



# **Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016**

**Report No. 28, 55<sup>th</sup> Parliament  
Education, Tourism, Innovation and Small  
Business Committee**



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**March 2017**



# Education, Tourism, Innovation and Small Business Committee

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## Abbreviations and glossary

the Bill	Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016
the commissioner	Commissioner of Police for the State of Queensland
the committee	Education, Tourism, Innovation and Small Business Committee
CCC	Crime and Corruption Commission
CCC Review	Statutory review of the <i>Child Protection (Offender Prohibition Order) Act 2008</i> , 2014, conducted by the Crime and Corruption Commission
FLPs	Fundamental Legislative Principles
health entities	the chief executive of the department in which the <i>Hospital and Health Boards Act 2001</i> is administered or a hospital and health service under that Act
NCOS	National Child Offender System
Offender Reporting Act	<i>Child Protection (Offender Reporting) Act 2004</i>
the PPR Act	<i>Police Powers and Responsibilities Act 2000</i>
Prohibition Order Act	<i>Child Protection (Offender Prohibition Order) Act 2008</i>
the proposed Act	<i>Child Protection (Offender Reporting and Offender Prohibition Order) Act</i> [if the Bill is passed]
reportable offender	a person convicted of a sexual or other serious crime against children
QPS	Queensland Police Service
Working with Children Act	<i>Working with Children (Risk Management and Screening) Act 2000</i>



## Chair's foreword

On behalf of the Education, Tourism, Innovation and Small Business Committee of the 55th Parliament of Queensland, I present this report on the committee's inquiry into the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016.

The Bill was introduced into the Legislative Assembly by the Hon Mark Ryan MP, Minister for Police, Fire and Emergency Services and Minister for Corrective Services on 29 November 2016. The committee was required to report to the Legislative Assembly by 7 March 2017.

In considering the Bill, the committee's task was to consider the policy to be given effect by the Bill, and whether the Bill has sufficient regard to the fundamental legislative principles in the *Legislative Standards Act 1992*. The fundamental legislative principles include whether legislation has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank the organisations that made written submissions on this Bill. I also thank the committee's secretariat, and the Queensland Police Service for their assistance.



Scott Stewart MP  
**Chair**



## Recommendations

### Recommendation 1 3

The committee recommends that the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 be passed.

### Recommendation 2 13

The committee recommends that proposed section 77B of the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 be amended to ensure that a self-represented offender may not cross-examine a person who is 16 or older at the time of the court proceeding but who was a child under 16 when the concerning conduct occurred.

### Recommendation 3 15

The committee notes that the Bill enables the police commissioner to direct any entity or individual, other than a health entity, to provide information about a reportable offender, and to disclose information to any entity or individual, other than a health entity.

The committee recommends that during the second reading debate the Minister clarify the intended operation of proposed sections 74D and 74E of the proposed Act, regarding who must give information about a reportable offender to the police commissioner, and to whom the commissioner may disclose information.

### Recommendation 4 16

The committee recommends that the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 be amended to allow the commissioner to give information about reportable offenders to Queensland Health and Hospital and Health Services, if it is necessary to ensure the safety of a child or the offender.

### Recommendation 5 17

The committee recommends that the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 be amended to ensure that the Youth Justice Act 1992 is a relevant Act for the chief executive (communities), and that the Corrective Services Act 2006 is a relevant Act for the chief executive (corrective services).

### Recommendation 6 22

The committee recommends that Schedule 1 of the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 be amended to replace 'an offender reporting' disqualification order in items 1, 2 and 5 of the amendments to the Working with Children Act with 'an offender prohibition' disqualification order.

### Recommendation 7 22

The committee recommends that Schedule 1 of the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 be amended to remove the consequential amendment to the *Mental Health Act 2000*, as this Act was repealed on 5 March 2017.

### Recommendation 8 27

The committee recommends that accurate, clear, precise and comprehensive explanatory notes for the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 be tabled as a priority. The replacement explanatory notes should satisfy the requirements of section 23 of the *Legislative Standards Act 1992*.



