

Office of the President

Child Protection (Offender  
Reporting) OLAB 2014  
Submission 005

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The Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

By Post and Email to: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Research Director

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

Thank you for the opportunity to provide a submission on the amendments to the *Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2014*. The Society commends the government for undertaking public consultation on the proposed legislation.

As there has been only a brief opportunity to review the amendment to the Bill, an in-depth analysis has not been conducted. It is possible that there are issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified. We urge the government to extend the period by which to provide comments and also extend the reporting date of the Committee, so that the Committee has a reasonable opportunity to consider the draft legislation before it.

**1. Overview**

The Bill contains several amendments which seem well adapted to reducing overlaps with other schemes and unnecessary administrative burdens. Examples of these improvements include the provisions for the suspension of reporting whilst subject to an order under the Dangerous Prisoner (Sexual Offender) Act (DPSOA), reducing the length of some of the reporting periods and allowing for exemption of children in some circumstances.

The aspects of the Bill which broaden both the types of reportable offences and the personal details required to be reported have the potential to create a massive influx in prosecution of people for technical breaches which might not necessarily endanger the safety of children.

With respect to the proposed amendments, we make the following comments on specific clauses in the Bill.

## **2. Clause 6 – amendment of s5 (Reportable offender defined)**

Clause 6 seeks to omit section 5(2)(c)(i) of the Act which provides:

- (2) However, a person mentioned in subsection (1)(a) is not a reportable offender merely because—
  - (i) a single offence against the Criminal Code, section 210;

Section 210 of the Criminal Code deals with indecent treatment of children under 16.

The Society does not support the removal of this exclusion. In our view, this provision is an essential defence for children and young people. Although page 4 of the Explanatory Notes states that the police commissioner will automatically suspend the reporting obligation of all offenders who do not pose a risk to the lives or sexual safety of children, we consider that section 5(2)(c)(i) of the Act be retained.

## **3. Clause 7**

Clause 7 proposes to insert a new section 9A to define when contact with a child is considered reportable contact. Proposed section 9A states:

- (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 by 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.
- (3) Reportable contact does not include contact with a child that is incidental to the offender's daily life unless the contact—
  - (a) involves an attempt by the offender to befriend, or establish further contact with, the child; or
  - (b) occurs with a regularity or frequency, or in a way, that may reasonably be expected to result in a level of familiarity or trust between the offender and the child beyond what may reasonably be expected to be incidental to the offender's daily life.

The Society notes that this provision widens the definition of what is considered reportable contact. While we understand the policy intention of this provision, we consider that in practice, it will be a difficult scheme to administer. We foresee that it will be hard to distinguish between contact that is reportable and incidental contact. Of particular concern is the obligation to report non incidental contact with children. In the course of ordinary life, it is conceivable that this obligation may be very onerous indeed. Every new friendship or association with a person with a child will potentially give rise to a need for a report. For example, if a person purchases takeaway food from an outlet that has child employees on a regular basis, is this incidental contact or contact that should be reported? The Bill prescribes a period of 24 hours for this report to be made. Complying with such a requirement for 5 or 10 years, or life, as may be the case, seems an unnecessarily severe restriction. This is

particularly so in light of the existing regime under the DPSOA which can apply to anyone convicted of a sexual offence involving children. This might also have the unintended consequence of vexatious or baseless claims.

Therefore the Society does not support this provision on the basis that the definition is imprecise, unclear and does not sufficiently define reportable conduct. In our view, the definition of reportable conduct must be clear and precise so that an individual will be able to predict what they are required to report by law. The definition does not achieve its purpose and, in our view is too vague and ambiguous for a person to easily judge what is considered reportable contact.

We also note that this might result in an increase in prosecutions for offences that do not pose any immediate risk to children is also likely to arise as a result of the very broad scope of the details required to be reported. Such details include any internet accounts held (including passwords) and, as mentioned above, any non-incidental contact with children. Given the ongoing and extensive nature of the new reporting obligations, it is likely that the resources of the QPS, Queensland Courts, and Legal Aid Queensland will be increasingly engaged in dealing with a high volume of technical violations.

