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Criminal Law (Sex Offenders Reporting) Bill 1997

Submission to the Legal Constitutional and Administrative Review Committee

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Introduction

This is a difficult area of public policy, which involves the careful balancing of conflicting rights. Protection of the community, and of children in particular, from potential sex offenders is obviously a highly desirable objective. However, it is important that public policy in this area is based upon well thought out measures that can reasonably be expected to serve that objective. Emotional responses to particular incidents, while understandable, run the risks not only of unnecessarily persecuting offenders who have served their sentences (and possibly undermining their rehabilitation) but also of undermining the basis of trust and presumption of innocence on which our society operates, and thereby setting undesirable precedents for the future.

There have been a number of proposed reporting, registration and notification schemes for sex offenders, in Australia and overseas, many of which clearly do not strike an appropriate balance.

This Bill appears to be a limited and moderate response to the perceived problem, compared to other proposals, and has a number of commendable features. These include:

- The restriction to convicted offenders, and to particularly serious offences involving children.
- The restricted range of disclosures envisaged (subject to the addition of other entities by regulation).

It does not seem unreasonable for a limited range of governmental authorities to have access, on a 'need to know' basis, to information about the whereabouts of former sex-offenders who are considered to pose a particular risk to the community. I note that it is proposed to amend the Criminal Law (Rehabilitation of Offenders) Act 1986. All such 'spent convictions' laws contain exemptions from the general principle that offenders should be allowed to put their past behind them. Communities in most jurisdictions have decided that sexual offences against children are one category of crime for which the offenders must continue to have obligations even after they have completed their sentence.

Given that there is no 'in-principle' objection to the limited proposed scheme of reporting, registration and disclosure, the question becomes one of practicality and

effectiveness, together with a careful review of the detail to ensure a proportional response. There is also a significant omission from the Bill of any safeguards concerning 'downstream' use of register information, which I discuss later.

Is the proposed scheme practical and likely to be effective?

The inclusion of thresholds in the scheme, which is in principle desirable, does of course invite criticisms of the apparently arbitrary choice of periods, and creates a 'boundary' anomaly; ie: one day can make the difference between the scheme applying or not. It would be helpful to hear arguments in support of the particular thresholds chosen, such as the 10 years retrospectivity, the 6 months sentence, and the 'formula' for calculation of the reporting period. The first two appear consistent with established thresholds in spent convictions laws.

The practicality of the law applying to persons convicted in other jurisdictions must be in doubt in the absence of reciprocal obligations. I assume that there is an expectation that there will be agreement on some form of national exchange of registration information, and note that the disclosure clause provides for this at 8.(4)(b).

It is obviously desirable that there is consistency between state, territory and federal laws in this area, particularly in respect of definitions and thresholds, and it may be appropriate to amend the Bill to ensure such consistency, provided the consensus strikes an acceptable balance of rights.

Is the detail of the proposed scheme necessary and proportional to its objectives?

The specific details required to be reported seem appropriate, but the ability to add to the list by regulation Cl 5.(2)(e) could be abused. It would be preferable for the list to be debated and confirmed in the legislation, with any future needs having to be justified and expressly authorised by Parliament.

Similarly, the power to authorise additional entities to receive information from the register (Cl 8.(4)(d)) leaves too much discretion with the Executive. It is easy to foresee pressure being brought to bear for community notification (along the lines of the so-called Megan's Laws in the United States). In my view it is important that the scope of disclosures is clearly set out in the legislation itself and any changes brought back to the Parliament.

It is not clear why the chief executives of *all* government departments need to have access to information from the register (Cl 8.(4)(a)). It should be possible to limit the range of government officials who would conceivably need access. (see comments below about the absence of safeguards concerning subsequent use).

There appears to be no definition of 'law enforcement agency'. Even within Australia there is no generally accepted meaning, and this becomes even more imprecise when dealing with overseas jurisdictions. It is important that the meaning is defined.

The inclusion of fingerprints and palmprints in the list of details that may be kept on the proposed register needs to be justified. The recording of biometric identifiers involves a level of intrusion which has traditionally, and rightly, been strictly limited. It may be that it is only proposed to record prints taken earlier before sentencing, or while in prison. This may be acceptable, but it is not immediately obvious what purpose would be served by requiring prints to be taken from ex-offenders as part of the registration process, if this is proposed.

The commissioner of police is also given a discretion to record on the register any other details he or she considers appropriate. Whilst it may be necessary to leave some discretion, there should at least be some debate about what details might be considered appropriate, and perhaps some statutory guidance.

The requirement to report applies to ex-offenders visiting Queensland for periods of 14 days or more in any one year. This seems disproportionately harsh - it is one thing for an ex-offender (who may have been out of prison for up to 10 years) to be on a register for their normal place of residence, but it is quite another to have a scheme which tracks their short-term movements, on business or holiday, around the country.

Absence of safeguards concerning subsequent use of information from the register

The Bill is curiously silent on the question of permitted uses, and contains no prohibition or safeguards concerning 'downstream' use of information legitimately disclosed from the register. While most of the permitted recipients will be subject to confidentiality provisions, with criminal sanctions, this only deals with the problem of unauthorised use or disclosure. There also need to be clear constraints on what the recipient organisations are able to use the information for, and to whom they can disclose it, together with sanctions for breaches of these conditions. This is the province of Privacy law, and it is hoped that the Committee's other inquiry will lead to the adoption of comprehensive privacy protection in Queensland. In the interim, this Bill should contain provisions specifying the purposes for which access to the register will be granted, and imposing sanctions for any breaches.

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