry staff and consult the child protection data base (CRIS) to ascertain whether the department had an existing file for any of the children concerned.

89. The department nominated a co-ordinator in each of its regional offices who was to take responsibility for ensuring an effective response to each report from the registry identified during the audit.
90. In response to the unexpected influx of reports, the department formed what it termed a 'Clinical Governance Team', members of which included the department's principal practitioners, a forensic psychiatrist, and staff of Forensicare as required.
91. The team was responsible for reviewing the assessments formulated by department staff in relation to each report. The reviews were undertaken in consultation with staff in each regional area responsible for each particular matter. The purpose of these reviews was to determine whether the decision-making and investigation undertaken in respect to each child was appropriate.
92. The department also provided additional funding of \$45,000 to Forensicare, a statutory agency providing assessment and treatment to people who have both a mental disorder and a history of or risk of criminal offending. The funding was provided to assist in the provision of clinical assessments of offenders to the department.
93. The submission of all of the reports to the department regarding the disclosures by the 376 offenders and 701 children concerned was completed on 9 June 2010. During this time, disclosures continued to be received by case managers and were reported to the department.
94. My investigators reviewed the response by the department to a sample of 50 of the children's circumstances. My investigation:
 - examined summary information provided by the department regarding each of the 50 children
 - obtained file material relating to 20 children where the summary raised concerns regarding the child's ongoing safety and well-being.
95. While a number of investigations are ongoing, my investigators did not identify any matters where it was considered the department had not responded appropriately to the child's circumstances.
96. The investigations conducted by the department confirmed that there were a number of cases where Victoria Police had failed to report disclosures by offenders to the department where children had been exposed to unsupervised contact with offenders.
97. Because of the disturbing nature of these cases, I have chosen to report on only two of those brought to my attention. They illustrate the circumstances of children that were not reported to the department in a timely manner as required by Victoria Police.

Case study one

The registered offender had been convicted of two separate sexual offences against children under the age of 16 including the sexual penetration of a fifteen year old child. He was in a relationship with a woman who had a four year old child and disclosed to his Victoria Police case manager that he was having ongoing contact with the child. The Victoria Police case manager for the offender failed to report the offender's contact with the child to the department on at least two occasions. After the case was identified in the audit, a joint visit between department staff and members of the local Victoria Police Sexual Offences and Child Abuse Unit (SOCAU) was undertaken. Serious concerns were identified for the child and the offender was immediately requested to cease contact with the child and leave the home. Due to the seriousness of the department's concerns a comprehensive sex offender risk assessment was requested from the Forensic Mental Health Service. The offender remains unable to have contact with the child.

Case study two

An offender had been placed on the Sex Offenders Register following conviction for sexual offences against a child. After he completed his custodial sentence he reported to his Victoria Police case manager that his living arrangements involved children, as he was obliged to do. The case manager failed to report the offender's contact with children to the department and this was discovered during the Sex Offenders Register audit. Department staff and members of Victoria Police investigated and identified that there been sexual abuse against a child by the offender.

98. On 22 December 2010, the department advised my office that as of 20 December 2010:

92 cases or client files remain open with child protection that were subject to ANOR [ANCOR] reports. Of these:

- 11 cases – closure is being finalised
- 6 cases (or children) were already subject to child protection involvement before the ANCOR report was received
- 3 children are the subject of Custody to the Secretary Orders following the ANCOR report.

The role of Corrections Victoria

99. As the Department of Human Services reviewed the reports it received from the registry it identified cases where more extensive information regarding the history of a registered offender was required to complete its assessment of the risk that offender may pose to a child. As many of the offenders had previously been in custody, it was expected that Corrections Victoria files would hold relevant assessment material.

100. My office was informed that the Department of Human Services made an initial request for the provision of 88 assessment reports relating to registered sex offenders to Corrections Victoria on 23 April 2010.
101. During my investigation concerns were raised with my office regarding the delay by Corrections Victoria in the provision of the requested reports to the Department of Human Services.
102. My investigators obtained a copy of the 'Instrument of Authority'¹⁰ provided by the then Minister for Corrections, to Corrections Victoria (the Commissioner and Deputy Commissioner), dated 26 May 2009 authorising the provision of information sought by the Department of Human Services from Corrections Victoria under the provisions of the Children, Youth and Families Act. Despite this authorisation, my office was informed that the Department of Human Services had not been provided with the information when it was initially requested.
103. I was informed that staff of Corrections Victoria had reservations in providing the information and consultation had occurred between senior managers of the Department of Human Services and the Deputy Commissioner, Community Correctional Services and Sex Offender Management, Department of Justice regarding the response to the request. I understand that an agreement was reached that where the Department of Human Services required further information to inform its risk assessments for children, Corrections Victoria would provide the Department of Human Services with a summary of relevant information from reports it held on the offenders as opposed to the full report.
104. As I was concerned that the Minister's authorisation had not been given effect to and that any delay in the provision of information may be hampering the investigation of children's safety, my office raised the matter with the Corrections Commissioner on 20 July 2010 and requested an explanation as to why the request had not been complied with. I was advised by the Commissioner on 27 July 2010 that arrangements had been made with the Department of Human Services for consent to be sought from offenders prior to the release of their information to the Department of Human Services.
105. While Corrections Victoria has claimed that it provided the Department of Human Services with information about sex offenders within six working days of the initial request, my investigation identified that a Principal Practitioner informed Corrections Victoria that 12 urgent cases were still outstanding over one month later.
106. The Commissioner also said that 'where this consent [from the offender for the release of his or her information] is not forthcoming and DHS [Department of Human Services] provides this confirmation, then information will be provided under section 92 [of the] *Children Youth and Families Act 2005*'.
107. The explanation provided by Corrections Victoria for the delay in provision of its reports to the Department of Human Services on the most serious of offenders is inadequate and unsatisfactory. This is particularly so given the Instrument of Authority authorised by the then Minister for Corrections to facilitate the release of any information sought by the Department of Human Services to assist it in the protection of children was available.

