

# **Child Protection (Offender Reporting) Amendment Bill 2013**

**Report No. 60**

**Legal Affairs and Community Safety Committee**

**April 2014**

## Legal Affairs and Community Safety Committee

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**Abbreviations**

2013 NSW Act	<i>Child Protection Legislation Amendment (Offenders Registration and Prohibition Orders) Act 2013 (NSW)</i>
Bill	Child Protection (Offender Reporting) Amendment Bill 2013
Committee	Legal Affairs and Community Safety Committee
CPOR Act	<i>Child Protection (Offender Reporting) Act 2004</i>
PACT	Protect All Children Today
QLS	Queensland Law Society
QPS	Queensland Police Service

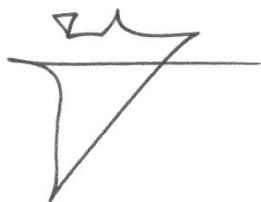
## Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Child Protection (Offender Reporting) Amendment Bill 2013.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on this Bill. I would also like to thank the Committee's Secretariat and the Queensland Parliamentary Library for its assistance with the examination of this Bill.

I commend this Report to the House.

A handwritten signature in black ink, appearing to read 'Ian Berry', written over a horizontal line.

Ian Berry MP

**Chair**

## Recommendations

### Recommendation 1

**2**

The Committee recommends the Child Protection (Offender Reporting) Amendment Bill 2013 not be passed.

## 1. Introduction

### 1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup>

The Committee's primary areas of responsibility include:

- Justice and Attorney-General;
- Police Service; and
- Fire and Emergency Services.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

### 1.2 Referral

The Child Protection (Offender Reporting) Amendment Bill 2013 (Bill) is a Private Members' Bill introduced into the Legislative Assembly by the Member for Yeerongpilly, Mr Carl Judge MP and referred to the Committee on 17 October 2013.

As no reporting date was fixed by the Legislative Assembly or Committee of the Legislative Assembly, in accordance with Standing Order 136(1), the Committee must report to Parliament on or before 17 April 2014.

### 1.3 Inquiry process

To assist with its examination of the Bill, the Committee wrote to Mr Judge MP inviting further comments from him on the Bill. The Committee also identified and consulted with likely stakeholders on the Bill. The Committee received written advice from Mr Judge MP<sup>2</sup> and three submissions from stakeholders (see **Appendix A**).

The Committee also wrote to the Premier seeking his assistance in coordinating a whole of Government submission on the Bill. The Premier advised the Committee the Government would not be providing a submission on the Bill.<sup>3</sup>

Both Mr Judge MP and the Queensland Police Service (on behalf of the government), were invited to provide the Committee with a response to the submissions. Mr Judge MP provided a response to submissions in a letter to the Committee dated 18 December 2013. The Queensland Police Service (QPS) declined to comment on the submissions.

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<sup>1</sup> *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

<sup>2</sup> Letter from Mr Carl Judge MP, Member for Yeerongpilly, 18 December 2013.

<sup>3</sup> Letter from the Hon. Campbell Newman MP, Premier of Queensland, 6 December 2013.

#### **1.4 Policy objectives of the Child Protection (Offender Reporting) Amendment Bill 2013**

The objectives of the Child Protection (Offender Reporting) Amendment Bill are to amend the *Child Protection (Offender Reporting) Act 2004* to:

- confirm and strengthen police powers to conduct random audits to ensure compliance with reporting obligations under the Act; and
- increase reportable offenders' likelihoods of apprehension for non-compliance with the terms of their reporting obligations.

#### **1.5 Should the Bill be passed?**

Standing Order 132(1) requires the Committee to determine whether to recommend the Bill should be passed.

The Committee has considered the form and policy intent of the Bill and while it sees merit in the policy objectives being pursued, for the reasons outlined in Part 2 of this report, the Committee considers that further research into the issues being dealt with by the Bill must occur before the legislation of this nature can be considered by the Parliament.

As outlined in the Committee's earlier report number 57 on the Child Protection (Offender Reporting – Publication of Information) Bill 2013, the Committee considers a review of the entire child protection offender reporting regime should occur to ensure that evidence based policy is introduced that deals with this issue in an holistic manner and not in a piecemeal fashion.

