



Queensland

Child Protection (Offender Reporting) and Other Legislation Amendment Act 2011

Act No. 10 of 2011



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Act No. 10 of 2011

An Act to amend the Child Protection (Offender Reporting) Act 2004, the Births, Deaths and Marriages Registration Act 2003 and the Police Powers and Responsibilities Act 2000 for particular purposes

[Assented to 14 April 2011]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Child Protection (Offender Reporting) and Other Legislation Amendment Act 2011*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Child Protection (Offender Reporting) Act 2004

3 Act amended

This part amends the *Child Protection (Offender Reporting) Act 2004*.

4 Omission of s 4 (Notes in text)

Section 4—
omit.

5 Amendment of s 13 (Offender reporting orders)

(1) Section 13(2)—
omit, insert—

-
- ‘(2) However, the court may only make the offender reporting order—
- (a) if the court is satisfied that the person poses a risk to the lives or the sexual safety of 1 or more children, or of children generally; or
 - (b) for a prescribed offence—without limiting paragraph (a), if the court is satisfied, having regard to the circumstances of the case, that—
 - (i) the context in which the offence was committed was not familial; and
 - (ii) it is appropriate to make the order.

Example for subparagraph (ii)—

The commission of the offence was not merely incidental.’.

- (2) Section 13(3), ‘subsection (2)’—

omit, insert—

‘subsection (2)(a)’.

- (3) Section 13—

insert—

- ‘(11) In this section—

prescribed offence means—

- (a) an offence against the Criminal Code, section 354 committed against or in relation to a child; or
- (b) an offence against the Criminal Code, section 363 or 363A.

Note—

See the Criminal Code, sections 354 (Kidnapping), 363 (Child-stealing) and 363A (Abduction of a child under 16)’.

6 Amendment of s 14 (When initial report must be made)

- (1) Section 14(1)(a), ‘28’—

[s 7]

omit, insert—

‘7’.

- (2) Section 14(1)(b), table, column 2, other than second and third entries, ‘28’—

omit, insert—

‘7’.

- (3) Section 14(1)(b), table, column 2, second entry, ‘90 days after the commencement date or 28’—

omit, insert—

‘7’.

- (4) Section 14(1)(b), table, column 2, sixth entry, ‘14’, first mention—

omit, insert—

‘7’.

- (5) Section 14(1)(b), table, third entry—

omit.

7 Amendment of s 15 (When offender must make new initial report after previous reporting obligations have stopped)

- (1) Section 15, ‘28’—

omit, insert—

‘7’.

- (2) Section 15(4), ‘14’, first mention—

omit, insert—

‘7’.

8 Amendment of s 16 (Personal details that are to be reported)

- (1) Section 16(1)—

insert—

- ‘(m) details of any carriage service (within the meaning of the *Telecommunications Act 1997* (Cwlth)) used or intended to be used by the offender; and
 - (n) details of any internet service provider or carriage service provider (within the meaning of the *Telecommunications Act 1997* (Cwlth)) used or intended to be used by the offender; and
 - (o) details of the type of any internet connection used, or intended to be used, by the offender, including whether the connection is a wireless, broadband, ADSL or dial-up connection; and
 - (p) details of any email addresses, internet user names, instant messaging user names, chat room user names or any other user name or identity used or intended to be used by the offender through the internet or another electronic communication service; and
 - (q) the passport number and country of issue of each passport held by the offender.’.
- (2) Section 16(2)(b) and (c), ‘14’—

omit, insert—

‘3’.

9 Amendment of s 19 (Reportable offender must report changes to relevant personal details)

- (1) Section 19(1), ‘14 days’—
- omit, insert—*
- ‘the prescribed period’.
- (2) Section 19(2)(d), after ‘person’—
- insert—*
- ‘owns or’.

[s 10]

- (3) Section 19(2), ‘14 day period’—
omit, insert—
‘14-day, or 3-day, period’.
- (4) Section 19(4)(a), ‘28 days’—
omit, insert—
‘14 days’.
- (5) Section 19—
insert—
- ‘(5) In this section—
prescribed period means—
 - (a) for a change about where a child generally resides as mentioned in subsection (2)(a)—24 hours; or
 - (b) for a change mentioned in subsection (2)(b)—24 hours; or
 - (c) for any other change in personal details—14 days.’.

