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Committee Secretary
Parliament of Victoria
Legislative Council, Legal and Social Issues Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

By email only: CSOInquiry@parliament.vic.gov.au

Dear Committee Secretary

Inquiry into the management of child sex offender information

The Office of the Victorian Information Commissioner (**OVIC**) is pleased to provide a submission to the Legal and Social Issues Committee's (**the Committee**) inquiry into the management of child sex offender information (**the Inquiry**).

OVIC is the primary regulator for information privacy, information security and freedom of information (**FOI**) in Victoria, administering the *Privacy and Data Protection Act 2014* (Vic) (**PDP Act**) and the *Freedom of Information Act 1982* (Vic) (**FOI Act**).

Providing fair public access to information while ensuring its proper use and protection is crucial to earning and maintaining public trust and confidence. Given OVIC's jurisdiction noted above, OVIC's submission considers the storage of, and access to, information regarding convicted child sex offenders (**offenders**)¹ by outlining:

- information collected from offenders under the *Sex Offenders Registration Act 2004* (Vic) (**SOR Act**), how it is stored, and who currently can access it;
- considerations for storing and managing information by Victoria Police under the SOR Act; and
- considerations for broader access to information.

For the purpose of this submission, a reference to 'information' includes a reference to offenders' personal information.

¹ This relates to points a) and c) of the Inquiry's terms of reference, available here: <https://www.parliament.vic.gov.au/lpic/article/4323>.

Collection, storage and access to information under the SOR Act

Information collected about offenders

The SOR Act requires offenders to keep police informed of their whereabouts and provide other personal information for a period of time to reduce the likelihood of reoffending, facilitate the investigation and prosecution of any offences they might commit, and prevent offenders from working in child-related employment or volunteer work.² The SOR Act also creates the Sex Offenders Register (**the Register**), maintained by the Chief Commissioner of Police.³

The SOR Act requires offenders to provide specific personal and sensitive information to Victoria Police each year within the reporting period.⁴ Offenders must also update information with Victoria Police within specific timeframes if there has been a change (for example, if they have a new home address).⁵ Victoria Police stores and maintains known offender information on the Register, including:

- name and other identifying particulars of the offender;
- details of the offence of which the offender was found guilty or with which the offender has been charged;
- the date on which the offender was sentenced for the registrable offence;
- the date on which the offender ceased to be in government custody;
- details of any prohibition order or registration order;
- any information reported under Part 3 of the SOR Act, which includes:
 - the offender's name, date of birth, address, telephone number, email address, Internet details (for example, Internet provider and usernames for online platforms such as instant messaging), employment information, motor vehicle information, tattoos or distinguishing marks, whether the offender was found guilty of a registrable offence in another jurisdiction, and the name of each child the offender has contact with, including the child's age, residential address and telephone number; and⁶
- any other information the Chief Commissioner of Police considers appropriate.⁷

Offenders also have to provide Victoria Police with copies of identity verification documents (such as a drivers licence) and a passport-type photograph,⁸ or police may take the offender's fingerprints or a finger scan.⁹ Police may also photograph the offender, including parts of the offender's body that may contain tattoos or distinguishing marks.¹⁰

² Section 1(1)(a) of the SOR Act.

³ Section 62(1) of the SOR Act.

⁴ Sections 14(1) and 26(1) of the SOR Act; Personal information under the PDP Act is defined in section 3 of the PDP Act and includes information or an opinion (including that forming part of a database) that is recorded in any form about an individual whose identity is apparent or can be reasonably ascertained from the information or opinion; similarly, sensitive information under the PDP Act is defined in Schedule 1 and includes information (that is also personal information) such as criminal record information, membership of political, professional or trade association, membership of a trade union, and sexual practices or preferences.

⁵ Section 17 of the SOR Act.

⁶ Section 14(1) of the SOR Act; this list is not exhaustive.

⁷ Section 62(2) of the SOR Act.

⁸ Section 26(1) of the SOR Act.

⁹ Section 26(2) of the SOR Act; in 2018-19 Victoria Police took almost 3,000 samples from offenders which were loaded into the National DNA database; Victoria Police Annual Report 2018-19, page 16, <https://www.police.vic.gov.au/annual-report>.

¹⁰ Section 27A of the SOR Act.