Accordingly, the Committee has determined the Bill should not be passed.

#### **Recommendation 1**

The Committee recommends the Child Protection (Offender Reporting) Amendment Bill 2013 not be passed.



## 2. Examination of the Child Protection (Offender Reporting) Amendment Bill 2013

### 2.1 Overview

The Child Protection (Offender Reporting) Amendment Bill 2013 (Bill) amends the *Child Protection (Offender Reporting) Act 2004* by inserting:

- **proposed section 74C** – Police functions include ensuring compliance with reporting requirement; and
- **proposed section 74D** – Power to enter and search premises without consent or warrant to ensure compliance.

The main objective of the Bill is to confirm and strengthen police powers to conduct random audits to ensure compliance with reporting obligations under the provisions of the *Child Protection (Offender Reporting) Act 2004* (CPOR Act).

The child protection offender register (Register) commenced in 2005 under the CPOR Act. The purpose of the register is to record the relevant personal particulars (for example, their name, date of birth, address, employment details, affiliation with clubs or organisations, names and ages of any children who live at their residence) of reportable offenders that are recorded on the register. In his Introductory Speech for the Bill, Mr Judge MP, stated:

*Significantly, as at June 2013 there were 4,193 offenders recorded on the register. Comparatively, as at 30 June 2010 there were 3,543 offenders registered in Queensland. This indicates the continually increasing number of reportable offenders in the Community.*

*As mentioned, from the commencement of the register in 2005 and until June 2010, there had been a total of 1,523 breaches of reporting obligations under the Child Protection (Offender Reporting) Act 2004.*

*This accurately indicates the recent rates of non-compliance over a considerable period of time and supports the legitimate need for improved, evidence based, measures to increase compliance. To this end and ultimately to protect children, the policy objective of the Bill is to confirm and strengthen police powers to conduct random audits to ensure compliance with reporting obligations and thereby increase reportable offenders' certainty of apprehension for any non-compliance.<sup>4</sup>*

### 2.2 Background

On 21 September 2012, Mr Judge MP wrote to the Minister for Police and Community Safety, raising serious concerns about the CPOR Act and the present approach being taken concerning the management of reportable offenders in Queensland.<sup>5</sup> He noted the role of managing reportable offenders was being exclusively performed by the QPS.

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<sup>4</sup> *Record of Proceedings (Hansard)*, 17 October 2013, page 3434.

<sup>5</sup> Letter from Mr Judge MP, Member for Yeerongpilly, to the Minister for Police and Community Safety, Hon. Jack Dempsey MP, 21 September 2012, page 1.

Mr Judge MP commented, as follows:

*...the existing legislation fundamentally fails to reduce the likelihood of re-offending. ... By and large this is because the CPOR Act does not provide any legitimate authority whatsoever for random compliance audits as arguably necessary (e.g., via unscheduled residential visitations to check whether a reportable offender may be residing or having unsupervised contact with a child). ... Accordingly, legislation providing legitimate authority to conduct random compliance audits as indicated would markedly strengthen deterrence of failing to comply with reporting obligations, albeit through increased apprehension of detection for non-compliance, and thereby effectively reduce the likelihood of re-offending.<sup>6</sup>*

In his letter of 21 September 2012, Mr Judge MP proposed a comprehensive review of the current approach to community management of reportable offenders be conducted. He suggested the responsibility for monitoring and administering scheduled or other prescribed reports by reportable offenders from the QPS to Probation and Parole within the Department of Community Safety.

He concluded this approach would result in an increase in capacity for detectives to investigate any suspected cases of non-compliance under the CPOR Act.

On 17 October 2013, Mr Judge MP introduced the Bill into the Legislative Assembly.