10 Amendment of s 22 (Reportable offender to report return to Queensland or decision not to leave)

- (1) Section 22(3)—
renumber as section 22(4).
- (2) Section 22—
insert—
- ‘(3) A report made under subsection (2) in relation to travel out of Australia must be accompanied by a copy of the reportable offender’s passport and travel documents verifying or supporting details in the report.’.

11 Amendment of s 26 (How reports must be made)

- Section 26(1)(a) and (b)—
omit, insert—

- ‘(a) an initial report;
- (b) an annual report;’.

12 Amendment of s 27 (Right to privacy and support when reporting)

(1) Section 27—

insert—

‘(1A) Subsection (3) applies if a police officer or other person receiving the report is aware the person making the report—

- (a) has special needs; and
- (b) because of the special needs, needs to be accompanied by an adult support person when making the report.

‘(1B) If it is not practicable for the person to be accompanied by an adult support person of the person’s own choice, the police officer or person receiving the report must arrange, if practicable, for an adult support person to be present when the person is making the report.’.

(2) Section 27(3)—

omit, insert—

‘(3) A police officer or other person receiving a report under this part must not allow a support person or interpreter to be present when a person is making the report unless the support person or interpreter has signed an undertaking not to disclose any information derived from the report unless required or authorised by or under any Act or law to do so.

‘(4) In this section—

special needs, of a person, means the person’s needs by taking into account—

- (a) the person’s age, sex or cultural background; and
- (b) any disability the person has.’.

(3) Section 27(1A) to (4)—

renumber as section 27(2) to (6).

[s 13]

13 Amendment of s 33 (Reporting by remote offenders)

Section 33(2)(c), ‘before the specific time’—

omit, insert—

‘when contacting the police commissioner under paragraph (a)’.

14 Insertion of new pt 4, div 5A

Part 4—

insert—

‘Division 5A Obligations about DNA sampling and analysis

‘40A Allowing DNA sample to be taken

- ‘(1) This section applies to a reportable offender who is making—
- (a) an initial report; or
 - (b) an annual report.

- ‘(2) If asked by the police officer or other person receiving the report, the reportable offender must allow a DNA sampler to take a DNA sample from the offender for DNA analysis.

Note—

The offender commits an offence against section 50 if the offender fails to comply with the obligation under subsection (2).

- ‘(3) However, subsection (2) does not apply to the reportable offender if a DNA sample, or the results of a DNA analysis of a DNA sample, from the offender are currently kept under the *Police Powers and Responsibilities Act 2000*.
- ‘(4) Also, if the reportable offender is a corresponding reportable offender, subsection (2) does not apply unless, if the offender had remained in a foreign jurisdiction, the offender would be required, under a corresponding Act, to allow a DNA sample from the offender to be taken for analysis.

‘(5) The *Police Powers and Responsibilities Act 2000*, chapter 17, part 5 applies in relation to a DNA sample mentioned in subsection (2).

‘(6) In this section—

DNA sample see the *Police Powers and Responsibilities Act 2000*.

DNA sampler see the *Police Powers and Responsibilities Act 2000*.’.

15 Amendment of s 50 (Failure to comply with reporting obligations)

(1) Section 50(1), penalty—

omit, insert—

‘Maximum penalty—300 penalty units or 5 years imprisonment.’.

(2) Section 50(2) and (3)—

renumber as section 50(3) and (4).

(3) Section 50—

insert—

‘(2) An offence against subsection (1) is a crime.’.

16 Amendment of s 51 (False or misleading information)

(1) Section 51(1), penalty—

omit, insert—

‘Maximum penalty—300 penalty units or 5 years imprisonment.’.

(2) Section 51(2) and (3)—

renumber as section 51(3) and (4).

(3) Section 51—

[s 17]

insert—

‘(2) An offence against subsection (1) is a crime.’

17 Insertion of new ss 52A and 52B

After section 52—

insert—

‘52A Proceedings for an indictable offence

‘(1) A proceeding for a charge of an offence against section 50(1) or 51(1) may, at the prosecution’s election, be taken—

(a) by way of summary proceedings before a magistrate under the *Justices Act 1886*; or

(b) on indictment.

‘(2) Subsection (3) applies if at any stage during a summary proceeding the magistrate is satisfied that the defendant may not be adequately punished on summary conviction because of the nature and seriousness of the offence or any other relevant consideration.

‘(3) The Magistrates Court—

(a) must not decide the charge as a summary offence; and

(b) must proceed by way of an examination of witnesses in relation to an indictable offence.

‘(4) If a Magistrates Court acts under subsection (3)—

(a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and

(b) any evidence brought in the proceeding before the magistrate decided to act under subsection (3) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and

(c) before committing the person for trial or sentence the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).