## 1 Introduction

### 1.1 Role of the committee

The Education, Tourism, Innovation and Small Business Committee (the committee) was established by resolution of the Legislative Assembly on 27 March 2015. The committee consists of three government and three non-government members.

The committee's areas of portfolio responsibility are:

- education
- tourism and major events
- innovation
- science
- the digital economy and small business.<sup>1</sup>

The committee is responsible for examining each Bill in its portfolio areas to consider the policy to be given effect by the legislation and the application of the fundamental legislative principles (FLPs).<sup>2</sup>

Further information about the work of the committee can be found on its [website](#).

### 1.2 Referral of the Bill

The Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 (the Bill) was introduced into the Legislative Assembly on 29 November 2016 by the Hon Mark Ryan MP, Minister for Police, Fire and Emergency Services and Minister for Corrective Services.

The Bill was referred to the committee for detailed consideration. The committee was required to report to the Legislative Assembly by 7 March 2017.

### 1.3 Committee inquiry process

Officials from the Queensland Police Service (QPS) briefed the committee on the Bill on 1 December 2016. A list of the officers who appeared at the briefing is at **Appendix A**.

The committee invited submissions from interested stakeholders by advertising on its website and by email to subscribers and stakeholder organisations. A list of the three submissions received by the committee is at **Appendix B**.

Copies of the material published in relation to this inquiry, including transcripts and submissions, are available on the committee's [website](#).

### 1.4 Should the Bill be passed?

Standing Order 132(1) of the Standing Rules and Orders of the Legislative Assembly requires the committee to recommend whether the Bill should be passed.

The committee considered the Bill, information provided by the QPS and the information and views expressed in submissions, and recommends that the Bill be passed.

#### **Recommendation 1**

The committee recommends that the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 be passed.

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<sup>1</sup> *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 17 July 2015), sch 6.

<sup>2</sup> *Parliament of Queensland Act 2001*, s 93.



## 2 Background to the Bill

### 2.1 Legislative framework for child protection offender reporting

A person charged with and convicted of sexual or other serious crimes against children (a reportable offender) may be sentenced in a number of ways - they may be fined, sentenced to a community-based order, sentenced to imprisonment, or receive a suspended prison sentence. Regardless of the penalty, almost all reportable offenders will again live in the community at some stage.<sup>3</sup>

To address concerns about the risks posed by reportable offenders living in the community, Queensland has laws to monitor, control or limit their behaviour.

Two Acts currently govern Queensland's system for monitoring people who offend against children and for regulating their behaviour - the *Child Protection (Offender Reporting) Act 2004* (Offender Reporting Act) and the *Child Protection (Offender Prohibition Order) Act 2008* (Prohibition Order Act).<sup>4</sup>

In effect the Offender Reporting Act provides a reporting system to monitor reportable offenders and obtain information about possible concerning behaviour, and the Prohibition Order Act provides a response mechanism to prevent the person from engaging in that behaviour.<sup>5</sup>

#### 2.1.1 Offender Reporting Act

The Offender Reporting Act imposes obligations on reportable offenders to report their personal details and whereabouts for a defined period of time, to reduce the likelihood of them reoffending.

Information about reportable offenders is collated in the child protection register, which assists police to monitor, investigate and prosecute reportable offenders who may commit further offences. The register forms part of a national scheme - the National Child Offender System (NCOS).<sup>6</sup>

#### 2.1.2 Prohibition Order Act

The Prohibition Order Act regulates the day to day conduct of reportable offenders - reducing the risk to children by allowing police to intervene early, in an effort to prevent, rather than respond to new offences against children.