#### **4. Clause 10 – Amendment of s13 (offender reporting orders)**

We suggest that the amended section 13(4) should read (extra wording in bold):

*Unless no conviction is recorded under the Penalties and Sentences Act 1992, section 12 or the Youth Justice Act 1992, section 183, a court may make an offender reporting order under subsection (1)(a) only if it imposes a sentence for the offence **and makes the order concurrently with the sentence.***

This will preserve the current wording of the section to ensure these matters are considered at the time of sentencing.

#### **5. Clause 11**

##### **Insertion of s16 - persons required to report under corresponding Act**

Clause 11 seeks to insert a new section 16 to deal with persons who are required to report. Proposed section 5(b) states:

- (5) A person is not guilty of an offence against section 50 because of a failure to comply with subsection (2) if the person—
  - (b) could not reasonably have been expected to have known that the person was required to report under this Act; or

In our view, this provision should be omitted and the following be inserted:

- (b) has not been notified of that reporting obligation;

This will ensure that a person is not penalised where they could not have reasonably been expected to know of the reporting obligation, and also covers the situation where they have not been notified.

### **Likelihood of increase in summary plea matters**

Our members have advised that the most common offence committed under the current Act is under s 50 (1). This is an offence of failing to comply with reporting conditions. According to QSIS data, in the period from July 2009 – June 2013, 1137 people were convicted of this offence - 858 of these convictions (75.46%) resulted in an imposition of a fine or a good behaviour bond. This suggests that over ¾ of the offences currently prosecuted are technical or very minor breaches.

This Bill increases the reporting frequency by 400% and expands the type of details which need to be reported to include a host of activities that are likely to arise on a regular basis. Examples of such details include any contact with a child that is not incidental contact and any social networking sites used (including the passwords).

The increase in reporting frequently alone may result in a massive increase in people before the courts for offences under the Act. A pure statistical analysis of current trends, which reveal that approximately 280 people currently fail to comply with an annual reporting obligation, would suggest that this figure is likely to significantly rise on introduction of quarterly reporting obligations.

### **Insertion of s18 - requirement to make periodic reports**

Instead of offenders reporting personal details annually, the proposal is that offenders will be required to report periodically. Therefore, the Bill provides a power for the Commissioner to require a person to make more frequent reports than prescribed, but does not provide a mechanism for a reduction of the obligation to make a periodic (quarterly) report. We consider that this is a rigid reporting scheme that might be reconsidered. We note this will be significantly more onerous for both offenders and administrators of the Act. We suggest that systems may need to be put in place to remind offenders of the reporting time frames to ensure compliance.

### **Insertion of s19 - when periodic reports must be made**

Proposed section 19(2) states:

- (2) However, the police commissioner may at any time require the reportable offender to make periodic reports more frequently, if the commissioner is reasonably satisfied more frequent periodic reporting is necessary to protect the lives or sexual safety of children.

As this decision can subsequently be reviewed under new Part 4A of the Act, we suggest the police commissioner should outline to an offender any reasons why increased reporting has been ordered. This will allow an offender to make an informed decision on whether to apply for a review based on the reasons given. It will also assist in outlining the grounds for the review application being made.

## **6. Clause 27**

### **Insertion of new pt 4, div 10 and pt 4A**

Proposed section 67A states:

This division applies to a reportable offender who—

- (a) was a child when he or she committed the offence that makes the person a reportable offender; or
- (b) has a cognitive or physical impairment.

The Society agrees and commends the insertion of this new provision. We hope that this provision will ensure that particular offenders will be suspended from reporting obligations in certain appropriate circumstances.

### **Part 4A Reviews and appeals**

The Society agrees that the decisions under this Act should be subject to review. The Society agrees with these provisions and commends the government for their inclusion in the draft legislation.

