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TO: childexploitation@homeaffairs.gov.au (by email)
FROM: Civil Liberties Australia Inc (CLA)

Attention: Hamish Hansford, First Assistant Secretary
National Security and Law Enforcement Policy Division
Department of Home Affairs…and his Team

Response to a request for 'consultation':

(Proposed) National Public Register of Child Sex Offences

(hereafter NPRCSO, or 'the register')

This is a formal response to your request to CLA, made by email on the morning of 3 January 2019 – with a deadline of 11 January, six (6) week days later – to take part in "national consultations" for a radical and dramatic change of policy and practice by the government. The request was for a CLA submission by 11 January.

CLA notes that the process being undertaken is not consultation about whether such a register should be implemented, but is "consultation" aimed at how to implement a pre-conceived register. It appears to be a fait accompli (See Appendix B).

What is proposed:

The 'Consultation' Paper says that:

Combatting child sexual abuse and exploitation in Australia is a key national priority, and that nationwide government action to protect children from sexual harm is critical to prevent and address these serious crimes.

CLA agrees strongly with these statements, and aims.

How is it proposed to achieve these aims?

CLA understands from the Consultation Paper that the proposed register will comprise:

- a website, including:
  - a convicted offender's name,
  - aliases,
  - date of birth,
  - photo,

- physical description,
- general locality,
- general nature of offending, and
- period of registration.

The website will be open unrestrictedly to the public of Australia and the world, and able to be crawled and searched by search engines. – summarising Consultation Paper, Page 1, Point 5

<u>EXECUTIVE SUMMARY</u> of this submission by Civil Liberties Australia

a. The basic proposal is deeply flawed, and even more deeply dangerous. The register would not "<u>combat</u> child sexual abuse" in any way. CLA provides evidence to demonstrate that it will not. The government provides no evidence that it would.

b. The register will cause a thousand vigilantes to bloom, each year, around Australia, in their homes, from beach to backblock, from shanty to palace.

- **It will be manipulated by rednecks and abused by the media to spark massive local controversy, and probably confrontation and possibly extreme violence, maybe death.**
- **It will target people who have been convicted and who have served their time.**
- **It will endanger the innocent families of such people in their homes, including children and partners, and endanger them physically and mentally.**
- **It will create a new double punishment on people who have met all the requirements the law and society have imposed on them.**
- **It will encourage convicted offenders, who have served their time in jail, to go underground to avoid public exposure (and it could cause such people to clump together for mutual support). Experts say it will lower house prices in some places.**
- **It will lead to online and real-world shaming of, discrimination towards, and violence against, entirely innocent people because they have the same name, a similar appearance, or fit the same profile, as a person named on the register. Time and time again we have seen these kinds of errors made by the media, immigration authorities, security forces and the general public.**

c. The demonstrably rushed* nature of this proposed register indicates clearly that it is designed with an eye towards an early federal election more than it is a properly considered policy and well-planned process to deal with a serious issue of major public concern. See discussion below under 'Dangerous proposal'.

d. CLA makes a series of recommendations at the end of this paper. The primary recommendation is that consideration of this matter be referred to the 46th Parliament, and that the necessary specific research is undertaken before the matter is again raised.

– ends <u>Executive Summary</u>

*** Expanding on the "rushed" comment above:**

* published material (Consultation Paper) without accurate footnotes;
* the claimed source material's author (the ABS) specifically declares its survey data should not be used for what the government is using it for, measuring child abuse;
* no source or reference provided for claimed AFP figures of rising 'exploitation' (NB: exploitation is a separate issue: even the government does not claim the register will combat exploitation);
* an email seeking consultation that says that only "key" ministers of other governments will be notified, not all ministers of all governments;
* a ridiculously short period (6.5 working days) of 'consultation' in a week (the first week of January) when the staff of many organisations are on leave – with no explanation of why such a short timeframe is necessary; and
* no consultation whatsoever on the fundamentally basic question: **whether there should be a register**…but only on how to implement one.

Dangerous proposal:

Such a register could be easily manipulated by those with intimate knowledge of computer and database technology to stir up vigilante action in specific locations. That itself is a serious threat in general to law and order, but particularly to democracy before an election, federal or state. Cyber-swaying of elections is a growing, worldwide trend, which is more and more dangerous to society in a number of ways.

It is highly likely evil elements will use such a dangerous and uncontrollable register for political purposes. CLA observes that Queensland is a state possibly more susceptible than others to redneck baiting in a way that tries to create 'wedge' political issues. We cannot help but comment that the Minister for Home Affairs, who is proposing the register, holds a seat on a very slim margin in Queensland.

