Child Grooming

“Offending all the way through from the start”

Exploring the call for law reform

A report prepared for Child Wise
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Creating child safe organisations and communities

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This report was prepared for Child Wise by Trisha Randahawa, Legal Researcher and Scott Jacobs, Research, Media, and Advocacy Manager at Child Wise.

At Child Wise, we believe that the abuse and exploitation of children is unacceptable and that it can and should be prevented. By creating child safe organisations and communities, we act to prevent, reduce, and minimise child abuse and exploitation in all their forms.

We all have a moral duty of care to ensure children are safe from harm. We must act now to make child abuse a thing of the past.

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Foreword

In recent months a number of reports have been released that have brought child sexual abuse to the forefront of the public debate. In particular, the report by the Victorian Parliamentary Inquiry into the Handling of Child Sexual Abuse by Religious and Other Non-Government Organisations, *Betrayal of Trust* and the Department of Justice's *Review of Sexual Offences: Consultation Paper*, have led to calls for the introduction of a specific offence related to the grooming of children with the intent to sexually abuse them.

Children are trusting and they rely on adults for love and support; when this trust is violated it has immeasurable impacts on their sense of self. The sexual abuse and rape of children is a crime that causes immense damage to a child across their entire life.

The grooming of a child is a preparatory act essential to the subsequent crime of child sexual abuse – it is critical to recognise that the two elements are inextricably linked. Only through realising the importance of grooming as a stage in the sexual abuse of a child can effective interventions and preventative measures be implemented.

The earlier abusive and grooming behaviours are detected, the less harm caused to the child. If the legislation is comprehensive, effective, and well implemented, police will be able to intervene at every stage of the child abuse process – from grooming, to encouragement, to actual abuse. The introduction of grooming legislation can only improve our ability to protect children.

This report, completed as part of a Victorian Law Foundation grant awarded to Child Wise, is aimed at providing advice and guidance to legislators and practitioners as they consider the introduction of offences specifically targeting the grooming of a child.

We are pleased to share our experience and recommendations in the hope that they will contribute to the reform of child sexual assault laws, and inform the public as Victoria responds to the grooming of children.

I commend this report to all who have an interest in creating child safe organisations and communities for our children.

Steve Betinsky,

Chief Executive Officer,
Child Wise.

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Introduction

Currently, there are limited attempts to identify and prevent the escalation of grooming behaviours. Efforts in this field are hampered by the lack of a strong legislative framework through which grooming a child for sexual abuse is classified as a specific offence, and a lack of community understanding about the nature and patterns of grooming behaviours conducted by child sex offenders.

When child sexual abuse is perpetrated, it almost never occurs without warning. Most cases of child sexual abuse are the result of months or even years of preparatory grooming of the victim. Child sex offenders identify a target and spend time developing a trusting relationship with the child and their parents or carers. The act of grooming a child for sexual abuse is rarely obvious, but there are signs that can identify grooming behaviours, and lead to an early intervention.

Law enforcement officials work tirelessly to protect children from predators. There have been substantial gains in the detection and prosecution of online child sex offenders and their grooming of children in recent years. Yet police and prosecutors are limited by the tools at their disposal – the introduction of offences for offline, or face-to-face, grooming of children, will dramatically increase their ability to respond to predators. It will allow interventions to be made across all stages of the child abuse act, from grooming, to encouraging, to the completed child sexual abuse offence.

This report provides a background to grooming: what it is, how it can occur, the specific behaviours and actions of an offender grooming a child, and the impact it has on victims, both primary and secondary. It examines current legislative approaches within Australia, and relevant legislation internationally, by discussing the relevant Acts, and conducting an analysis of case law surrounding legislation.

In many ways this report is a direct response to the Victorian Parliamentary Inquiry into the Handling of Child Sexual Abuse by Religious and Other Non-Government Organisations' final report, *Betrayal of Trust*, and the Department of Justice's *Review of Sexual Offences: Consultation Paper*, which both propose specific legislation be introduced to cover the offence of grooming children offline. Yet its roots lie in an earlier recognition that grooming occurs not only online but offline, and that we need to ensure all forms of abusive behaviours towards children are prevented.

Throughout this report are statements taken directly from interviews Child Wise conducted with convicted child sex offenders. In the interviews, they discussed how they groom children, the actions they take, the way they disguise their sexual interest in children, and how they take advantage of certain situations. They are presented as indented, italicised quotes, and provide an insight into how grooming behaviour occurs, and how child sex offenders operate. By better understanding their methods, we can better design laws to capture and prevent grooming and child sexual abuse.

Definitions

A number of complex issues need to be considered when trying to define grooming. In another context, many actions that are used by child sex offenders to 'groom' a child may be innocent or normal behaviour. As with many preparatory crimes, the intent of the offender is central to determining grooming behaviours.

For instance, behaviour that is appropriate at one stage in a child's development may be inappropriate at another stage (i.e., cuddling and holding a toddler versus a 12 year old).

Child Sexual Abuse

The following definitions are reproduced from the Australian Institute of Family Studies, and are used to ensure industry consistency of definition. The full paper is titled: *What is child abuse and neglect?* and can be accessed at www.aifs.gov.au

Sexual abuse
Defining sexual abuse is a complicated task. Although some behaviours are considered sexually abusive by almost everyone (e.g., the rape of a 10-year-old child by a parent), other behaviours are much more equivocal (e.g., consensual sex between a 19-year-old and a 15-year-old), and judging whether or not they constitute abuse requires a sensitive understanding of a number of definitional issues specific to child sexual abuse.

A very general definition of child sexual abuse has been proposed by Tomison (1995): "the use of a child for sexual gratification by an adult or significantly older child/adolescent" (p. 2). Similarly, Broadbent & Bentley (1997) defined child sexual abuse as: "any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards" (p. 14). Sexually abusive behaviours can include the fondling of genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger or any other object, fondling of breasts, voyeurism, exhibitionism and exposing the child to or involving the child in pornography (Bromfield, 2005; US National Research Council, 1993).

However, unlike the other maltreatment types, the definition of child sexual abuse varies depending on the relationship between the victim and the perpetrator. For example, any sexual behaviour between a child and a member of their family (e.g., parent, uncle) would always be considered abusive, while sexual behaviour between two adolescents

may or may not be considered abusive, depending on whether the behaviour was consensual, whether any coercion was present, or whether the relationship between the two young people was equal (Ryan, 1997).

Thus, in this paper, different definitions are presented for each class of perpetrator: adults with no familial relationship to the child, adult family members of the child, adults in a position of power or authority over the child (e.g., teacher, doctor), adolescent or child perpetrators, and adolescent or child family members.

Adults with no familial relationship to the child
Any sexual behaviour between a child under the age of consent and an adult is abusive (the age of consent is 16 years in most Australian states; see Age of Consent Laws for a more detailed discussion). Therefore, in Australia, consensual sexual activity between a 20-year-old and a 15-year-old is considered abusive, while the same activity between a 20-year-old and a 17-year-old is not considered abusive.

Family members of the child
Any sexual behaviour between a child and an adult family member is abusive. The concepts of consent, equality and coercion are inapplicable in instances of intra-familial abuse.

Adults in a position of power or authority over the child
Sexual abuse occurs when there is any sexual behaviour between a child and an adult in a position of power or authority over them (e.g., a teacher). The age of consent laws are inapplicable in such instances due to the strong imbalance of power that exists between children and authority figures, as well as the breaching of both personal and public trust that occurs when professional boundaries are violated.