### 2.3 Summary of provisions

The Bill proposes to introduce two sections which can be summarised as follows:

- **Proposed section 74C** – *Police functions include ensuring compliance with reporting requirement* – provides: for the avoidance of doubt, the functions of the police service include – ensuring compliance with a reporting obligation by a reportable offender.
- **Proposed section 74D** – *Power to enter and search premises without consent or warrant to ensure compliance* – provides:
  - subject to the police officer making a reasonable attempt to inform the occupier of the purpose of the entry and that the police officer is permitted to enter the place without the occupier's consent or a warrant;<sup>7</sup>
  - a police officer may, without the consent of the occupier of the premises, at any reasonable time, enter and stay on a premises reported by the reportable offender to be a premises at which the reportable offender generally resides, to investigate a matter or make an inquiry to ascertain whether a detail required to be reported by the reportable offender under section 16 has been correctly reported;<sup>8</sup>
  - search the premises for anything that may be evidence of the commission of an offence against section 50 or 51 of the Act;<sup>9</sup>
  - if the police officer enters the premises and finds the evidence, the officer may:
    - (a) seize the evidence;
    - (b) keep the evidence for 6 months or, for the duration of any proceeding or appeal in relation to the proceeding;

<sup>6</sup> Letter from Mr Judge MP, Member for Yeerongpilly, to the Minister for Police and Community Safety, Hon. Jack Dempsey MP, 21 September 2012, page 1.

<sup>7</sup> Proposed section 74D(2).

<sup>8</sup> Proposed section 74D(1).

<sup>9</sup> Proposed section 74D(1)(c).

- (c) if the evidence is a document – take extracts from and make copies of the document, but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the officer’s possession;<sup>10</sup> and
- The definition of ‘premises’ does not include a part of the premises used exclusively by a person other than the reportable offender.<sup>11</sup>

## 2.4 Issues raised in submissions

There were three submissions which discussed the Bill. These were from:

- Protect All Children Today;
- Queensland Safety Legislation Action Network; and
- Queensland Law Society.<sup>12</sup>

The key concerns raised in these submissions are outlined below under separate sub-headings.

### Current powers are sufficient

One argument against introducing the measures outlined in the Bill is that the current powers of police in this regard are sufficient. The Queensland Law Society (QLS) made this point in its submission on the Bill.<sup>13</sup> The QLS stated one of the main reasons that it did not support the Bill was because:

*Broadly, the Society considers that current police powers are sufficient.*<sup>14</sup>

### Place an unrealistic workload on Queensland Police Service

Additionally, two submissions stated the proposals under the Bill would place an unrealistic workload on the QPS.

For example, Protect All Children Today (PACT) raised the following concerns:

*Whilst PACT is supportive of Police having greater powers to investigate child related offences, we are not convinced that the strengthening of Police powers to conduct random audits is the best way to address breaches. The Police are already under-resourced with ever increasing responsibilities and this approach places unrealistic workloads on current Officers. It would appear that the timing of Police undertaking random searches is too late and is likely to be after an offence has occurred and a child has been victimised. By directing resources to improving the transfer of information between the key stakeholders identified above, the risk of offender recidivism is likely to be managed more effectively.*<sup>15</sup>

<sup>10</sup> Proposed section 74D(3).

<sup>11</sup> Proposed section 74D(5).

<sup>12</sup> Note that the submission from the Queensland Law Society was made in relation to the Child Protection (Offender Reporting – Publication of Information) Bill, however the Queensland Law Society included commentary on the Child Protection (Offender Reporting) Amendment Bill 2013 at the conclusion of its submission.

<sup>13</sup> Queensland Law Society, Submission No. 3, page 3.

<sup>14</sup> Queensland Law Society, Submission No. 3, page 3.

<sup>15</sup> Protect All Children Today, Submission No. 1, page 1.

The QLS also made reference to the issue of the Bill placing an increased workload on the QPS:

*We also note that police resources will need to be increased in order to be able to put these powers into effect, and details of this should be ascertained.<sup>16</sup>*

In response to these points, Mr Judge MP commented as follows:

*It is important to clarify that the proposed amendments will not impose any additional workload and/or strain on police resources. Specifically, it is contemporary practice for police officers to perform compliance audits on reportable offenders in the community. Therefore, the proposed legislation will empower and support police officers undertaking this important work.<sup>17</sup>*

### **Alternatives to the Queensland Police Service**

PACT flagged that there may be options, other than relying on the QPS in this regard, that could be considered. For example, PACT indicated that instead of widening police powers in this regard, the focus should be on ensuring that Corrections, Probation and Parole are resourced adequately so as to work with the QPS to minimise the risk of offender recidivism.<sup>18</sup>

Further in his letter of 21 September 2012, Mr Judge MP suggested that the responsibility for monitoring and administering scheduled or other prescribed reports by reportable offenders be moved from the QPS to Probation and Parole within the Department of Community Safety. He concluded that this approach would result in an increase in capacity for detectives to investigate any suspected cases of non-compliance under the CPOR Act.