¹⁰ A copy of the Instrument of Authority is attached at Appendix 1.

108. The practice of seeking the permission of the registered sex offender before the release of information on cases where children may have been at risk demonstrates that Corrections Victoria has opted to place the rights of registered sex offenders over the rights of vulnerable children that may be at risk of harm.
109. In the interim response provided by the Secretaries and the Chief Commissioner dated 25 November 2010, I was also informed that arrangements have been agreed upon between Corrections Victoria and the Department of Human Services in relation to information sharing. I was informed that:

A centralised request process has now been implemented between the two agencies wherein all requests from DHS for information held by CV's Sex Offender Programs (SOP) are coordinated centrally between the Office of the Principal Practitioner, DHS and the Sex Offender Management Branch ... The centralised request process has been communicated to regional staff within both departments, and is aimed at streamlining what was an *ad-hoc* [their emphasis] and time consuming process, to ensure that CV is better positioned to assist DHS in investigating Child Protection matters.

110. I was also informed that:

... CV's SOP has employed a clinician specifically to respond to requests for information from DHS regarding sex offender registrants. Since the clinician was employed, CV has received 26 requests from DHS and provided 19 summary reports which offer more detailed CV information than the original information on registrants initially given to DHS. Of these reports, 17 offenders consented to the exchange of information, whilst there has only been two occasions where information was provided pursuant to the Minister's Instrument of Authority ...

Inspections by the Office of Police Integrity

111. Pursuant to section 66A of the Sex Offenders Registration Act, the Director, Police Integrity is required to monitor compliance by the Chief Commissioner of Police in relation to the access and release of information held by the registry.
112. The Sex Offenders Registration Act does not stipulate the frequency or manner in which the Office of Police Integrity fulfils its monitoring role. However the Office of Police Integrity has developed policy and procedures regarding the inspection of the Sex Offenders Register. The Director has advised that he will be responding to the Minister for Police and Community Services on his inspection and other matters shortly.
113. The inspection undertaken by the Office of Police Integrity notes such discrepancies as the failure to transfer information the case manager has received from the offender onto the Sex Offenders Register. My officers viewed recent results of an inspection where in one instance the paper copy for the offender listed the offender's telephone number but this information had not been recorded on the registry's electronic file.

114. The information held electronically by the registry is also required to be entered by registry staff onto the electronic database for ANCOR so that information is accessible nationally. My officers were informed that the two electronic information systems for the registry and ANCOR are incompatible and information cannot be automatically and electronically transferred from one to the other.
115. Inspections by the Office of Police Integrity have noted instances where information on the offender has been entered on to the Sex Offenders Register but not replicated on the ANCOR database.
116. Section 66A of the Sex Offenders Registration Act does not stipulate the nature of the recorded information to be inspected by the Director of the Office of Police Integrity. Rather, it requires the Director 'to monitor compliance' with Part 4 of the Act. I note that the Office of Police Integrity does inspect to ensure that where an offender has disclosed unsupervised contact with a child, it is recorded on the offender's file. This audit could usefully be extended to include whether that information has been reported to the Department of Human Services.
117. The Director, Police Integrity drew my attention to one of the challenges facing the agencies responsible for dealing with registered sex offenders. That is:

... since 1 October 2004, 3604 offenders have been sentenced in circumstances requiring registration. Of that number, 67.04% are registered for 15 years or life. At this rate it can be anticipated that in the first 30 years of the operation of the scheme, more than 20,000 individuals will have been registered, 67.04% of them for 15 years or life. For most categories of sexual offending, registration is **mandatory** [his emphasis]. In such cases there is no curial or administrative discretion, though after 15 years an RSO [Registered Sex Offender] registered for life can apply to the Supreme Court for suspension of his or her reporting obligations. The court can therefore expect thousands, literally, of such applications after 2019.

... Yet the circumstances of sex offending, and of sex offenders, vary enormously. Some offenders represent so slight a continuing risk to the community that, in the consideration of law enforcement priorities, the cost of long term monitoring surely cannot be justified. Moreover, if we are to have tens of thousands of registered offenders in the future, the truly dangerous offenders may be overlooked in the vast sea of registrants.

