



Office of Hon Anne Tolley

MP for East Coast
Minister of Police
Minister of Corrections
Deputy Leader of the House

9 APR 2013

Mr Joshua Grainger
Fyi-request-734-3ef91223@requests.fyi.org.nz

Dear Mr Grainger

On 28 February 2013 you requested from Police, under the Official Information Act 1982 Police information relating to a proposal for a sex offender register. The request for a briefing to the Minister of Police dated 21 March 2012 was transferred to my office for consideration for release on 14 March 2013.

The requested briefing is attached. Recommendations (c) and (d) and all of paragraphs 3, 4, 31, 32 and 34, as well as parts of paragraphs 11, 12 and 28 have been withheld under section 9(2)(g)(i) of the Official Information Act 1982 – to maintain the effective conduct of public affairs through the free and frank expression of opinions by or to Ministers and employees of any department; and section 9(2)(f)(iv) to protect the confidentiality of advice tended by Ministers of the Crown and officials.

Some names have been withheld under section 9(2)(a) of the Official Information Act 1982 to protect the privacy of natural persons.

You have the right, under section 28(3) of the Official Information Act, to ask the Ombudsman to review my decision if you are not satisfied with the way I have responded to your request.

Yours sincerely

Hon Anne Tolley
Minister of Police



BRIEFING FOR THE MINISTER OF POLICE

Subject	SEX OFFENDER REGISTERS: NEW ZEALAND		
Date	21 March 2012	Ref	BR/12/30
Priority	<input type="checkbox"/> Urgent <input checked="" type="checkbox"/> Non-urgent		

Recommendations

The recommendations are that the Minister of Police:

- (a)
note that if properly implemented and sufficiently resourced, a SOR can serve to reassure the public that all sex offenders are subject to some degree of monitoring and treatment thereby minimising their risk of reoffending. A SOR has also proven to be an effective tool for allowing enforcement agencies to investigate and prosecute a crime reasonably quickly;
Yes/No
- (b)
note that SORs also have a number of drawbacks, such as the risk of "vigilante" justice, and the implications of administering and maintaining a mandatory and permanent register of all sex offenders;
Yes/No
- (c)Yes/No
- (d)Yes/No

Minister's comments:

.....
 Hon Anne Tolley
 Minister of Police

Date / /

SEX OFFENDER REGISTERS: NEW ZEALAND

Purpose

1. This briefing sets out the arguments for and against establishing a Sex Offender Register (SOR) in New Zealand and the criteria Police recommends should be adopted if a SOR is introduced to New Zealand. The briefing also outlines the approach currently followed in New Zealand for managing child sex offenders,

Executive Summary

2. Overseas experience has demonstrated that, if properly implemented and sufficiently resourced, a SOR can serve to reassure the public that sex offenders are being actively monitored and receiving treatment, thereby minimising their risk of reoffending. In jurisdictions where there are multiple Police forces, a SOR has also proven to be an effective tool for allowing enforcement agencies to investigate and prosecute a crime reasonably quickly. However, there are also a number of drawbacks to SORs, such as the public using the information on a SOR to harass registered offenders, thereby increasing the risk of "vigilante" justice.

3.

[REDACTED]

4.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Background

5. Sex Offender Registers (SORs) are a common law enforcement tool in many Western jurisdictions. New Zealand is one of few Western nations

not to have its own SOR. In 2003, Parliament considered a Private Member's Bill which, if enacted, would have established such a Register. However, it was voted down in 2006 at the Second Reading stage as Parliament had a number of concerns about the effectiveness of SORs.¹

Aims of SORs

6. SORs aim to keep the public safe in three potential ways:
 - promoting public safety by informing people of any convicted sex offenders who may live locally (and in many jurisdictions, enabling the public to access information directly from the SOR);
 - discouraging convicted sex offenders from reoffending, and
 - aiding law enforcement agencies in the investigation of sexual offending and the surveillance of sex offenders.
7. Public concerns about sexual predators, and child sex offenders specifically, were a major impetus for the development of SORs in all Western jurisdictions. Usually, a specific and widely publicised case of sexual offending against a child has been the driving factor behind the introduction of a SOR, and it is normally the surveillance of child sexual offenders that dominates law enforcement action.
8. Most SORs proceed on the perception that sex offenders are "predators" and that they will inevitably reoffend once they are released from prison. However, the level of recidivism among sex offenders is generally low. For example, a 2003 analysis of sex offenders who had completed the Kia Marama programme at Rolleston Prison in Christchurch between 1994 and 2001 found a reported re-offending rate of only 4 per cent.²