### **Further research required**

While the main focus of the QSCLAN submission was the Child Protection (Offender Reporting – Publication of Information) Amendment Bill 2013, the QSCLAN submission did also touch on the Bill. In terms of the proposals in the Bill, QSCLAN emphasised the importance of research underpinning any proposed legislation.

In this regard, Mr Judge MP responded:

*To this end the Bill is consistent with deterrence research findings, recognising that increases in the certainty of apprehension causes a significant deterrent effect. This reality is gaining acceptance and the strategy of increasing certainty of apprehension is now being applied in our jurisdictions including New South Wales.<sup>19</sup>*

Mr Judge MP also addressed this concern in his Introductory Speech:

*Underpinning this policy objective and the Bill is a consistent finding in deterrence research that increases in the certainty of apprehension and punishment demonstrate a significant deterrent effect. However, studies of deterrence also suggest that the threat of imprisonment, as a standalone measure, only generates a small general deterrent effect.<sup>20</sup>*

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<sup>16</sup> Queensland Law Society, Submission No. 3, page 3.

<sup>17</sup> Letter from Mr Judge MP, Member for Yeerongpilly, 18 December 2013, page 1.

<sup>18</sup> Protect All Children Today, Submission No. 1, page 1.

<sup>19</sup> Letter from Mr Judge MP, Member for Yeerongpilly, 18 December 2013, page 1.

<sup>20</sup> *Record of Proceedings (Hansard)*, 17 October 2013, page 3434.

## 2.5 Similar legislation in other Australian jurisdictions

Legislation similar to that proposed under the Bill has been introduced, in different forms, in a number of jurisdictions, including:

- New South Wales;
- Western Australia;
- Victoria; and
- The United Kingdom.

A summary of the situation in each of these jurisdictions is set out below.<sup>21</sup>

### New South Wales

The Bill is very similar to the *Child Protection Legislation Amendment (Offenders Registration and Prohibition Orders) Act 2013* (NSW) (2013 NSW Act) which was assented to on 29 October 2013. The 2013 NSW Act amends, among other legislation, the *Child Protection (Offenders Registration) Act 2000* (NSW) to allow police officers to enter and inspect any residential premises at which a registrable person generally resides for the purposes of verifying personal information the registrable person has been required to report.

When introducing the new legislation, the NSW Attorney-General and Minister for Justice, the Hon. Greg Smith MP, said that the police were currently unable to confirm if a registrable person has complied with their reporting obligations under the NSW *Offenders Registration Act* in terms of the veracity of the information provided, particularly in relation to computer usage and online communications. The amendments in the 2013 NSW Act enable police officers to enter and inspect residential premises of registrable persons, without prior notice or a warrant, to verify the reportable information provided by the registrable person.<sup>22</sup>

In his second reading speech introducing the above new amendments, the NSW Attorney-General, the Hon. Greg Smith MP, said:

*The entry and inspection amendments will have privacy implications for registrable persons. However, it is considered that the public interest in allowing such an increase in police powers so that they may determine the veracity of the information that a registrable person provides, as part of their reporting obligations, and thereby enhancing the safety of children, outweighs these privacy issues. The bill has, however, sought to minimise the impact that the new arrangements will have on any non-registrable individuals who may be sharing accommodation with the registrable person, such as a boarding house, a home or an apartment.*<sup>23</sup>

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<sup>21</sup> The background research for this information was provided to the Committee by Mr Carl Judge MP, in a letter dated 18 December 2013, Attachment 2 (Queensland Parliamentary Library and Research Service Research Brief), pages 1-7.