-
- ‘(5) The magistrate must invite and hear any submissions from the prosecution and defence before making a decision under subsection (2).

‘52B Limitation on who may summarily hear a proceeding for an indictable offence and the level of penalty

- ‘(1) A proceeding against a person for an offence against section 50(1) or 51(1) must be before a magistrate if it is a proceeding—
- (a) for the summary conviction of a person; or
 - (b) for an examination of witnesses in relation to the charge.
- ‘(2) However, if a proceeding for the offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.
- ‘(3) The maximum penalty that may be imposed on a summary conviction of the offence is 200 penalty units or 3 years imprisonment.’.

18 Amendment of s 61 (Failure to comply with procedural requirements does not affect reportable offender’s obligations)

Section 61, note, ‘50(3)’—

omit, insert—

‘50(4)’.

19 Insertion of new pt 5A

After section 74—

insert—

[s 20]

‘Part 5A Change of name

‘74A Change of name of reportable offender

- ‘(1) This section applies if a reportable offender intends to change his or her name under the *Births, Deaths and Marriages Registration Act 2003* or a law of a foreign jurisdiction (each the *relevant law*).
- ‘(2) The reportable offender must obtain the police commissioner’s written permission before changing, or applying to change, the offender’s name under the relevant law.
- Maximum penalty—20 penalty units or 6 months imprisonment.
- ‘(3) In deciding whether to give the permission, the police commissioner must consider each of the following—
- (a) the safety of the reportable offender and other persons;
 - (b) the reportable offender’s rehabilitation or care or treatment;
 - (c) whether the proposed name change could be used to further an unlawful activity or purpose;
 - (d) whether the proposed name change could be considered offensive to a victim of a crime or an immediate family member of a deceased victim of a crime.
- ‘(4) Subsection (5) applies if the police commissioner becomes aware that the reportable offender has failed to comply with subsection (2) in registering, under the *Births, Deaths and Marriages Registration Act 2003*, a change of name.
- ‘(5) The police commissioner may apply to the registrar under the *Births, Deaths and Marriages Registration Act 2003* for the cancellation of the registration.’

20 Insertion of new s 74B

Part 6—

insert—

‘74B Declaration about disclosure or release of personal information to particular corresponding registrars

‘(1) This section applies to a disclosure or release of personal information in the register made under or purportedly under this Act or the *Police Service Administration Act 1990—*

- (a) by the commissioner before the prescribed day; and
- (b) to a person who became a corresponding registrar on the prescribed day.

‘(2) The disclosure or release is and always was as lawfully made as if it were made on the prescribed day.

‘(3) In this section—

prescribed day means the day each of the following Acts became a corresponding Act—

- (a) the *Child Protection (Offender Reporting and Registration) Act* (NT);
- (b) the *Child Sex Offenders Registration Act 2006* (SA);
- (c) the *Community Protection (Offender Reporting) Act 2005* (Tas);
- (d) the *Crimes (Child Sex Offenders) Act 2005* (ACT).’.

21 Replacement of pt 7, hdg (Transitional)

Part 7, heading—

omit, insert—

‘Part 7 Transitional provisions

‘Division 1 Provision for the Criminal Code and Other Acts Amendment Act 2008’.

[s 22]

22 Amendment of s 79 (Transitional provision for the Criminal Code and Other Acts Amendment Act 2008)

Section 79, heading, from ‘for’—
omit.

23 Insertion of new pt 7, div 2

Part 7—
insert—

‘Division 2 Provisions for the Child Protection (Offender Reporting) and Other Legislation Amendment Act 2011

‘80 Declaration about application of s 14

- ‘(1) This section applies to a reportable offender who—
- (a) before the commencement, was required to make an initial report; but
 - (b) had not made the report before the commencement because the period, stated in pre-amended section 14, for making the report had not ended.
- ‘(2) To remove any doubt, it is declared that pre-amended section 14 continues to apply to the reportable offender for making the report.
- ‘(3) In this section—
- commencement* means the commencement of this section.
- pre-amended section 14* means section 14 as in force immediately before the commencement.

‘81 Application of s 33

- ‘(1) This section applies if—

-
- (a) before the commencement, the police commissioner agreed, under section 33(2), to allow a reportable offender to make a report at a specific time; and
 - (b) at the commencement, the specific time had not ended and the offender had not made the report.
- ‘(2) Section 33(2) as in force immediately before the commencement continues to apply to the reportable offender until the end of the specific time.
- ‘(3) In this section—
- commencement* means the commencement of this section.