Adolescent or child perpetrators
Sexual abuse is indicated when there is non-consensual sexual activity between minors (e.g., a 14-year-old and an 11-year-old), or any sexual behaviour between a child and another child or adolescent who - due to their age or stage of development - is in a position of power, trust or responsibility over the victim. For example, any sexual activity between a 9-year-old and a 15-year-old would be considered abusive as the age difference between the two children leads not only to marked developmental differences, but also disparities in their levels of power and responsibility within their relationship. Another example of abuse due to an imbalance of power would be sexual activity

between two 15-year-olds, where one suffers an intellectual disability that impairs their ability to understand the behaviours that they are engaging in. Normal sexual exploration between consenting adolescents at a similar developmental level is not considered abuse.

Adolescent or child family members
Sexual abuse occurs when there is sexual activity between a child and an adolescent or child family member that is non-consensual or coercive, or where there is an inequality of power or development between the two young people. Although consensual and non-coercive sexual behaviour between two developmentally similar family members is not considered child sexual abuse, it is considered incest, and is strongly proscribed both socially and legally in Australia.

Grooming

There is limited consensus on how grooming can be defined. As such, three broad definitions are offered below.

'The term 'grooming' refers to actions deliberately undertaken with the aim of befriending and influencing a child, and in some circumstances members of the child's family, for the purpose of sexual activity with the child. These actions are designed to establish an emotional connection in order to lower the child's inhibitions and gain access to the intended victim. In this respect grooming involves psychological manipulation that is usually very subtle, drawn out, calculated, controlling and premeditated' (Victorian Parliamentary Inquiry into the Handling of Child Sexual Abuse by Religious and Other Non-Government Organisations, 2013).

'A process by which a person prepares a child, significant adults, and the environment for the abuse of the child. Specific goals include gaining access to the child, gaining the child's compliance and maintaining the child's secrecy to avoid disclosure. This process serves to strengthen the offender's abusive pattern, as it may be used as a means of justifying or denying their actions' (Craven et. al, 2006).

'The manipulation or 'grooming' process involves befriending children, gaining their trust, and often feeding them drugs and alcohol, sometimes over a long period of time, before the abuse begins. The abusive relationship between victim and perpetrator involves an imbalance of power which limits the victim's options' (NSPCC, 2013; Barnado's, 2012).

What is grooming?

Child sex offenders groom children, their parents or carers, and/or organisational representatives to build trusting relationships through which they can use children for their own sexual gratification. Grooming is the act of preparing a child with the intent of sexually abusing them, but the process also involves the act of manipulating people and situations to gain and maintain access to the victim/s.

Grooming is an insidious process that can be difficult to recognise or distinguish from seemingly innocuous actions. It has two main elements:

- Building a trusting relationship with the child and his/her carers, and
- Isolating the child in order to abuse them.

There is no one set of actions or behaviours that are used to groom a child. Some of the ways grooming occurs and how they can be recognised will be considered in this report, but it is important to remember that grooming occurs both before the offence in order to access the child, and after the offence to maintain that access for future abuse and ensure the child's silence. Grooming also seeks the parent or carer's continued trust.

'I was overly friendly with the children, to the point of hugging and so on. That should have alerted someone that something wasn't right, I tended to relate more to children instead of adults and my peers, and that should have alerted someone that something wasn't right.'– Child sex offender

The belief in the stranger, the 'dirty old man' as the child sex offender is a persistent, but incorrect conception. The vast majority of adult child sex offenders are representative of the general population, and nearly 95% of them were known to their victims and their families. Most are men, but there is some evidence to suggest that up to 7% of child sexual abuse has been perpetrated by women (though the extent to which that abuse has been the result of grooming is unclear).

While a smaller proportion of grooming would seem to occur within organisations, we know that they have provided abusers with 'almost limitless opportunities for the manipulation and abuse of children' (Beech & Sullivan, 2002; see also: Nolan, 2001; Waterhouse, 2000; Utting, 1998). Many groomers make contact with children through organisations, but may not commit the

abuse while still connected to their work – often the grooming process occurs over months or years and beyond the bounds of the organisation.

The majority of known offenders in organisational and institutional settings are 'deliberately seeking situations in which they might abuse' (Faller, 1988). These offenders have either 'generated or made use of existing environments of pervasive secrecy' that exist at organisations (Green, 1999). Grooming is able to occur in such environments because there is no awareness, oversight, or openness.

In the same way that offenders exploit vulnerable organisations, when targeting children in the home environment they take advantage of ambiguities over boundaries and behaviour to groom children through touch, inappropriate conversations, and a lack of supervision.

'The boy who was going to become a victim, I would get him away, [try] to get him alone. It was a carefully contrived set of events over a long period of time.'

'Over time you got to know he's the type of person who will let you do things… he's probably curious, it's not the sort of thing that's ever happened in his life, he's curious.'

'I'd start sexualising the conversation, a little bit at a time, and then a little hug. If I sensed any resistance at all I'd stop.'
– Child sex offender

It would be wrong to assume that all grooming behaviour and abuse that occurs is conducted by 'professional perpetrators' – those considered hardened paedophiles, the ones that employ far more sophisticated techniques to manipulate the environment in which they operate, colleagues and family members, and their victims. In many instances, the abuse of children may be perpetrated by opportunistic or situational offenders, rather than the committed paedophile.

'I would tell them things like, you know, don't mention what's happening, I will probably get the sack, you know the people who run this show, won't stand for any association outside of the you know, I'll get the sack. If you tell any of your mates, you're coming to my place for other art classes, they'll stop the program and they'll all blame you. I sort of shouldered a whole lot of responsibility onto the person I was grooming, to be very secretive about his behaviour and his visitations with me and his relationship with me.' – Child sex offender

A detailed consideration of child sex offenders (including situational, opportunistic, and committed) is beyond the scope of this report – it is worth consulting Smallbone, Marshall & Wortley for a comprehensive offender typology. This includes the various foundations that can motivate child sexual abuse, identifying offender behaviour, considering how they can be treated, and assessing how offenders operate in different situations (Smallbone, Marshall & Wortley, 2008).

The table on the following page outlines the way that each type of offender may operate in a given setting, though it should be remembered that this is a broad approach and there is no fool-proof mechanism for categorising offenders before, or in many cases after, they abuse a child.

Setting/Offender	Situational	Opportunistic	Committed
Public	Stimulated to offend in the course of short-term contact with a child in generally accessible locations	Exploits sexual opportunities when encountering children in generally accessible locations	Frequents generally accessible locations where children are likely to be in order to access those children
Institutional [Organisational]	Stimulated to offend in the course of routine quasi-parental duties while working or volunteering in an organisation that caters to children	Exploits sexual opportunities while working or volunteering in an organisation or agency that caters to children	Joins organisations or seeks employment in agencies that cater to children in order to access those children
Domestic	Stimulated to offend in the course of routine childcare duties	Exploits sexual opportunities when left alone with children	Establishes relationships with single mothers or befriends neighbours with children in order to access their children.