<sup>22</sup> The Hon. Greg Smith MP, NSW Attorney-General and Minister for Justice, *Child Protection Legislation Amendment (Offenders Registration and Prohibition Orders) Bill 2013 (NSW)*, *Legislative Assembly (Hansard)*, 18 September 2013, pages 23735-23736.

<sup>23</sup> The Hon. Greg Smith MP, NSW Attorney-General and Minister for Justice, *Child Protection Legislation Amendment (Offenders Registration and Prohibition Orders) Bill 2013 (NSW)*, *Legislative Assembly (Hansard)*, 18 September 2013, page 23736.

In its report to the NSW Parliament on the legislation before it was passed, the Legislative Review Committee made the following points in relation to the entry and inspection power:

- the 'Committee notes the limits/safeguards that are placed on this proposed power'. The limits include the use of the power just once per year until the reporting period expires and it applies only to those persons convicted of sexual and other serious offences against children, and where the court is satisfied the person poses a risk to the lives or sexual safety of a child or children;
- the power cannot be used in respect of those parts of the residential premises used exclusively by another person unless the police officer has reasonable grounds to suspect that the parts are being used by the registrable person;
- nevertheless, the Committee noted that despite safeguards, the power to enter and inspect residential premises of a registrable offender without prior notice or a warrant may impact significantly on privacy rights. The Committee said that while such rights must be balanced against the public interest in securing the safety of children, *'the Committee is concerned about the effect this amendment may have on the privacy rights of non-registrable persons who may be co-habiting with registrable persons'*.<sup>24</sup>

The 2013 NSW Act provides a power to *inspect* only and not to *search*.<sup>25</sup> However, in NSW, if the officers form any suspicions during the inspection about the truth of information supplied by the registrable person, this might form the basis of an application for a search warrant for the residential premises. During the second reading debate, a number of members emphasised that the power was limited to inspection rather than search. While indicating some concern about the practical operation of the demarcation between 'inspection' and 'searching' and the restriction of the power to just the part of the residential premises occupied by the registrable person, the NSW Opposition did not oppose the legislation and it was passed.<sup>26</sup>

### Western Australia

In December 2012, the Western Australian Parliament passed the *Community Protection (Offender Reporting) Amendment (No 2) Act 2012* (WA). The amendments inserted new provisions into the *Community Protection (Offender Reporting) Act 2004* (WA). The relevant provisions apply where a protection order prohibits conduct that relates to the use by a reportable offender of the Internet.

Under the new section 94C of the *Community Protection (Offender Reporting) Act 2004* (WA), if a protection order prohibits conduct that relates to the use by a reportable offender of the internet, an authorised police officer may, at any time and without a warrant, enter premises where the offender generally resides and exercise a power to determine whether there is any evidence that the offender has breached the order. Under section 94C(3), the authorised police officer may inspect any computer at the premises or seize any computer at the premises and remove it for the purpose of inspecting it. The police officer may use reasonable force in the exercise of the power.

Unless the exercise of the power is authorised by a senior police officer, these powers must not be exercised in relation to a particular premises more than once in any 12 month period.

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<sup>24</sup> Legislative Review Committee, *Child Protection Legislation Amendment (Offenders Registration and Prohibition Orders) Bill 2013* (NSW), Legislative Review Committee Digest, No. 45 of 55, 15 October 2013, pages 7-8.

<sup>25</sup> Note that the proposal under the Bill being considered by the Committee seeks to provide a power to 'search' and not just 'inspect'.

<sup>26</sup> See Mr Paul Lynch MP, *Child Protection Legislation Amendment (Offenders Registration and Prohibition Orders) Bill 2013* (NSW), *Legislative Assembly (Hansard)*, 16 October 2013, pages 24119-24120.

## Victoria

In Victoria, a report was released by the Victorian Ombudsman: *Investigation into the failure of agencies to manage registered sex offenders* in February 2011. The Ombudsman recommended various legislative changes to manage sex offenders, including powers to be able to test the veracity of registered information provided by offenders.

The Victorian Police have power to enter and search premises without a warrant if they have reasonable grounds to believe that a registered sex offender has failed to comply with reporting obligations but not if it is suspected that the sex offender has furnished false or misleading information. Accordingly, the Police can only investigate failure to comply, not the giving of false information.

