

**Human Rights and
Equal Opportunity Commission**



Privacy Commissioner

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Your reference:

Ms Judy Gamin MLA
Chairman
Legal, Constitutional and Administrative Review Committee
Legislative Assembly of Queensland
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 in which you invited me to provide written comments in relation to the text of the Bill to assist the Committee in reporting to Parliament about the Bill.

I entirely support measures being taken to address the abhorrent problem in our society of sexual offences against children, however this is a very sensitive issue and in addressing this problem, it is vital that a sensible balance be maintained between the rights of individuals in relation to their personal information and this pressing public need.

The tenets of any privacy regime over the handling of personal information deal with the collection, security, accuracy, use and disclosure of that information.

Essentially, the Bill appears to enable the Commissioner of the Police Service in Queensland to create and maintain a Sex Offender Register which will contain information about offenders for a prescribed 'reporting period'. It is not clear from the wording of section 7 as to when the reporting period commences and in some cases, retention of the information may be indefinite.

The Bill will set in place the monitoring of movements of people who have completed their sentences for the crimes they committed or were acquitted on the grounds of unsoundness of mind. This raises substantial civil rights concerns and while my comments are restricted to the handling of the information, I have provided a copy of the Bill to the Directors of the Human Rights and Disabilities Units of this Commission who may decide to provide written comments to you from their perspectives.

The kind of information which will be recorded is information which would be regarded as 'personal information' within the meaning of the Privacy Act 1988 (C'th) if the Act applied. Section 8(2) of the Bill provides that the Register will include the offender's name and aliases, address, date of birth, other identifiers and "anything else the Commissioner considers appropriate". Clearly, the Register will also include details of the offence, sentence or acquittal and the required reporting period. Under the Bill, the registrars of Queensland courts are obliged to notify the Commissioner of details of an offender convicted for a serious sex offence committed in relation to a child or an offence relating to obscene material depicting children where the offender has been sentenced to serve a term of imprisonment of at least six months. The obligation also exists in relation to a person who has been acquitted on the ground of unsoundness of mind of either of those same offences.

The Bill also provides that a person may be a sex offender if convicted or acquitted in another jurisdiction on similar charges and is subject to the reporting requirement under section 7 if the offender resides or enters Queensland. The Bill imposes a requirement upon offenders temporarily staying in Queensland for a period of more than 14 days or periods totalling in excess of 14 days within any period of twelve months, to report the required details to the nearest Police station within 7 days of entering the State. This requirement has the potential to apply to any offender entering Queensland for legitimate reasons such as holidays or business trips which may be for very short periods but accumulate to more than 14 days in any twelve month period. I query how an offender from another jurisdiction would become aware of this requirement upon them.

Further information is required from offenders under section 6 of the Bill, as offenders intending to leave Queensland are obliged to report to the nearest Police station not more than 14 days or less than 3 days before leaving. Offenders temporarily staying in Queensland for more than 14 days will have to report twice. It is also not clear how this requirement would be satisfied by an offender who had or intended to enter Queensland for less than 3 days and was subject to section 7 of the Bill. This ambiguity may lead to the Register containing inaccurate information.

Under section 8(3), the Commissioner must delete all information about an offender from the Register immediately after the offender is no longer required to report under section 7. The combined effect of these requirements will mean that the register will contain details of all movements of offenders within Queensland for the duration of the reporting period, which in some cases could be indefinitely.

Section 8(4) of the Bill permits the Commissioner of Police to disclose information from the register to certain parties.

Having explored what the Bill provides in relation to the collection, retention and disclosure of information, I note that the Bill is silent on :-

- 1 the purpose of collecting this information;
- 2 whether offenders will be informed of the purpose of collection;
- 3 what mechanisms will be available, if any, for an offender to view information on the register and take steps to have it amended;
- 4 what the information will be used for;

5 for what purposes it may be disclosed to third parties.

I enclose a copy of the Information Privacy Principles in the *Privacy Act 1988* with which Commonwealth agencies are obliged to comply. These principles outline some standards for fair information handling practices and may be useful in developing procedures for the administration of the Register, if not specific provisions for such practices in the Bill.

The main shortcoming of the Bill is that the purpose for collecting and maintaining this Register is not specified. The purpose of collection of the information is an essential element in the structure of the Information Privacy Principles. For example, under the Principles:

- Collection of information is limited to only such information which is *necessary* for the purpose of collection.
- Prior to or soon after the point of collection, the individual concerned should be informed of the purpose for their information being collected.
- The information collected should not be used for any purpose other than the original purpose of collection or a directly related use.

