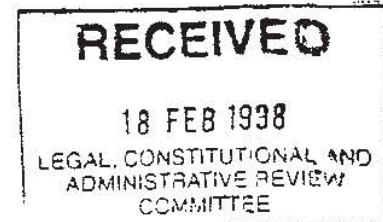




# Minister for Police and Corrective Services and Minister for Racing

Hon. Russell Cooper M.L.A.

17 FEB 1998



Ms Judy Gamin MLA  
Legal, Constitutional and Administrative Review Committee  
Legislative Assembly of Queensland  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear ~~Ms Gamin~~ *Judy*,

In response to your letter dated 2 December 1997, the Queensland Corrective Services Commission provides the following comments on the proposed Criminal Law (Sex Offenders Reporting) Bill 1997.

- The Bill is described as being "to require the notification of information to the police by persons who have committed certain sexual offences, and other purpose" but fails to describe or explain the overall purpose of this notification of information by offenders in enhancing the response of the criminal justice system to the needs of both victims and offenders.
- The *Criminal Law Amendment Act 1945* makes provision for persons who are unable to control their sexual instincts. It extends to sexual offences against children under the age of sixteen years. Section 19 allows a court to order a sexual offender to report the offender's address within 48 hours of the offender's release from custody. However, a court cannot make such an order unless satisfied that there exists a substantial risk of a further offence of a sexual nature being committed against a child under 16. The proposed Bill outlines a new reporting regime for persons reporting. However, the period of reporting is defined with reference to offences which may have no relevance to a person who was detained under the *Criminal Law Amendment Act 1945*. This seems anomalous.
- "Residential Address" is defined narrowly and could be interpreted as directed only at persons temporarily residing in Queensland.
- More thought may need to be given to the term "not in custody" in clause 5 (1) so as to clarify the following:

- (a) Whether prisoners who are on Home Detention would report (these persons are in custody) To ensure consistency, it would seem appropriate to include prisoners released to the community on Home Detention.
- (b) Whether persons in Police custody would also be subject to reporting conditions.
- "Discharge" in clause 5(3) is given a specific meaning in corrective services legislation. It does not include release on parole, extended leave etc. The intention therefore of 'discharged' requires clarification to distinguish between persons discharged from supervision obligations and those still subject to corrective services supervision.
- Clauses 5 and 6 refer to "reasonable excuse", however it is not clear what is meant by reasonable excuse, nor who must be satisfied as to the reasonableness of the excuse.
- Clause 6(2) needs to be precisely expressed.
- It is not clear whether the calculation of a reporting period in clause 7(4)(b)(ii) is to be only implemented where a prisoner is expressly denied parole.
- The Reporting Period does not take account of whether the sex offender who is returned to custody for unrelated offences, must still report on discharge. The Bill needs to clarify what happens when a sex offender leaves the State (for a lengthy period) and subsequently returns to Queensland. The issue of whether the reporting period is held in abeyance or not warrants clarification.
- In the case of a defendant who is acquitted of a sex offence on the basis of unsound mind, there are ethical concerns as to whether the reporting conditions stipulated under this Act should apply, in the same manner in which they would apply to a convicted sex offender. Section 5 (2)(d) states 'details of the conviction, or acquittal on the ground of unsoundness of mind, that makes the person a sex offender'. This wording is somewhat confusing and needs to be clarified. In instances where an individual is found unfit to plead before a court, should the reporting conditions apply? Should the reporting conditions apply where charges were laid but a conviction was not achieved because of lack of evidence, which is common where children are the only witnesses?
- The Bill does not include juvenile sexual offenders even though statistics from Children's Court would support that there is a concerning increase in the number of offences of sexual assault committed by juveniles against children.
- Clarification is required as to whether "term of imprisonment" includes a suspended term of imprisonment. It is ambiguous as to whether an offender sentenced to 12 months imprisonment to be suspended after three months, would still be required to report to police.



- As it is intended that the Bill apply retrospectively, it will place obligation of notification on all "sex offenders" from its commencement and from ten years prior to its commencement. How is it intended that the large number of offenders over the previous ten year period would be informed of their obligations under this legislation?
- The Bill allows for a large degree of discretion on the part of the Police Commissioner to determine the nature of information to be provided by "sex offenders" to police. Prisoner advocates and civil libertarians may object to such a discretion.
- The maximum penalty imposed for failure to comply with the obligations of the Bill is 30 penalty units. This translates to a maximum fine of \$2 250. As this is the maximum penalty, the only way an offender would be imprisoned for failure to comply with the Bill is if they were in default of the fine.
- Implementation of the procedures will be resource intensive for court staff and police officers throughout the state. The question must be asked whether the increased workload can be justified when compared with the benefit for the community as a result of this initiative.

The Commission in considering the proposed Bill, identified that one consequence may be that sexual offenders will be more likely to take action to change their identity, in order to avoid the reporting requirements .

I hope that this information is of assistance in the current investigation and reporting process undertaken by your Committee.

Yours sincerely



**RUSSELL COOPER MLA**

Minister for Police and Corrective Services  
and Minister for Racing

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