(Smallbone, Marshall & Wortley 2008)

Finkelhor has suggested that there are four preconditions that must be met for child sexual abuse to occur, and that all factors relating to sexual abuse can be grouped as contributing to one of these preconditions:

> 1. A potential offender needs to have some motivation to abuse a child sexually;
>
> 2. The potential offender has to overcome internal inhibitions against acting on that motivation;
>
> 3. The potential offender has to overcome external impediments to committing sexual abuse; and
>
> 4. The potential offender or some other factor has to undermine or over come a child's possible resistance to the sexual abuse.
>
> (Finkelhor, 1984)

'I think the fantasies started thinking about 14 years of age, the actual grooming and targeting started in my early twenties, and I was 24 when I first offended.'
– Child sex offender

The introduction of grooming as a specific preparatory offence will help to increase the external impediments that a potential child sex offender is required to overcome (Finklehor's fourth precondition). In line with Smallbone, Marshall & Wortley's approach to situational crime prevention, effectively implemented and utilised grooming offences will help to deter potential offenders from targeting and grooming children, and it may help to detect instances of grooming prior to actual sexual abuse taking place (2008).

The grooming process begins with the internal feelings and mindset of the potential offender, but manifests itself in Finkelhor's last two stages. Grooming involves spending time alone with the child, separating them from other people (adults or children), and cultivating a power based relationship with them. It then continues, through manipulation and inappropriate behaviour, in a process that will be further considered below.

The long term impact and trauma of sexual abuse perpetrated against a child is well documented, though not fully understood. As considered in *Betrayal of Trust*, the parents or carers of the child who has been abused often undergo significant trauma and grief themselves. Feelings of helplessness, complicity, and failure are common, as the adult feels that by not recognising and preventing the grooming and abuse they have contributed to the betrayal of trust of their child.

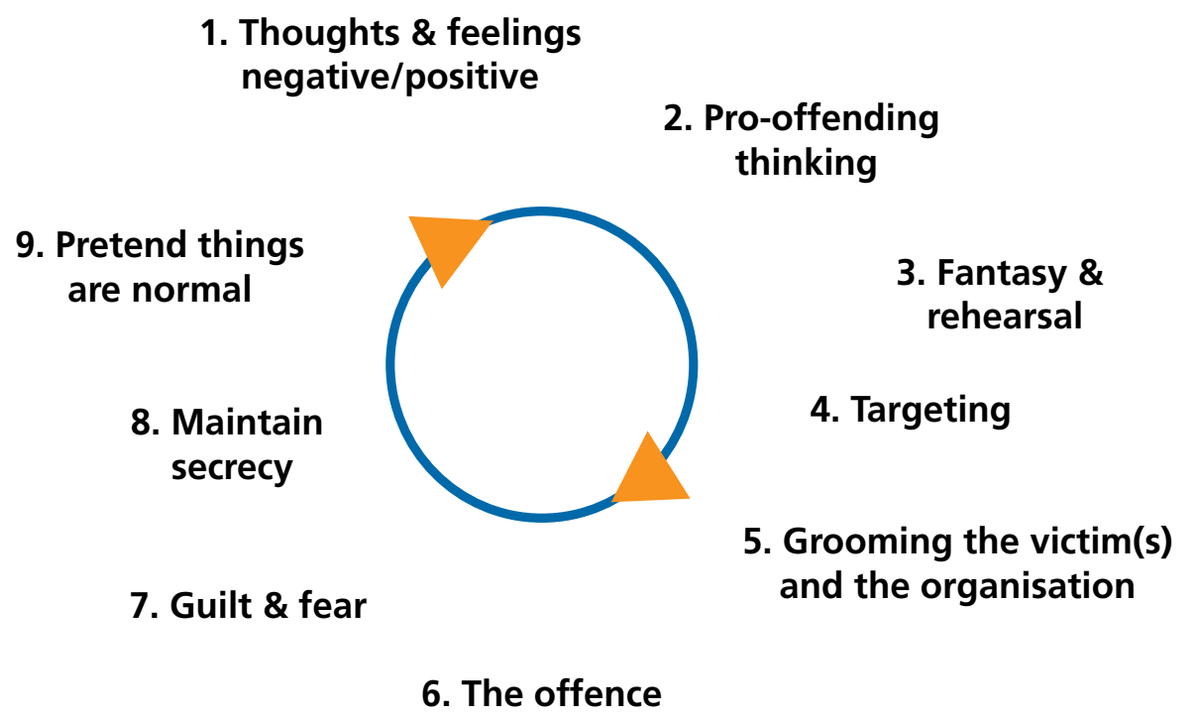
There is limited direct evidence, but Child Wise's anecdotal experience is that certain acts of grooming or encouragement may lead to trauma for the child, even when sexual abuse has not occurred. The betrayal of trust and emotional damage that occurs when an adult grooms a child can harm a child's ability to relate to others in later life, and the normalisation of sexual actions and discussions may affect the rate of their sexual development.

At the very least, if actual sexual abuse does occur, the grooming process takes on a deeper, more traumatic meaning for the child. It can make the child (and later the adult) feel responsible for the abuse, deserving of the abuse, or unable to speak up and disclose their abuse. Immediately following abuse occurring, the grooming process is continued – and the process of grooming directly leads to the child's continued silence. The inability to disclose and discuss their abuse reinforces and exacerbates the long-term harm to the child.

How does grooming occur?

Offenders who sexually abuse children engage in a cyclical pattern of behaviour. While there are variations amongst sex offenders in how they operate, the concept of the sexual offending cycle can be used as a fairly typical pattern for the largest category of offenders, adult male sex offenders. An understanding of the offender cycle can provide a context for grooming, and the actions and motivations of the groomer.

The Offender Cycle



Adapted from the Core Sex Offender Management & Intervention Program Victoria, 2001.

'When they groom they might take one aside, give him treats, get the knowledge, give him ice cream, get to know his parents, say "Oh I'll help with your homework" or "come around", and normally most offenders get the victim alone, part of the grooming is to get them alone…"This is where I live, if you want a hand with your homework, or want to get your bike fixed", that's where the offence is most likely to occur' – Child sex offender

1. Thoughts & feelings, negative/positive: Adults who sexually abuse children describe the first stage as having experienced certain feelings – depression, sadness, anger, anxiety, excitement, loneliness, and despair. They can emerge immediately prior to offending, or build up over a long period of time.

2. Pro-offending thinking: At this stage the offender convinces themselves that their behaviour is not harmful, and will make them feel better.

3. Fantasy & rehearsal: The third stage is often used to escape from problems and to relieve feelings of anxiety about their desire to abuse children. Often, the desire to repeat the feelings reinforces the fantasy and leads offenders to act out their desires in reality.

4. Targeting: The selection process used to isolate and choose victims, usually vulnerable or neglected children. The targeting includes the parents or caregivers of the children.

5. Grooming: This stage is covered throughout the report, and is the manipulation or coercion of children, parents/caregivers, and/or staff in order to gain access and isolate the child.

6. The offence: The actual sexual assault occurs, and the offender relies on this act to reinforce and replay earlier fantasies, used to escape negative feelings.

7. Guilt & fear: Often feelings of guilt or fear emerge after the offence has been perpetrated. The offender may convince themselves that it didn't happen, wasn't too bad, they were provoked, or the child enjoyed it.

8. Maintain secrecy: The cover up stage, a lot of work (in effect, continuing the grooming stage) goes into keeping the victim silent. Bribery, threats, coercion, manipulation and special treatment might be used.