In April 2012, the Victorian Law Reform Commission tabled a report titled '*Sex Offenders Registration*' in response to the Victorian Ombudsman's report. The Commission recommended that the Victorian Police should be given power to enter and search premises where it is believed the registered offender to be but only if the Police believe, on reasonable grounds, that there has been a failure to comply with reporting obligations without reasonable excuse or that false or misleading information has been given.

## United Kingdom

In the United Kingdom, the *Sexual Offences Act 2003* (UK) was amended in 2007 to include new section 96B giving police powers of entry and search for the purpose of risk assessing registered offenders. However, such powers must be exercised pursuant to a warrant obtained in the Magistrates Court if there have been at least two failed attempts to enter. The power is not intended to be used if the police have reasonable grounds to believe a person has breached the notification requirements or committed an indictable offence. In that case, the general search and entry powers under the *Police and Criminal Evidence Act 1984* (UK) are available.

### 2.6 Risk of Apprehension and Recidivism

The Committee also considered the argument raised by Mr Judge MP that the Bill is based on research which found that recidivism was less likely if offenders think it is likely they will get caught rather than if heavier penalties were used as a deterrent. In this regard, in correspondence to the Committee, Mr Judge MP noted:

*Increasing certainty of apprehension is necessary to create a significant deterrent effect for non-compliance by reportable offenders.*<sup>27</sup>

On this matter, the Committee notes the following:<sup>28</sup>

- Research over several decades and across a number of countries has found that enhancing the *certainty* of punishment produces a stronger deterrent effect than increasing the *severity* of punishment.
- An increased likelihood (i.e. - certainty) of apprehension and punishment was associated with declining crime rates.<sup>29</sup>

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<sup>27</sup> Letter from Mr Carl Judge MP, Member for Yeerongpilly, 18 December 2013, page 1.

<sup>28</sup> The background research for this information was provided to the Committee by Mr Carl Judge MP, in a letter dated 18 December 2013, Attachment 2 (Queensland Parliamentary Library and Research Service Research Brief), page 9.

<sup>29</sup> V Wright, *The Sentencing Project: Deterrence in Criminal Justice: Evaluating Certainty Versus Severity of Punishment*, Briefing Paper, November 2010, page 4.

- A paper prepared by the Victorian Sentencing Advisory Council concluded:  
*A consistent finding in deterrence research is that increases in the certainty of apprehension and punishment demonstrate a significant deterrent effect. Perceptions about the certainty of apprehension, for example, may counter the ‘present bias’ and reinforce the potential cost of committing crime.*  
*Research into specific deterrence shows that imprisonment has, at best, no effect on the rate of reoffending and often results in a greater rate of recidivism. Possible explanations for this include that: prison is a learning environment for crime, prison reinforces criminal identity and may diminish or sever social ties that encourage lawful behaviour and imprisonment is not the appropriate response to many offenders who require treatment for the underlying causes of their criminality (such as drug, alcohol and mental health issues). Harsh prison conditions do not generate a greater deterrent effect, and the evidence shows that such conditions may lead to more violent reoffending.<sup>30</sup>*

The Victorian Sentencing Advisory Council paper also noted:

- a 2010 study of police presence consistently found that putting more police on the street was associated with reductions in crime;
- a 2005 Australian study found that a rise in the number of random breath tests carried out on drivers would result in a significant decrease in the number of alcohol related serious crashes (by way of deterring drink driving); and
- - a 2004 Australian study found that while penalties for drink driving in NSW rose in 1998, there was a statistically significant *increase* in road crashes following the introduction of the harsher fines. When the study explored why this had occurred, it was found that when the stiffer penalties were introduced police enforcement activity was reduced, suggesting that the level of certainty about being caught had declined. Thus, the decreasing perception of certainty of apprehension was greater than the deterrent effect of the higher penalties.<sup>31</sup>

### Committee Comment

The Committee accepts the premise for the Bill and is also persuaded by a conclusion in the Victorian Ombudsman’s report of February 2011 entitled *‘Investigation into the failure of agencies to manage registered sex offenders’* that, in general, there are benefits to extending police powers in this area.