While CLA is non-party-political, it must be publicly observed that the Minister proposing this urgent, rushed, ill-considered register will be a political candidate likely to be among those who could most benefit from almost-certain malicious use of such a register to stir right-wing, redneck reaction, as well as examples of forceful vigilantism likely to be blown up to the extreme in the media. Even a debate about having such a register is likely to stir high emotion. Perhaps that's the reason the issue is being thrust forward during the media 'silly season' in early January?

The register creates an easy pick-a-patsy tool for manipulators, malcontents and those of evil intent. Use of the register will primarily benefit such people, and the media. The media may well be a major user of the register to 'break' stories and foment reportable (mis)behaviour.

The proposed register may enable mainstream media and social media manipulators – anyone really – to stir up trouble at one simple Googling. It is very easy to imagine such a register being abused during state and/or federal elections. There are no suitable checks or balances in what appears to be, from the Consultation Paper, the current proposal.

Why "national"?

The Consultation Paper makes no convincing case – and provides no evidence of the need – for a **national** register.

It should not have to fall to commentators like the Law Council of Australia and Civil Liberties Australia to point out to the federal government the constitutional fact that the states are primarily responsible for law and order. They are quite capable of coming up with a system that meets the needs of their residents. Indeed, several have already done so in relation to child sex offenders, and to registers.

CLA asks why does the federal government, and in particular the Minister for Home Affairs, consistently come in over the top of the states to centralise bureaucracy, especially over issues concerning human rights and civil liberties, by handing additional powers to the uniformed forces of police, border/customs and defence?

The argument in the Consultation Paper that offenders would move to states which have no public register is bordering on the ridiculous. The states from which they leave would no doubt be happy to see them go: and the states where they might go can easily toughen their laws, including by creating public registers, if they see real evidence that border hopping was happening. The claim is yet another example of Ministerial fear raising in the community.

Under Australia's federated system, if there is any issue that genuinely requires federal government intervention, it should be identified by the states, and the states should request that action be taken. The fact the states have not done so indicates this register proposal is a concocted issue.

The federal government is deaf and blind in relation to acting centrally when requested on fundamentally important issues, even when the reason for doing so is rock solid. For example, the citizens of the two territories are not able to pass their own laws without the Damoclean sword of federal veto hanging over them. Despite clear requests by the territories for basic equality with other citizens of Australia, Minister Dutton and the federal government have not acted to ensure equal democracy, human rights and civil liberties throughout the nation.

Primary failing of the proposal:

The proposal will not achieve its aim, as stated by the Government/Minister/Department.

The primary problem with the government's proposal is that its purported solution – an internet sex offender register – will do nothing to either:

- combat child sexual abuse, or
- protect children from sexual harm.

An internet database register of itself cannot "combat" anything, and does nothing to "protect children". It is the wrong solution to what the government acknowledges as a serious problem, and a "key national priority". As an analogy, if crime in general could be ameliorated by simply creating a register of criminals, that step would have been taken years ago worldwide. That no such registers exist anywhere in the world as a crime-fighting tool strongly indicates that such a proposed solution is woolly and wishful thinking.

The government proposal appears to not have the benefit of any evidence to demonstrate that it would work. Were there any evidence, it would have been provided in the 'Consultation' Paper.

At the very least, Australians expect their governments to act from an evidence base. The lack of evidence provided by the Department of Home Affairs indicates there is none. Indeed, "the evidence base" for laws such as the type of 'Megan's Law' operating in the USA is "weak" and appears to have "developed largely as a response to community agitation" (Australian Institute of Criminology, 2007, p. 1). More importantly, there is little evidence that it reduces offending or recidivism rates or impacts on stranger assaults on children (Australian Institute of Criminology, 2007).

For the reasons outlined above, CLA does not support the creation of a national child sex offender register. Doing so would be wasting time and money – and creating false hopes – in an area of national importance. Even the well known Queensland child advocacy organisation, Bravehearts, "does not support widespread community notification of sex offenders (based on the experience of 'Megan's Law' in the United States)" although they advocate adoption of a scheme similar to that operating in WA (Bravehearts, 2017).

In the United States from 2003 there has been a "publicly accessible online sex offender register that feeds into a national register" with a similar scheme in South Korea and highly restricted forms of notification operating in England and Wales, and Scotland (Whitting, Day, & Powell, 2017, p. 339). It is not clear what is driving the Australian government to promulgate such a scheme that garners scarce support globally.