Police may apply to the court for an offender prohibition order if they become aware that a reportable offender is engaging in concerning conduct that poses a risk to children. The prohibition order will prohibit the reportable offender from engaging in conduct that is viewed as a precursor to them committing a further offence.<sup>7</sup>

An offender prohibition order can be made in relation to a reportable offender (or someone who would be a reportable offender had they not completed their sentence before the Offender Reporting Act commenced), who has recently engaged in concerning conduct, and who presents an unacceptable risk to the lives or sexual safety of children.<sup>8</sup>

Concerning conduct is behaviour that poses a risk to the lives or sexual safety children, such as residing near a child or child care centre.<sup>9</sup> Offender prohibition orders prohibit the person from engaging in

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<sup>3</sup> CCC, *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008*, 2014, p 1. Available at <http://www.ccc.qld.gov.au/research-and-publications/browse-by-topic-1/legislation-reviews/2013-review-of-the-child-protection-offender-prohibition-order-act-2008/review-of-the-child-protection-offender-prohibition-order-act-2008>

<sup>4</sup> Explanatory notes, p 1.

<sup>5</sup> CCC, *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008*, 2014, p 5.

<sup>6</sup> Explanatory notes, p 1; CCC, *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008*, 2014, p 1.

<sup>7</sup> Explanatory notes, p 1; CCC, *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008*, 2014, p 2.

<sup>8</sup> *Child Protection (Offender Prohibition Order) Act 2008*, ss 6, 8, sch; *Child Protection (Offender Reporting) Act 2004*, s 5.

<sup>9</sup> *Child Protection (Offender Prohibition Order) Act 2008*, s6(3).

concerning conduct, and may restrict who they can contact or where they can live, work or visit, and may prohibit activities such as photographing children or using the internet.<sup>10</sup>

## 2.2 Review of the Prohibition Order Act

Under the Prohibition Order Act, the Crime and Corruption Commission (CCC) must review the operation of the Act, as soon as practicable after five years from the Act's commencement. The CCC must prepare a report for tabling in the Legislative Assembly.<sup>11</sup>

In accordance with this obligation, the CCC commenced a review in June 2013 to examine the operation of the Prohibition Order Act between 2008 and 2013, and to determine the extent to which it achieved its objective of protecting the lives and sexual safety of children. The CCC reported in December 2014.

The review examined whether the operation of the Prohibition Order Act was being adversely affected by legislative or operational factors, such as the clarity or wording of the Act, the capacity of police officers to respond to concerning conduct, and the court process. The CCC also examined aspects of the Offender Reporting Act where its operation intersected with the Offender Prohibition Order Act.<sup>12</sup> The review made 17 recommendations to address the identified issues (see **Appendix C**).<sup>13</sup>

The Bill gives effect to the recommendations from the CCC review in relation to the statutory framework, including amalgamating the Prohibition Order Act and the Offender Reporting Act, and amendments to streamline, simplify and strengthen Queensland's system for monitoring reportable offenders and regulating their conduct.<sup>14</sup>

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<sup>10</sup> *Child Protection (Offender Prohibition Order) Act 2008*, s 11; CCC, *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008*, 2014, p 8.

<sup>11</sup> *Child Protection (Offender Prohibition Order) Act 2008*, s 60.

<sup>12</sup> CCC, *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008*, 2014, pp 2-3.

<sup>13</sup> CCC, *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008*, 2014, pp x-xii.

<sup>14</sup> Explanatory notes, p 1.

## 3 Examination of the Bill

### 3.1 Purpose of the Bill

The Bill gives effect to the recommendations made by the CCC review, enhances protections for children, and streamlines the administration of offender reporting legislation.<sup>15</sup>

The primary objectives of the Bill, as outlined in the explanatory notes, are to:

- extend the offender reporting requirements to include a person found guilty of an offence, which is not a reportable offence, but that was committed in circumstances that satisfy the elements of a reportable offence
- require reportable offenders whose reporting obligations are suspended under the *Dangerous Prisoners (Sexual Offenders) Act 2003* to make an initial report to police
- allow reporting obligations to be suspended if a reportable offender has a significant mental illness
- reduce the timeframes within which a reportable offender must report travel into and out of Queensland and clarify that reportable contact with a child extends outside Queensland
- remove the requirement for the court to consider both the nature and pattern of concerning conduct, and the requirement for concerning conduct to be recent in relation to an application for a prohibition order
- prohibit a self-represented offender from cross-examining a witness who is a child, or was a child when the offence occurred
- introduce an extended information sharing network to allow government and non-government agencies to give and receive information, and protect information such as the name of the respondent or victim in relation to an offender prohibition order
- extend the protection from liability for members of the community who provide information about a reportable offender, in good faith, to the commissioner
- allow a police officer to take fingerprints to enrol a reportable offender in an automated reporting system, to take photographs at a location other than a police station, and to photograph items that the reportable offender is required to provide information about
- require a reportable offender to give a police officer access information for an electronic device in the offender's possession, or that they have access to, if the officer suspects the offender has committed an offence under the proposed Act
- allow a police officer to inspect an electronic device in the possession of a reportable offender convicted of a prescribed internet offence, sentenced to a supervision order or released from detention in the last three months, or assessed as posing an elevated risk of reoffending.<sup>16</sup>

### 3.2 Consultation

The explanatory notes state that consultation on the Bill was undertaken with government agencies and the following stakeholders:

- Bravehearts
- Aboriginal and Torres Strait Islander Legal Service (Qld)
- Queensland Aboriginal and Torres Strait Islander Child Protection Peak
- Office of the Public Guardian
- Protect All Children Today
- Queensland Law Society
- The Bar Association of Queensland, and
- Office of the Information Commissioner.<sup>17</sup>

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<sup>15</sup> Explanatory notes, p 1.

<sup>16</sup> Explanatory notes, pp 1-3.

<sup>17</sup> Explanatory notes, p 22.

### 3.3 Amendments proposed by the Bill

The Bill amalgamates the Prohibition Order Act into the Offender Reporting Act to integrate the processes and prohibitions of offender prohibition orders with the monitoring process used to manage reportable offenders under the Offender Reporting Act. The Prohibition Order Act is repealed by the Bill. After repeal of the Prohibition Order Act, the combined Acts would be renamed as the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

Consistent with the current Prohibition Order Act, the Bill requires the Crime and Corruption Commission (CCC) to review the operation of the proposed Act, as soon as practicable after five years from commencement.<sup>18</sup> The CCC noted this implements recommendation 1 of the CCC review which states:<sup>19</sup>

*Combine the [Prohibition Order Act] and the [Offender Reporting Act]. The responsible Minister might then consider undertaking a further review of the combined Act at some appropriate point, for example, after a further 3 to 5 years of operation.*<sup>20</sup>

The Bill makes additional amendments to facilitate the more holistic management of reportable offenders. The amendments include changes to reporting obligations and the offender prohibition order application process, introduction of an extended information sharing framework, and additional police powers.

The CCC submission noted that it had been consulted on drafting instructions for the Bill and although 'some of the amendments were not recommend by the CCC, the CCC generally supports the amendments to the 'prohibition order provisions' contained in the Bill'.<sup>21</sup>

#### 3.3.1 Reporting obligations

##### Who is a 'reportable offender'?

Clause 7 amends section 5 of the Offender Reporting Act to ensure offenders who commit offences, the facts of which would constitute reportable offences, are classed as reportable offenders and are therefore subject to the offender reporting obligations.

Currently under section 5 a person is a reportable offender if they are convicted of a reportable offence listed in schedule 1 of the Offender Reporting Act. If a person commits an offence that would be a reportable offence but due to the circumstances the reportable offence is not particularised on the indictment, or the person pleads guilty to a lesser offence, they will not be a reportable offender.

For example, currently a person convicted of 'entering a dwelling and committing an indictable offence', where the indictable offence is rape, is not a 'reportable offender' as the offence of rape was not particularised. Similarly, a person charged with a reportable offence who pleads guilty to a lesser charge, is not a 'reportable offender' if the lesser charge is not a reportable offence.<sup>22</sup> The outcome is that people who commit an offence, the facts of which would constitute a reportable offence, are not always categorised as reportable offenders who therefore have comply with offender reporting obligations.