9. Pretend things are normal: Acting or portraying themselves as normal, offenders are able to maintain the respect of the community or the parents/ caregivers, to ensure continued access to children. At the end of this cycle, offenders feelings of guilt, fear, anger, excitement reoccur or can no longer be ignored, so the process begins again.

The child sex offender is following a pattern of behaviour that remains constant in across a range of situations – the methods only change as the circumstance or environment alters. Online grooming is one type of environment where grooming occurs; offline, or face-to-face grooming, is another environment, but the child sex offender uses the same techniques and patterns of behaviour to groom a child.

Grooming is an insidious process, one that both builds a trusting relationship with the child and his/her carers, and one that isolates the child in order to abuse them. Importantly, grooming occurs both before the sex offence, to access the child, and after the offence, in order to maintain access, ensure the child's silence, and keep the trust of carers and adults.

'I would arrange for private if you want more than what you're learning here in the time available, you can bring your work to my place for whatever reason, then whatever took place there was away from the organisation.' – Child sex offender

The grooming process can often occur over extended periods of time. Child Wise has knowledge of child sex offenders that have accessed families with children who are 10 years old, because they have a preference for 12-13 year old children. These committed paedophiles are willing to build a trusting relationship with families over years (often with multiple targets at one time), because it helps to put their grooming behaviour beyond all doubt. However, it often occurs in a much shorter time span, dependant on the skill and experience of the offender.

People intent on grooming children for sexual abuse are commonly charming and helpful, have insider status, and often go on the offensive when behaviour is challenged. Worrying behaviours that may be grooming include:

- Peer-like play with children;
- Preference for the company of children;
- Engagement in 'roughhousing' and tickling;
- Touching games;
- Failing to honour clear boundaries of behaviour; and
- Seeking one-on-one contact with children.

(van Dam, 2001)

'Just giving them a cuddle was a grooming [sic]*, cos you're grooming to see what their reaction or response is to your touch… you're offending all the way through from the start… I'd always make excuses, I'd go to the toilet upstairs, but I'd go to the bedroom, and you knew exactly what you're doing, you're going to offend.' – Child sex offender*

Grooming frequently involves high levels of planning and effort, where subtle manipulations and special attention is paid to the family and/or organisation, and the victim. Occasionally, bribery, coercion, force, or threats may be used. Child sex offenders often ingratiate themselves to parents or staff in organisations, helping out and providing extra assistance. Such actions lower the chance of detecting inappropriate or grooming behaviours, as they become considered integral to the family or organisation, and devoted to children.

It is important to remember that up to 30% of child abuse is perpetrated by peers – children or of a similar or older age group. Young people can also be responsible for physical, emotional, and sexual abuse, and organisational responses to these forms of abuse 'are usually incorporated into policies to prevent bullying' which is not appropriate in all cases (Irenyi et al., 2006). However, the concept of 'peer grooming' does not seem to be a strong one, and there has been limited evidence or research of its occurrence.

Child offenders rarely seem to conduct 'grooming' behaviour as described above. Many of the abusive behaviours exhibited by children are concerning, as they may be offending or reacting to abuse that has been perpetrated against

them. A sensitive approach to child and youth grooming behaviours is required.

There is no one type of person who is likely to offend against children – there may be warning signs, equally, there may be none. The key theme around child grooming with the intent of sexual abuse is opportunity. Some offenders await the opportunity, others create the opportunities and put themselves in settings where they could abuse, and still others move between a range of settings to enable abuse (Gallagher, 1998).

It is not just paedophiles that pose a risk to children; many people have the capacity to become child sex offenders. Based on the results from a large sample of both male and female public sector childcare workers in the UK, in 15 per cent of the male and 4 per cent of the female respondents, Freel found a level of sexual interest in children (2003). Most concerning was that 4 per cent of the men and 2 per cent of the women admitted that 'if it was certain no one would find out and there would be no punishment' they might have sex with a child (Freel, 2003). This probably underestimates the true situation, given the social stigma surrounding the expression of sexual interest in children.

'Power and control is one of the biggest tools an offender uses. He uses it firstly to develop a level of authority over the child, possibly, he uses it to develop a friendship, with the child, he uses it to offend against, uh, any other person, an offender needs to disempower [sic] *that person, he does that by taking away their rights either with violence, or assertiveness using coercion, he does it to convince a victim that what was perpetrated against that person was ok, when in fact it wasn't.' – Child sex offender*

Anyone who works with children, police, the judiciary, social workers, and the general public, need to be able to recognise the grooming process used by child sex abusers toward both adults and children (Beyer, Higgins & Bromfield, 2005). This will assist effective implementation of any grooming legislation, and increase the likelihood that it is used by police and prosecutors.

Purpose of grooming legislation

As the earlier sections of this report show, the abuse of children is a continuum, which begins with a child sex offender grooming the child to gain their trust. A truncated description of this process might be to identify the child, build trust, normalise sexual discussion, behaviour, or touching, ultimately with the intent to abuse the child. Currently, Victorian Police are only able to effectively intervene in online grooming through the Commonwealth Criminal Code, or following the completion of the abuse, often after the penetration or rape of the child has occurred.

The understanding of how child sex offenders operate has grown substantially, leading to a greater chance of identifying and recognising the grooming of children. The creation of a specific preparatory offence related to grooming will allow earlier intervention in the child abuse act, reducing the impact and trauma for the child.

The nature and scope of preparatory offences in general are best understood by contrast with the law of attempt. San Bein comments that "conduct intended to commit an offence that has not reached the stage of the beginning of the execution of the offence does not constitute an attempt but preparation." (Bein, 1993: 186). With other examples of preparatory offences to be found in the area of counter terrorism (see s101.4, s101.5 and s101.6 of the *Criminal Code* Act 1995 (Cth)) and organised crime (eg. the consorting laws found in s93X(1) of the *Crimes Act* 1900 (NSW)) there is some force to Bein's assertion that, "The more serious the complete offence, the greater the justification for imputing criminal liability at an earlier stage on the path from the formation of intent to its realization." (Bein,1993: 200). He further asserts the utility of preparatory offences where there is a, "…need to provide the police with the means for making preventative arrests. This is particularly true of those offences regarding which it is particularly difficult to apprehend perpetrators and prevent consequences." (Bein,1993: 201). While the seriousness of completed acts of child sexual assault is readily apparent, the difficulties of interception and proof that law enforcement face in seeking to avert such harm will be discussed further below. Ferzan too highlights the role of such "proxy crimes" as a preventative tool, "Proxy crimes do not punish for blameworthy behavior. Proxy crimes are purely for prevention."(Ferzan, 2011: 1284).

In order to allow for intervention prior to the relevant child suffering any real lasting harm, a preparatory face-to-face grooming offence has to be drafted broadly enough to encompass the sort of otherwise innocuous and legal conduct frequently engaged in by child groomers. This is not uncommon with numerous preparatory offences already in existence in Australian criminal legislation targeting seemingly insignificant conduct that becomes threatening when engaged in with an intent to commit a serious crime, most commonly

housebreaking or stealing (eg. *going equipped for stealing* contrary to s91 of the *Crimes Act* 1958 (Vic), *going equipped for commission of offence of dishonesty or offence against property* contrary to s270C of the *Criminal Law Consolidation Act* 1935 (SA) or *going equipped for commission of offence against the person* contrary to s270D of that same Act). While the conduct element remains important so as to avoid any allegation of a particular preparatory offence actually amounting to no more than a thought crime (and thereby violating the fundamental rule of criminal law that liability can not be imposed for a person's thoughts/intention alone – Bein,1993: 187), it has been noted that, "…the more general and vague - rather than specific and strict the definition of the *actus reus* (e.g. by the use of such terms as "does any act" or "possesses any instrument") - the greater the need for an element of purpose." (Bein,1993: 193).