As a judge of 20 years standing prior to my appointment as DPI [Director, Police Integrity], I can attest to a view widely held by my former judicial colleagues that the indiscriminate nature of this scheme, and the absence of judicial discretion, has produced, in far too many cases, outcomes that are absurd, unnecessary, unfair and a waste of the resources of Victoria Police. I myself have imposed sentences on offenders (particularly youthful offenders) which have resulted in lifetime registration, yet in circumstances where, in my view, the offender represented no greater risk to the community than the majority of those in his or her age group.

In my view, those who represent a risk of further offending should be identified by individual assessment. Registration should be subject to judicial discretion, guided by carefully formulated legislative criteria and, perhaps, a legislative presumption in favour of registration.

118. He has also advised that:

The legal basis on which such wholesale disclosure was made, and continues to be made, is not entirely clear and is a matter I am considering as part of my monitoring obligations under section 66A of the SOR [Sex Offenders Registration] Act.

In my opinion, therefore, the wholesale indiscriminate disclosure of information to DHS cannot be justified under section 64(2)(b) of the SOR Act by reference to Chapter 4 of the CYF [Children Youth and Families] Act.

Inadequate commitment to the register by Victoria Police

119. The change of management arrangements for the Sex Offenders Register in January 2010 was implemented by Assistant Commissioner Jeff Pope (Intelligence and Covert Support) after he became responsible for the registry on 28 September 2009.

120. Assistant Commissioner Pope advised that the registry had never been staffed with its full management complement. He also stated that historically, key staff had varying levels of experience in sex offender management. It was only with the changes initiated by him that sergeants with specific experience in sex offender management and the investigation of sex offences were appointed to oversee the Sex Offenders Register.

121. The Chief Commissioner has also advised that:

Victoria Police has had to build this capacity as best we could, having regard for other competing priorities and demands. Consequently, Victoria Police has submitted business cases for additional funding and resources to the 2006, 2007, 2008 and 2009 Expenditure Review Committee. All were not supported by government. Additional resources to administer the Register would have significantly enhanced our capability to mitigate risk associated with the Register and presented by registered sex offenders to our community.

... the Sex Offender Registry is managed by a Detective Senior Sergeant and two Detective Sergeants. All three have extensive experience in investigating sex offences and sex offenders and their experience has significantly enhanced the capability of the Registry.

122. Witnesses from Victoria Police and the Department of Human Services interviewed during my investigation also drew my attention to:

- inadequate guidelines and limited training for police responsible for registered offenders
- variable levels of commitment by senior management to the importance of the Sex Offenders Register across Victoria Police.

123. Since commencing this investigation, Victoria Police has introduced a new state-wide reporting format for all case managers which now directs Victoria Police case managers to report all disclosures by offenders of contact with a child regardless of any view they may form regarding the risk they consider the offender poses to a child. The documentation provided to Victoria Police case managers also clarifies that the Department of Human Services will require the full name and address and date of birth of all children concerned as well as the details of the offender and the nature of the offender's access to children. The form also provides direct contact telephone numbers for each regional office of the Department of Human Services to facilitate the making of the report.
124. I have examined the Victoria Police reporting documents that existed prior to the audit in March 2010 and consider the revised version is a significant improvement in the guidance given to Victoria Police members.
125. The reporting document now provides the following text to all Victoria Police members with responsibility for the case management of registered offenders:

Police members should always notify Child Protection (DHS) of a registered sex offender's contact with children. (DHS) Child Protection may be in possession of significant information about the child that would alter the overall view of risk. Baring [sic] this in mind notification should be seen as a matter of priority.

126. The Chief Commissioner has also stated:

I am pleased to advise that Assistant Commissioner Pope has been driving change in this area and as a consequence, the Sex Offender Register will be a module on our Interpose system, which is our primary case management and intelligence system. The Sex Offender module of Interpose is due for release in February / March 2011. We are working closely with Crimtrac through this change process and the data in Interpose on registered sex offenders will be automatically uploaded into ANCOR by September 2011. Therefore by the end of the third quarter of this year Victoria Police will have one database (a component of Interpose) where we hold the Sex Offender Register and associated case management information, with an automatic feed of this data into ANCOR. This work has been progressing throughout 2010 and will be a significant advancement from our current arrangements.

127. The Acting Officer in Charge stated to my investigators that since the commencement of the Sex Offenders Register, case managers are only provided with one day of training in relation to their role and responsibilities.
128. At interview, a clinical forensic psychiatrist with 30 years research experience in the nature and impact of sexual abuse and the assessment and management of offenders referred to a lack of leadership within Victoria Police. The psychiatrist was engaged by the Department of Human Services to provide expert advice on its handling of the reports from the registry. He stated:

It's worked very well in those few regions where senior police have really taken it on board and thought, "this is something we give priority to and we talk about" ... And that's meant it's worked.

129. He also said that there was:

... no structure, no mechanism and no leadership really at the highest level [and that for the system to work] an allocation of resources and prioritisation [was required] ... otherwise you are leaving it to the genius and energy of a few individuals.

