



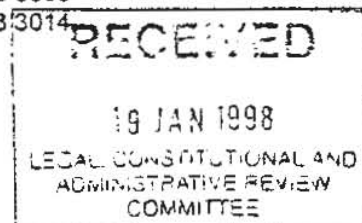
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CONFIRMATION OF FACSIMILE SENT 16/1/98
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Your Ref:
Our Ref: JJT
Date: 13 January 1998

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Ms Judy Gamin MLA
Chair
Legal Constitutional and Administrative Review Committee
Parliament House
George Street
BRISBANE QLD 4000



Dear Ms Gamin,

CRIMINAL LAW (SEX OFFENDERS REPORTING) BILL 1997

I refer to your letter of 2 December 1997 seeking comment on this proposed legislation to assist your committee in preparing a report requested by the Queensland Parliament.

At the outset, I indicate that making comment on this bill has been constrained by the lack of available information as to its intended purpose. The Bill is expressed to be for, "*An Act to require the notification of information to the police by persons who have committed certain sexual offences, and for other purposes.*" The text of the Bill does not indicate what these "other purposes" might be, nor is it clear why the police have any need for the information which it is proposed should be notified to them. For the purposes of our comments, it has been assumed that the Bill is intended to introduce a mechanism to assist police in the investigation of sex offences which may involve persons previously convicted of such offences.

Before raising specific issues, it is my view that this proposed legislation as a whole is ill-conceived and unlikely to achieve any worthwhile public purpose. Offenders who appear before our courts are sentenced on the basis of their conduct. Rehabilitation of offenders is one of the primary matters considered by courts in determining appropriate sentences. Sentences are structured to maximise the prospect of particular offenders refraining from continued criminal conduct on their release. This Bill proposes an additional regime of ongoing surveillance which will have inevitable punitive consequences for offenders who have completed their sentences, and, having met their obligations to society, re-established themselves in the community. In particular, I would point out that the identification of suspects is rarely a complex or difficult aspect of the investigation or prosecution of child sex offences once a complaint has been made. The existing exemptions to the *Criminal*

Law (Rehabilitation of Offenders) Act coupled with administrative arrangements between state governments, seem to already meet the requirements of bodies such as Education Queensland, who may have particular concerns in relation to their employment policies.

I ask that your report take into account the following observations:

1. Definition of "sex offender"

Section 3(1)(b) includes in the definition of "sex offender", an adult who -

"... has been acquitted of an offence mentioned in paragraph (a) on the ground of unsoundness of mind; ..."

I do not believe it is appropriate for such persons to be subject to the reporting requirements proposed. A person acquitted on the basis of unsoundness of mind is blameless for any offence in the eyes of our criminal justice system. If the acquittal is the result of a hearing before the Mental Health Tribunal it will not have involved any consideration or finding in relation to the facts of the alleged offence or the responsibility which the alleged offender may have borne had they not been of unsound mind at the time of the events which led to them being charged. The accused will merely have indicated that they do not wish to dispute the facts alleged for the purposes of the MHT hearing. This is not the same as entering a plea of guilty to an offence.

Although it may be argued that the provisions of the proposed Act are not punitive but merely an administrative device to protect the public, the implications of the mentally ill being deemed to be "sex offenders" under this Bill are significant. A person required to register themselves as a result of an acquittal on the basis of unsoundness of mind is bound by this requirement indefinitely (s.7(2)). This is likely to have significant implications for such a person's future employment. Indeed, this appears to be one of the intended implications of the proposed Bill.

The mentally ill are likely to be more detrimentally affected by this legislation than other accused. The indefinite reporting requirement applies in relation to charges defined as "serious sex offences". In our submission, there will be many circumstances in which the charge resulting in this onerous reporting requirement is such that, had the offender not been found of unsound mind but had pleaded guilty to the offence, they would not have received a sentence which would result in any reporting requirement at all.

The special provisions for the registration of accused persons who are not responsible for offences as a result of their mental state are in our view based on two unfounded assumptions:

- (a) Sex offenders in general re-offend at such a higher rate than other offenders that they special legislation is required to monitor their whereabouts; and
- (b) Persons found not guilty of sex offences by reason of unsoundness of mind are more dangerous than "normal" offenders and are more likely to commit offences of a similar nature for an indefinite period into the future.

Accused persons acquitted on the basis of mental illness should not be included in the definition of "sex offender" for the purposes of this legislation.

2. Retrospective effect of the legislation

Section 3(2)(b) retrospectively applies the legislation to proceedings that, *"happened within 10 years before the commencement of this section"*. There do not appear to be exceptional circumstances which have led to this legislation. This fact, coupled with the potentially punitive effect of the legislation lead us to the view that the proposed Act should not have retrospective application. To impose the requirements of the Bill retrospectively would be to again punish offenders who have in many cases, long since completed their sentences and hopefully been rehabilitated into the community.

If the committee believes that the retrospective application of this Bill is justified, I would query how the period of 10 years has been chosen as appropriate. If this requirement is to be maintained, then I would propose that the legislation include provision for the notification of those affected by these requirements before they become potentially liable for criminal prosecution. Despite the inclusion of s.12(1) allowing a three month period for initial registration following the commencement of the Bill, the retrospective nature of the legislation is likely to lead to large numbers of offenders who have long since completed any contact with the criminal justice system being placed in the position of unwittingly committing the offence of failing to register their details due to their ignorance of this legislation.

3. The creation of the register

Should this Bill be passed into law, there seems little point in requiring the notification to police of the personal details of a large number of offenders if the commissioner of police is not required to keep a register of this information. At present the Bill states that the commissioner "may keep a register". If the apparent intention of the legislation is to be achieved, sections 8(1) and 8(2) should be amended to clearly state a requirement that the register be kept and to prescribe the information which the register is to contain.

4. Disclosure of the register's contents

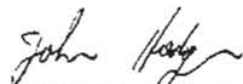
The register as proposed allows for disclosure of information regarding offenders to a significant number of bodies and individuals. I believe that the potential for inappropriate disclosure is so great, and the consequences of any such disclosure so potentially serious that there is a clear need for greater safeguards to be included in the legislation. The following issues need to be addressed:

- (a) The legislation should clearly state the limited purposes for which information may be disclosed under s.8(4) (Amendment required);
- (b) the categories of person to whom the contents of the register may be disclosed should not be able to be extended by regulation, but should require amendment of the legislation and the consequent scrutiny this would involve (Deletion of s.8(4)(d));
- (c) the categories of person to whom the information may be disclosed should be more specific, to appropriately limit the delegated authority likely to impact on the disclosure of information from the register (Amendment to s.8(4));

Given the importance of maintaining the integrity of the register and appropriate standards of privacy, I would recommend that it be made an offence under the proposed Bill to disclose information from the register except for any purpose other than that specified in the Bill or to any person other than those similarly set out. Such a sanction will go some way to appropriately limiting the potential for unauthorised use of the register's contents.

I hope these comments are of use to the committee in their deliberations.

Yours faithfully,



JOHN HODGINS

CHIEF EXECUTIVE OFFICER