9 January 2014

Mr Ian Berry MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street, Brisbane, QLD 4000

Dear Mr Berry

I refer to your correspondence to Mr Traves QC dated 18 October 2013 whereby you sought a submission from the Queensland Bar Association regarding the *Child Protection (Offender Reporting – Public of Information) Amendment Bill 2013*.

Mr Traves QC has retired as President of the Bar Association and has asked me to reply on his behalf. I have consulted with various members of the Association.

The Bill appears to implement the following changes to existing law.

First, there is a scheme to allow the police commissioner to publish on the internet the personal details including a photograph of a sex offender if the offender has contravened his or her obligations to report certain details to the police under the *Child Protection (Offender Reporting) Act 2004* or the offender's whereabouts are otherwise unknown.

Second, there is a scheme to allow the police commissioner to publish on the internet a photograph of an offender and a statement about the general area where they reside if:

(a) the person is subject to a supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003* and the supervision order does not prohibit such publication;
(b) the person is subject to the *Child Protection (Offender Reporting) Act 2004* and reoffends sexually against a child; and
(c) the person is guilty of any offence punishable by 5 years or more imprisonment and the publication is authorised by the Minister because the Minister is satisfied that the person poses a risk to the lives or sexual safety of a child or children.

The person must be given natural justice by the police commissioner before the photograph and information is published.

The police commissioner may remove the photograph at any time and must remove it if the person ceases to be a person who is eligible to have the photograph published.

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Third, a person may apply to be informed as to whether a person is required to report under *Child Protection (Offender Reporting) Act 2004* and the police commissioner may so inform that person if satisfied that the specified person has regular unsupervised contact with a child of whom the applicant is a parent or guardian.

Fourth, it is an offence to engage in public conduct by which the person intends to create promote or increase animosity towards or harassment of a person who is identified as an offender under this new scheme. It is also an offence to engage in public conduct that is likely to create promote or increase animosity towards or harassment of a person who is identified as an offender under this new scheme.

I make the following comments on these schemes.

There is a real risk that the publication of names, photographs and the general area where sex offenders live will indirectly lead to the identification of victims of sex offences. Long experience of members of the Association in both prosecuting and defending sex offenders, including child sex offenders lead to the following observations. The vast majority of child sex offenders ingratiate themselves using existing family or friendship networks to gain access to child victims. *"Grooming"* of child victims is unfortunately typical. However, offenders who opportunistically abduct children from streets are, thankfully, comparatively rare.

The fact that child sex offenders are almost always known to their victims creates great difficulty in identifying them in a manner which does not identify the victim. For example, if an offender ingratiates himself into his wife or female partner's family for the purpose of procuring victims it may well lead people who are familiar with that family to identify the victim or victims. There is a real risk that if the persons identify who the victims were that it will become known in the victim's greater social network. This is undesirable as it will further traumatise the victim. This is particularly so in small communities or where the person offended against a particular group of children, for example, at a school.

Victims of sex offenders should be granted unqualified access to the whereabouts of the sex offenders who violated them. If the victims are children this access should be extended to their parents or carers. This would be simple to legislate and protects the identity of victims and will hopefully help them avoid the offender. It is obviously undesirable for a victim to have ongoing contact with an offender unless the victim deliberately chooses to do so. Providing access to the information about the relevant offender kept on the *Child Protection (Offender Reporting) Act 2004* to victims and their parents should occur.

The Bill seems to be premised on the idea that publication of sex offenders' photographs can be removed from the public domain by the police commissioner. In the Bar Association's view once identifying information has been published on the internet it will remain there forever in one form or another. It would be simple to copy the details published by the police commissioner and then re-publish that information on an overseas website. Once this information is in the public domain it will remain there forever and it would be naïve to legislate in a manner which does not take that practical reality into account.

The Bill creates offences against harassing sex offenders. This is obviously designed to prevent vigilantism (which should always be discouraged). However, the offence provisions are extremely widely drawn. They include not encouraging ridicule of, nor creating

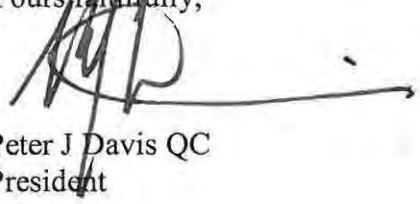
animosity towards sex offenders. Humour is something that is very difficult to control and should not be the subject of the criminal law. The offence provisions are so widely drawn that they may well inhibit press freedom and general discussion regarding sex offending. This might even raise constitutional issues. Violence by members of the community against persons who offended sexually is already a crime under the criminal law as is stalking or other serious harassment. The anti-vigilante provisions should be redrawn entirely so as not to prevent frank and open discussion regarding sex offending.

The Bill provides that persons subject to supervision orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003* can be identified by photograph on the police commissioner's website. For offenders currently on a supervision order they will have to apply to the Supreme Court to prevent this. However, when in the future, offenders are placed on supervision orders the Supreme Court will have to order that it is permissible to publish the offenders photograph. It would be desirable for the default position, whether it be publication or non-publication, be the same for all irrespective of whether the order pre-dates the Bill or not.

Mr Traves QC wrote to the Attorney-General on 14 November 2013 and urged that there be a complete review of the various schemes for supervision and detention of sex offenders after they are released from prison. On 6 December 2013 the Court of Appeal ruled that the *Criminal Law Amendment (Public Interest Declarations) Amendment Act 2013* was invalid as beyond the power of the Queensland Parliament. Further, it was reported in the press on 8 December 2013 that the Attorney-General proposed to review the entirety of that legislation. In my view for the reasons expressed in that letter it may be prudent for this legislation to be considered in light of any such overall review.

I hope this is of assistance. If I can be of any further assistance please do not hesitate to contact me.

Yours faithfully,



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