Access to information on the Register

Access to the Register is currently restricted to certain persons or classes of persons authorised by the Chief Commissioner of Police. However, Victoria Police may share information on the Register with other persons in certain circumstances.¹¹ For instance, the Chief Commissioner of Police and authorised persons may disclose personal information on the Register:

- to the Registrar under the *Births, Deaths and Marriages Registration Act 1996*;¹²
- to the Secretary to the Department of Justice and Community Safety (**DJCS**) for the purpose of administering the *Working with Children Act 2005*;
- to the Firearms Appeal Committee under the *Firearms Act 1996*;¹³
- to a government department, public statutory authority or court¹⁴ for specified purposes;¹⁵
- to the Australian Crime Commission for entry on the Australian National Child Offender Register;¹⁶
- for the purpose of Division 10 of Part 3 of the SOR Act (regarding publishing information about offenders who fail to comply with reporting obligations);¹⁷ and
- for the purpose of section 66ZZC of the SOR Act (regarding disclosing personal information about prohibition orders and registration orders).¹⁸

The Chief Commissioner of Police may also provide to any person de-identified information about offenders on the Register.¹⁹

The current scheme therefore appears to limit access to offender information to persons who require the information to fulfil statutory obligations. We discuss broader access to offenders' personal information later in this submission.

Storage and management of offender information

This part of OVIC's submission considers the Inquiry's term of reference regarding the storage of data and information regarding offenders by Victoria Police under the SOR Act.

¹¹ Section 63(1) of the SOR Act.

¹² Section 70I of the SOR Act authorises information sharing between the Secretary and the Registrar.

¹³ Section 63 of the SOR Act; In sharing information with these persons, the Chief Commissioner of Police must develop guidelines in relation to accessing and disclosing personal information in the Register, section 63(2) of the SOR Act.

¹⁴ Independent Broad-based Anti-corruption Commissioner (**IBAC**), *Report to the Minister for Police pursuant to section 70N of the SOR Act*, 1 January 2015 to 31 December 2016; page 20 of this report notes these terms are interpreted broadly to include both Victorian and interstate bodies.

¹⁵ Section 64(2) of the SOR Act.

¹⁶ Section 64(3) of the SOR Act.

¹⁷ Section 64(3A) of the SOR Act.

¹⁸ Section 64(3B) of the SOR Act.

¹⁹ Section 64A of the SOR Act; IBAC's Report notes on page 21 that de-identified information was provided to one external consultant between 1 January 2015 and 31 December 2016.

Data quality

According to the Victorian Auditor General Office's (**VAGO**) report on Managing Registered Sex Offenders, information on the Register is not contained in one list or source.²⁰ Instead, the Register comprises information held across multiple systems and locations (which, in 2019, could not be integrated) including:

- Sex Offender Registry (**SOR**) database (this is being replaced with the National Child Offender System (**NCOS**), which is hosted and administered by the Australian Criminal Intelligence Commission (**ACIC**) but updated by Victoria Police and other police forces);²¹
- Law Enforcement Assistance Program (**LEAP**);
- Interpose (VAGO notes Interpose does not work well and Victoria Police members must still use other tools such as spreadsheets and calendars to track action items and case manage offenders);²²
- Offender Management Team database;²³ and
- VAGO also notes around 7,000 hard copy RSO records stored in filing cabinets were in the process of being digitised in 2019.²⁴

VAGO notes Victoria Police case managers and the SOR Unit manually enter data to maintain and update each system, with some information being duplicated across multiple systems.²⁵

Information Privacy Principle (**IPP**) 3 under the PDP Act requires organisations (including Victoria Police) to take reasonable steps to make sure that the personal information they collect, use or disclose is accurate, complete and up to date. Manually managing information across separate systems increases the risk of incomplete, inaccurate, inconsistent or outdated data because it requires Victoria Police to access multiple systems to update offender information. The more systems involved, the higher the risk that the information may not be updated properly or efficiently,²⁶ which increases the risk of privacy issues arising.

To minimise risk to data quality, VAGO notes Victoria Police uses unique identifiers to trace offenders across the SOR database and LEAP.²⁷ This has resulted in only small data inconsistencies across the two systems, which has not affected offender management.²⁸ While it appears data consistency between the SOR database and LEAP is relatively good, the use of unique identifiers appears to only be used for these two systems. We note that the SOR database is being phased out and Interpose is due to be replaced in 2020,²⁹ which means the stated consistencies may be less relevant in the future. This suggests there is still a moderate risk of inaccurate or incomplete information across the other systems being used to record information on the Register.

²⁰ Victorian Auditor-General's Office, *Managing Registered Sex Offenders, Independent Assurance Report to Parliament 2019-20* (August 2019), page 26 (hereafter referred to as the 'VAGO Report'); information referred to in VAGO's report was provided by Victoria Police for the purpose of conducting the audit.