130. The Chief Commissioner has further added:

We acknowledge AC Pope's [Assistant Commissioner Jeff Pope] leadership that first identified this issue and driven remedial action.

131. In reference to where accountability for the failure to report the contact of registered sex offenders with children should lie, the psychiatrist stated:

The fact that some people will go way beyond what anyone could reasonably expect of them, because they are deeply concerned with a particular error, does not justify the assumption that ... other people could have done it and should have done it. It [reporting] only works if, in fact, the norm was to do that because that was the norm that was set and some people fell off that norm. That's not what happened here. Some people exceeded it by far ... But I don't mean that other people failed ...

132. The Chief Commissioner has further advised that:

The implementation of the Sex Offender Governance Committee has been instrumental in engaging senior management from the four police Regions. The responsible Superintendent from the Region is actively engaged in decisions about policy, systems, methodology, training and other related matters. ... [The] Deputy Commissioner ... issued a communiqué to all Superintendents in the Regions in 2010 ensuring they understand their accountability with respect to the effective management of registered sex offenders. A forum has been planned for 24 February 2011 with all Superintendents to reconfirm their accountabilities and to highlight risks, methodologies and other related issues to ensure all responsible officers understand their obligations.

Differing approaches to risk

133. Interviews with staff of Victoria Police and the Department of Human Services demonstrated that the two organisations have different approaches to the concept of risk in relation to offenders on the Sex Offenders Register.

134. The Department of Human Services' concern in such matters is to consider the risk of harm to individual children with whom a registered offender may be in contact.

135. However Victoria Police has approached the assessment of risk from a law enforcement perspective in terms of the risk of further offences being committed. While these approaches can be complementary, it appears that the differing approaches have hampered the understanding of each other's roles and responsibilities.

136. At interview, the Acting Officer in Charge of the registry described an example of Victoria Police's approach to categorisation as:

If a person is 45 years of age and has one conviction for non penetrative sexual assaults he would be low risk by virtue of the fact that he has very little history. If you have a sex offender that has been convicted multiple times for sex offences over a long period of time with multiple victims he would be deemed as very high risk.

137. He explained the limitation of this approach, compared to the Department of Human Services broader interest in the welfare of children as:

I need to qualify what risk means from the Registry's perspective. It's only risk of re-offending, it's not risk to children, it's not risk to the community, it's risk based on – he's re-offended in the past, his history shows that and so from a management perspective Victoria Police would focus more on the bloke with lots of history as opposed to the person with very little history.

138. A Department of Human Services officer involved in coordinating its response to the influx of reports described the police approach to risk in terms of:

Their [Victoria Police] risk rating is based on rating sex offenders to other sex offenders in the community. ...

139. Expert evidence suggested that the number of offenders on the Sex Offenders Register may also have contributed to police under-estimating the concerns that arose from offenders' disclosures of their contact with children. The psychiatrist stated:

... vast numbers of people are put on the register for whom the chances of molesting children in the future were not greater than any other man in the community ... It means that the system has to deal with a large number of people on the register who commonsense and experience tells them are no more risk than anyone else. And that means you get bored and you lose all faith in it and it just becomes routine. And when the occasional one pops up who really ought to grab your attention it's lost in the noise of all these other people.

140. In the interim response provided, the Secretaries and the Chief Commissioner informed me:

Victoria Police is responsible for administering the SOR Act and consequently for managing each registrant. This involves police conducting a risk assessment on each registrant, a function outside the traditional police role. Police are not well placed to undertake risk assessments of sex offenders as they lack the training, experience and expertise to perform such work which militates against police developing a reliable, holistic, and informed view of a registrant's risk.

141. I was also informed that:

Currently, the SOR Act does not allow or provide any means by which Victoria Police may access the registrant to obtain a comprehensive understanding of the risk a registrant may pose to the community. In the absence of any powers under the SOR Act which police could use to either gather relevant information, or to undertake a clinical assessment, Victoria Police has developed a “static risk assessment” process. The current risk assessment process gathers information from criminal histories, informant briefs, intelligence and other allied information available to police to assess such risk.

Lack of coordination

142. I am concerned at the lack of coordination between Victoria Police and the Department of Human Services. My report *Improving responses to allegations involving sexual assault*¹¹ in 2006 emphasised the need for coordination between agencies to ensure effective responses in this area. I noted at that time:

Many of the issues are complex. They have serious consequences for the community, particularly for the well-being of some of the most vulnerable. Implementation of some of my recommendations will require a whole-of-government approach. The efforts of government agencies involved must be directed to working collaboratively with each other and the community they serve if there is to be long-term and durable change.

143. All key government agencies were consulted during the investigation leading up to that report. All agencies expressed their commitment to working cooperatively to ensure improved responses to allegations of sexual assault, including Victoria Police and the Department of Human Services. Despite these commitments this situation has arisen in my view, from a lack of common purpose between agencies in using the Sex Offenders Register as a tool to protect children.

144. The failure of Victoria Police to make the required reports was not detected by the Department of Human Services. Indeed the department’s case management system (CRIS), which I criticised in my 2009 report *Own motion investigation into the Department of Human Services – Child Protection Program*¹², does not provide the degree of reporting functionality that would allow the department to do so.