Arguments for SORs

9. What follows are some of the perceived benefits of SORs which led to their being established.

Public Reassurance

10. In recent decades, medical practitioners, academics and social commentators have highlighted the serious toll sexual offending can take on its victims, and society as a whole. In New Zealand, as in most other Western nations, Governments have responded by placing more resources into detecting and prosecuting offenders, and increasing support and counselling services for victims. SORs are intended to be an important tool to further these aims.³ In cases where the information in a SOR is publicly accessible, the public can use that information to protect themselves or other at-risk individuals.

Law Enforcement and Investigation Tool

11. In jurisdictions where there are multiple Police forces, the presence of a SOR has proven to be a useful investigative tool for law enforcement authorities, provided it is well maintained and constantly updated.⁴ Many

¹ The Sex Offenders Registry Bill (36-1), referred to Select Committee in 2003, voted down in 2006.

² Department of Corrections (2011) sourced from http://www.corrections.govt.nz/about-us/factsheets/managing-offenders/specialist_units/kia-marama-special-treatment-unit.html

³ Stout, B. Kehshall, H and Wood J "Building Stakeholder Support for a Sex Offender Public Disclosure Scheme: Learning from the English Pilots"; *The Howard Journal* Vol 50, No 4, (2011), pp 406-418, p.413.

⁴ Stout, B. Kehshall, H and Wood J, above n 2, p.415.

jurisdictions require all sex offenders to register in a SOR, and should any of these people reoffend, a SOR has proven to be an effective tool for allowing enforcement agencies to investigate and prosecute a crime reasonably quickly. The effectiveness of a SOR in this regard is determined by the extent of stored information regarding individual offenders, such as photographs, distinguishing physical features, and biometric data.

Treatment of Registered Offenders

12. [REDACTED] the information within SORs are accessible to agencies that provide treatment services for registered sex offenders. The provision of treatment services is another reason why mandatory registration for all sex offenders is commonplace in most jurisdictions with a SOR. However, treatment can be effective only if there are the resources and law enforcement tools available to undertake this work. In many jurisdictions, providing the necessary resources in order to ensure that offenders on a SOR receive the treatment they require has proven to be a significant problem.

Drawbacks of SORs

13. Although SORs may increase public perception that active steps are being taken to track and manage convicted sex offenders, the experience of overseas jurisdictions has also demonstrated a number of drawbacks to a SOR.

Public Access

14. Many jurisdictions in the United States and Australia enable members of the public to access SORs for the purpose of obtaining information about registered sex offenders living in their area. General public access to SORs has been criticised by many commentators who point out that, instead of using the information on SORs to protect themselves, many members of the public use this information to harass registered offenders. In extreme cases, members of the public have used such information to perform acts of "vigilante" justice.

Broad Definition of "Sex Offender"

15. The definition of "sex offender" in many SORs is so broad that relatively minor offending is captured by offenders who do not pose any serious risk to society. Requiring all sex offenders to register when society does not fear all of them has proven to be a significant drain on the capabilities of law enforcement agencies.⁵ Many commentators have pointed out that a SOR should consist only of those offenders who actually do present a risk to society, or should be confined only to those who have been convicted of child sex offences, so that monitoring and treatment resources can be dedicated to these particular offenders.

Mandatory and Permanent Registration

16. In many jurisdictions, all sex offenders are required to register on a SOR upon conviction, and the registration is permanent. To the extent that

⁵ Zevitz & Farkas (2000) "Sex Offender Community Notification: Managing High Risk Criminals or Exacting Further Vengeance?" *Behavioural Sciences and the Law* 18: 375-91.

permanent registration results in a person being stigmatised as a sex offender, a SOR often presents a form of continued punishment. Registered offenders have difficulty finding a place to live, are denied job opportunities, education, and rehabilitation programs, which not only prevent them from reintegrating into society, but potentially encourage them to associate with other convicted sex offenders, leading to further offending.⁶