> **Important note on the 'Whitting' study:**
> At face value the study by Whitting and her colleagues (2017) appears to endorse positive outcomes from online notification over the early period of the WA scheme (less than two years). But results require very careful scrutiny, for example being based on interviews with 21 police officers only, as the authors themselves canvass in their conclusion.

The Consultation Paper says:

"Establishing a National Public Register is intended to enhance community safety and protect children from sexual abuse by deterring offenders, raising public awareness and enabling concerned citizens to be more vigilant about the potential risks posed by offenders in their communities". – Page 2, Point 12

CLA observes there is no evidence to suggest that online registers do any of the above, or are positively effective in doing the above. It is wishful thinking that the newly-stated Home Affairs intention(s) would be achieved in Australia simply because the Home Affairs Department and its Minister has put them in a consultation paper.

CLA's responses to the questions posed by the Consultation Paper:

There appear to be thirteen (13) questions, many of which assume that the NPRCSO will go ahead. We will therefore not address those questions individually here, given CLA's response to what should have been the first question: will a NPRCSO be effective?

1. Does your organisation support public registration of registered child sex offenders?

No. Civil Liberties Australia does not support **an online <u>public register, with open public access,</u>** which is what is at the heart of this proposal.

The main reason we do not support an online public register, as proposed, is contained in the copious research showing such a register will not achieve what is claimed, and is dangerous. Academic Karen Gelb's 2018 short paper (Law Institute of Victoria: full references at the back of this submission) provides a succinct overview of evidence, and echoes the discussion in the paper by Carol Ronken and Robyn Lincoln from 2001 in the ANZ Journal of Criminology.

The more recent, excellent overview by Napier and colleagues (2018) published by the Australian Institute of Criminology (see references at the end), adds to reasons as to why such a register will not be effective.

In summary, the above researchers say:

- public notification offers no community protection, and in terms of crime prevention it is suggested that people will not access the websites for direct assistance but rather only for casual or prurient interests;
- public notification can give the community a false sense of protection and therefore parents may engage in less risk assessment;
- those people on sex offender registers do not have lower reoffending than those who are on them: child sex offences are as likely to be committed by someone with a history of property offending as they by someone with prior conviction (and Child Sex Offender registration) for offences against children;
- public notification schemes can lead to stigmatisation, labelling, and withdrawal from community-based treatment programs for offenders;
- public notification schemes can lead to, and indeed there is evidence in the UK and USA that they have led to, vigilante action by members of the public;
- public notification can lead to re-victimisation of child sexual abuse victims and their families – most of these offences are committed by someone known to the victim (and are likely to be members of their family);
- public notification, more importantly, could lead to lower reporting rates regarding offending against children, if there is to be such online scrutiny of family members; and
- public notification is only useful in the case of the potential for child sex offences committed by strangers.

In their closing remark, Napier and colleagues (AIC 2018) say:

> *Policy responses to sexual offending need to be carefully considered and must be based on strong theoretical foundations, supported by evidence.*

There is absolutely no way the Minister or the Department of Home Affairs could claim legitimately that claimed effectiveness of their current proposal is "supported by evidence".

CLA notes: The 2018 Napier et al (that is, AIC / Dept of Home Affairs) research finds:

- public registration does not reduce recidivism and can even increase reoffending among notified offenders and is counter-rehabilitation;
- not much is known about non-public registers (like the UK versions) but they appear to be preferable in assisting police manage local sex offenders;
- little consistent evidence about community safety aspects: while the public show support, greater fear can be generated with public registers;
- there can be the unintended consequence of depressing property prices in a location which might have a cluster of child sex offenders appearing on a public online register;
- there are problems in how to deal with youthful sex offenders (perhaps caught in sexting activities) and whether they should be on a public register when they turn 18; and
- there has been no evaluation of the non-public register that currently operates nationwide (all above dot points, from Napier et al., 2018).

In passing, in relation to the most recent (2018), most useful research evidence, by Napier and colleagues, CLA notes the following:

> Napier and colleagues' paper was published by the Australian Institute of Criminology (AIC).
>
> *"The AIC is Australia's national research and knowledge centre on crime and justice, compiling trend data and disseminating research and policy advice. The AIC informs crime and justice policy and practice in Australia…*
>
> *The Australian Institute of Criminology (AIC) is part of the **Home Affairs** Portfolio and accountable to the **Minister for Home Affairs**."* (website of the AIC, 'About Us', 190106 1600 hours).