145. The value of being able to monitor these matters in this manner was acknowledged by the Assistant Director Child Protection Operations, who stated to my investigators:

We have various categories on CRIS ... we have four broad categories, physical, sexual, emotional, neglect. So these [reports from the registry] would have been historically classified as sexual abuse, potential risk of sexual abuse.

It would be a good tool to have a separate category on our CRIS data system so that we could track and monitor the numbers ... Had we had that this issue might have become evident because I suspect it was specific locations which weren’t recording and the data might have brought that out.

11 Ombudsman Victoria, *Improving responses to allegations involving sexual assault*, March 2006.

12 Ombudsman Victoria, *op. cit.*

146. The Department of Human Services has now advised that:

... a change to the Client Relationship Information System (CRIS) case management system will take effect from March 2011 enabling the accurate tracking and analysis of reports from the Victoria Police Sex Offender Registry. The department will conduct an annual audit of these reports to identify any potentially concerning reporting patterns, including the absence of reporting. However, it remains the responsibility of Victoria Police to make reports.

147. In the interim response provided to my office by the Secretaries and Chief Commissioner, I was informed that the Department of Human Services received just over 48,000 reports in the 2009-10 financial year with approximately 12,000 coming from Victoria Police. In particular, their interim response stated:

Given the volume of reports coming into DHS from the community and the large number coming from police, the failure of police to notify DHS of the approximately 700 children interacting with registrants would arguably have been difficult to discern by DHS. It would almost certainly not have been construed as a significant reduction in reports from Victoria Police. Notwithstanding this fact, DHS has now reconfigured systems to identify reports that relate to registrants.

Improving practices

148. Victoria Police has implemented new staffing arrangements for the registry and changed administrative processes to promote the reporting of children exposed to registered offenders to the Department of Human Services.

149. Assistant Commissioner Jeff Pope, who has oversight of the registry, has stated that he has ensured that the registry is now staffed by sergeants who are experienced in sex offender management and the investigation of sex offences. He has established a Sex Offender Registry Governance Committee to oversee the operations of the Sex Offenders Register in response to the operational failures identified through the audit process.

150. In their interim response to my office, the Secretaries and the Chief Commissioner confirmed the following:

Victoria Police has developed interim operational guidelines that direct Police members to report all contact between a registrant and child to Child protection so that all the issues concerning the risk to, and wellbeing of, the child/children can be determined. These guidelines will form the basis of further discussions between police and Child protection to ensure that consultations and reports occur to ensure the safety and wellbeing of the child/children.

151. I was also informed by the interim response that the Department of Human Services is:

... currently reviewing policy and practice advice to the child protection workforce with regard to the management and investigation of Australian National Child Offender Register (ANCOR) reports ... [and is] ... also considering approaches to managing the projected growth in the number of registrants in forthcoming years.

Limitations of the legislation

152. During the course of my investigation, witnesses reported concerns regarding the limitations of the Sex Offenders Registration Act. These relate to:
- no definition for what constitutes unsupervised contact
 - the ambiguity of the requirement for reports to be made when children may be exposed to registered offenders
 - the limitations in relation to the sharing of information between Victoria Police, Corrections Victoria and the Department of Human Services.
153. The Director, Police Integrity also informed me that:
- ... the problems identified have resulted, at least in part, from a legislative scheme that casts the net far too widely and makes no meaningful attempt to identify offenders who truly pose a continuing risk to the community. The result has been to place a substantial and, to some degree, pointless administrative burden on Victoria Police – a burden that will increase exponentially in coming decades.
154. In their interim response, the Secretaries of the Department of Human Services and the Department of Justice, and the Chief Commissioner stated their concern that the Act did not allow for the sharing of information that would assist Victoria Police in its assessment of an offender as follows:
- It is important to note however that the SOR Act affords no facility to mandate information exchange to inform Victoria Police’s risk assessment with any of the following:-
- (a) any information regarding the registrant’s treatment, as obtained/undertaken while in custody, on a custodial order, or a forensic custody order;
 - (b) any current or past information on the dynamic risk factors or needs that may be pertinent to the registrant’s criminogenic behaviour;
 - (c) specific information with respect to the registrant’s current treatment or related medical/physical supervision; and with no powers to verify the veracity of the information provided by the registrant with respect to their current living arrangements; particularly as they may apply to contact with children; and/or
 - (d) any relevant information on the familial conditions in which the registrant is residing, either with children, or in regular contact with children, and whether the hosting family is taking appropriate steps to reduce risk to the children.
- This last point is further complicated by the tension between the SOR Act and the Children, Youth and Families Act 2005 (the CYF Act)... which provides for a mandatory reports [*sic*] by Victoria Police to DHS where a member of the police force has formed a reasonable belief that there [are] significant concerns for the well-being or safety of a child.
155. In addition, they also identified concerns that the Sex Offenders Registration Act ‘... contains no provisions to allow police to establish the veracity of personal information supplied by registrants, such as an entry without warrant power to establish whether a registrant is living with children’.

