



30 April 2014

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Sir/Madam

Re: Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2014

Thank you for the invitation to make a submission in relation to the above Bill which will substantially amend the *Child Protection (Offender Reporting) Act 2004* and also amend the *Police Powers and Responsibilities Act 2000*. The Bar Association welcomes the opportunity to make the following comments on the proposed amendments.

Frequency of periodic reporting

The Bill proposes to increase the frequency with which convicted child sex offenders will have to report to police. Currently, offenders are required to report their personal details to police, annually, and also report changes to relevant personal details. Under the amendments, offenders will be required to report four times each year in addition to reporting changes to relevant personal details.

The amendments provide the police commissioner with a discretion to require an offender to report more frequently than four times per year if the police commissioner is reasonably satisfied that more frequent reporting is necessary to protect the lives or sexual safety of children.

Under the proposed changes, there is no scope for the police commissioner to permit an offender to report less frequently than four times per year at any time during the offender's reporting period, even in circumstances where the offender has consistently reported as required and is not deemed to be a high-risk offender.

It would be appropriate for the amendments to provide for a mechanism (whether automatic or at the discretion of the police commissioner) whereby an offender who reports as required without incident for a certain period is then permitted to report on a less frequent basis for the remainder of the reporting period, provided, of course, the offender continues to report changes to personal details as required.

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BAR ASSOCIATION
OF QUEENSLAND
ABN 78 009 717 739

Ground Floor
Inns of Court
107 North Quay
Brisbane Qld 4000

Tel: 07 3238 5100
Fax: 07 3236 1180
DX: 905

chiefexec@qldbar.asn.au

Constituent Member of the
Australian Bar Association

Reporting of contact with children

Currently, an offender must report regular “unsupervised contact” with children at the time of the annual report and, in addition, report any changes to that contact within 14 days. The term “unsupervised contact” is not defined in the Act. The amendments are designed to remove the ambiguity about the kinds of contact that must be reported and tighten the timeframes for reporting changes to contact. Under the amendments, an offender will be required, at the quarterly reports, to advise police of any “reportable contact” with children and, in addition, report any changes to that contact within 24 hours.

By way of definition of “reportable contact”, the Explanatory Notes provide:

“Reportable contact will occur where the offender:

- has physical contact with the child; or
- communicates with the child orally, whether in person, by telephone or over the internet; or
- communicates with the child in writing (including electronic communication);

In circumstances where the offender is:

- supervising or caring for any child; or
- exchanging contact details with any child; or
- attempting to befriend any child. (emphasis added)”

In our view, the qualifying circumstances are appropriately included to identify the kinds of contact with children that must be reported.

The Bill will introduce section 9A to the Act to define “reportable contact”. Presently, that section reads:

9A Reportable contact defined

(1) A reportable offender has *reportable contact* with a child if the offender –

- (a) has physical contact with the child; or
- (b) communicates with the child orally, whether in person, by telephone or over the internet; or
- (c) communicates with the child in writing (including electronic communication).

(2) Without limiting subsection (1), reportable contact includes contact with a child when the offender is -

- (a) supervising or caring for any child; or
- (b) exchanging contact details with any child; or
- (c) attempting to befriend any child. (emphasis added)

In its present form, the proposed section 9A does not give effect to the intended definition of “reportable contact” and the wording of section 9A(2) is not apt to achieve the aim of removing the ambiguity about the kinds of contact that must be

reported. On its face, the section also achieves a width of application that is impracticable.

It would be desirable, in our view, for the wording in section 9A(2) to reflect the definition of “reportable contact” referred to in the Explanatory Notes.

It is noted that the amendments exclude “contact with a child that is incidental to the offender’s daily life” from the definition of “reportable contact” unless the contact involves an attempt to befriend or establish further contact with the child or occurs with such regularity or frequency as to result in a level of familiarity or trust beyond what may reasonably be expected to be incidental to the offender’s daily life. An example of incidental contact provided in the Act will be contact that occurs when an offender buys a newspaper from a shop where the shop attendant is a child.

The provisions relating to incidental contact are both sensible and reinforce the desirability of having section 9A(2) reflect the definition of “reportable contact” referred to in the Explanatory Notes.

Passwords for email accounts and social networking sites

The amendments will significantly expand the scope of personal details an offender must report to police. Among other things, an offender will be required to report details of social networking sites the offender visits, accounts used in connection with such sites, email addresses and internet user names.

Offenders have not previously had to report these details to police. These changes will increase the ability of police to monitor an offender’s online activities.

In addition, an offender will also be required to provide police with the passwords for the offender’s email addresses, internet accounts and use of social networking sites.

In our view, a blanket requirement that offenders provide their passwords to police in all cases infringes on the privacy of offenders to a greater extent than is reasonably necessary to safely manage the risks to children. The requirement that an offender provide password access to police should be restricted to circumstances where a particular offender can reasonably be said to pose an identifiable risk to children in relation to the offender’s use of the account the password is used to access.

Extended powers of entry for police officers

The amendments amend the *Police Powers and Responsibilities Act 2000* to allow a police officer to enter an offender’s residence at any time to verify the offender’s personal details. There is no restriction on the number of times police can enter the residence.

Such a power is a dramatic infringement on the rights and liberties of offenders.

It would be desirable to place limits on the use of the power such as restrictions to limit the number of times police are able to use the power in relation to an offender in any year or a requirement that the power only be used in circumstances where a police officer has a reasonable suspicion that an offender has not accurately reported his or her personal details at a particular time.

Removal of indecent dealing offences as exclusionary offences for juveniles

Currently, a juvenile offender who is convicted of indecently dealing with a child under 16 pursuant to section 210 of the Queensland Criminal Code is not a reportable offender under the Act. The same exclusion applies to juvenile offenders convicted of various offences of possessing and publishing child exploitation material.

The amendments will remove the offence of indecent dealing with a child under 16 as an exclusionary offence for juvenile offenders. The Association is opposed to removing this offence from the list of exclusionary offences for juvenile offenders. It would be preferable for this offence to remain on the exclusionary list to avoid an increased number of juvenile offenders becoming reportable offenders and being placed on the child protection register.

It will very often be the case that that the offence of indecent dealing where the offender is a juvenile offender (especially where the age difference between offender and complainant is marginal) is not exploitative in the sense that is applicable when the offence is committed by adult offenders.

Conclusion

Thank you again for the opportunity to comment on the above Bill.

The Association requests an opportunity to appear before the Committee at the public hearing to be held on Wednesday, 7 May 2014.

Yours faithfully



for **Peter J Davis QC**
President