Clause 7 of the Bill addresses this issue by providing that a person will be a 'reportable offender' if the court makes a declaration that it is 'satisfied the facts and circumstances surrounding the offence constitute elements of a reportable offence'. This amendment 'recognises the importance of identifying and monitoring any person who is found guilty of committing, attempting to commit or intending to commit, a sexual or other particular serious offence against a child'.<sup>23</sup>

<sup>18</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 34.

<sup>19</sup> Submission 3, p 1.

<sup>20</sup> CCC, *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008*, 2014, p 22.

<sup>21</sup> Submission 3, p 1.

<sup>22</sup> Explanatory notes, p 4.

<sup>23</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 7; Explanatory notes, p 4.

## When reporting obligations begin and end

Clause 20 amends section 5 of the Offender Reporting Act to specify that reporting obligations begin when an offender prohibition order is imposed, if they have not already commenced.<sup>24</sup> Currently under section 35, reporting obligations commence when the reportable offender is sentenced for the offence, is released from government detention, or an 'offender reporting order' is imposed.

The current arrangements may delay commencement of the reporting obligations, for example, if a magistrate imposed an 'offender reporting order' before the trial and sentencing were completed. Clause 20 will ensure that in instances where an application for a prohibition order proceeds concurrently with a criminal trial, and the order is granted before conclusion of the trial, the person will be subject to reporting obligations as soon as the court imposes the offender reporting order.

The Bill also amends section 8 of the Offender Reporting Act to specify that reporting obligations end when all reporting periods end, including those under an offender prohibition order. This amendment clarifies that where the offender's reporting obligations are due to cease before an offender prohibition order ends, the reporting obligations continue to apply until the offender prohibition order ceases to operate. This amendment implements recommendation 2 of the CCC review:

*Revise the relevant legislation to specify that where the offender's reporting obligations are due to cease before the end of an [offender prohibition order], these obligations continue to apply for the duration of the [offender prohibition order].<sup>25</sup>*

## Suspending reporting obligations

Clause 6 amends section 4 of the Offender Reporting Act to require reportable offenders, whose reporting obligations are suspended while they are subject to a supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*, to make an initial report to the police. These offenders 'present the greatest risk to the community and are subject to the most stringent monitoring by Queensland Corrective Services'.<sup>26</sup> Requiring those offenders to make an initial report is expected to provide police with 'vital information' to facilitate investigation of any future offences. The initial report will provide police with information such as:

*... tattoos and other distinguishing marks, children the reportable offender is likely to have reportable contact with upon their release, email addresses, telephone numbers, passwords to social networking sites, the make, model and registration of any vehicle the offender owns or drives.<sup>27</sup>*

The Bill also extends the circumstances in which reporting obligations may be suspended to include circumstances when the reportable offender has a significant mental illness.<sup>28</sup>

Protect All Children Today (PACT) supported 'police being provided with an initial report containing vital information about a reportable offender prior to a suspension of their reporting obligations, to ensure the greater protection of children in the wider community'. The suspension of reporting requirements for offenders with a significant mental illness was also supported by PACT, 'providing there is ongoing review and evidence of continuing mental illness'.<sup>29</sup>

## Reporting requirements regarding travel

The Bill amends the Offender Reporting Act to reduce the time within which a reportable offender must advise the commissioner of information about intended travel outside Queensland from seven days to 48

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<sup>24</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 20.

<sup>25</sup> CCC, *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008*, 2014, p 23.

<sup>26</sup> Explanatory notes, p 13.

<sup>27</sup> Explanatory notes, p 13.

<sup>28</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cls 28-29.

