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6 December 2013

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

Dear Mr Hastie

Submission on the Child Protection (Offender Reporting—Publication of Information) Amendment Bill

The Office of the Information Commissioner (**OIC**) provides the attached in response to the Legal Affairs and Safety Committee's call for submissions on the *Child Protection (Offender Reporting—Publication of Information) Amendment Bill 2013 (Bill)*.

OIC notes that the Bill proposes amendments to the *Child Protection (Offender Reporting) Act 2004* and the *Dangerous Prisoner's (Sexual Offender's) Act 2003* which provide for the publication of the personal information of sex offenders. Any such publication necessarily impacts on their right to privacy. It is also noted that the Explanatory Notes to the Bill contend that the adverse impact on this right to privacy is justified with reference to community protection considerations.

OIC's attached submission addresses this and associated issues for the consideration of the Legal Affairs and Community Safety Committee.

Yours sincerely,

Clare Smith
Acting Privacy Commissioner
On behalf of
Information Commissioner

Child Protection (Offender Reporting – Publication of Information) Amendment Bill 2013

The Queensland Office of the Information Commissioner is an independent statutory authority. This submission does not represent the views or opinions of the Queensland Government.

Overview

Thank you for the opportunity to make a submission to the Legal Affairs and Community Safety Committee's consideration of the Child Protection (Offender Reporting – Publication of Information) Amendment Bill 2013 (**Bill**) introduced into the Queensland Parliament by the Member for Dalrymple, Mr Shane Knuth MP on 12 September 2013.

The Office of the Information Commissioner Queensland (**OIC**) has, under the *Information Privacy Act 2009* (Qld) (**IP Act**), a role in providing public comment on any matter which relates to public sector privacy.

OIC notes that the purpose of the Bill is to give the community access to critical information enabling them to identify reportable offenders in their neighbourhood or, who otherwise have access to children in their care.

The Explanatory Notes to the Bill accept that the publication of the personal information of sex offenders impacts on their right to privacy but that the adverse effects on this right is justified with reference to community protection considerations.

OIC makes the following submission on the balance between the right to privacy versus the public interest of community safety contained in the Bill for the Committee's consideration.

Executive Summary

The OIC recognises the public interest in community safety. However OIC submits that the privacy of the offender and third parties may be compromised to a greater extent than that required to achieve the policy objective of the Bill.

OIC suggests the Committee give consideration to:

- Limiting the categories of personal information in relation to the reportable offender able to be published on the website to only those details clearly necessary to inform and protect the community. The Commissioner of Police should still have the discretion whether to publish the more restricted categories of personal information;
- Ensuring the publication of the information is proportionate to the particular community need for information. For example - information on an offender who has failed to report may need to be generally available. However, where the presence of an offender would only be of concern to the local community in which they reside and work, alternative options for local dissemination could be instituted. The Western Australian framework appears to present a model that seeks to balance the various interests and needs while still providing sufficient protections.

Background

The Bill amends the *Child Protection (Offender Reporting) Act 2004 (CPOR Act)*.

The purpose of CPOR Act¹ is to require particular offenders who commit sexual, or other serious offences against children to keep police informed of their whereabouts and other personal details for a period of time after their release into the community in order to:

- reduce the likelihood that they will re-offend; and
- facilitate the investigation and prosecution of any future offences that they may commit.

A 'reportable offender' is a person who is sentenced for a reportable offence.²

The personal details required to be reported and placed in the register in the CPOR Act (register) relate specifically to the purpose of that Act and in particular to the functions reserved to the Queensland Police Service (QPS) in preventing, investigating and prosecuting further offences by reportable offenders.

Access to the register is strictly controlled. Section 69(1) of the CPOR Act states the Police Commissioner must ensure:

(a) that the register, or any part of the register, is only accessed by a person, or a class of person, who is authorised to do so by the police commissioner; and

(b) that personal information in the register is only disclosed by a person with access to the register, or the relevant part of the register, in circumstances authorised by the police commissioner or as otherwise required by or under any Act or law.

Section 69(2) of the CPOR Act goes on to state:

*The police commissioner must develop guidelines about the access to, and disclosure of, personal information in the register that attempt to ensure that access to the personal information in the register **is restricted to the greatest extent possible without interfering with the purpose of this Act.***
(our emphasis)

Unauthorised disclosure of any of the information in the register is punishable by a maximum penalty of 2 years imprisonment or a \$16,500 fine.