I would also prefer to see provisions in the Bill for :

- access and amendment rights of individuals to their information on the Register;
- penalties for unauthorised disclosure or misuse of the information;
- records of disclosures of the information to third parties;
- much tighter restrictions on disclosure to specified third parties in terms of the purposes for which those third parties may use the information;
- requirements upon third parties receiving the information from the Register, including interstate recipients, to have appropriate measures in place to protect the information against improper use or disclosure.

The Bill appears to give rise to a Register which records only information which has been proved in court or are matters of fact provided by the offenders themselves. There is some room for concern in that the Bill has the potential, under the discretion given to the Commissioner of Police, to allow the Register to contain information which may be unsubstantiated. In turn, this information may then be disclosed to third parties for purposes which are not spelled out. If unsubstantiated information is permitted on the Register, then the issues of access and amendment rights for the offenders, and obligations of accuracy upon the Police take on a greater significance. Offenders should have an appropriate opportunity to dispute unsubstantiated information held about them, particularly before it is used or disclosed to a third party. Where disclosure of such information is sought, it would be preferable if the Bill obliged the Police on a case by case basis to consider, on the grounds of veracity and relevance to the purpose for disclosure, as to whether the particular information should be disclosed or not.

As you would be aware, I also administer the Commonwealth Spent Convictions Scheme in Part VIIC of the *Crimes Act 1914* (C'th). I should point out a remote possibility for a sex offender to be permitted under the Commonwealth Scheme not to inform the Queensland Police as required under the Bill. The Spent Conviction Scheme contains a statutory exception to the Scheme for "designated offences" which includes sex offences and offences committed against any person under the age of 18 at the time of the offence. There is some doubt as to whether an offence involving obscene material depicting children would be regarded as a designated offence and consequently may not be exempt from the operation of the Commonwealth Scheme.

The possibility arises where an offender was a minor at the date of conviction and was convicted for a Commonwealth offence involving obscene material depicting children and was sentenced to more than 24 months but less than 30 months imprisonment. Under the Bill, such an offender would be subject to a reporting period of between 5 years and 7.5 years depending on the sentence given. However, under the Commonwealth Scheme the offender only has to wait five years before the offender is not required to inform any person in any State or Territory about the conviction (see section 85ZV(1) of the *Crimes Act 1914*). Consequently, there would appear to be a potential area of conflict over which the Commonwealth Scheme would prevail, albeit there would seem to be a low risk of occurrence.

I would like to thank you for the opportunity to provide comments on the Bill. Should you wish to discuss the above comments, please contact Mr Andrew Amble at first instance on (02) 9284 9685 (direct).

Yours sincerely



MOIRA SCOLLAY
Privacy Commissioner

23 January 1998

.. INFORMATION PRIVACY PRINCIPLES



Principle 1 - Manner and purpose of collection of personal information

1. Personal information shall not be collected by a collector for inclusion in a record or in a generally available publication unless:
 - (a) the information is collected for a purpose that is a lawful purpose directly related to a function or activity of the collector; and
 - (b) the collection of the information is necessary for or directly related to that purpose.
2. Personal information shall not be collected by a collector by unlawful or unfair means.

Principle 2 - Solicitation of personal information from individual concerned

Where:

- (a) a collector collects personal information for inclusion in a record or in a generally available publication; and
 - (b) the information is solicited by the collector from the individual concerned;
- the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, before the information is collected or, if that is not practicable, as soon as practicable after the information is collected, the individual concerned is generally aware of:
- (c) the purpose for which the information is being collected;
 - (d) if the collection of the information is authorised or required by or under law - the fact that the collection of the information is so authorised or required; and
 - (e) any person to whom, or any body or agency to which, it is the collector's usual practice to disclose personal information of the kind so collected, and (if known by the collector) any person to whom, or any body or agency to which, it is the usual practice of that first mentioned person, body or agency to pass on that information.

Principle 3 - Solicitation of personal information generally

Where:

- (a) a collector collects personal information for inclusion in a record or in a generally available publication; and
- (b) the information is solicited by the collector;

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is collected:

- (c) the information collected is relevant to that purpose and is up to date and complete; and
- (d) the collection of the information does not intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Principle 4 - Storage and security of personal information

A record-keeper who has possession or control of a record that contains personal information shall ensure:

- (a) that the record is protected, by such security safeguards as it is reasonable in the circumstances to take, against loss, against unauthorised access, use, modification or disclosure, and against other misuse; and
- (b) that if it is necessary for the record to be given to a person in connection with the provision of a service to the record-keeper, everything reasonably within the power of the record-keeper is done to prevent unauthorised use or disclosure of information contained in the record.