Database Creation and Maintenance

17. Creating and maintaining a SOR database has proven to be a costly exercise for many jurisdictions.⁷ Although the initial costs of establishing a SOR are not prohibitive, the ongoing operation and maintenance costs increase with the number of people registered on a SOR.
18. In Australia, the Western Australian State Government has recently allocated \$3 million to setting up a publicly accessible SOR and has forecast that the future administration and operating costs of the SOR will cost the State Government a further \$1.4 million annually. However, critics suggest that this forecast annual cost is an underestimate and does not take proper account of a steadily increasing number of registered offenders.⁸

A Possible Model: The United Kingdom

19. The United Kingdom has a national Violent and Sexual Offender Register database called VISOR that is accessible only to members of Police, the National Probation Service, Corrections staff and private organisations that monitor and provide treatment services to offenders. All convicted sex offenders are required to register with their local Police force within three days of their conviction, or release from prison. Failure to do so can result in imprisonment. Registered offenders must inform Police if they change their name or address and disclose if they are spending more than seven days away from their home address.⁹
20. Although registration on VISOR is mandatory for sex offenders, they can also be removed from the register after a specified period of time, or after receiving appropriate supervision and treatment.
21. In 2001, VISOR was supplemented by the introduction of the Multi-Agency Public Protection Arrangement (MAPPA), which aims to provide a mechanism whereby the agencies responsible for the treatment and management of sexual and violent offenders could better discharge their responsibilities to protect the public in a coordinated way.¹⁰
22. A review of MAPPA and VISOR in 2011 concluded that the MAPPA procedure itself is generally effective in monitoring sex and violent offenders, and ensuring that they receive appropriate treatment.

⁶ Willis, G. M. and Grace R.C. "Assessment of Community Reintegration Planning for Sex Offenders" *Criminal Justice and Behaviour* 36 (2009), pp 494 - 512.

⁷ "States Struggle to Control Sex Offender Costs" (28 May 2010) sourced from <http://www.npr.org/>.

⁸ "Statewide Sex Offender Register Stats Revealed", *Herald Sun*, 15 January 2012, sourced from <http://www.heraldsun.com.au/news/statewide-sex-offender-register-stats-revealed/story-e6frf7jo-1226244738691>

⁹ Criminal Justice Joint Inspection (UK) *Putting The Pieces Together: An Inspection of Multi-Agency Public Protection Arrangements*, November 2011.

¹⁰ For further information on MAPPA, see above n 7.

However, the same report also expressed concern at the administrative effort required to maintain the VISOR database, and noted that information within VISOR was often incomplete and difficult to access.¹¹

Managed Disclosure

23. Since 2008, the United Kingdom has been trialling a "managed disclosure" approach through a number of pilot projects.¹² In contrast to SORs where the details of sex offenders are automatically disclosed to the general public, the UK managed disclosure approach enables any member of the public to apply for information about a specific sex offender who has registered with Police on VISOR, and who may pose a risk to a child.
24. Police must consult with the National Probation Service, and any agencies who may be providing a monitoring or treatment programme for the offender, before making a disclosure. All disclosures must be lawful, proportionate and necessary to protect a child from the risk of significant harm. Police will disclose such information only to the person best placed to protect the child, thus disclosure is not guaranteed in all cases.
25. Information about a disclosure must be treated as confidential. Anyone who receives a disclosure is required to sign an undertaking prior to receiving the information, stating they will not share the disclosed information to any other person.
26. Although many child protection and human rights agencies in the UK were initially skeptical of the managed disclosure approach, subsequent reviews of the pilot projects have revealed that most now hold favourable views towards the scheme. The review also found no evidence that recipients of the disclosed information are sharing it with other people. There are plans to expand the managed disclosure approach throughout the UK on a permanent basis.¹³
27. The United Kingdom VISOR attempts to avoid the drawbacks of many SORs by withholding general public access, thereby minimising the risk that the information on the database could be misused, or lead to acts of vigilante justice. Offenders can also be removed from VISOR after a specified period of time, or after receiving appropriate supervision and treatment.
28. [REDACTED] a closer analysis of the United Kingdom model would be required before it could be reliably ascertained whether it is suitable for New Zealand, [REDACTED]

¹¹ Above n7, paras 7.7, 8.31-8.36.