156. The Chief Commissioner has also responded that:

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

Pilot program

157. During the course of my investigation I was informed of a pilot project in Frankston and Mildura. The Sexual Offence Child Investigation Team (SOCIT) is a Victoria Police pilot project operating independently within a multidisciplinary centre (the centre) at these locations. The centre includes detectives, specialist counsellors, medical practitioners and staff from the Department of Human Services.

158. At interview one Victoria Police officer who had participated in the pilot project described how he was able 'to walk down the hallway and report to DHS [the Department of Human Services]' immediately following a registered offender disclosing to him that he was having unsupervised contact with a child.

159. The Assistant Director Child Protection Operations stated at interview on 16 June 2010 that:

The Department of Human Services Child Protection has been following it [the pilot] closely and the Government did fund three [further pilots] in this year's state budget. We [the Department of Human Services] did some work with VicPol last year as both organisations agreed that they were the way to go. Government broadly accepted the argument but the funds were only available for three, the original bid was for ten.

160. At interview, the Acting Officer in Charge of the Registry explained that there is a high degree of compliance with the reporting obligations by Victoria Police members involved in the Frankston pilot. In his view this was due to Victoria Police members at that location understanding that the Department of Human Services was to be informed immediately following a disclosure from a registered offender that he or she had had unsupervised contact with a child.

161. Documentary evidence examined demonstrated that there was 100 per cent compliance with the reporting requirement in the two pilot regions.

162. The Chief Commissioner has also advised that:

Victoria Police is committed to rolling out the SOCIT model statewide and we are making good progress in that transition. Frankston was one of the SOCIT pilot sites. However, also at Frankston, we operated a separate pilot known as Nexus. The Nexus pilot relates to enhanced information sharing practices with Department of Human Services and Corrections Victoria on registered sex offenders. This pilot needs to be formally evaluated before we consider any further expansion. Moreover, it would benefit from legislative amendment...

Conclusions

163. My investigation established that between October 2004 and March 2010 Victoria Police failed to report to the Department of Human Services 376 registered sex offenders who had reported contact with over 700 children. This failure left children exposed to unacceptable risk.
164. The exact number of children with whom these offenders may have had contact is difficult to ascertain. In some instances, offenders were found to have been in contact with a greater number of children than they had initially disclosed to Victoria Police. As investigations conclude, it is likely that this number will increase.
165. The failure of Victoria Police to report the circumstances of children exposed to registered offenders to the Department of Human Services arose due to a combination of:
- inadequate commitment to the Sex Offenders Register by Victoria Police
 - lack of a shared understanding between Victoria Police and the Department of Human Services of the concept of 'risk' and how it should be applied to the Sex Offenders Register
 - lack of understanding by Victoria Police members of the instances in which information may be disclosed under the Sex Offenders Registration Act
 - failure of the key agencies to share responsibility for ensuring the Sex Offenders Register contributed to the protection of children.
166. The volume of these matters indicates a systemic breakdown in the management of registered sex offenders rather than isolated instances of individuals failing to meet their responsibilities.
167. This investigation and my earlier report on my *Own motion investigation into the Department of Human Services – Child Protection Program*¹³ raise serious concerns regarding the management of registered sex offenders and the protection of children in Victoria.
168. My investigation indicates a concerning lack of coordination between Victoria Police and the Department of Human Services. In my report *Improving responses to allegations involving sexual assault*¹⁴ I emphasised the need for coordination between agencies to ensure effective responses in this area:

Many of the issues are complex. They have serious consequences for the community, particularly for the well-being of some of the most vulnerable. Implementation of some of my recommendations will require a whole-of-government approach. The efforts of government agencies involved must be directed to working collaboratively with each other and the community they serve if there is to be long-term and durable change.

13 *ibid.*

14 Ombudsman Victoria, *op. cit.*

169. While the primary responsibility for management of the Sex Offenders Register lies with Victoria Police, I am concerned that the Department of Human Services was restricted in its ability to analyse the number of reports it received from the registry. The CRIS case management system did not provide the Department of Human Services with the ability to closely monitor and routinely analyse the volume of reports from such a significant intelligence source of serious reports to its child protection program.
170. The Department of Human Services has now sought to amend its systems to ensure that it is able to identify reports received from the registry.
171. Corrections Victoria also failed to promptly disclose information in its possession to the Department of Human Services to inform its assessment of the children at risk. Given the seriousness of the matter I consider the delay by Corrections Victoria in the provision of reports to be of significant concern particularly as the delay may have hampered the effective and thorough assessment of risk to children.
172. The explanation provided by Corrections Victoria for the delay in provision of its reports to the Department of Human Services on the most serious of offenders is inadequate and unsatisfactory. This is particularly so given the Instrument of Authority authorised by the then Minister for Corrections to facilitate the release of any information sought by the Department of Human Services to assist it in the protection of children was available.
173. The practice of seeking the permission of the registered sex offender before the release of information on cases where children may have been at risk demonstrates that Corrections Victoria opted to place the rights of registered sex offenders over the rights of vulnerable children that may be at risk of harm.
174. I consider it unacceptable that the safety and protection of children was caught up in bureaucratic procedures that prolonged the process of providing critical information. In their interim response, the Secretaries of the Department of Human Services and the Department of Justice, and the Chief Commissioner stated that:

The Australian Psychological Society Code of Ethics requires that registered psychologists disclose confidential information only under specific circumstances:-

- a) with the consent of the relevant client;
- b) where there is a legal obligation to do so;
- c) if there is an immediate or specified risk of harm to an identifiable person or persons that can be averted only by disclosing information; or
- d) in the course of supervision or training providing that the data is de-identified.

