

17 October 2003

Our ref Jane Sanders
Mobile 0418 407 290
Email jane.sanders@freehills.com
Doc no Sydney\004530362

Attention: Rosemary Kusuma

NSW Ombudsman
Level 24, 580 George Street
SYDNEY NSW 2000

Dear Ms Kusuma

**Review of Child Protection (Offenders Registration) Act 2000:
Submission by Shopfront Youth Legal Centre**

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged people aged 25 and under. Our solicitors provide court representation and legal advice on a range of legal issues, with our main area of expertise being criminal law.

The Shopfront is located in Darlinghurst. Our primary client base is in the Kings Cross and inner city area, but we also act for young people in other parts of metropolitan Sydney. Most of our clients are significantly disadvantaged by homelessness, mental illness, intellectual disability, a history of abuse or a combination of these factors.

We welcome the opportunity to comment on the *Child Protection (Offenders Registration) Act 2000*. Whilst we do not have any direct experience of the Act in practice, we have extensive experience working with both victims and offenders. As such, we feel we are able to make a valid contribution to the review of the Act.

The Shopfront acts for many young people who have been victims of child sexual abuse. We have seen the devastating effect this abuse can cause, often years later. The Shopfront also acts for many young people who have committed criminal offences; a very small number of these have committed sex offences.

In general, we support legislative and policy initiatives which protect children from abuse. However, we have some concerns about the reporting regime established by the Act.

The registration and reporting requirements are likely to have an unjust and disproportionate impact on some of the most disadvantaged people in our community, particularly young people, homeless people, and those with intellectual disabilities. These

people are they likely to have difficulty complying with the registration requirements, and to incur further penalties as a result.

We are also concerned about certain classes of offenders being placed on the register where the nature of the offence clearly does not warrant it. We take issue in particular with the application of the Act to children convicted of offences arising from consensual underage sex. Young people in this category are not the predatory sex offenders at whom the legislation was aimed.

In your Discussion Paper, it is asserted that people who are found guilty without a conviction being recorded are not required to register. This is misleading; in fact, some juvenile offenders are required to register even if no conviction has been recorded. The Children's Court has the power to impose any sentencing option without recording a conviction, and indeed may not record a conviction against a child under 16 years of age. It is only those whose matters are dismissed under s.33(1)(a) of the *Children (Criminal Proceedings) Act* who are exempt from registration requirements (subject of course to the exemptions for Class 2 and child pornography offences).

We recommend that children's registration obligations apply only where a conviction is recorded. The non-recording of a conviction will usually reflect the court's view about the objective seriousness of the offence and the issue as to whether both underage parties participated in the conduct freely.

As stated by a former Senior Children's Magistrate: "Children's Courts have recognised in recent years that the damage to a child's future wrought by conviction for a youthful misdemeanour may be heavily out of proportion to the offence itself and to any other order the court may make in consequence of the offence." (page 60, *The Children's Court & Community Welfare in NSW*, Rod Blackmore, 1989).

Alternatively, we recommend that the sentencing court have a discretion to order that an offender be exempted from registration and/or reporting obligations.

We also recommend that appeal and review rights under the Act be extended, so that a registrable person may apply to the Administrative Decisions Tribunal to be removed from the register, or to be exempted from reporting, where special circumstances exist. Such special circumstances may include where a young person has been convicted of an offence arising from consensual sex with a person of similar age.

Finally, we have had the benefit of reading the submission prepared by NSW Young Lawyers, together with their letters to the Attorney-General on 18 September 2002 and to you on 15 May 2003. We agree with the views expressed by NSW Young Lawyers and endorse their submission.

Should you wish to discuss any aspect of this submission, please contact Jane Sanders (jane.sanders@freehills.com) or Jane Irwin (jane.irwin@freehills.com). We can also be reached by telephone on 9360 1847.

Yours faithfully

Jane Sanders
Principal Solicitor