The Bill expands the purpose of the CPOR Act – Community Protection

The Bill retains the law enforcement purpose as the 'main purpose'. However, the Bill proposes that the publishing of information about a reportable offender is to be a lesser or secondary purpose of the CPOR Act. The Explanatory Notes to the Bill states this secondary purpose is to enable

concerned members of the community [to] have access to critical information enabling them to

¹ Section 3 of the CPOR Act.

² Section 5 of the CPOR Act.

identify reportable offenders in their neighbourhood or who otherwise have access to children in their care.

Later in the Explanatory Notes it is noted that:

The publication of personal information impacts on the right to privacy of individuals... Publication of personal information is required to provide adequate deterrence for the abhorrent behaviour of sex offences against children...

Privacy of ‘reportable offenders’

The proposal in the Bill – that members of the public will have access to information about certain categories of ‘reportable offenders’– would necessarily involve the use and disclosure of ‘personal information’.³

‘Personal information’ is defined in section 12 of the *Information Privacy Act 2009 (IP Act)* as being:

any information or opinion, whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

The Bill’s proposed amendments to the CPOR Act

The details required to be placed in the register by the reportable offender are numerous and highly personal and contain personal information of third parties. As outlined above, these categories of information were enacted for the purpose of enabling police to prevent, investigate and prosecute further offences by reportable offenders.

Prescribed personal details is defined in section 74AF(4) to mean the ‘personal details’ of a reportable offender, other than any details reported under section 16(1)(e) [of the *Child Protection (Offender Reporting) Act 2004*] and a photograph of the reportable offender.

Personal details of a reportable offender are defined in section 16 of the CPOR Act. There are 17 listed categories of information which include:

- the offender’s name, previous names
- The offender’s date of birth
- The address of each of the premises at which the offender generally resides... or the name of each of the localities in which the offender can generally be found;
- The names and ages of any children who generally reside in the same household as that in which the offender generally resides or with who the offender has regular unsupervised contacts; and
- If the offender is employed-
 - (i) the nature of his or her employment; and
 - (ii) the name of his or her employer (if any); and

³ And because the online component of the proposal - the potential for personal information to be transferred overseas.

- (iii) the address of each of the premises at which the offender is generally employed or, if the offender is not generally employed
- Offender’s current residential address.

Section 74AE of the Bill requires the Police Commissioner to keep a website for the purpose of publishing information about reportable persons and the Police Commissioner must ensure the website is available for inspection by members of the public. Section 74AF (1) of the Bill provides that the Police Commissioner may publish any or all of the ‘prescribed personal details’ of a reportable offender, if satisfied that certain events have occurred.

Section 74AG provides that subject to the relevant section, the Police Commissioner may publish a photograph of a person and a statement about the general area where the person resides, other than a person who is a child.

Privacy Protections in the Bill

OIC notes that some limited privacy protections for ‘reportable offenders’ have been placed in the Bill including:

- a released prisoner may apply to the court to amend a supervision order so that the prescribed personal information is not to be published on the website⁴
- publication of a reportable offender’s personal information is not mandatory⁵
- the decision as to what ‘personal details’ are published is discretionary
- the Bill provides factors that must be considered by the Police Commissioner when deciding whether to publish particular information⁶; and
- the Police Commissioner must give the person written notice of the proposal to publish their photograph and a statement about the general area where the person resides.⁷

Also, the Bill seeks to deter the information about identified offenders becoming a catalyst for civil ‘disruption’.⁸ OIC notes that the Bill would make it an offence for anyone to engage in conduct, otherwise than in private, likely to create, promote or increase animosity towards or harassment of, a person as an identified offender.

It is not clear from the Bill what “conduct” or what “otherwise than in private” means in this context. OIC suggests that these terms should be clearly defined in the Bill to ensure the community understands their obligations after accessing information from the website.

OIC submits that the Committee fully weigh these proposed protections to ascertain whether they would be an effective protection against civil disobedience arising out of the publication of the information.

⁴ Section 19AB(2) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld).

⁵ Section 74AC of the *Child Protection (Offender Reporting – Publication of Information) Amendment Bill 2013* (Qld).

⁶ Ibid, sections 74AF(1), 74AI(2) and 74AI.

⁷ Ibid, section 74AG(2)(b).

⁸ Ibid, Division 4 – Offences .

