

EXECUTIVE SUMMARY

The NSW Police Force established the Child Protection Register (the Register) in 2001, following the passage of the *Child Protection (Offenders Registration) Act 2000* (NSW) (CPOR Act). The CPOR Act requires offenders who have been convicted and sentenced for certain offences involving children or child abuse material to register with police when they re-enter the community. They must then provide reports to police of their personal details for a number of years. The purpose of the Register is to protect children from serious harm and ensure the early detection of offences by repeat child sex offenders who are in the community. The Register is a database that assists police to monitor and investigate these offenders.

The Commission's investigation has established that there have been problems with the Register for 17 years. Significant errors in the application of the CPOR Act started occurring as early as 2002. These errors have included incorrect decisions by the NSW Police Force about which persons should be included on the Register, and incorrect decisions about how long persons were legally required to make reports of their personal information to police under the CPOR Act (their 'reporting period').

Some of these errors have resulted in child sex offenders being in the community without being monitored by the NSW Police Force as required by the CPOR Act. The Commission reviewed one case in which a person reoffended while unmonitored. Other errors have caused the NSW Police Force to unlawfully require people to report their personal information to police for a number of years. As a result, people have been wrongly convicted, and even imprisoned, for failing to comply with CPOR Act reporting obligations, when in fact those obligations did not apply to them at the relevant time. Two persons were unlawfully imprisoned for more than a year in total.

The NSW Police Force has been aware for a number of years that there were significant issues with the Register. In 2014 the NSW Police Force Child Protection Registry (the Registry), the specialist unit in the State Crime Command responsible for maintaining the Register, started filing internal reports warning of systemic issues causing inaccuracies in the Register. Multiple reports from the Registry prompted the NSW Police Force to review 5,749 Register case files. This review was started in 2016 and took two years to complete. In October 2018 it concluded that 44 per cent (2,557) of those Register case files had contained errors.

There are a number of factors which have contributed over time to the errors in the Register. One of the most significant factors is the difficulty of interpreting and applying the provisions of the CPOR Act. Another is the insufficient resources allocated to the Registry to handle an ever-increasing workload.

The CPOR Act places obligations on courts and certain government agencies to assist the NSW Police Force to implement the registration scheme. However, almost since its inception, this multi-agency system has not been functioning as Parliament intended, particularly in relation to the identification of who are registrable persons.

The NSW Police Force has taken a number of significant steps since the start of the Commission's investigation to improve the administration of the Register, including doubling the staff in the Registry. This report contains 11 recommendations to remedy the unlawful conduct that has occurred and prevent further errors in the Register. Our key recommendations are that the NSW Police Force ensures that adequate resources are allocated to the Registry now and into the future to enable it to maintain the Register; that the CPOR Act be urgently referred to the NSW Law Reform Commission for comprehensive review so that the fundamental problems

with the legislative framework can be addressed and the various statutory responsibilities of the NSW Police Force, courts and government agencies reconsidered, and that an independent body conduct audits of the Register.

In **Chapter 1** we describe how we conducted our investigation, referred to as Operation Tusk. Our investigation commenced in September 2017 on the basis of information provided in a public interest disclosure. Early in the investigation the NSW Police Force acknowledged there were a significant number of errors in the Register. The Commission and the NSW Police Force adopted a collaborative approach, sharing information and expertise to identify and address issues throughout the investigation.

In **Chapter 2** we set out the key elements of the Child Protection Register. We explain the purposes of the Register, and what are the consequences under the CPOR Act if a person is determined to be a 'registrable person'. We describe the roles and responsibilities of the NSW Police Force Child Protection Registry and other police officers in relation to the Register. We explain that the Register is part of a national framework of different statutory registration schemes for sex offenders across Australia.

In **Chapter 3** we discuss the nature and extent of the errors that have occurred in the Register over time, including the results of the review of Register case files initiated by the NSW Police Force (called the 'CPR case review'). We highlight the serious consequences of these errors through several case studies. We found that since 2002 the NSW Police Force has made over 700 incorrect decisions about who were 'registrable persons' under the CPOR Act, or about the length of registrable persons' reporting periods. We also found that the NSW Police Force has unlawfully required people to report their personal information, and conducted unlawful inspections of persons' homes, as a result of incorrect information in the Register. The NSW Police Force has also charged and arrested people for not complying with CPOR Act reporting obligations when those people were not under any obligation to report under that Act. As a result, at least seven people were wrongly convicted of offences under the CPOR Act.