Principle 5 - Information relating to records kept by record-keeper

1. A record-keeper who has possession or control of records that contain personal information shall, subject to clause 2 of this Principle, take such steps as are, in the circumstances, reasonable to enable any person to ascertain:

- (a) whether the record-keeper has possession or control of any records that contain personal information; and
- (b) if the record-keeper has possession or control of a record that contains such information:
 - (i) the nature of that information;
 - (ii) the main purposes for which that information is used; and
 - (iii) the steps that the person should take if the person wishes to obtain access to the record.

2. A record-keeper is not required under clause 1 of this Principle to give a person information if the record-keeper is required or authorised to refuse to give that information to the person under the applicable provisions of any law of the Commonwealth that provides for access by persons to documents.

3. A record-keeper shall maintain a record setting out:

- (a) the nature of the records of personal information kept by or on behalf of the record-keeper;
- (b) the purpose for which each type of record is kept;
- (c) the classes of individuals about whom records are kept;
- (d) the period for which each type of record is kept;
- (e) the persons who are entitled to have access to personal information contained in the records and the conditions under which they are entitled to have that access; and
- (f) the steps that should be taken by persons wishing to obtain access to that information.

4. A record-keeper shall:

- (a) make the record maintained under clause 3 of this Principle available for inspection by members of the public; and
- (b) give the Commissioner, in the month of June in each year, a copy of the record so maintained.

Principle 6 - Access to records containing personal information

Where a record-keeper has possession or control of a record that contains personal information, the individual concerned shall be entitled to have access to that record, except to the extent that the record-keeper is required or authorised to refuse to provide the individual with access to that record under the applicable provisions of any law of the Commonwealth that provides for access by persons to documents.

Principle 7 - Alteration of records containing personal information

1. A record-keeper who has possession or control of a record that contains personal information shall take such steps (if any), by way of making appropriate corrections, deletions and additions as are, in the circumstances, reasonable to ensure that the record:
 - (a) is accurate; and
 - (b) is, having regard to the purpose for which the information was collected or is to be used and to any purpose that is directly related to that purpose, relevant, up to date, complete and not misleading.
2. The obligation imposed on a record-keeper by clause 1 is subject to any applicable limitation in a law of the Commonwealth that provides a right to require the correction or amendment of documents.
3. Where:
 - (a) the record-keeper of a record containing personal information is not willing to amend that record, by making a correction, deletion or addition, in accordance with a request by the individual concerned; and
 - (b) no decision or recommendation to the effect that the record should be amended wholly or partly in accordance with that request has been made under the applicable provisions of a law of the Commonwealth;the record-keeper shall, if so requested by the individual concerned, take such steps (if any) as are reasonable in the circumstances to attach to the record any statement provided by that individual of the correction, deletion or addition sought.

Principle 8 - Record-keeper to check accuracy etc of personal information before use

A record-keeper who has possession or control of a record that contains personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date and complete.

Principle 9 - Personal information to be used only for relevant purposes

A record-keeper who has possession or control of a record that contains personal information shall not use the information except for a purpose to which the information is relevant.

Principle 10 - Limits on use of personal information

1. A record-keeper who has possession or control of a record that contains personal information that was obtained for a particular purpose shall not use the information for any other purpose unless:
 - (a) the individual concerned has consented to use of the information for that other purpose;
 - (b) the record-keeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person;
 - (c) use of the information for that other purpose is required or authorised by or under law;
 - (d) use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue; or
 - (e) the purpose for which the information is used is directly related to the purpose for which the information was obtained.
2. Where personal information is used for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue, the record-keeper shall include in the record containing that information a note of that use.

Principle 11 - Limits on disclosure of personal information

1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned) unless:
 - (a) the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person, body or agency;
 - (b) the individual concerned has consented to the disclosure;
 - (c) the record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person;
 - (d) the disclosure is required or authorised by or under law; or
 - (e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.
2. Where personal information is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the purpose of the protection of the public revenue, the record-keeper shall include in the record containing that information a note of the disclosure.
3. A person, body or agency to whom personal information is disclosed under clause 1 of this Principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.

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