<sup>29</sup> Submission 1, pp 1, 3.

hours.<sup>30</sup> The amendment ‘reduces the opportunity for reportable offenders to either meet children interstate or take children interstate for the purposes of committing a sexual or other particular serious offence against those children.’<sup>31</sup>

The explanatory notes describe the ways that some offenders avoid informing police about travel by continuing:

*... to circumvent the seven day reporting period by delaying a report of any changes until seven days after they have entered and remained in Queensland for seven days; or by returning to Queensland for less than seven days; or cycling periods of travel into and out of Queensland for up to six days.*

The amendment applies to requirements for a reportable offender to advise of:

- their intention to travel outside Queensland<sup>32</sup>
- a decision not to leave Queensland, after advising of an intention to travel outside Queensland<sup>33</sup>
- any change to travel plans while they are outside Queensland<sup>34</sup>
- their return to Queensland after a period of absence,<sup>35</sup> and
- any changes to their personal details that occurred while they were outside Queensland.<sup>36</sup>

The reduction in the reporting timeframe is intended to ensure the appropriate monitoring of reportable offenders to minimise the risk of reoffending. The reduction should ensure the appropriate monitoring of offenders who are currently circumventing reporting obligations by exploiting the seven day timeframe.<sup>37</sup>

Additional amendments to the Offender Reporting Act are proposed to require reportable offenders to advise of any reportable contact they have with a child outside Queensland, and if they intend to travel with a child or to have contact with a child while travelling.<sup>38</sup>

PACT submitted that supported ‘reducing the timeframes associated with reporting travel into and outside Queensland’ and ‘the need to include any children accompanying them as this should better protect vulnerable children and young people’.<sup>39</sup>

### 3.3.2 Prohibition orders

Clause 11 moves sections about the making of offender prohibition orders from the Prohibition Order Act to the proposed Act. The clause also amends some of the provisions regarding what constitutes concerning conduct.

#### Recent conduct

Clause 11 relocates section 6 of the Prohibition Order Act to the proposed Act and renumbers it as 13A. Section 6 currently allows the commissioner to make an application to a court for an offender prohibition order if the commissioner believes the person is a ‘relevant sexual offender’ who has recently engaged in concerning conduct.

The Bill proposes to remove the requirement for the commissioner to consider the timing of the concerning conduct, and instead require the court (in proposed section 13C) to consider the timing of the conduct when considering whether to make the prohibition order.

<sup>30</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cls 12-16; Explanatory notes, p 5.

<sup>31</sup> Explanatory notes, p 5.

<sup>32</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cls 13 and 16.

<sup>33</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 15.

<sup>34</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 14.

<sup>35</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 15.

<sup>36</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 12.

<sup>37</sup> Explanatory notes, pp 5 and 16.

<sup>38</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cls 9, 13 and 16.

<sup>39</sup> Submission 1, p 2.

Queensland is the only jurisdiction that requires concerning conduct to be recent in order for the commissioner to apply for an offender prohibition order. Concerns were raised about this restriction during the CCC review, with suggestions to remove the requirement for the conduct to be recent. However, the CCC review determined that the requirement for concerning conduct to be recent was a 'key limit on the scope of the Act' and concluded that the limit should be retained.<sup>40</sup>

The amendment differs from the outcome of the CCC review in that it removes the explicit requirement for the conduct to be recent for an application to be made; it retains some limitation on the timing of the conduct by requiring the court to consider when it occurred in determining whether an order should be made.<sup>41</sup>

### **Nature and pattern of concerning conduct**

Clause 11 moves section 8 of the Prohibition Order Act to the proposed Act as proposed section 13C. Section 8 currently permits the court to make a prohibition order if, based on the nature and pattern of conduct engaged in by the offender, the court is satisfied they pose an unacceptable risk to the lives or sexual safety of children, and making an order will reduce the risk.

The Bill proposes to reduce the threshold of the matters the court must consider to be satisfied that the offender poses an unacceptable risk. The amendment would require a court to be satisfied that the offender poses an unacceptable risk with regard to either the nature or pattern of an offender's conduct, removing the current requirement to consider both the nature and pattern of the conduct.<sup>42</sup>

This amendment implements recommendation 3 of the CCC review:

*Amend the [Prohibition Order] Act to clarify the definition of concerning conduct.*<sup>43</sup>

### **Cross-examining protected witnesses**

Clause 36 inserts a proposed new section 77B to provide that in a proceeding about a prohibition order, a respondent who is representing themselves must not personally cross-examine a protected witness. The explanatory notes state that a protected witness is a child under 16 or a person who was a child under 16 when the concerning conduct subject to an application for an offender prohibition order occurred.<sup>44</sup> Despite this, there is no definition of a protected witness in the Bill (this issue is discussed below).