Chapter 4 explores the responses of the NSW Police Force to those persons who have been subjected to unlawful or unjust actions as a consequence of the errors in the Register. The NSW Police Force was generally proactive in seeking annulments from the courts when it identified that persons had been wrongly convicted for offences under the CPOR Act. However, in 2016 the NSW Police Force made the decision not to notify persons that it had made errors in their cases. Relying on internal legal advice, the NSW Police Force intentionally limited the information it provided to such persons, to avoid the prospect of civil claims. We found that on at least three occasions, the NSW Police Force wrote letters which were in fact misleading. The NSW Police Force now acknowledges that these letters are misleading, and has agreed to notify all those who may have been subjected to unlawful or unjust actions as a result of errors in the Register.

In Chapters 5 to 8 we discuss the systemic problems which have contributed to the occurrence of so many errors in the administration of the Register.

Chapter 5 looks at the resourcing of the Registry over time. There has been a steady increase in the demand, complexity and scope of the Registry's work. In October 2003 there were 916 persons on the Register. By August 2019 there were 4,344. The Registry's resources were not increased proportionate to its increasing workload. This resulted in the Registry being understaffed, which impacted on the accuracy of its work, its ability to engage in proactive investigative activities, and the welfare of its staff. Since the start of our investigation the NSW Police Force has added 14 officers to the Registry. We recommend that the NSW Police Force adopt a responsive model of resourcing for the Registry into the future.

Chapter 6 examines the legislative framework for the Register. The NSW Police Force and the Commission agree that the CPOR Act is so complex and ambiguous in important respects that it creates an inherent risk of errors in the Register that the NSW Police Force cannot effectively mitigate. The legislative framework creates such practical difficulties that it undermines the Act's object of ensuring that registrable persons are monitored and comply with their obligations. The Commission's analysis of the CPOR Act, incorporating input from the NSW Police Force, identified over 20 issues. These issues are set out in full in **Appendix 2**, with examples of cases in which the complexity or ambiguity in the Act have led to errors. We recommend that the Attorney-General urgently refer the CPOR Act to the NSW Law Reform Commission for comprehensive review, to be completed within six months.

In **Chapter 7** we explain that courts and 'supervising authorities' have obligations under the CPOR Act to assist the NSW Police Force to implement the Register. However, there have been problems with compliance with some of these obligations for many years. Since 2003 authorities have been relying on the NSW Police Force to determine who the CPOR Act requires to be registered, even though the Act does not contemplate this role being performed by police. This shift away from the system envisioned by the CPOR Act has resulted in the NSW Police Force making decisions under that Act without access to adequate information. The NSW Police Force has already adopted some of our recommendations for interim solutions to improve the Registry's access to the information necessary to implement the CPOR Act. However, ultimately, the respective roles of the courts, the NSW Police Force and other authorities in relation to the Register need to be reconsidered as part of the review of the CPOR Act recommended in Chapter 6.

In **Chapter 8** we discuss the electronic systems that the Registry uses to keep the information on the Register about offenders' reporting obligations up to date. In 2014 Registry officers began to notice issues with these systems, and in 2015 it was reported that these problems had resulted in registered child sex offenders being released into the community without being monitored by the NSW Police Force under the CPOR Act. The NSW Police Force approved an IT project in 2017 to fix the issues with the electronic systems. At the time of writing, this project had not yet been completed. We recommend that the NSW Police Force take steps to ensure that the project is completed as soon as possible.

In **Chapter 9** we consider mechanisms to improve governance, quality assurance and accountability in relation to the Register. We recommend that an interagency committee and governance framework, involving the NSW Police Force, courts and supervising authorities, be established to improve compliance with each authority's obligations under the CPOR Act. We also recommend that the NSW Police Force develop an internal governance framework to ensure all local commands comply with the statutory framework when managing registrable persons. We further recommend that the statutory framework for the Register be amended to provide for independent compliance audits of the Register, similar to the *Sex Offenders Registration Act 2004* (Vic).