Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022

Submission No: 10

Submitted by: Queensland Council for Civil Liberties

Publication:

Attachments:

Submitter Comments:

QUEENSLAND COUNCIL FOR CIVIL LIBERTIES
Protecting Queenslanders' individual rights and liberties since 1967

Committee Secretary
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Dear Madam

Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022

Kindly accept our submission in relation to the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022* (Qld).

About the QCCL

The Queensland Council of Civil Liberties is a voluntary organisation which has since 1967 sought to protect the rights and liberties of Queenslanders.

Overview

Our submission is that the Bill, whilst modernising the existing legislation, has a number of matters that need to be addressed.

Firstly, s42 of the Bill introduces s21B, and 21A(ii), where the concern is the granting police of unfettered access to technological devices.

Secondly, the section 15 is excessive in that it includes:

1. Devices that may only be used occasionally (inclusive of all passwords);[1] and
2. Devices which may be used, or owned, by a third-party device (e.g. a parent, a friend, or friend's device used 7 days within a year).

[1] See for example section 15A requires details that are unnecessary.

Thirdly, there is a lack of sufficient definitions in Schedule 5.

Background Facts

The Queensland Council of Civil Liberties takes the view that the proposed bill unfairly hinders a person's right to privacy of a reportable offender, and of third parties.

The amendments to the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* and the *Police Powers and Responsibilities Act 2000* extends the power of police to restrict and observe the acts of a reportable offender, this being a person who has committed an offence against a child.

The existing legislation already ensures that all locations of offenders are known to police, and for monitoring of the person after their release from gaol. We do not, in general, oppose reporting requirements for released sex offenders.

There is no demonstrated need to extend this monitoring to permit a police officer, at will, to access devices which a released offender has used, including those that have only been used occasionally or which belong to third parties (such as parents, friends or employers). The current proposal would, for example, enable a police office to access the phones and computer of a Minister of the government if an offender has, as some time, borrowed a device. This proposal has gone too far in what powers police can have.

In this context, it must be a said that there is a stark contrast between the view of the general public that all child sex offenders are compulsive recidivists and can't be rehabilitated and the conclusion of the criminology community that many sex offenders have lower rates of recidivism than other types of offenders[2].

This topic is reviewed in a paper by the Australian Institute of Criminology[3] whose review of the evidence indicates that the fact depends on the type of offence and that those who target male victims outside their family have a higher rate of re-offending in the long term than other types of offenders.

A common criticism of the criminologists' point of view is that it is based on conviction rates. The evidence used by Ms Richards is based on arrest rates.
The Justice Policy Institute[4] quotes a US Bureau of Justice statistics study also based simply on re-arrest rates which shows that sex offenders are less likely to be re-arrested than people who are convicted of other offences.

Officers would also be able, under the proposal, to share data, including log-ins and passwords with other agencies. These other agencies are not subject to any restrictions on their use of this information.

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[2] *Preventative Detention for "Dangerous" Offenders in Australia: A critical analysis and proposals for policy development* by Professor Bernadette McSherry & Ors, November 2006.

[3] K Richards Misperceptions about Child Sex Offenders
https://www.aic.gov.au/publications/tandi/tandi429
[4] Registering Harm: How Sex Offense Registries Fail Youth Communities
https://justicepolicy.org/research/registering-harm-how-sex-offense-registries-fail-youth-communities/

High-risk reportable offenders, must receive written notice from the Police Commissioner requiring information on their location of residence or where they can be found away from their general residence for three or more consecutive days.

The importance of considering this balance was discussed by Hinton J in *Police v Schmidt* [2018] SASC 80 when His Honour described the power as allowing freedom but within reason due to the nature of the offence. It clearly seeks to balance the freedom of a person with the need to protect children.

Under the current legislation, section 6 defines the term an existing reportable offender:

1. An existing reportable offender is—
    a. a person who, as a result of having been sentenced for a reportable offence before the commencement date—
        i. is serving a term of imprisonment; or
        ii. is subject to a supervision order; or
    b. a person who, immediately before the commencement date, was subject to a reporting order made under the Criminal Law Amendment Act 1945, section 19.
2. Subsection (1)(a) does not apply if a conviction was not recorded under the Penalties and Sentences Act 1992, section 12 or the Youth Justice Act 1992, section 183.

A reportable offender in this context is anyone who has committed an offence with respect to a child, physically, orally (by phone or over the internet) or communicates with a child in writing. In addition, reportable offenders have had contact with an adult offender who has done one of the above, whether indirect, direct or attempted.

Generally, reportable offenders are to report for a period of 5 years from the date they were convicted, when the offender has committed a single offence or multiple offences being dealt with together.

The period is 10 years for someone convicted for the second time for one more reportable offence (or a series of offences arising out of the same incident – i.e., within 24 hours and against the same person).

Section 15 requires all reportable offenders to provide details of the internet or any other electronic communication service (such as a sever), including passwords of their devices or a third-party device (used 7 times over the course of a year). Moreover, it should be noted that due to the nature of the offences, anonymising software is prohibited for a reportable offender. Again, this breaches the basic privacy of the offender and the third-party.

Commentary on the Bill

We now comment on particular provisions in the Bill.

Amendment of s21B and 21A (Power to enter for Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004)

The amendments proposed concern us.

Mobile phones contain a gold mine of personal information about an individual. In fact, we would submit carrying out a search a smart phone is probably more invasive of a person's privacy than carrying out a search of a house as the phone probably contains more extensive information.

We start from the premise that prisoners including those on probation, parole or other post detention supervised release, do not have the same privacy rights as ordinary citizens, but they are not stripped of their entire right to privacy
.
Nor does the nature of the criminal offence of which a person has been convicted deprive them of their right to privacy. Protection of the right to privacy and from the arbitrary or biased searches requires that other than in the most exceptional circumstances, the search must be based be authorised by a warrant or based on a reasonable suspicion that a person has committed on offence or has in their position contraband material.

In the case of those subject to probation[5], parole or other types of post release supervision orders, there may be a case, based on the relationship between the officers supervising them and the prisoner and the fact the prisoners have been released subject to conditions, that it may be appropriate to authorise those officers to carry out suspicion less searches of those prisoners they supervise. On one version of this argument the relationship between the officer and the prisoner and the knowledge gained from it provides at least part of the requisite reasonable suspicion.

However, it is our view that the police ought not to be entitled to search the device of a person who is no longer in prison except where they have a reasonable suspicion that an offence has been committed against sections 228A, 228B, 228C, 228D, 228DA, 228DB, 229B or 218B evidence of which is likely to be found on the phone. There might be other offences that could be included but they should meet the standard set out in section 30 (1) (vii) of the *Police Powers and Responsibilities Act*

Devices used occasionally or by third parties

Reportable offenders use of a third-party device (even if for only 7 days of the year) is extreme and unnecessary. This invades on those people's privacy and personal liberties. Their information should not be subject to the police power as they are innocent and have not committed offences such as the offenders in questions. It is our view, the search of devices owned by third parties, which have been temporarily in the possession of an offender should be authorised by a warrant.

[5] We accept that in relation to the charges the subject of this legislation, probation would be extremely rarely, if ever imposed. However, we reference it for comprehensiveness sake

Lack of Definitions - Amendment of Schedule 5

Schedule 5 of the amended Act must further define the terms 'motor vehicle' and 'media access control address'.

Conclusion

We agreed that offenders must report in order to protect children.

However, we do not agree that there should be either a general police power to inspect all devices, including occasionally used devices and third-party devices. This being particular so for third party devices.

We trust this is of assistance to you in your deliberations

Yours Faithfully

[redacted]

Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
24 November 2022