The cross-examination of child witnesses by self-represented respondents has been found to have a 'negative impact on the nature and quality of evidence received by the court', and would have 'limited benefit to the proceeding'.<sup>45</sup>

PACT submitted that in its experience:

*... children and young people are extremely fearful of coming into contact with the accused through the court process, so any steps to minimise this from occurring should be implemented as a matter of priority.*

Prohibiting the personal cross-examination of witnesses would maximise the quality of evidence and ensure 'protected witnesses are not disadvantaged or further victimised when giving evidence'.<sup>46</sup>

To safeguard the rights of reportable offenders, or relevant sexual offenders, and ensure procedural fairness, offenders may obtain legal representation for the purpose of cross-examining a protected witness. If they are unable to personally arrange a legal representative, the court will arrange for free legal assistance to be provided by Legal Aid. The restriction on self-representation applies only to cross-

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<sup>40</sup> CCC, *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008*, 2014, p 24.

<sup>41</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 11; Explanatory notes, pp 8 and 17-18.

<sup>42</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 11; Explanatory notes, p 17.

<sup>43</sup> CCC, *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008*, 2014, p 23.

<sup>44</sup> Explanatory notes, pp 10 and 37.

<sup>45</sup> Explanatory notes, p 19.

<sup>46</sup> Explanatory notes, p 10.

examining a protected witness; the offender may represent themselves for the remainder of the proceeding.<sup>47</sup>

This amendment implements recommendation 17 of the CCC review:

*Amend the [Prohibition Order] Act to provide adequate protection to child witnesses:*

- (a) by prohibiting a self-represented offender from cross-examining (in person) a child witness in any proceeding under the Act*
- (b) by providing that offenders must be given the opportunity to obtain legal representation (either publicly funded or not) in these circumstances*
- (c) by incorporating protections similar to those contained in the [Domestic Family Violence Prevention] Act or the Evidence Act.<sup>48</sup>*

### **Who is a protected witness**

The Bill prohibits the cross-examination of protected witnesses in proceedings about prohibition orders by applying the provisions of the *Evidence Act 1977* (the Evidence Act) that exclude such cross-examination in criminal proceedings. By applying the definition of a ‘protected witness’ in the Evidence Act, the proposed new section 77B would prevent a self-represented offender from cross-examining a witness who is under 16, but would not prevent them from cross-examining a witness who was under 16 when the concerning conduct occurred, but who is 16 or older at the time of the court proceeding.

Further, as the Evidence Act has broad application, the definition of a protected witness is broader than children and includes witnesses who have a cognitive impairment or who are the victims of specified offences.<sup>49</sup> It may not be appropriate to extend the restrictions on cross-examination for the purpose of proceedings about prohibition orders to all of those who are protected under the Evidence Act.

In addition, the Offender Reporting Act currently contains a definition of a protected witness, which is a reportable offender who is, or has been, in a witness protection program and will therefore have modified reporting obligations.<sup>50</sup> In the absence of a definition of a protected witness for the purpose of the proposed new section 77B, the current definition in the Offender Reporting Act would apply - the use of the same term for two distinctly different purposes may create ambiguity.

The committee sought advice from the QPS regarding these potential issues, and the QPS confirmed the committee’s view that an amendment was necessary:

*The Queensland Police Service has reviewed the application of section 21M of the Evidence Act 1977 and determined that section 77B may not adequately protect all witness (sic) who were child victims of sexual or particular other offences. It is proposed to seek ... to amend section 77B during consideration in detail of the Bill, to clarify that for the purposes of the offender reporting legislation, a protected witness includes a person who was 16 years or under at the time the alleged offence was committed.<sup>51</sup>*

### **Committee comment**

The committee noted the absence of a definition of ‘protected witness’ in the Bill in relation to the cross-examination of children under the proposed new section 77B, and that the intended operation of the legislation as outlined in the explanatory notes was inconsistent with the provisions of the Bill. The Bill as drafted would not prevent a self-represented offender from cross-examining a witness who was under 16 when the concerning conduct occurred, but who is 16 or over at the time of the court proceeding.