Outside of preparatory offences, Ost discusses the potential for capturing grooming via prosecutions for attempted completed sexual offences under the relevant child sexual assault laws in the UK in, *Getting to Grips with Sexual Grooming? The New Offence under the Sexual Offences Act 2003*. However, because the *Criminal Attempts Act* 1981 (UK) requires an accused to have gone beyond committing acts merely preparatory to the offence (see s1(1)), it is ultimately likely to be of little utility in capturing genuinely preparatory grooming activity (Ost, 2004: 150). The law of attempt is likely to also be of minimal utility for this purpose in Australia too where the relevant physical element required to be proven generally constitutes conduct "more than merely preparatory to the commission of the offence" (taken from s321N(1)(a) of the Victorian *Crimes Act* but see also s11.1(2) of the Commonwealth *Criminal Code*, s44(2) of the *Crimes Act* 1900 (ACT), s43BF(2) of the *Criminal Code Act* 1983 (NT) and s4 of the *Criminal Code Act Compilation Act* 1913 (WA) .

Ost points to the English case of *R v Rowley* [1991] 4 All ER 649 as demonstrative of the shortcomings in seeking to capture the kind of preparatory conduct inherent in child grooming via charges for attempted completed sexual offences (here inciting a child to commit an act of gross indecency contrary to s1 of the Indecency with Children Act 1960 (UK)); in that case, "… the Court of Appeal held that the defendant's act of leaving messages in public places for boys to contact him, messages that did not contain any propositions or incitements, only amounted to a preparatory act as opposed to an attempt to commit the offence of inciting the child to commit an act of gross indecency."(Ost, 2004: 150)

The Queensland Council for Civil Liberties, in a submission to the Queensland Legislative Assembly Legal Affairs and Community Safety Committee regarding the introduction of a specific grooming offence in that State (discussed further below), raised the prospect of leaving the regulation of grooming activity to the

law of attempt due in part to the undesirability of criminalising "…someone who had formed but not yet manifested an intention sufficient for an attempt." (Queensland Council for Civil Liberties 2013: 2). The Department of Justice and Attorney General response however confirmed that the underlying objective sought to be achieved via the introduction of a grooming offence was to allow for intervention at a truly preparatory stage, before the enlivening of the law of attempt:

> "Relying on the law of attempt would not achieve the Government's policy intention to, in effect, criminalise acts preparatory to the commission of a child sex offence. The act relied constituting an attempt must be an act immediately connected with the contemplated offence. The act must go beyond mere preparation to commit the offence and must amount to the beginning of the commission of the offence" (Department of Justice and Attorney-General 2013: 7-8)

Indeed it will contended below that the Queensland grooming offence found in s218B of the *Criminal Code Act* 1899 (Qld) provides the best current model for capturing conduct truly preparatory to child sexual assault.

Analysis of current legislative approaches

Existing legislation seeking to target grooming activity currently focuses significantly on online activities. This is true of both Australian and overseas jurisdictions; see for example, the offence of *luring a child* in section 172.1 of the *Criminal Code of Canada* which is restricted to communication "by a means of telecommunication." However as evidenced by the following discussion, not all such offences clearly fall into the category of grooming offences, in capturing truly preparatory activity. Current criminal legislation in Australia that captures varying degrees of grooming activity (be it offline or online) can be broken down into the following categories of offences:

Procuring offences

Various formulations of this offence can be found in s58 of the Victorian *Crimes Act*, s66EB(2) of the NSW *Crimes Act*, s63B(1) of the SA *Criminal Law Consolidation Act* and s125C of the Tasmanian *Criminal Code Act* 1924. A broader version of such offence covering acting with *intent to procure* can be found in s474.26 of the Commonwealth *Criminal Code*, s63B(3)(a) of the South Australian *Criminal Law Consolidation Act,* s125D(1) of the Tasmanian *Criminal Code Act,* s66(1) of the ACT *Crimes Act* 1900, s204B(2)(i) of the WA *Criminal Code Act Compilation Act* 1913, s131(1) of the NT *Criminal Code Act* 1983 and s218A(1) of the Queensland *Criminal Code Act* 1899. In relation to this latter group of offences, all bar the Northern Territory version of would appear to be restricted to online activity, referring as they do to relevant "communication" (often by electronic means, or via the use of a carrier service in the case of the Commonwealth offence).

The Queensland *Criminal Code* defines procuring as to, "...knowingly entice or recruit for the purposes of sexual exploitation." (see s218B(10)). This definition would appear to focus the offence on procuring for a commercial focus. The Victorian *Crimes Act* currently has a similar offence of, *facilitating sexual offences against children*, which is drafted more broadly then the above pure procurement offences in so far as it criminalises acting or omitting to act for gain which facilitates the commission of a sex offence against a child with another person, being at least reckless to such facilitation (see s49A). The requirement to prove "personal gain or gain for another person" along with the very high maximum penalty of this offence (namely 20 years imprisonment, under sub-section (1)) would appear to support the contention that such an offence was intended to capture commercial activity leading to child sexual assault. As the Victorian Department of Justice rightly observe in their report *Review of Sexual Offences: Consultation Paper*, these offences arose out of laws targeting child prostitution in particular and so differ in purpose from other child sexual assault offences, particularly those aimed at allowing for intervention prior to any such offending (Victorian Department of Justice, 2013: part 8.3.3). This may go some

way to explaining their limited use to combat particular acts of child sexual assault let alone conduct preparatory to such offending.

Offences concerning sending pornographic material to a child or making the same available

These offences can be found in s474.27A of Commonwealth *Criminal Code*, s66(2) of the ACT *Crimes Act* and s171.1 of the *Criminal Code of Canada.* Such an offence (namely, *indecent communication with young person under 16*) has also been proposed in New Zealand via the *Objectionable Publications and Indecency Legislation Bill 2013* (NZ). Again a broader version of such offence encompassing acting with intent to expose a child to pornographic material can be found in s125D(3) of the Tasmanian *Criminal Code Act* and s204B(2)(ii) of the WA *Criminal Code*. However all of these offences are restricted to electronic forms of communication (again via the use of a carrier service in the case of the Commonwealth offence).

While such activity can undoubtedly form part of the grooming process when this is viewed as a spectrum of conduct of increasing gravity, it is also arguably a very serious sexual offence in and of itself causing serious trauma to any child involved. In this way it is more than merely preparatory in the sense of the conduct sought to be captured in any grooming offence aimed at allowing for intervention prior to lasting harm occurring.