²¹ The VAGO report notes on page 54 that NCOS cannot be easily amended to suit Victoria's specific legislative environment and to do so requires ongoing negotiation with ACIC particularly as the legislation is amended. This results in NCOS not always having the required fields for Victoria Police to input and update which impacts the completeness of data on NCOS.

²² VAGO report page 56.

²³ VAGO report page 26.

²⁴ VAGO report page 26.

²⁵ VAGO report page 55; VAGO also notes the SOR unit must employ a full-time staff member to quality check the data to ensure it is consistent across all systems.

²⁶ VAGO notes on page 55 that manual data entry across multiple systems is inefficient and introduces potential for errors or inconsistencies.

²⁷ VAGO Report pages 57 and 77.

²⁸ VAGO report pages 57 and 77; for example, the report notes on page 77 that 90.2% of records across the SOR database and LEAP database had matching dates of birth and names.

²⁹ VAGO report page 26.

The nature and circumstances of becoming a registered offender is sensitive and significant for the offender and their proper management. Relying on incorrect information could detrimentally impact how offenders are managed and how future offences are investigated, making it imperative that information is kept up to date and complete. VAGO's report notes each Victoria Police system used to store information is used for a specific purpose, but none can conduct all activities to manage offenders, and the systems are not integrated.³⁰ OVIC sees a need to ensure information is managed consistently across each system, and recommends further inquiry be conducted into the feasibility of standardising the approach to information management.

Information security

In addition to increasing the risk to data quality, maintaining information on multiple systems has information security impacts too.

VAGO's report notes the use of multiple systems arose because the SOR Unit's methods for storing offender information evolved over time to suit needs.³¹ While this evolution appears necessary for Victoria Police to fulfil its various law enforcement functions, maintaining disparate systems with different information for a range of purposes may result in different, and therefore inconsistent, security controls across each system. Even within each system there may be inconsistencies around security and access. For example, VAGO's report notes while Interpose allows Victoria Police to control which members have access to certain files, there is inconsistency regarding folder structure and access levels, which means offender information may be accessed by members who do not need it.³²

Maintaining multiple systems can also increase the risk of malicious or unauthorised access to information by increasing the number of systems and access points for hostile actors to manipulate.

Victoria Police has information security obligations under the Victorian Protective Data Security Framework (**Framework**) and the Victorian Protective Data Security Standards (**Standards**).³³ This means Victoria Police must safeguard its information assets and systems in a way that is proportionate to threats and supportive of business outcomes, in accordance with the Framework and Standards. For example, understanding the value of offender information and how to protect it will help ensure consistency in identifying and assessing criteria for managing the information across its lifecycle to maintain its confidentiality, integrity and availability.³⁴

Broader use and disclosure of offender information beyond the current information sharing scheme

This part of OVIC's submission considers the Inquiry's term of reference regarding investigating the circumstances in which details of convicted child sex offences can be made public. In doing so, we consider the disclosure of personal information and largely discuss impacts on information privacy.

For this part, we consider the disclosure of information from Victoria Police to individual members of the public as a different concept to the public release of such information. *Disclosure* in this sense refers to the provision of information by Victoria Police to a member of the public and *release* refers to wide dissemination (for example, on Victoria Police's website with no limits or conditions).

³⁰ VAGO report page 54.

³¹ VAGO report page 54.

³² VAGO report page 56.

³³ For more information about the Framework, visit OVIC's website here: <https://ovic.vic.gov.au/data-protection/framework-vpdsf/part-one-introduction-to-the-framework/>.

³⁴ OVIC, *Victorian Protective Data Security Standards, Standards and Objectives Version 2.0*. OVIC, *Guiding Principles Victorian Protective Data Security Framework and Standards*, page 3 (<https://ovic.vic.gov.au/wp-content/uploads/2020/02/Guiding-Principles-V1.0.pdf>).

Any infringement on the right to privacy must not be arbitrary

Amongst other things, in investigating the circumstances in which details of offences can be disclosed or released, OVIC encourages the Committee to consider individuals' right to privacy and whether any interference with that right is justified.

To the extent that an offender's or victim's identity is apparent or can be reasonably ascertained from offence details, there is a presumption that at least some of this information will remain confidential as it relates to offenders' and victims' privacy.³⁵ In Victoria, the right to privacy is enshrined in the *Charter of Human Rights and Responsibilities Act 2006 (the Charter)*, which outlines a person has the right not to have his or her privacy unlawfully or (even if lawful) arbitrarily interfered with.³⁶ Further, information privacy is protected under the PDP Act, which provides for the responsible collection and handling of personal information in the Victorian public sector.³⁷

The Charter and the PDP Act evince the importance placed by Parliament on protecting the right to privacy. The reference to arbitrary interference with privacy in the Charter indicates that even where it may be lawful to interfere with an individual's privacy, it is still nonetheless prohibited if that interference is arbitrary.