CLA finds it extraordinarily strange that the Department of Home Affairs declines to quote recent and relevant research emanating from the AIC, its own, in-house research agency – which is supposed to **"inform justice policy and practice in Australia"** – and instead chooses to use inappropriate research from the ABS which the ABS says should not be used for the purpose for which the Department of Home Affairs is mis-using it. Kafkaesque.

This is further evidence that this entire register proposal and the purported 'consultation' is the ersatz product of a festive thought bubble brought to public fruition in a hastily-generated 'consultation' email about 10 o'clock, morning of 3 Jan 2019, even as the DHA remained tensely challenged about inter-governmental consultation. A public inquiry into the genesis of the processes would not be wasted.

As well as academic studies clearly warning about the dangers of the proposal , there appears no need to create a national public register when it is clear that the states/territories have already been promulgating their own procedures. (See also: **Why "national"?** above). As recently as 3 September 2018, Victoria has amended its sex offender registration scheme to allow for restricted notification in limited circumstances with significant provisions built-in to ensure that any deleterious consequences are addressed. For example,

- Only people who are authorised by the police can access the register.
- The police may provide a person with information about the SOR if it thinks it is appropriate to do so.

  The information supplied must be **de-identified** (the person's identity must not be obvious from the information given).
  https://www.secasa.com.au/pages/the-victorian-register-of-sex-offenders/

No research has been undertaken into the effectiveness of these new provisions.

Resourcing questions:

We respond to these as a 'set' given that they presuppose that the NPRCSO is going ahead. As we demonstrate, the register would not achieve what it aims to achieve: it may well be counterproductive. It should not go ahead.

Suffice to say that experience and evidence strongly indicates that there will be significant law enforcement resources required to maintain the register, that there will be legislative problems across jurisdictions (despite the states and territories already being purportedly "signed up" to the non-public registers), that the privacy implications of offenders and their families as well as victims will be significant, and that the data are likely to contain errors (as evidenced by such databases in the USA). The law enforcement resources (police) would be much better allocated to:

- existing precautionary and educational activities. If no such activities exist in any jurisdiction, they should be introduced, based on a national model material prepared centrally;
- better education and training for police officers in the field of child sexual abuse;
- more intense investigations of allegations;
- better exchange of information and patterns across police forces; and
- undertaking of much more research centrally and by state and territory academics into the broad field of child sexual abuse, and specifically into mechanisms to "combat" the problem and how the national and other governments could best assist.

Legal and privacy questions:

In relation to legal and privacy implications, we observe that the government is far better placed than we are to pay for top quality advice from contracted experts in these fields. However, some aspects should obviously be of concern to the government.

The government creating such a register could be interpreted as malfeasance should any criminal or civil action result from inadvertent or malicious misuse of such a register (eg, if anyone, or a group, acts inappropriately on data sourced from the register). A similar danger exists in relation to any person wrongly named on the database who may be affected, or who remains on the database beyond the period prescribed by a sentence.

There is a danger that states and territories become liable for data held, managed and manipulated by the federal government if the data is erroneous, or not properly maintained, or inadvertently or maliciously manipulated.

> **CLA asks: Has the potential harm to victims of sex offences been considered?**
> There is potential for harm to be caused to victims of child sexual assault from the online publication of offender details, especially because most child sex offending occurs within families or by those known to families (75-85%). So a child's name could be revealed or the family members could be identified with possible consequences of stigmatisation and harassment (Bravehearts, 2017). There should be a clear option for victims to opt out of having their case's details promulgated on an online register if they choose.

In terms of privacy, no Australian Government department has yet been able to guarantee privacy of its data. To the contrary, Departments and agencies such as Defence, Centrelink, Health, Medicare and others have demonstrated they are incapable of securing data. As well as public leaks, such bodies regularly (usually every year) detect and punish employees for unauthorised access to information against public service and agency rules: that behaviour is unlikely to be any different in relation to a sex register.

To answer the specific question, even with unlimited people-power and financial resources, the government (and governments) would be unable to "ensure" data quality and accuracy of information. Also, the privacy implications for people wrongly identified by the register are obvious, and will be extremely costly to government in compensation claims when (not if) the system fails and/or is breached.