‘82 Declaration and other provision about effect of previous sentence for a new class 1 or class 2 offence

- ‘(1) This section applies to a person who—
- (a) before the commencement, was sentenced for an offence that is a new class 1 or 2 offence; but
 - (b) immediately before the commencement, was not a reportable offender.
- ‘(2) To remove any doubt, it is declared that, subject to section 5, the person is a reportable offender.
- ‘(3) However, a reporting obligation does not apply to the person unless the police commissioner has given the person a notice under section 59.
- ‘(4) In this section—
- commencement* means the commencement of this section.
- new class 1 or 2 offence* means an offence that—
- (a) before the commencement, was not a class 1 or 2 offence; but
 - (b) on the commencement, is a class 1 or 2 offence.’.

[s 24]

24 Amendment of sch 1 (Class 1 offences)

Schedule 1, item 1—

insert—

‘(e) any of the following provisions of the Criminal Code (Cwlth)—

- section 272.8 (Sexual intercourse with a child outside Australia)
- section 272.9 (Sexual activity (other than sexual intercourse) with a child outside Australia)
- section 272.10 (Aggravated offence—child with mental impairment or under care, supervision or authority of defendant)
- section 272.11 (Persistent sexual abuse of child outside Australia)
- section 272.14 (Procuring child to engage in sexual activity outside Australia)
- section 272.15 (“Grooming” child to engage in sexual activity outside Australia)
- section 272.18 (Benefiting from offence against this Division)
- section 272.19 (Encouraging offence against this Division)
- section 272.20 (Preparing for or planning offence against this Division).’.

25 Amendment of sch 2 (Class 2 offences)

(1) Schedule 2, item 1(a)—

insert—

- section 216 (Abuse of persons with an impairment of the mind)
- section 351 (Assault with intent to commit rape)

-
- section 352 (Sexual assaults); or’.
- (2) Schedule 2, after item 1(a)—
- insert—*
- ‘(aa) the following provision of the Criminal Code, as in force from time to time before being repealed by the *Criminal Law Amendment Act 2000*—
- section 337 (Sexual assaults); or
- (ab) the following provision of the Criminal Code, as in force from time to time before being repealed by the *Criminal Law Amendment Act 1997*, if the offence was of a sexual nature as defined by the *Criminal Law Amendment Act 1945*, section 2A—
- section 344 (Aggravated assaults); or’.
- (3) Schedule 2, item 1(g)—
- omit, insert—*
- ‘(g) any of the following provisions of the Criminal Code (Cwlth) if the offence is committed against or in relation to a child—
- section 270.6 (Sexual servitude offences)
 - section 270.7 (Deceptive recruiting for sexual services)
 - section 273.5 (Possessing, controlling, producing, distributing or obtaining child pornography material outside Australia)
 - section 273.6 (Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia)
 - section 471.16 (Using a postal or similar service for child pornography material)
 - section 471.17 (Possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service)

[s 26]

- section 471.19 (Using a postal or similar service for child abuse material)
 - section 471.24 (Using a postal or similar service to procure persons under 16)
 - section 471.25 (Using a postal or similar service to “groom” persons under 16)
 - section 474.19 (Using a carriage service for child pornography material)
 - section 474.20 (Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service)
 - section 474.22 (Using a carriage service for child abuse material)
 - section 474.23 (Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service)
 - section 474.25A (Using a carriage service for sexual activity with person under 16 years of age)
 - section 474.26 (Using a carriage service to procure persons under 16 years of age)
 - section 474.27 (Using a carriage service to “groom” persons under 16 years of age)
 - section 474.27A (Using a carriage service to transmit indecent communication to person under 16 years of age); or’.
- (4) Schedule 2, item 1(aa) to (g)—
renumber as item 1(b) to (j).

26 Amendment of sch 3 (Dictionary)

- (1) Schedule 3—
insert—
‘annual report means a report under section 18.

Note—

For when a person stops being a reportable offender, see the *Child Protection (Offender Reporting) Act 2004*, section 5(4).

- ‘(2) For subsection (1), the results of a DNA analysis may be destroyed by deleting any information in QDNA that identifies the person from whom the DNA sample was taken with the results obtained by analysing the sample.’.

32 Amendment of sch 6 (Dictionary)

Schedule 6—

insert—

‘***reportable offender*** see the *Child Protection (Offender Reporting) Act 2004*.’.