Therefore, in investigating the circumstances in which the details of child sex offences can be disclosed or released, there must be a specific need to make that information public and interfering with offenders' privacy must be necessary and proportionate for the prevention of crime or in the interests of public safety (in particular, child safety). For example, there should be evidence to show that disclosing information to the public is necessary to protect the public from crime, or in this context, to protect a child from being the victim of a crime.³⁸ Whilst the protection of children is of the highest public importance, other consequences of disclosure or release must also be considered to ensure a fully informed decision is made.

Appropriate limits on disclosure of personal information

Offenders must provide a significant amount of personal information to Victoria Police under the SOR Act, both initially, and each subsequent year within the reporting period. The amount of personal information to be made public is relevant in determining the necessity and proportionality of disclosure or release.

For example, the more personal information is disclosed, the stronger the public interest needs to be to justify the interference with privacy. De-identified information is more likely to be appropriate to disclose from a privacy perspective because individuals theoretically cannot be identified.³⁹ Notably, this power already exists in section 64A of the SOR Act, which authorises the Chief Commissioner of Police to disclose de-identified information regarding one or more offenders on the Register. Conversely, providing full access to information in the Register would require significant evidence to demonstrate its necessity.

³⁵ Confidential in the sense that it will not be publicly accessible.

³⁶ Section 13 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic); Charter of Human Rights and Responsibilities Bill 2006, Legislative Council, second reading speech, page 1292
([https://hansard.parliament.vic.gov.au/?IW_DATABASE=*&IW_FIELD_TEXT=HOUSENAME%20CONTAINS%20\(ASSEMBLY\)%20AND%20SPEECHID%20CONTAINS%20\(49793\)%20AND%20SITTINGDATE%20CONTAINS%20\(4%20May%202006\)&Title=CHARTER%20OF%20HUMAN%20RIGHTS%20AND%20RESPONSIBILITIES%20BILL&IW_SORT=n:OrderId&LDMS=Y](https://hansard.parliament.vic.gov.au/?IW_DATABASE=*&IW_FIELD_TEXT=HOUSENAME%20CONTAINS%20(ASSEMBLY)%20AND%20SPEECHID%20CONTAINS%20(49793)%20AND%20SITTINGDATE%20CONTAINS%20(4%20May%202006)&Title=CHARTER%20OF%20HUMAN%20RIGHTS%20AND%20RESPONSIBILITIES%20BILL&IW_SORT=n:OrderId&LDMS=Y)).

³⁷ Section 1(a) of the PDP Act.

³⁸ As an example, the UK Government prepared a privacy impact assessment regarding its disclosure scheme, which outlines the legal considerations for disclosing offender information. One consideration is that interfering with the rights of the offender under Article 8 of the European Union Convention of Human Rights must be necessary and proportionate for the prevention of crime to justify the disclosure of otherwise confidential information; Home Office, Child Sex Offender Disclosure Scheme Privacy Impact Assessment, page 7

(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97874/privacy-impact-assessment.pdf).

³⁹ This is provided the information has been properly de-identified, which can be difficult. The risk of re-identification often remains, particularly where the information can be matched with other information to reveal an individual's identity, which is easier to do when information is publicly released.

Only information that is necessary to prevent harm to children should be disclosed.

Related to the amount of personal information that should be disclosed, the number of offenders to whom the disclosure scheme should apply is also relevant. Reporting obligations under the SOR Act apply to all offenders, regardless of their risk to the community.⁴⁰ As of 2018-19, there were 8,349 people recorded on the Register.⁴¹ Therefore, the Committee should consider whether all or only certain kinds of offenders should be subject to a public disclosure scheme. To limit the amount of personal information disclosed, we suggest limiting the types of offenders about whom information could be disclosed. One potential example is provided by Western Australia (**WA**), where individuals may apply for access to photographs of certain offenders in their locality, including:

- high risk serious sexual offenders subject to supervision orders under the *High Risk Serious Offenders Act 2020* (WA);
- serious repeat reportable offenders; and
- persons convicted of an offence punishable by imprisonment for five years or more and there is concern that this person poses a risk to the lives or sexual safety of one or more persons or persons generally.⁴²

Appropriate limits on access and use of personal information

There are different ways information could be disclosed to the public, including release via a public register (for example, on a website without application), a new information disclosure scheme (for example, upon an application) or existing information disclosure schemes (such as an application under the FOI Act). The sensitivity and significance of the information on the Register and the purpose for which it is collected and maintained means there should be limits on who may access the information, when, and broadly how individuals may use that information.