Vigilantism:

As has occurred in the UK, there is clear and obvious potential for those with similar names, residential locations or likeness to the photographic images depicted to be targeted as a result of online publication of their details (Bravehearts, 2017). This occurred in Britain following newspaper publication of images and personal details against five "innocent" individuals who shared characteristics with the publicised offenders (Bravehearts, 2017). Clearly, such vilification can extend to the family members or associates of registered offenders.

According to Bravehearts (2017, p. 3) one released offender was "hounded out of more than 10 hotels/motels and 3 homes/apartments after authorities notified his neighbours".

While the study based on the WA register says that there was only one vigilante offence in the early period of the scheme, elsewhere in the article the authors note that one of their police interviewees reported harassment of a publicised sex offender who had to move house, and a second police interviewee recalled local distribution of an official letter about another offender (Whitting, et al., 2017).

As these authors concede their study was based on interviews with police (as well as analysis of police data), but did not interview released offenders about their concerns and experiences; problems in WA are therefore highly likely to be severely understated in the study (Whitting, et al., 2017). It is self-evident that former offenders will not report or will under-report any harassment experienced to police, as they generally wish to avoid police interaction as much as possible.

> **CLA notes: New legislation is likely to be required in each jurisdiction**
> It is also instructive that in the USA and for the WA scheme, special criminal vigilantism legislation had to be drawn up as well as laws surrounding misuse of the information (Bravehearts, 2017).

CLA is aware that the Whitting study (p. 339) reports that it did not find support in WA for the proposition that the local register "significantly increased the workload of the police responsible for its management". However, police participants in the study claimed that there was an increased workload in setting up the scheme and that "they were inundated with enquiries when the website was launched" (p. 345).

Questions relating to the details of a register:

> **CLA asks: what – precisely – is the model being proposed?**
> It is not clear from the Consultation Paper whether the proposed National Register is intended to mirror that which is in operation in WA, with its three-tier system, which has been the subject of one very limited and inconclusive research study (Whitting, et al, 2017).

There are different legislative provisions in various jurisdictions about the length of time people spend on registers. How will the "national" register overcome these problems? Will a national register hold responsibility for, and guarantee, removal of a person's data – according to law – on the national register only, or on any other register?

The answer to such a dilemma is to create a national system: however, national systems for bail, sentencing, parole and a host of other legal matters (including a Criminal Cases Review Commission to address wrongful convictions) are of much higher priority than a national legal reform based solely on sex offenders, whose details police fully hold.

An idea was apparently floated in the Minister's media statements, after the Consultation Paper had been issued, that only postcodes would be identified, not residential addresses, and that vigilantism would therefore not occur. CLA comments that, with a name and/or photo, it would likely be a matter of hours only – given the ubiquitousness of social media – before anyone on the sex offender registry would be identified as to residential address, workplace, friends, relatives, meeting places, activities, etc.

In identifying someone so quickly via social media, CLA hopes that;

a. the identification is correct, and the person picked out is not some totally innocent person of the same name and close likeness; and
b. that the child who was sexually abused is not collateral damage of social media identification, given that roughly 75% of child sex offenders are relatives or family friends.

Periods of registration

"The period of registration ranges from 8 years to life registration and is generally based on the seriousness of the convicted offence(s) and other considerations such as multiple or repeat offending". – Page 2, Point 7

CLA believes that, in Queensland for example, the shorter period is for five years from custodial release. The Department of Home Affairs ought to have correct information, and ought to provide correct information in any Consultation Paper.

Again, the fact that the Department's Consultation Paper is so shoddy is an indication of haste in preparation, and that this proposed register has received minimal proper policy consideration, and possibly no consideration as to practical difficulties. For a national register to operate, either laws, sentences and terms of registration will need to be aligned, or the actual data records will require incessant changes…and each time the main database is accessed provides increased potential for errors.

Types of offenders:

> **CLA asks: Which offenders will be subject to online notification?**
> It is important to note that one, limited study of the WA scheme found (as has been widely claimed also for the US) that, even though it was set up to target high-risk repeat and dangerous offenders, about 25% of those whose identifying details were place online were classified as low to moderate risk (Witting, et al., 2017) and thus there is a net-widening process already occurring in that jurisdiction.

The consultation paper is unclear about precisely which types of offenders will be extracted from the current non-public registers and placed into the NPRCSO.

As observed, US schemes have 'blown out' in terms of numbers and demonstrated a net-widening effect despite having a remit to include high-risk offenders only.