The offence found in s66EB(3) of the NSW *Crimes Act* is interesting in this regard; its label, *grooming children*, would tend to suggest its focus on capturing the kind of preparatory conduct necessary to allow for intervention prior to lasting harm occurring. However while the mental element lends itself to the type of sexual intention inherent in grooming activity (namely, "the intention of making it easier to procure the child for unlawful sexual activity with that or any other person") the offence itself is restricted to only two types of physical activity, namely engaging in conduct that:

1. Conduct that exposes a child to indecent material; or
2. Provides a child with an intoxicating substance.

Again while such conduct can form part of the broader grooming process, they are also arguably serious and damaging completed acts of criminality in and of themselves, and thus exceed conduct of merely preparatory nature. Thus while the NSW Attorney General and Minister for Justice called the section "a preparatory offence" during the second reading speech when the relevant bill introducing the offence was being considered in NSW Parliament, he also made clear that the offence wasn't intended to capture all types of potential grooming activity but rather, "…the kinds of grooming activities commonly

engaged in by paedophiles, whether online, through electronic communications or through any other means or activities." (Hatzistergos, Second Reading Speech: 1). Indeed the focus of the offence upon more serious forms of potential grooming activity is aptly demonstrated by the case of *R v Craig Andrew Woodley* [2013] NSWDC 14 which provides as interesting case study in relation to the implementation of the section, as one of the few cases involving purely face-to-face grooming activity and where there was no completed sexual offence save for one charge of act of indecency contrary to s610(1) of the NSW *Crimes Act* which the sentencing judge interestingly described at [47] as at a lower range of offending than the two s66EB(3) grooming charges.

The fact that the offender in this case also appeared to have no sexual interest in children per se, that is beyond the specific child victim in this particular case, (see [60]) is also noteworthy and highlights the fact that grooming activity isn't always conducted by a hardened/committed pedophiles but rather can occur at a range of levels. There is therefore a need for the law related to grooming to account for all relevant offender typologies.

Meeting/travelling with the intention of meeting a child previously groomed to procure a him/her for unlawful sexual activity

This offence can be found in s66EB(2A) of the NSW *Crimes Act* and internationally in s131B of the *Crimes Act* 1961 (NZ) and s15 of the UK *Sexual Offences Act 2003*. Indeed the UK legislative scheme in general provides an interesting point of comparison with the UK *Sexual Offences Act 2003* containing a whole host of offences that cover various aspects of the potential grooming process. These include: *causing or inciting a child to engage in sexual activity* (s10), *engaging in sexual activity in the presence of a child* (s11) and *causing a child to watch a sexual act* (s12). Section 14 goes so far as to criminalise activity whereby a person "intentionally arranges or facilitates something that he intends to do, intends another person to do, or believes that another person will do, in any part of the world" where doing this would involve either sexual activity with a child (contrary to s9) or any of the other offences listed above. However all of these offences again arguably involve completed sexual offences causative of very serious and lasting trauma to any child involved. The closest to an actual grooming offence that the UK legislative scheme comes therefore is s15, *meeting a child following sexual grooming.* However this should not be mistaken for a genuine stand-alone grooming offence (McAlinden, 2002: 30-31); see for example Cleland who describes the s15 offence as more accurately a "post-grooming" offence (Cleland, 2005: 201).

While such an offence can be seen as a positive move in allowing for intervention before any completed sexual offending and attendant trauma has occurred, it is doubtful whether it takes matters much further then the law of

attempt as discussed above. In arranging a concrete meeting and indeed taking steps towards the realisation of this by at least commencing travel the perpetrator has arguably already engaged in acts more than merely preparatory to the commission of the completed sexual offence intended. It does of course allow for prosecutions in the absence of any evidence of the specific sexual offence envisioned by a perpetrator but above all it really provides a "a clear point at which to intervene" to quote Craven, Brown and Gilchrist discussing the absence of any such clear threshold in the context of face-to-face grooming where the perpetrator and victim are already sharing the same physical space; indeed, "In this scenario the problem of distinguishing sexually motivated behaviour from non-sexually motivated behaviour is accentuated, because the sexually motivated behaviour is not dissimilar to normal interaction." (Craven, Brown and Gilchrist, 2007: 65). The issue of proof of relevant intent in grooming offences will be discussed further below.

It should be noted that while the UK offence requires proof of communication between the perpetrator and child on at least two prior occasions, this does not have to take place online. Indeed the prior communication does not even have to be of an explicitly sexual nature, allowing for the capture of seemingly, "…'innocent' behaviour that is part of the grooming process." (Gillespie, 2004a: 245). It is for this reason Ost has queried whether s15 is intended to be, "…a 'catch all' offence, covering any contact with the child provided that the individual subsequently sets out to meet him or her." (Ost, 2004: 152). Nonetheless because of the importance any such communication is likely to be in proving the necessary sexual intent, it is doubtful whether exclusively non-sexual communication can/would be covered. Furthermore in relation to the present report, because of what commentators have observed is a 'virtual crime scene' (O'Connell, 2003: 3) or 'digital footprint' (McLaughlin, 2009: 12) that the online context provides, it has been extensively argued that practical difficulties surrounding issues of proof are likely to hinder the use of the offence to capture prior offline communication.

Section 218B of the *Criminal Code Act* 1899 (Qld)

Following on from the above, it would seem that the only grooming offences framed in such a way to capture truly preparatory activity currently in existence in Australian criminal legislation are those found in s474.27 of the Commonwealth *Criminal Code*, s63B(3)(b) of the SA *Criminal Law Consolidation Act*, and s218B(1) of the Queensland *Criminal Code*. However as the first two again appear to be restricted to online communication (with the SA *Criminal Law Consolidation Act* requiring a relevant 'communication' and the Commonwealth offence again requiring the use of a carrier service) and as such

only the relevant provision of the Queensland *Criminal Code* will be the subject of this discussion. This section provides:

218B Grooming children under 16
(1) Any adult who engages in any conduct in relation to a person under the age of 16 years, or a person the adult believes is under the age of 16 years, with intent to:
(a) facilitate the procurement of the person to engage in a sexual act, either in Queensland or elsewhere; or
(b) expose, without legitimate reason, the person to any indecent matter, either in Queensland or elsewhere;
commits a crime.
Maximum penalty 5 years imprisonment.

As can be seen the relevant activity is broadly defined to include "any conduct" and thus not restricted to online activity nor the specific acts of purported grooming covered by the NSW offence. The Explanatory Notes to the *Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Bill 2012* (Qld) which introduced the offence into the Queensland Criminal Code expressly notes that it allows for, "…police to intervene before a sexual act or sex-related activity takes place."(Explanatory Notes, *Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Bill 2012* (Qld): 3). It also helpfully applies whether the procurement to engage in a sexual act that the perpetrator intends is either imminent or in the future; "For example, the adult may seek to build a relationship of trust with the child, intending to sexualise that relationship at some point in time." (Explanatory Notes, *Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Bill 2012* (Qld): 10).

Finally the extra-territorial application covering sexual or indecent activity "either in Queensland or elsewhere" importantly expands the scope of application for the offence and ensures that it will not be restricted in practice by state borders which may not so restrict would-be offenders. Nevertheless, although this does not as yet appear to have been expressly considered or tested, there may be a potential issue as to whether the relevant 'conduct' for the purpose of this provision can take the form of words alone.

Judicial consideration of existing grooming law

The gravity with which Courts view grooming activity is clear from the discussion of *R v Woodley* above, where the sentencing judge held that the acts of face-to-face grooming therein as more serious than the completed sexual offence. The leading authorities which guide principles of sentencing in (albeit online) grooming offences are also informative of how seriously Courts treat such activity.