175. They also stated that:

The willingness of an offender to participate is influenced by the trust fostered in the offender about how information is controlled, and is premised on the principle that information is released only when necessary and appropriate. Release of all information including reports without obtaining consent from the offender can undermine the participation and engagement of the offender.

176. I find it difficult to accept this rationale. It is also concerning that the Department of Human Services accepted this position. Nor does it explain the delay in the provision of information by Corrections Victoria to the Department of Human Services. However the Department of Human Services has pointed to its extensive stipulations and requirements for Corrections Victoria's provision of detailed and prompt information.
177. In my view the Department of Human Services should not have accepted the explanation provided by Corrections Victoria and sought to ensure the authorisation of the Minister for the release of information was utilised without further delay.
178. I would have expected Victoria Police, the Department of Human Services and Corrections Victoria to have worked together more effectively in relation to the Sex Offenders Register to advance the protection of vulnerable children. The failure to do so is incompatible with the obligations of all Victorian public sector agencies under the *Charter of Human Rights and Responsibilities Act 2006*.
179. I have recommended that in future the three agencies should collaborate closely to ensure the Sex Offenders Register is used for its intended purpose of reducing the likelihood of further offences against children being committed. This should include an exchange of information where the safety of a child is at risk. In my view the legislation should be amended accordingly.
180. Victoria Police should also build on the audit it has recently undertaken and ensure the appropriateness of how registered offenders are managed is subject to ongoing internal auditing. Adequate training and organisational support to police case managers in their role and responsibility to report under the Act should also be provided.
181. I consider that Victoria Police should seek greater involvement by Corrections Victoria and the Department of Human Services in the ongoing governance of the Sex Offenders Register. Other agencies with responsibilities that involve the prevention of harm to vulnerable people, such as professional registration bodies or other public sector agencies may also have useful contributions to make.
182. As the Sex Offenders Registration Act does not provide a definition of what constitutes 'unsupervised contact', I consider that there still exists a risk of misinterpretation of the obligations on offenders to disclose contact with children and for Victoria Police to report. In the absence of any legislative guidance on the forms of unsupervised contact, the policy should guide both offenders and Victoria Police case managers to provide for the widest possible interpretation. In particular, there is the risk that a registered offender may not consider they are required to disclose email or chat room contact with a child under the current definition.

183. The legislation specifies a time frame of three days of unsupervised contact. I consider that the risk posed to children exists from the moment unsupervised contact occurs and that while the legislation remains as is, Victoria Police policy should guide its members to report instances of any contact with children regardless of the number of days that have transpired.
184. The reported success of the pilot programs in Frankston and Mildura indicates the potential for considerable benefits to be derived from a multidisciplinary approach to the management of registered sex offenders.
185. The inspections of the Sex Offenders Register files undertaken by the Office of Police Integrity provide a further opportunity for ensuring compliance with the practice of reporting unsupervised contact between registered offenders and children to the Department of Human Services. I consider the current inspection to ensure that registered offenders have been recorded as having disclosed unsupervised contact could be strengthened by the Office of Police Integrity including whether the disclosure of contact has been reported by Victoria Police to the Department of Human Services.
186. I am concerned that the two database systems currently in use to record offender information are reliant on the input of data by registry staff and are not designed for the replication of information concurrently on both databases. In my view it is critical that such offender information be readily accessible to both Victoria Police and other law enforcement bodies should an offender change location. The incidence of information not being entered into both database systems is of concern. Hopefully the new Sex Offender module on Interpose will address my concerns.
187. I consider the current legislative arrangements require review to ensure the obligations on both registered offenders and the registry are balanced with the need to protect children from harm.
188. Both the Chief Commissioner and the Secretary of the Department of Justice have drawn my attention to the need for the Victorian legislation to complement a national legislative scheme, while acknowledging gaps in the current process. However, the proposals to amend the Sex Offenders Registration Act should not be unduly delayed given the inadequacies identified in this report.

Recommendations

I recommend that Victoria Police:

Recommendation 1

In conjunction with the Department of Human Services and Corrections Victoria, develop a governance model for the operation of the Sex Offenders Register which promotes greater collaboration with agencies in relation to the prevention of the sexual abuse of children. The potential contribution of other agencies should also be considered during the development of the governance model.

Recommendation 2

Conduct regular audits of the information received at the registry to ensure that offenders who have disclosed unsupervised contact with a child are being reported to the Department of Human Services.

Recommendation 3

Develop a protocol with the Department of Human Services and Corrections Victoria for the release and sharing of information on registered sex offenders.