In the WA study it was claimed that "only five percent of reportable offenders were subject to notification" (Whitting et al., 2017) and so the need for clear prescription that it could (if proceeded with) be limited to "released, adult, dangerous, repeat child sex offenders" (Bravehearts, 2017, p. iv).

A register should not be corrupted by people who are highly unlikely to commit any future child sex offence, otherwise the reason for a register's existence is based on a false premise. For example, someone age 80, trending senile and/or in poor health, who was charged and convicted of historic child sex offences 30-60 years earlier, is unlikely to pose the same risk as someone in their teens or early twenties whose offending was in recent years. A one-size-fits-all sex register conflates the pair as equal risk to a casual internet inquirer…and to the media.

There have been claims that the WA scheme has not "impacted adversely on offenders' psychological well-being" but the statement is only from the perspective of police interviewees: there was quite a deal of concern, panic and depression experienced by offenders (Whitting, Day, & Powell, 2017, p. 345).

Exceptional categories:

A register should not be able to be the vehicle for a mass retribution campaign against high-profile people. For example, if Cardinal George Pell was to be convicted and sentenced, his residential location and details would need to be included on the proposed register. This would leave him open to harassment from people on religious bigotry grounds without any connection to his alleged sexual offending, and to people not living in his area.

Given the significant number of high-profile Australian public personalities against whom allegations of inappropriate sexual behaviour and abuse have been made (eg, actors/media personalities), or convictions recorded (eg, performer Rolf Harris in the UK, who would presumably be listed on the proposed register if he returns to WA), this could be a concerning issue. If such people are to be excluded from a register for reasons of their public fame, then such a register would be inherently unfair to all others who may be on it. Selective placement on the register, or selective data available, would comprise a double punishment to some. Unfair "justice" is no justice at all.

Juvenile offenders:

"Information about juvenile child sex offenders would not be made public while the offender remains under the age of 18".

– Types of offenders. Attachment A, Page 4 of 5.

CLA is aware, even if the Minister and the Department are not, of serious issues where state-versus-federal legislation has created problems for juveniles under the sexting laws for sending inappropriate self images. Some juveniles have ended up on sex offender registers.

Under the proposed register as apparently outlined, once a juvenile sexting offender reaches 18 , he or she could be placed on the national register for an offence of exchanging consensual images in breach of the Telecommunications Act. While Victoria has made amendments to address this problem, other states and territories have not.

The entire area of juveniles potentially becoming registered sex offenders on a national database – because of their youthful sex exploration – is fraught with potential dangers. No consideration appears to have yet been given to the physical, mental, reputational and community minefields potentially involved in this aspect of a register.

Retrospective?

Also not dealt with in the Consultation Paper is whether entry on a national register will be retrospective: that is, whether people who have previously offended, and who have been convicted and have served their sentences completely, will suddenly find they are subjected to an extra punishment of being named on the proposed NPRCSO.

There is firm presupposition against retrospective legislation in the Australian Parliament. If the proposed laws to create the register, and the provisions and regulations around it, are

made retrospective, there would be a serious breach of human rights and civil liberties. The Australian Parliament should be alert to ensure no aspect of what is proposed is retrospective in effect in any way.

Effectiveness questions:

> **CLA notes: no effect on recidivism**
> One US study (Schram & Milloy, 1995) revealed reoffending was the same for those subject to notification versus those who were not (19% vs 22%) (see Bravehearts, 2017, p. 6).

A register such as that proposed is location-specific to the last known address of the registered sex offender. As others have pointed out, there is nothing to prevent offending in other locations or offending while travelling or in transit, which obviates the fundamental premise of the register.

As CLA said at the outset, the primary measure of potential effectiveness should occur BEFORE a register is implemented*. The Consultation Paper acknowledges community notification registers in WA and SA, yet there has been no formal evaluation provided in the Consultation Paper in terms of the success, or otherwise, and problems, if they exist, associated with the now-operating registers. A suite of studies has been conducted but these do not constitute any kind of rigorous evaluation of the schemes.

* such baseline research would be required now, in advance, for any valid follow-up research that was to occur in future years, if this proposal proceeds.

For example, the study on the WA model suggests that there was initial public interest and use with "182,475 hits on the community notification website between 15 October 2012 (when it went live) and 27 February 2015" (Whitting, Day, & Power, 2017, p. 346). While trends over time were not able to be captured in this research, it is suggested that the hits declined significantly, which strongly indicates an initial prurient public interest with little, if any, direct assistance provided by the website.