The Committee also notes a number of other jurisdictions both here in Australia and overseas have introduced legislation to give police additional powers particularly to test the veracity of registered information provided by offenders or to obtain such information if it has not been provided. Each model in each jurisdiction is slightly different and the Committee is not convinced that any particular model represents the “best” approach.

For example, the Committee notes the New South Wales and the Western Australian models include certain restrictions and safeguards on the police powers in this regard. For example, there is a restriction in each of these jurisdictions regarding the number of times the power can be used by police in relation to each registered offender each year. The Committee is unconvinced that the NSW model, which limits the power to “inspect” only and not “search” is appropriate. The power to search, as proposed in the Bill, appears to be a better approach.

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<sup>30</sup> Donald Ritchie, Victorian Sentencing Advisory Council Paper: *Does imprisonment deter? A Review of the Evidence*, April 2011, page 3.

<sup>31</sup> Donald Ritchie, Victorian Sentencing Advisory Council Paper: *Does imprisonment deter? A Review of the Evidence*, April 2011, page 42.



The Committee also accepts from submissions received on the Bill, there are a number of issues with this policy proposal which must be considered in greater detail prior to passing it into law.

On balance, the Committee considers that legislation of this nature is a positive step in terms of increasing the safety of Queensland children. It is the Committee's view that the determination of the most appropriate model for Queensland is best considered in conjunction with a detailed review of the entire child protection offender reporting regime to determine what, if any, other aspects of the CPOR Act need improvement.

The Committee notes that in his letter of 21 September 2012, Mr Judge MP also recommended such a review take place:

*It is also perceived that cost-benefits and enhanced child safety could possibly be achieved through a comprehensive review of the current approach to community management of reportable offenders.<sup>32</sup>*

Once such a review has been undertaken, amendments will be able to be introduced to facilitate legislative development in this area with the aim of improving the existing child protection offender reporting regime in Queensland as a whole.

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<sup>32</sup> *Record of Proceedings (Hansard)*, 17 October 2013, page 3434.

### 3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill. The Committee brings the following to the attention of the House.

#### 3.1 Rights and liberties of individuals and power to enter premises

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals. Section 4(3)(e) of the *Legislative Standards Act 1992* further provides that whether the legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a Judge or other judicial officer?

##### Potential FLP issues

Proposed section 74D affects the rights and liberties of individuals and confers powers on police officers to enter premises to search and seize documents or other property without consent or a warrant issued by a Judge or other judicial officer.

The Explanatory Notes state the provision is necessary to reduce rates of non-compliance:

*[The provision] takes into consideration effective compliance management of the continually increasing number of reportable offenders in the community. It is also stressed that any infringement upon the rights and liberties of individuals is outweighed by the need to protect children who may be exposed to harm and/or abuse because of non-compliance. Specifically, without this provision a reportable offender's non-compliance may go undetected over a prolonged period of time.*

*... research indicates that increases in the severity of penalties, such as increasing the length of terms of imprisonment (e.g. mandatory 20 year sentencing introduced through the Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012), do not produce a corresponding increase in deterrence. For this reason, improved, evidence based, measures are required to increase compliance by reportable offenders in the community.*

*This research and rationale have been applied to the Bill [which has been] purposefully designed to increase reportable offenders' certainty of apprehension for any non-compliance. It is asserted that this can only be achieved by enabling police officers to enter and search premises without consent or a warrant. Several limitations have been imposed on the exercise of the power ... to mitigate the inconsistency with Fundamental Legislative Principles, specifically –*

- (a) requiring the officer to advise the occupier what they are entering the premises and that they are authorised to do so under the Act without consent or warrant; and*
- (b) limiting the purposes for which the power may be exercised – the police must enter only for the purpose of checking compliance with the reporting obligations provisions of the Act; and*

- (c) *limiting the times at which the power may be exercised – reasonable times of the day and only for such periods as are reasonable to do the compliance check; and*
- (d) *limit the evidence that may be seized under the provision to evidence of the commission of an offence against the reporting obligation under the Act.*

