



1 August 2011

C46, 78.1
RB;rp

The Honourable John Rau MP
Attorney-General
DX 336
ADELAIDE SA

cc Ms Joanna Martin, Senior Legal Officer

Dear Mr Attorney

Child Sex Offenders Registration Act

I refer to your letter of 16 June 2011 and thank you for inviting the Society to consider the legislative reform being contemplated to the *Child Sex Offenders Registration Act (2006)*. The matter was referred to the Society's Aboriginal Issues, Children and the Law, and Criminal Law Committees.

The Society is in general agreement with the tenor of the proposed changes. The Children and the Law Committee has provided some observations about the suggested list of criteria to be taken into consideration by judges when exercising their discretion under the proposed amendments.

It is our understanding that the 'young love exemptions' were designed to apply to cases where sexual intercourse was considered to be consensual. Yet in the proposed amendments there is a reference to the possibility of coercion. Presumably if a judge is to have discretion then the existence of coercion would not be determinative, yet if there was coercion the act could not in fact have been truly consensual. It appears to us that some guidance about the issues of consent and coercion are necessary, as this has been an area of contention in the past and, from time to time, some judges have made remarks about consent which this Committee and other community groups have found misguided.

Further, the list of issues appears to allow the offender and the prosecution to put forward their views, but does not allow a judge to consider the views of the victim. South Australia has a range of legislative measures to ensure that the voice of the victim is heard in criminal proceedings. If a Victim Impact Statement has been tendered to the court at the initial trial, then a judge exercising discretion in accordance with the proposed amendments should have access to that statement, particularly as it may affect the judge's views about the existence or non-existence of coercion.

It is important that the point of view of the person under the age of 18 be available to the judge, as Section 49 of the *Criminal Law Consolidation Act* was designed to protect those the State considered to be vulnerable. How that person perceived the conduct of the offender should be a consideration as

acts/behaviour that a mature adult might be able to resist may be of a type that makes a young person susceptible to course of conduct to which they otherwise would not have agreed.

Should you wish any further elaboration on these views Members of the Children and the Law Committee would be happy to provide additional information or to meet with Ms Joanna Martin.

Yours sincerely



Ralph Bönig
PRESIDENT