Proposed section 67G reads:

"67G Application of pt 4A

This part applies if a reportable offender is dissatisfied with a decision mentioned in schedule 4"

This appears to be an error as there is no Schedule 4. It seems that this reference ought to be to Schedule 2B.

Proposed section 67J(6) states that, 'the Magistrates Court must not award costs in relation to an appeal under this part. The Society does not support this provision. In our view, the Magistrates Court should not be prohibited from awarding costs in relation to an appeal under this division. This is a matter that should be decided based on the individual circumstances of each appeal.

## **7. Clause 31 - Insertion of Transitional provisions for the Act**

Proposed section 86 states that reportable offenders who have made annual reports for 2013 under the pre-amended Act must start making the periodic reports. We suggest that current reportable offenders should be provided with reminders or notice about the new reporting time frames to ensure compliance.

## **8. Schedule 2 Personal details for reportable offenders**

Items 14 and 15 of proposed Schedule 2 state requires a reportable offender to provide extensive details about their online activities. These proposed provisions state:

- (14) Details of any social networking site that the reportable offender joins, participates in or contributes to, or with which the offender registers or opens an account, including passwords for the registration or account.
  
- (15) Details of either of the following used, or intended to be used, by the reportable offender through the internet or another electronic communication service, including passwords—
  - (a) an email address;
  - (b) an internet user name, including a user name or identity associated with an instant messaging service, chat room or social networking site.

The Explanatory Notes state that:

... the imposition on the privacy of offenders who establish and maintain internet and social media accounts, to now have to provide passwords to police for those accounts, does not outweigh the rights of children to communicate safely.

The requirement for type of information to be provided is a departure from the current position. The Society understands the policy intent of these requirements but also believes that these considerations must be adequately balanced with the rights and liberties of reportable offenders. In our view, such information should only be required to be provided on request where there is reason to inspect such material. Furthermore, as this information is highly sensitive, measures must be taken to ensure that privacy is maintained and protected against incidents such as fraud or release.

## **9. Clause 35**

### **Proposed new section 21A**

The Act proposes the insertion of a new section 21A (power to enter for Child Protection (Offender Reporting) Act 2004) *Police Powers and Responsibilities Act 2000*. The proposed section states:

- (1) A police officer may, at any time, enter premises where a reportable offender generally resides to verify the offender's personal details reported by the offender under the *Child Protection (Offender Reporting) Act 2004*.

This proposed section seeks to provide police officer with broad powers to enter premises at any time to verify an offender's personal details. These are significant powers and as such, must be balanced against the rights and liberties of offenders in order to mitigate the potential



for abuse. In order to achieve this end, we suggest that a police officer be made to obtain a warrant prior to entering the premises. This would provide external oversight to this process.

If this recommendation is not adopted, we suggest that the following protections should be provided in this section to ensure that an offender's privacy is protected:

- provide for a threshold of criteria justifying exercise of the power, for example- a police officer must reasonably suspect that the reportable offender's personal details are incorrect;
- the police officer should be required to attempt to obtain the consent of the reportable offender to enter the premises;
- there should be a requirement for permission to be granted by a commissioned officer; and
- the use of a register whereby the police are required to enter details of the entry into an offender's house, the reasons why the entry is required, etc.

**Omission of s490A of the *Police Powers and Responsibilities Act 2000* (When DNA sample taken from reportable offender and results must be destroyed)**

The Society is concerned with the proposal to remove this section. In our view it is imperative that DNA information be destroyed once an offender has stopped being a reportable offender. We are concerned that DNA of any individual who has been a reportable offender will continue to be kept and used. We are unsure of the policy objective behind this omission, but reiterate that the destruction of DNA samples at the appropriate time is a key protection.

If you require clarification of any of the issues of raised in this submission, please do not hesitate to contact our policy solicitors. We look forward to receiving a copy of the Committee's report.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Ian Brown', written over a circular stamp or seal.

**Ian Brown  
President**