¹² For an overview of the managed disclosure approach and the results of the pilot projects, see Stout, B. Kehshall, H and Wood J "Building Stakeholder Support for a Sex Offender Public Disclosure Scheme: Learning from the English Pilots"; *The Howard Journal* Vol 50, No 4, (2011), pp 406-418, p.413.

¹³ Above n 12.

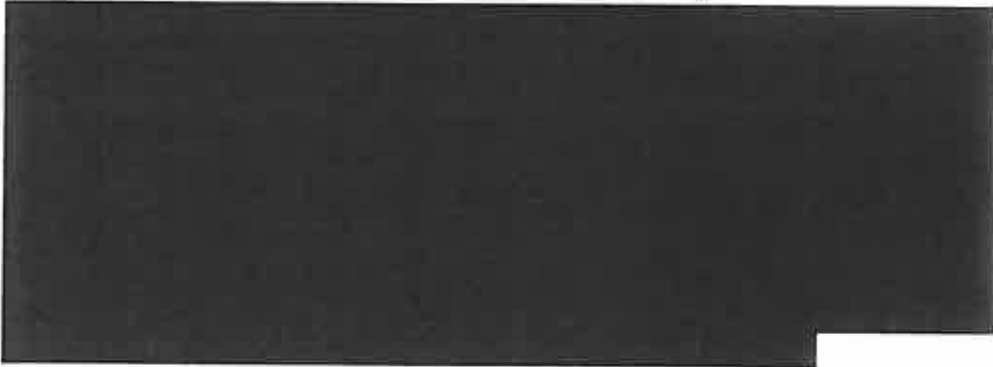
New Zealand's Approach to Managing Sex Offenders

29. Although New Zealand does not have a register for all convicted sex offenders, there is a protocol in place to monitor child sex offenders (CSOs) who have been released from prison.
30. In 2009, New Zealand Police, the Department of Corrections, the Ministry of Social Development and Housing New Zealand Corporation signed an information sharing agreement for managing CSOs who have been released from prison into the community with conditions or on supervision. As such, it applies to all CSOs who are released under such conditions, and for as long as those conditions last.¹⁴ The agreement authorises the sharing of information to:
- monitor compliance by a CSO with release conditions;
 - manage the risk that the offender may commit further sexual offences against children;
 - identify any increased risk that the offender may breach conditions or will commit further sexual offences against children; and
 - facilitate the reintegration of the offender into the community.

31.



32.



33. As an alternative to establishing a SOR, consideration could be given to allocating further resources towards improving the effectiveness of the protocol, thereby promoting its effectiveness as a tool for monitoring child sex offenders in the community.

34.



¹⁴ In New Zealand, a CSO is defined under section 182B of the Corrections Act 2004 as an offender who has been convicted of sexual offending against a person under 16 years of age AND who is subject to release conditions, detention conditions (if the offender is serving a sentence of imprisonment on home detention), conditions of a sentence of supervision, intensive supervision, community detention, or home detention (imposed under section 80A of the Sentencing Act 2002), post-detention conditions of a sentence of home detention, or conditions of an extended supervision order.

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

Recommendations

The recommendations are that the Minister of Police:

- (a) **note** that if properly implemented and sufficiently resourced, a SOR can serve to reassure the public that all sex offenders are subject to some degree of monitoring and treatment thereby minimising their risk of reoffending. A SOR has also proven to be an effective tool for allowing enforcement agencies to investigate and prosecute a crime reasonably quickly;
- (b) **note** that SORs also have a number of drawbacks, such as the risk of "vigilante" justice, and the implications of administering and maintaining a mandatory and permanent register of all sex offenders;
- (c) [Redacted]
- (d) [Redacted]

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Date: / /2012

Kevin Kelly
General Manager
Strategy, Policy and Performance

Supplementary Information
 Contact for telephone discussion (if required)

Name	Position	Telephone		Suggested First Contact
		Direct Line	After Hours	
Kevin Kelly	General Manager: Strategy, Policy and Performance	[REDACTED]	[REDACTED]	<input checked="" type="checkbox"/>
[REDACTED]	Adviser - Crime and Social Policy	[REDACTED]		<input type="checkbox"/>