Importantly in the WA case, "only 4 applications** had been received, none of which had led to a disclosure" (Whitting, Day, & Power, 2017, p. 345). This underscores the notion that there can be prurient public interest in looking up one's local area, yet an extraordinarily low level of direct action by parents with genuine concerns.

** The WA scheme involves people who find something that concerns them on the register/ internet seeking a formal disclosure of non-public information.

> **CLA notes: Little use of registers**
> Despite seemingly strong public support (via non-rigorous opinion surveys) for public notification there is little use of such systems, with one cited figure being as low as 3% who reported suspicious activity to police over a one-year period (Whitting, et al., 2014), and this was in the early 'honeymoon' period of that newly-established register. That percentage should be compared with the people who reported suspicious activity before the register was set up.

If proper research is undertaken, CLA believes this register proposal will be abandoned… UNLESS there is a motive ulterior to combating child sexual offences (see summary).

CLA believes, based on the available evidence, that research will certainly demonstrate a register of the type proposed is:

- useless as far as delivering any additional benefit to police holding details of released sex offenders, other than for citizens who wish to act as vigilantes;
- counter-productive, for the reasons outlined;
- a false comforter, when a register cannot "combat" sexual or any other crime;
- riddled with dangers as to data leaks, quality, accuracy and timeliness;
- potentially extremely costly in damages awards against national and state/territory governments; and
- a sideshow, a bread-and-circuses response to what CLA agrees is a very serious problem.

CLA notes:
Given that most of the literature on sex offender registers is based on the American experience, great caution must be exercised when extrapolating analysis to Australia. For that reason, we need our own, up-to-date research.

CLA recommends a proper government-funded but independent and well-resourced evaluation of existing state initiatives, including new research on the WA scheme and Victorian developments, before any further consideration of a federal register.

CLA notes: Select the best overseas example to follow
If changes are to be made to the current system of non-public registration for sex offenders, then it is strongly recommended that the Australian government considers adopting the limited and proactive notification system now operating in & Wales and Scotland rather than opting to mimic the American model which, research shows, appears to be ineffective. The British scheme (often called Sarah's Law) was piloted from 2008, is now a decade old and has been properly evaluated by research.

"Evaluations of the pilot scheme in both England and Scotland suggested limited and controlled disclosure of information to community members has fewer negative consequences than blanket disclosure" (Bravehearts, 2017, p. 11). There is tentative indication of greater compliance by offenders under this scheme as well. This strategy aligns with the third tier of the WA scheme where a parent or guardian can proactively seek information about someone over whom they have concerns (Whitting, et al., 2017).

CLA asks: What action is the government proposing on the existing 'rogue' registers?

An important consideration is whether the Australian Government proposes taking any action on the (often salacious, incorrect and alarm-inducing) privately-run online sex offender websites currently available. The Consultation Paper is silent on this issue.

In regards to the proposed register, what could realistically be done by government if private citizens create their own registers, for example as wiki-type sites, using data gleaned from the public register but holding the information online beyond the length of time stipulated in law that an offender should be on a register? What can realistically be done if errors are introduced (accidentally or maliciously) into those private sites? What could be done if the Minister or his colleagues were listed on a private site as a child sex offender using the postcode of one of their residential or other addresses?

CLA's overall recommendations:

a. **Defer the register proposal until the 46th Parliament, a matter of months.**

b. **The Department of Home Affairs commissions independent research from reputable academics in Australia. The research should examine, analyse and report on the WA situation in detail and recent developments in Victoria, and also cover international examples of such registers.**

c. **Investigate action that can be taken against the dangerous, 'rogue' registers.**

d. **Undertake research immediately on the most effective ways to combat child sex offending, compared to or in conjunction with a register.**

e. **Allocate future funding on the basis of evidence of the best chance of success options.**

– ends CLA recommendations

General CLA comment:

The 'Consultation' Paper appears to equate physical child sexual abuse with child exploitation material in the digital sphere. It seems to do so to be able to propagate alarmist figures without evidentiary support. See Page 1, Point 2.

See Appendix A and Appendix B for detailed analysis of the statistics and mechanics of this "consultation" process. CLA demonstrates how the quoted figures are inappropriate, the sources (and their selection) are suspect, the email chain/timing is questionable and the overall impression is of a hastily-fabricated, poorly handled process aimed at meeting a political need. That the Australian government would treat such an important issue in such a shoddy manner is a serious indictment on the current political ethos.