Available to the public on a website

OIC notes under the current CPOR Act, the information that the offender is required to provide under has restricted access.

The Bill proposes that numerous categories of personal information offender details will potentially be made available to the 'world at large' through posting on a website.

In this digital age, communication which occurs in the private setting of a home can be quickly and readily transmitted to large numbers of persons. It is inevitable that negative communications about identified offenders will be spread through social networking sites such as Facebook and Twitter, through text messaging, and through contributions to blogs and other community forums.

The Bill appears to acknowledge these media insofar as the definition of 'conduct is not taken to happen in private if it' consists of a form of communication with the public or a section of the public.⁹

OIC suggests that the Bill explicitly set out that 'communication' includes online and telephonic communications and that digital communication is specifically referenced.¹⁰

Impact on privacy including privacy of third parties

OIC acknowledges that in order for the community to be informed concerning an identified offender, that offender's privacy will be necessarily compromised. The privacy principles in the IP Act allow for the disclosure of an individual's personal information and the publication of that information online where this is 'authorised or required under a law'.¹¹ The IP Act itself recognises that privacy is not an absolute right; privacy is subject to specific public interests, including where use or disclosure are necessary to prevent a serious threat to life, health, safety or welfare of an individual or the community.

Breadth of personal details

OIC submits that further consideration, consistent with the objectives of the Bill, should be given as to what information reported in the register would be necessary to be made public, in order to enable the community to be protected.

The purpose for which QPS obtains and uses the personal details of reportable offenders is different to the purpose for which the community would need information about reportable offenders.

The breadth and detail of the information needed by QPS to fulfil its functions under the CPOR Act does not necessarily translate as necessary for the community's purposes as outlined in the Bill.

⁹ Ibid, section 74AN(5)(a).

¹⁰ For example - section 28(2) of the IP Act uses the expression [communicate] 'by way of telephone, radio, the internet or other form of communication'.

¹¹ Information Privacy Principle 11(1)(d) and section 33(b) of the IP Act.

For example, section 16(1)(m) of the CPOR Act requires the reportable offender to provide QPS with the details of any carriage service¹² used or intended to be used by them. This information can be of use to QPS in seeking information from the carriage service on, for example, the offender's internet usage¹³. QPS needs this information; the community, however, would have no use for information about which internet provider the reportable offender uses.

It is a truism that the more information published about an individual the more the individual's privacy is compromised. With the exception of section 16(1)(e) of the CPOR Act, the Bill allows the Police Commissioner to publish¹⁴ 'any or all of the prescribed personal details of a reportable offender'¹⁵, regardless of whether or not they would be of any use in furthering the stated purpose of the Bill.

Publication of personal information which is not required to fulfil the purpose of the Bill would unnecessarily compromise the privacy of the reportable offender. A significant amount of the offender's personal details contained in the register reflect, and are of use for, only the law enforcement purpose of the CPOR Act and have no relevance to the information needs of the community.

OIC suggests that the 'personal details' which can be published concerning a reportable offender be restricted to those details which directly serve the purposes of the community as set out in the Bill.

Third party information

The categories of information which constitute 'personal details' in section 16 of the CPOR Act are relatively wide-ranging and include information that would also constitute and/or potentially constitute the personal information of persons other than the reportable offender. Examples of these are:

- the name of the reportable offender's employer and the employment address;¹⁶
- the names and ages of any children who generally reside in the same household of the reportable offender or with whom the offender has regular unsupervised contact;¹⁷ and
- the make, model, colour and registration number of any motor vehicle owned by someone else but which is generally driven by the offender.¹⁸

OIC suggests that the details which can be published on the website should not include third party information.

¹² Within the meaning of the Telecommunications Act 1997 (Cth).

¹³ This requirement was introduced in recognition of the use of the internet in crimes committed by child sex offenders. Examples were given of accessing child exploitation material and grooming children via the internet. Explanatory notes for the *Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2010*.

¹⁴ OIC acknowledges this authority is discretionary. However, as stated earlier, there is little to no guidance in the Bill on the exercise of the discretion.

¹⁵ Section 74AF of the Bill.

¹⁶ Section 16(1)(f) of the *Child Protection (Offender Reporting) Act 2004*. Note, while the definition of personal information excludes corporations, in some cases employers may be known as names of individuals.

¹⁷ Ibid Section 16(1)(e).

¹⁸ Ibid Section 16(1)(h).