Recommendation 4

Review the SOCIT and Nexus models and consider state-wide implementation.

Recommendation 5

Ensure that training for all case managers is undertaken as a priority and that refresher training is held regularly to support ongoing understanding.

Recommendation 6

Ensure that policy provides for the widest possible interpretation of unsupervised contact to ensure that all instances of contact with children whether phone, internet or in person, or number of days is provided for.

I recommend that the Department of Human Services:

Recommendation 7

Ensure that it has the capacity to identify, analyse and promptly respond to reports received from the registry.

I recommend that the Office of Police Integrity:

Recommendation 8

Extend its auditing of the registry to encompass the obligation of Victoria Police to report to the Department of Human Services when an offender has disclosed contact with a child and that each report of contact with a child has been documented and provided to the Department of Human Services in accordance with legislative requirements.

I recommend that the Commissioner of Corrections:

Recommendation 9

Ensure the timely provision of assessment reports when requested by the Department of Human Services or Victoria Police to assist in the identification of risks posed to children by registered sex offenders.

I recommend that the Attorney-General:

Recommendation 10

Consider providing a reference to the Victorian Law Reform Commission to examine the legislative arrangements in place for the registration of sex offenders and the management of information provided under its reporting obligations. The ambiguity of the definition of unsupervised contact should be considered in such a review. In addition, the power to test the veracity of information provided to the registry by offenders should also be considered.

Agency responses to recommendations:

The Chief Commissioner of Police, the Secretary of the Department of Justice (responsible for Corrections Victoria), the Secretary of the Department of Human Services and the Director, Police Integrity have all acknowledged my concerns about the limitations of the Sex Offenders Registration Act. They also support my proposals for change.

G E Brouwer

OMBUDSMAN

Appendix 1



Minister for Corrections

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CD/09/94352

CORRECTIONS ACT 1986

INSTRUMENT OF AUTHORITY


I, Bob Cameron, Minister for Corrections, in the State of Victoria, under section 30(3)(b) and section 91(1) (e) of the Corrections Act 1986 authorise the persons holding the following positions:

- (a) Commissioner, Corrections Victoria
- (b) Deputy Commissioner, Prisons and Transitional Services
- (c) Deputy Commissioner, Community Corrections Services and Sex Offender Management
- (d) Deputy Commissioner, Strategic and Financial Services
- (e) Director, Prison Services
- (f) Director, Community Corrections
- (g) General Manager of a Prison
- (h) Operations Manager of a Prison
- (i) General Manager, Community Corrections Services
- (j) Regional General Manager, Community Corrections Services
- (k) Operations Manager, Community Corrections Services
- (l) Manager, Information Privacy and Information Management
- (m) Regional Director, Department of Justice

to disclose to the Secretary to the Department of Human Services, or to any person to whom the functions and powers in section 35 or section 192 of the *Children, Youth and Families Act 2005* has been delegated by the Secretary, the following information:

- (a) information sought by the Secretary or delegate pursuant to s35 of the *Children, Youth and Families Act 2005*; and
- (b) information requested by the Secretary or delegate pursuant to s192 of the *Children Youth and Families Act 2005*.

This authorisation may be revoked in whole or in part, or amended, at any time I determine.

Signed 
Bob Cameron
Minister for Corrections

Date 26/5/19
.....



Ombudsman's Reports 2004-11

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Whistleblowers Protection Act 2001 Investigation into allegations of improper conduct by a councillor at the Hume City Council
February 2011

2010

Investigation into the issuing of infringement notices to public transport users and related matters
December 2010

Ombudsman's recommendations second report on their implementation
October 2010

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October 2010

Whistleblowers Protection Act 2001 Investigation into an allegation of improper conduct within RMIT's School of Engineering (TAFE) – Aerospace
July 2010

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June 2010

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May 2010

Report of an investigation into Local Government Victoria's response to the Inspectors of Municipal Administration's report on the City of Ballarat
April 2010

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March 2010

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March 2008

Conflict of interest in the public sector
March 2008

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Investigation into VicRoads' driver licensing arrangements
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Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters
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Investigation into the use of excessive force at the Melbourne Custody Centre

November 2007

Investigation into the Office of Housing's tender process for the cleaning and gardening maintenance contract – CNG 2007

October 2007

Investigation into a disclosure about WorkSafe's and Victoria Police's handling of a bullying and harassment complaint

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Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong

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Review of the Freedom of Information Act 1982

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Improving responses to allegations involving sexual assault

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Complaint handling guide for the Victorian Public Sector 2005

May 2005

Review of the Freedom of Information Act 1982

Discussion paper

May 2005

Review of complaint handling in Victorian universities

May 2005

Investigation into the conduct of council officers in the administration of the Shire of Melton

March 2005

Discussion paper on improving responses to sexual abuse allegations

February 2005

2004

Essendon Rental Housing Co-operative (ERHC)

December 2004

Complaint about the Medical Practitioners Board of Victoria

December 2004

Ceja task force drug related corruption – second interim report of Ombudsman Victoria

June 2004