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Serious Sex Offenders Detention and Supervision Bill 2012.

Thank you, on behalf of Liberty Victoria, for providing this opportunity for comment.

In short, Liberty Victoria is deeply concerned about the Serious Sex Offenders Detention and Supervision Bill 2012, particularly as it changes the test for the making (and the revocation) of non-publication orders with regard to information that might lead to the identification of offenders. Liberty Victoria is concerned that the Bill is actively counter-productive with regard to the protection of the community.

Under the Serious Sex Offenders (Detention and Supervision) Act 2009 ("the Act") at present, the Court must have regard to the following factors pursuant to s.185 when considering whether or not to make a non-publication order with regard to information that might lead to the identification of an offender and his or her whereabouts:

"(a) whether the publication would endanger the safety of any person;

(b) the interests of any victims of the offender;

(c) whether the publication would enhance or compromise the purposes of this Act."

With regard to the purposes of the Act as expressly referred to by s.185(c), s.1 of the Act provides:

"(1) The main purpose of this Act is to enhance the protection of the community by requiring offenders who have served custodial sentences for certain sexual offences and who present an unacceptable risk of harm to the community to be subject to ongoing detention or supervision.

(2) The secondary purpose of this Act is to facilitate the treatment and rehabilitation of such offenders."

Clause 13 of the Bill provides that the following would be substituted for s.185(c) of the Act:

"(c) the protection of children, families and the community;

(d) the offender's compliance with any order made under this Act;
(e) the location of the residential address of the offender.".

Further, Clause 7 of the Bill makes it plain that non-publication orders must be reviewed during periodic reviews of supervision orders.

Liberty Victoria is very concerned that the Bill, in purportedly seeking to respond to community anger about the making of non-publication orders, may both stoke the flames of such outrage and actively be contrary to the public interest.

There appears to be little doubt that the substantive effect of the amendment will be to result in more offenders having their names and addresses made public. Indeed, having regard to the Statement of Compatibility to the Bill, that appears to be the desired outcome (Parliament of Victoria, Hansard, 12 September 2012, p 4128).

As made plain from the above, at present the purposes of the Act must be expressly considered when a Court is determining whether or not to make a non-publication order. This includes, albeit as a "secondary purpose", the facilitation of treatment and rehabilitation of the offender. The Bill, if passed, would remove this express consideration from the test to be applied. While the purposes of the Act are still relevant when undertaking statutory interpretation (CIC Insurance Ltd v Bankstown Football Club Ltd (1997) 187 CLR 384, 408), the removal of reference to the treatment and rehabilitation of offenders as an express part of the test is most concerning. Further, the express removal of that reference to the facilitation of treatment and rehabilitation is likely to be used by those who seek to "name and shame" offenders to buttress submissions as to how the test should be interpreted.

The "naming and shaming" of offenders brings with it the real prospect of vigilante conduct, which endangers the personal safety of the offender and his or her friends and family as well as potentially other members of the community. It is also disruptive to treatment and rehabilitation. This is not in the public interest.

As held by French CJ in Hogan v Hinch (2011) 243 CLR 506, 537 [32]: "[r]ehabilitation, if it can be achieved, is likely to be the most durable guarantor of community protection and is clearly in the public interest."

If the Bill is passed, the new test raises the spectre that an offender's non-compliance with his or her supervision order will be used to justify the revocation of non-publication orders at the periodic review stage. It is important that this does not become used as some kind of tool by those enforcing supervision orders in order to try to ensure compliance of offenders lest their identities and home addresses be made public. There needs to be expert consideration as to how such an approach may impact offenders from a mental health and rehabilitative perspective. Such an approach raises the likelihood of stigmatic shaming as opposed to providing a meaningful pathway to social reintegration.

Further, while the Second Reading Speech emotively refers to this legislation as applying to the "worst of the worst", the sheer numbers of applications for detention and supervision orders made under the Act makes it plain that such orders are no longer only sought against those most likely to be recidivists and to offend against the most vulnerable. Rather, it seems plain that the executive has taken a precautionary approach that sees applications made once the threshold is reached under the Act, which has resulted in a significant burden being placed upon the limited resources of the County Court of Victoria due to the sheer numbers of such applications.

If passed, the Bill would also potentially result in some offenders wishing to continue to

remain in quasi-imprisonment at Corella Place (a secure facility adjacent to Ararat Prison and presently used to supervise some offenders "in the community"), rather than to be re-integrated into the community in public or community housing. This is because the terms of the new test directly (and intentionally) increase the prospect that an offender's name and address will be released into the public realm, with potential consequences to the safety of the offender and those around them. In that manner, the Bill supports the continued "warehousing" of such offenders after their sentences expire.

Thank you again for the opportunity to comment, and please do not hesitate to contact Michael Stanton through our office for any further information or assistance with regard to any of the above.