R v Asplund [2010] NSWCCA 316 was a Commonwealth prosecution for offences contrary to s474.27(1) of the Commonwealth *Criminal Code*. Although the charges relate specifically to certain "determined and continuous" (see [47]) indecent communication which the offender engaged in both via telephone and the internet with a 13 year old girl over a 61 day period, the case represents a detailed examination of the grooming process. The Court recognised the severity of certain uncharged acts of grooming and appropriately took these into account including the offender's actions in providing the victim was substantial sums of money which, "…is not caught by any criminal charge but is strong circumstantial evidence pointing to his intentions of grooming her for sexual activity." (at [5]) This also includes the victim sending the offender an explicit photo of her vagina at his request about which it is observed,

> "…it is a demonstration of how easily and quickly young children can be overcome by the power of a male adult and a desire to please." (at [5])

There was also evidence of the offender deliberately spurning and toying with the victim at a certain juncture during their communication which the Court described a "manipulative" and forming,

> "...part of the grooming conduct in that it makes clear the offender expects subservience; that he is the one with the power. The communication is not indecent but it is strong evidence of grooming and an abuse of his power over her." (at [5])

It was observed importantly at [6] that the criminality in grooming lay in the interference with the child's right to privacy and healthy psychosexual development by "…requiring her to feed into and gratify his sexual titillation and fantasies with a long-term view of having her submit to sexual activity with him." And at [5]:

> "It was not a case of seeking instant gratification of his sexual fantasies, but rather he was placing his ideas of personal encounter out there for her consideration, and reducing the sense of foreignness or inappropriateness of the idea."

The relevant principles which a Court should be guided by in imposing sentence for grooming activity were set out at [8]:

- Level of persistence in use of carriage service for grooming purposes;
- Nature of indecent material communicated;
- Extent to which the intent to future sexual activity with himself is exposed and developed;
- The nature of the future sexual activity intended;
- Age and power differential between victim and offender;
- Nature of prior relationship between offender and victim; and
- The offender's level of awareness and indecency and deliberateness in communicating.

Whilst many of these factors would seem specific to cases of online grooming where indecent material is communicated, the reference to the possibility of a prior relationship between the offender and victim is of particular relevance to cases of offline grooming where the perpetrator is usually not a stranger the victim has met over the internet. The Court relevantly identified the harm to this particular victim as "...an abuse of power and the formulation of destructive relationship" which must have had "some corrosive impact" upon her, "...so that she forgoes the normal sexual mores accepted by our society and becomes compliant with unhealthy demands and an interest in prurient suggestion."(at [48]) In ultimately deciding to increase the sentence imposed at first instance general deterring others from committing such offences was held to be of particular significance in these cases due in part to difficulties in detection,

> "The offences of which the respondent was convicted have the potential to do great damage to young persons in the community. They are hard to detect and general deterrence is of particular significance when sentencing."(at [50])

In *R (Cth) v Poynder* [2007] NSWCCA 157 Rothman J made the following apt observation regarding the legislative purpose behind the relevant Commonwealth offence,

> "The legislature, with this provision, is seeking to implement society's abhorrence of the practice of inducing children to engage in inappropriate sexual behaviour. That process includes not only the direct and physical abuse of children but the "grooming" of children to accept more readily inappropriate sexual activity. Even though a perpetrator of an offence of this kind may have no intention of acting out the fantasy or fantasies in which she/he is indulging, the conduct has a significant deleterious impact upon any child participating in it." (at [96])

Areas for consideration

The actual utility of grooming laws: problems with interception and proof of intent

The *ex post facto* operation of many of the laws in this area whereby evidence of grooming is only detected after a completed sexual offence has been reported, has been noted by commentators including Gillespie who still sees potential for such laws to act as a deterrent force,

> "However, we must be realistic about the offence of grooming and realise that it will not be used often because, sadly, most grooming offences are detected only after abuse has occurred. In those circumstances, an offender should not be charged under s.15 [of the UK *Sexual Offences Act*], but instead with a substantive sexual offence. That is not to say that the grooming offence is not useful. It will serve as an additional deterrent and, where an offender is discovered before committing a sexual act, appropriate measures can be taken against him." (Gillespie 2004b: 3; see also Ost 2004: 152–3)

In addition to such difficulties in effectively intercepting grooming activity before a completed sexual offence takes place, the absence of any direct evidence proving the relevant criminal intent usually means that circumstantial evidence is relied upon at trials to infer the necessary intent. The suggested direction to NSW Juries in the Criminal Trial Courts Bench Book is indicative of how the difficult issue of intent is usually sought to be proven in criminal trials:

> Intention may be inferred or deduced from the circumstances in which … [*specify, for example, the death occurred*], and from the conduct of [*the accused*] before, at the time of, or after [*he/she*] did the specific act … [*specify, for example, which caused the death of the deceased*]. Whatever a person says about [his/her] intention may be looked at for the purpose of finding out what that intention was in fact at the relevant time.
>
> In some cases, a person's acts may themselves provide the most convincing evidence of [*his/her*] intention. Where a specific result is the obvious and inevitable consequence of a person's act, and where [*he/she*] deliberately does that act, you may readily conclude that [*he/she*] did that act with the intention of achieving that specific result. (Judicial Commission of New South Wales 2002: 443)

This reference to the often cited principle from *R v Stokes and Difford* (1990) 51 A Crim R 25, that every person intends to the natural consequences of their acts, highlights the difficulties in proving intent to the requisite standard in a preparatory offence for face-to-face grooming involving acts not always of a clear sexual nature. Craven, Brown, & Gilchrist describe this as the, "seemingly

impossible task of proving beyond reasonable doubt that the ambiguous behaviour is sexually motivated' (Craven, Brown, & Gilchrist, 2006: 297). This is particularly so where no relevant trail of messages or other forms of electronically recorded communication that disclose a potential sexual intent may exist,

> "Internet grooming is much more likely to make the grooming process explicit, and it is more likely that evidence of the sexual nature and intent of the behaviour can be obtained, that is, via the computer trail that remains (or through records of conversations with undercover police officers). In contrast, there is much less likely to be such tangible evidence in 'face to face' sexual grooming interactions. Here, the identification of behaviours as sexually motivated relies on people being witness to it and recognising it as such. However, it is extremely difficult to distinguish between sexually motivated grooming behaviours and perfectly normal child/adult interactions that have no sexual motivation, especially when the witnesses have no training or knowledge about the grooming process and the tactics used by offenders. Even then, obtaining evidence that would be sufficient in court presents a further difficulty." (Craven, Brown, & Gilchrist, 2006: 64)

The importance of records of electronic communication was also noted by Gillespie who surveys the kind of evidence used to prove the necessary criminal intent in these cases:

> "Of course, it is known that intent is one of the more difficult species of *mens rea* to prove, so how will this be done within the context of grooming? Other than a confession, the most likely useful evidence will be chat room transcripts, emails and text messages sent between the offender and the victim. In previous grooming cases, it has been shown that either the victim or the perpetrator has kept the emails (in the same way that lovers keep 'love letters') and these will be a useful source of evidence. Additionally, emails to others will often be crucial and, in the past, there have been occasions when, for example, a perpetrator has emailed a friend 'updates' on how the grooming process has been working. Similarly, when perpetrators have been arrested, they have been found in possession of condoms, lubricating jelly, alcoholic drinks etc. It would be perfectly reasonable to lay such evidence before a jury and ask them to draw their own conclusion as to the likely intent of the offender." (Gillespie, 2004b: 2-3)