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Appendix A:

Statistics and sources:

The statements / figures provided in the Department of Home Affairs' Consultation Paper are unreliable, to say the least. For example, under Introduction 2. it is claimed that:

> *Child sexual abuse and exploitation has serious impacts on many victims and survivors. As many as 1.4 million adult Australian identify as having experienced sexual abuse or exploitation as a child.*

In the Consultation Paper, the reference for the source of that claim was given as the WA Department of Community Services. However the WA Government denied being the source. When the Child Exploitation Team of the Department of Home Affairs was contacted for the correct reference source, it provided the following:

> We apologise for the confusion with references in the consultation paper. The inadvertently missing reference 1 on page 1 is to *Australian Bureau of Statistics, Personal Safety Survey, Australia, 2016*.

On examining the 2016 ABS survey quoted, there is no category for "sexual abuse or exploitation". In fact, the survey does not cover "exploitation".

Civil Liberties Australia notes, in relation to the "1.4 million Adult Australians" figure, that the ABS paper ***quoted by the Department of Home Affairs*** states the following:

> **"DATA USES**
> "The abuse module was primarily designed to be used in conjunction with information collected in other parts of the survey – that is, to analyse the relationship between experiences of child abuse before the age of 15 and later experiences of violence as an adult. It was **not designed to measure the extent of child abuse**, in order to do this a separate survey would be required.
>
> **"Abuse data cannot be used to examine:**
> * Current rates of child abuse, and whether rates have increased or decreased over time." (Emphases added)
>
> http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4906.0.55.003main+features172016

NOTE:
No checkable reference is given for claim that "By the end of 2018, the Australian Federal Police is on to track to receive more than 20,000 reports of child exploitation material across Australia."

The Minister gives no checkable reference for his media release claim that: "Reports of child sexual abuse and exploitation in Australia continue to rise – reports to the Australian Federal Police soared by 77 per cent in 2018 over 2017." CLA notes that the Department and Minister appear to have to joined "child sexual abuse" and "child exploitation material" in order to be able to quote alarmist figures. We also note that child exploitation material is not discussed in the Consultation Paper as part of the register proposal. In response to our request for more details, DHA provided this on 9 January:

> "…our most recent statistics are that the AFP received a 77% increase in reports of child exploitation material from 2017 to 2018. The AFP figures should be used as a guide only as reports of child exploitation material do not necessarily reflect the number of investigations or convictions nationally. At this time, we are not able to provide further detailed statistical information… " – Child Exploitation Team, email 2.54pm 190109.
> NB: the '77% increase" (itself a questionable figure) relates to child exploitation material, not child sexual abuse.

Appendix B:

‘Consultation’:

CLA believes that the approach is sham public consultation on an issue as important as the government states this is.

We also note that such a proposal was not publicly aired by the government during 2018. The current “urgent” initiative is clearly the result of sudden eruption in the final hours leading up to Christmas. The first emails to state and territory Ministers and other stakeholders appear to have been received in the dying hours of Friday 21 December, just as most enterprises were shutting down for the festive season.

The first general ‘consultation’ emails appear to have been sent out by the Department of Home Affairs (DHA) around 10am on 3 January 2019.

The errors and shabbiness of the emails and documentation show little attention to detail, and completely unconscionable haste. In many ways, the process so far has been a travesty of policy development and ‘consultation’ by the government, and is an insult to the Australian people.

So poor has been the process – and so intense the confected urgency – that the question arises: does the Minister have extraneous motivation for his undue haste? Is this process being hastened to lay the groundwork for electioneering, or is it to secure the vote of Senator Hinch who is well known for “outing” people in the media and also in parliament, contrary to customary parliamentary standards. (Hinch has been jailed for having contempt for the law).

The email correspondence from Ministerial Support in the Dept of Home Affairs said:

> *“The Minister for Home Affairs will issue a media release announcing the consultations shortly.*
>
> *– email 1.14pm 21 Dec 2018*

“Shortly” turned out to be 19 days away: 9 January 2018.

In the media release of that date, Minister Dutton said:

> ”It (the register) would have a strong deterrent effect on offenders and ensure that parents are not in the dark about whether a registered sex offender has access to their children.”

The Minister has nowhere provided any evidence whatsoever that the first phrase is true.

CLA believes the Minister’s use of the phrase “whether….has access to their children” is so wild, irresponsible and emotive a statement that the Minister should formally withdraw it. It is beyond event the worst previous examples of fear-raising by Minister Dutton in relation to terrorism issues, such as his “people are afraid to go out for dinner in Melbourne” statement.

ENDS