*Furthermore, it is provided that premises does not include a part of the premises used exclusively by a person other than the reportable offender.*

*Overall, the Bill will improve the management of reportable offenders in the community and ultimately serve to improve child protection in Queensland.*<sup>33</sup>

The former Scrutiny of Legislation Committee adopted an expansive approach in identifying rights and liberties which included the right to privacy. The Queensland Legislation Handbook provides that there should be a balance within legislation between individual and community interests, and that the treatment of all persons affected by legislation should be reasonable and fair.<sup>34</sup>

The Queensland Legislative Handbook provides that power to enter premises should generally be permitted only with the occupier's consent or under a warrant issued by a Judge or Magistrate, and that residential premises should not, without the highest justification, be entered except with the occupier's consent or under a warrant.<sup>35</sup> Further, the former Scrutiny of Legislation Committee examined powers of entry and commented adversely if appropriate safeguards were not provided.<sup>36</sup>

### **Committee Comment**

The Committee has considered whether the powers to enter premises and seize evidence without consent or a warrant are justified in these circumstances and whether limitations in the Bill provide adequate safeguards to protect reportable offenders from inappropriate incursion into their rights and liberties. The Committee concludes that the powers to enter premises and search for or seize documents or other property are justified in the circumstances. In terms of the issue of whether limitations in the Bill provide adequate safeguards, it is the Committee's view that further research is required to determine this point more fully. The Committee understands that this issue will be investigated in detail during the proposed review of the entire child protection offender reporting regime which is proposed to take place by the Queensland Government in the near future.

### **3.2 Explanatory Notes**

Part 4 of the *Legislative Standards Act 1992* relates to Explanatory Notes. It requires that an Explanatory Note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an Explanatory Note should contain.

Explanatory Notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

<sup>33</sup> *Explanatory Notes*, Child Protection (Offender Reporting) Amendment Bill 2013, page 2.

<sup>34</sup> The Queensland Legislation Handbook, at para. 7.2.12.

<sup>35</sup> The Queensland Legislation Handbook, at para 7.25.

<sup>36</sup> The Queensland Legislation Handbook, at para 7.25, citing Alert Digest 1997/13, at page 19.

**Appendix A – List of Submissions**

Sub #	Submitter
001	Protect All Children Today
002	Queensland Child Safety Legislation Action Network
003	Queensland Law Society

# Statement of Reservation



## Peter Wellington MP

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2 April 2014

MR IAN BERRY, MP

CHAIRMAN

LEGAL AFFAIRS & COMMUNITY SAFETY COMMITTEE

  
Dear Mr Berry

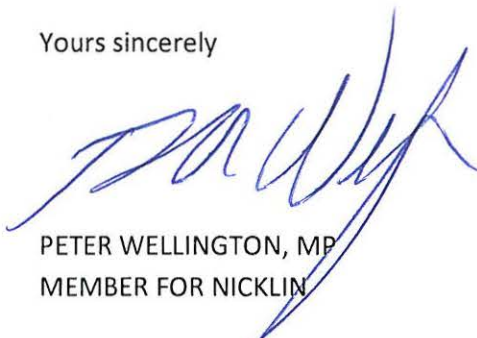
I refer to the Committee's recommendations that the Child Protection (Offender Reporting) Amendment Bill 2013, not be passed. I submit this statement of reservation to the Committee's recommendations because I believe our Committee's ability to fully consider the Bill has been hindered by:

1. The Premier's advice to the Committee that the Government would not be providing a submission on the Bill; and
2. The Police Service's advice to the Committee that it declined the Committee's invitation to comment on submissions that were made to this Bill.

I believe, for the Committee to be able to make a complete report, the State Government and the Police Service should have made a submission. Their decision not to be involved in the Committee process or make any submissions, I believe, shows how the current Committee system is not able to produce the best reports possible.

The refusal of the Police Service to make a submission on the Bill which has the potential to directly impact on Qld Police Officers' duties, suggest to me that the leadership of the current Police Service has become politicised, is no longer at arms-length from the Government and is now doing their bidding.

Yours sincerely

  
PETER WELLINGTON, MP  
MEMBER FOR NICKLIN