For example, with a public register available on a website with no limits or conditions on access, anyone may access information at any time and could use it for any purpose for any period of time. This could result in individuals accessing and using the information for purposes other than ensuring child safety. Further, while offenders may only be required to report their information to Victoria Police for a period of time, if their information is made public without limit, that information could be used for longer than the reporting period.

To mitigate some of the risks to privacy with a public register, consideration should be given to:

- **Limiting who may access the information** – There should be limits on who may access information on the Register to those persons who need to know to prevent harm to children. If the purpose of establishing a public register is to enable parents and guardians to determine whether their child may be in contact with an offender, then access to the Register should be limited to those persons upon application, rather than providing access to a publicly available register. Further, wide dissemination of offender information could result in offenders failing to report or update their information altogether.⁴³

⁴⁰ Registration is automatic for adult offenders who commit Class 1 or Class 2 offences (sexual offences against a child), sections 6 and 7 of the SOR Act. Registration is discretionary for only some types of offenders such as an offender who is under the age of 18, an adult sentenced for certain sexual offences against an adult, and any person who commits any offence where the court finds the offender poses a risk to the safety of one or more persons or to the community, section 8 of the SOR Act.

⁴¹ Victoria Police, *Annual Report 2018-19*, page 79, <https://www.police.vic.gov.au/annual-report>.

⁴² Community Protection Western Australia, *Local Search Application*, <https://www.communityprotection.wa.gov.au/LocalSearch/LocalSearchWithoutMdl>.

⁴³ United Kingdom Home Office, *Keeping Children Safe: Your Right to Ask Communications Guidance*, page 20 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97895/keeping-children-safe-guidance.pdf).

For example, the United Kingdom's (UK) child sex offender disclosure scheme allows parents, carers and guardians to formally ask police to tell them if a specified person has a record for child sexual offences.⁴⁴ Similarly, the WA scheme referred to earlier attempts to restrict access to photographs of certain offenders by permitting individuals to apply for access regarding offenders in their locality only.⁴⁵

- **Limiting use of the information** – Similarly, there should be limits on how information accessed from the Register may be used so that the information remains confidential as far as possible while still contributing to the protection of children. In practice, this may be difficult. However, it is important to recognise the sensitivity of the information and the potential for misuse by attempting to dissuade harmful uses of the information (such as harassment and vigilantism). For example, the WA Community Protection Offender Register creates a criminal offence to misuse publicly available information about offenders.⁴⁶ Similarly, the UK scheme requires applicants to sign an undertaking that they agree the information is confidential and they will not disclose it further.⁴⁷

Interaction with existing information access regimes

If information is to be disclosed to members of the public, consideration should be given to how access will be provided in practice and how that will work with other disclosure schemes. For example, individuals have the right to request access to documents held by the Victorian Government and its agencies (including Victoria Police) under the FOI Act. However, information on the Register is currently exempt under the FOI Act due to provisions in the SOR Act that prohibit disclosure.⁴⁸

Further, OVIC encourages the development of a disclosure scheme that can be administered outside the FOI Act, as well as clear guidance on how individuals may access offender information to streamline disclosure and ensure consistency in approach.

Thank you for the opportunity to make a submission to the Inquiry. I have no objection to this submission being published without further reference to me. I also propose to publish a copy of the submission on the OVIC website but would be happy to adjust the timing of this to allow the Committee to collate and publish submissions proactively.

If you have any questions about this submission, please contact me or my colleague Sarah Crossman, Senior Policy Officer [REDACTED]

Yours sincerely

[REDACTED]
Sven Bluemmel
Information Commissioner

⁴⁴ United Kingdom Government, *Guidance: Find out if a person has a record for child sexual offences*, <https://www.gov.uk/guidance/find-out-if-a-person-has-a-record-for-child-sexual-offences>.

⁴⁵ <https://www.communityprotection.wa.gov.au/LocalSearch/LocalSearchWithoutMdl>; The website also requests applicant to provide their personal details including name and WA drivers licence.

⁴⁶ Section 85L of the *Community Protection (Offender Reporting) Act 2004* (WA).

⁴⁷ United Kingdom Home Office, *The Child Sex Offender Disclosure Scheme Guidance Document*, page 11 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/184095/disclosure-scheme-guidance.pdf).

⁴⁸ This information has been found to be exempt under section 38 of the FOI Act.