It should be borne in mind that Gillespie's reference to incriminating items found on a perpetrator is in the context of a discussion of the relevant UK offence regarding meeting/travelling with the intention of meeting a child previously groomed to procure him/her for unlawful sexual activity activity (ie. s15 of the UK *Sexual Offences Act,* discussed further above). Thus it is of limited application

in a preparatory grooming offence seeking to provide for intervention before any arrangement is formed to engage in concrete sexual activity. Even in relation to that offence though issues of how to prove the relevant intent persist, as noted by Ost "...[In] *Re Attorney General's Reference (No.41 of 2000)* [[2001] 1 Cr App R (s) 372], the defendant sexually groomed a thirteen year old boy prior to committing the offence of making indecent photographs of him by providing him with numerous gifts and money. However, the giving of gifts and money may not necessarily be behaviour which could, in itself, be indicative of an intent to commit a sexual offence against a child at a subsequent meeting." (Ost, 2004: 153)

It is for these reasons that it has been suggested that anyone caught under the umbrella of a preparatory grooming offence, although not constricted by the requirements inherent in the law of attempt as discussed above would nonetheless, "...have to take significant steps towards the actual commission of a sexual offence before a clear intention can be discerned." (Khan, 2004: 224)

Ultimately as alluded to by Craven, Brown & Gilchrist above, public education is likely to be key to overcoming the difficulties inherent in both interception and proof of grooming offences. The literature distinguishes between known risks and unknown risks in this regard, the former referring to persons who are known to authorities due to past sexual offending (McAlinden, 2012: 27-270). Authorities can already employ often not specifically criminal measures such as civil preventative orders to track these people and intervene before they offend again, whether their predatory conduct is taking place online or offline (indeed s123 of the UK *Sexual Offences Act* provides for *risk of sexual harm orders* which authorities can apply for even when a person has not yet been convicted of a child sex offence, and which allow for the imposition of prohibitions deemed necessary for the protection of children generally or any particular child from harm from the defendant, whether that harm is physical or psychological).

The difficulty arises with persons unknown to authorities who are often already trusted or close to the victims/family and whom no one has any reason to suspect and therefore monitor. This is particularly problematic where the relevant behaviour has become normalized as is the ultimate goal of grooming (McAlinden, 2012: 33).

While police can proactively lay traps as it were to catch would-be online perpetrators, the only way to effectively intervene and disrupt offline grooming where there is usually no tangible physical evidence, is for the people involved

to be sufficiently educated to identify the signs of grooming to then provide police with impetus they need to intervene as well as the evidence required to successfully prosecute such matters in Court (Craven, Brown, & Gilchrist, 2007: 66 and 69).

Proposed legislative model

Due to its relatively recent enactment, it has not been possible to gauge the usage or operation in practice of the Queensland model for a preparatory grooming offence. Nevertheless, Child Wise supports as a possible model for a grooming offence in Victoria, the formulation that currently appears in s218B of the Queensland *Criminal Code*, enacted as it was after a thorough parliamentary inquiry involving submissions from a wide variety of interested bodies including the relevant interest groups (such as those concerned with protecting civil liberties).

Child Wise also broadly supports the model grooming offence proposed by the Victorian Department of Justice in their review of sexual offences (in Victorian Department of Justice 2013: part 8.3.3), particularly in relation to the substantial maximum penalty suggested therein which is important in light of the comparatively low maximum penalties provided for in the relevant legislation in other states (eg. 5 years imprisonment under s204B(2) of the WA *Criminal Code* and s131 of the NT *Criminal Code* even though both are arguably more serious completed sexual offences involving as they do acting with intent to procure or at least expose a child to indecent matter) which Child Wise would argue does not adequately reflect the grave culpability involved in grooming.

However Child Wise is strongly in favour of a grooming offence that properly captures face-to-face grooming activity, and although the relevant media release from the Victorian Premier's office asserts that this will be the case (see http://www.premier.vic.gov.au/media-centre/media-releases/8680-government-acts-against-child-grooming.html), the use of the term "communicates" in the model proposed by the Victorian Department of Justice has the potential to confuse the situation in this regard. Child Wise therefore suggests that the terms of the relevant offence be clarified to ensure that they cover all forms of face-to-face grooming – through words, as well as through physical actions. It should also be formulated so as to allow for extra-territorial application beyond state borders as per the terms of the Queensland offence.

Child Wise also advocates for recognition, whether in the terms of the offence itself or elsewhere (perhaps in the sentencing process) of the effect of grooming upon such third parties associated with the victim as the child's family which was recommended in the recent *Betrayal of Trust* report (Family and Community Development Committee 2013: 13). As identified in the body of the report, the process of grooming and abuse has serious consequences and traumatic impact on secondary victims, a reality that should be reflected in the gravity of the offence.

The offence should also recognise the increased harm to the victim when the relevant offender otherwise occupied a position of trust or authority, and the

impact on the victim of the egregious breach of trust involved in the abuse of a child by a person responsible for supervising or caring for the child (see for example the aggravating factor to be taken into account in determining the appropriate sentence for an offence set out in s21A(2)(k) of the *Crimes (Sentencing Procedure) Act* 1999 (NSW)).

Additional Recommendations

The introduction of legislation that recognises grooming as a specific preparatory offence is an important step in better protecting our children from abuse. There are a number of subsequent recommendations that are aimed at ensuring such legislation is effectively implemented.

Training for practitioners

As legislation on grooming is introduced, there should be training and information packages developed for police, prosecutors, child protection workers, and the judiciary. The benefits and potential deterrence aspects of grooming legislation have been discussed above, but they can only have a full impact if they are understood and implemented.

Preparatory offences are difficult to detect, prove, and prosecute, but by educating the professions most likely to utilise or come into contact with such offences, there is a greater likelihood that they will be employed effectively.

Community awareness campaigns

This report highlights the difficulties that grooming offences will face – in particular, evidence gathering and identification of grooming behaviours. In conversations with Child Wise, police have commented that an inherent challenge for preparatory crimes of this nature is a lack of community awareness. Of necessity, for offences around offline grooming, police will largely rely on reports or complaints made by the general public.

The awareness of indicators and signs of child sexual abuse in the general community is low (ACF, 2009), and the understanding of grooming and the behaviours of child sex offenders is likely to be lower still. There is a need for a public education campaign on both child sexual abuse, and on grooming. Parents, carers, and people who work with children should all be provided with the tools and knowledge to identify child sex offenders and report suspected grooming and child abuse to police or child protection.

Conclusion

The act of grooming a child for sexual exploitation or abuse is an abhorrent one. In Victoria, at present, there is no specific offence for face-to-face grooming, although this situation is likely to change in the near future. We hope this report will contribute to the formulation of grooming legislation, and offers an insight into the grooming of children.

Grooming is, as noted above, an insidious process. Determining grooming behaviours and acts relies largely on determining intent. Yet our knowledge of child sex offenders is growing, and with this knowledge we can better identify those who prey on the most vulnerable in our society, on our children.

The introduction of grooming legislation is to be welcomed, but cannot on its own offer the protection our children need. Awareness and action must be combined, and through these efforts, we can build child safe organisations and communities.

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Organisations have a moral responsibility to ensure children are safe in their care.

Child abuse is preventable.

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