If this suggestion is not accepted, OIC recommends consideration be given to ensuring that the privacy of third parties is not compromised by the publishing of information about the reportable offender.

Once again, OIC acknowledges the Police Commissioner has a discretion to not publish information of persons associated with the reportable offender. To protect the privacy of third parties who may be associated with a reportable offender, OIC suggests that if The Bill retains the option to publish all the personal details of reportable offenders there at least be a presumption against publishing those details that could identify third persons.

To an extent, this presumption is already operating in the Bill. OIC notes that one of the factors that the Police Commissioner can take into account in deciding whether to publish information about a reportable offender is 'whether publishing the identifying information about the person might identify a victim of an offence...'¹⁹

OIC also notes that the Police Commissioner's discretion to publish does not apply to the names and ages of children who generally reside in the same household of the reportable offender or with whom the offender has regular unsupervised contact.

OIC supports protecting the privacy of these children but suggests that this provision as presently drafted may cause alarm as the general community would be unaware whether children seen on the premises where the offender resides are members of the household or are at risk. It may be possible to identify alternative ways to address such concerns while protecting the privacy of these children, for example a limited amount of general information could be published concerning these children that would not be identifying information.

In the event third party information is proposed to be published, it is recommended that there be a requirement to consult or at a minimum notify such third parties that their personal information will be published in this context.

Alternative approaches to limit publication

The very nature of the internet is that there is no control over the dissemination and uptake of information. While the publishing of details on a reportable offender online would enable members of the relevant community to access sufficient information to identify those persons, it also enables any person anywhere to access that information.

OIC submits that detailed consideration be given as to whether the purpose for publication on the website – help safeguard a specific limited community – is served by promulgation of the offender's information outside of that community. It is submitted that limiting access in a manner that meets the affected community's information needs would limit both the privacy impacts of publication on the website and the risk of inappropriate behaviour which the Bill seeks to deter.

¹⁹ Section 74AI(b) of the *Child Protection (Offender Reporting – Publication of Information) Amendment Bill 2013*.

OIC notes that Western Australia has taken a tiered approach to disclosing information about dangerous and high risk sexual offenders. Their web publishing scheme provides three tiers of information access on known sex offenders. The three tiers have differing levels of access. The tiers have been designed to provide specific and targeted information relevant to the community's needs.

The first tier and most open category, displays photographs and personal details of reportable offenders who have either failed to comply with their reporting obligations, provided false or misleading information to Police and whose location or whereabouts is not known to Police, to enlist public vigilance in order to assist in the location of the non-compliant offenders. The Western Australian Police Minister reported that Police reconnected with ten missing sex offenders within 7 months of the launch of the website.

The second tier provides online access photographs of certain dangerous and high risk offenders to requesting persons who reside within the same suburb and adjoining suburbs as the offender. When the resident submits their online request they are required to provide personal details and to accept conditions which closely align with the requirements of the Bill.

The third tier allows a parent or guardian to inquire with Police whether a specific person, who has regular unsupervised contact with their children, is a reportable offender. Police must assess the request and may disclose to the applicant whether the person is a reportable offender to assist the parent to take appropriate steps to safeguard their children.

It is suggested that the Committee give consideration to making information available in a similar staged manner to the Western Australian model.

Inaccurate information

The Bill makes provisions for removing information from the website if it has been published in error.²⁰ OIC supports this provision and further emphasises the importance of taking all reasonable steps to ensure personal information is accurate, complete and current before it is published on the website.²¹ The nature of the internet is that it can be indelible. Once the information has been published on the web, remediation of the original website does not mean that the incorrect information is no longer accessible. Websites are regularly archived and the archives made publicly available and content once accessed can readily be forwarded onto or placed on another website or discussed in another document, post or forum.

Accuracy should extend to the published image of the reportable offender. Any benefits to the community in publishing personal information about reportable offenders would be negated if they are not able to correctly identify the individual. Additionally, there would be an obvious detriment to a person who is not a reportable offender being mistakenly identified as such – either through inaccurate or out-dated information, or an 'ambiguous' photograph, being published on the website.

As noted above, the detriment would not necessarily be negated even if the inaccurate information is then removed or corrected.

²⁰ Ibid section 74AL(1).

²¹ Information Privacy Principle 8, Information *Privacy Act 2009*.

Conclusion

OIC would be pleased to offer further assistance or expand on any of the points raised in this submission should the Legal Affairs and Community Safety Committee request it.