The committee noted the advice from the QPS regarding the intention that the Bill prevent a self-represented offender from cross-examining a witness who was a child under 16 when the concerning conduct occurred but who is no longer under 16 at the time of the court proceeding.

<sup>47</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 11; Explanatory notes, p 19.

<sup>48</sup> CCC, *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008*, 2014, p 42.

<sup>49</sup> *Evidence Act 1977*, s 21O.

<sup>50</sup> *Child Protection (Offender Reporting) Act 2004*, sch 5.

<sup>51</sup> Queensland Police Service, correspondence dated 14 February 2017, attachment p 2.

The committee recommends that proposed section 77B be amended to ensure that a self-represented offender may not cross-examine a person who is 16 or older at the time of the court proceeding but who was a child under 16 when the concerning conduct occurred.

#### **Recommendation 2**

The committee recommends that proposed section 77B of the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 be amended to ensure that a self-represented offender may not cross-examine a person who is 16 or older at the time of the court proceeding but who was a child under 16 when the concerning conduct occurred.

### **3.3.3 Information sharing**

Clause 34 moves provisions about the sharing of information between the commissioner and other entities from the Prohibition Order Act to the proposed Act. The clause also amends some of those provisions to ‘address the risks associated with limited information sharing and protection from liability provisions’.<sup>52</sup>

Amendments to the information sharing framework implement recommendation 11 of the CCC review:

*Amend the [Prohibition Order Act] to improve information sharing between the Queensland Police Service and relevant agencies, and between the Queensland Police Service and members of the public.*<sup>53</sup>

In making this recommendation the CCC review noted:

*To be effective, the information-sharing framework must include entities associated with the management and monitoring of offenders, and those with a direct role in protecting children at risk. The QPS must be able to share information with these entities and vice versa.*<sup>54</sup>

#### **Commissioner receiving and giving information about reportable offenders**

Sections 42 and 43 of the Prohibition Order Act are relocated to the proposed Act and renumbered as sections 74D and 74E respectively.

Section 42 currently requires government entities to give the commissioner information relevant to an assessment of whether a reportable offender poses an unacceptable risk of committing a sexual or other serious crime against children. The current section excludes ‘the chief executive of the department in which the *Hospital and Health Boards Act 2001* is administered, or a hospital and health service under that Act’ (health entities) from the requirement to provide information. Section 42 also excludes information that is subject to legal privilege.

Section 43 currently permits the commissioner to disclose information about a reportable offender to a prescribed entity, which is defined as the chief executive (child safety), chief executive (communities), chief executive (education) and chief executive (employment and screening).

The Bill widens the entities who are required to give the commissioner information, and to whom the commissioner may give information, to any entity except health entities. The exception from a requirement to give information that is subject to legal privilege is retained. The Bill does not define who is an ‘entity’ except to state that an ‘entity’ includes a government entity.<sup>55</sup>

A government entity is defined by reference to section 24 of the *Public Service Act 2008* as a department; public service office; agency, authority, commission, corporation, instrumentality, office or other entity established under an Act or State authorisation for a public or state purpose; registry or other administrative office of a court; or an entity declared to be a government entity. The explanatory notes

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<sup>52</sup> Explanatory notes, p 9.

<sup>53</sup> CCC, *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008*, 2014, p 34.

<sup>54</sup> CCC, *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008*, 2014, p 32.

<sup>55</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 34.

state that a definition of a 'non-government entity' is included in the Bill, however there is no such definition in the Bill.

In relation to the extended information sharing framework, PACT submitted:

*We are extremely supportive of any legislative amendments that increases (sic) information sharing to ensure the adequate protection of vulnerable children and young people.*

*It is pleasing to note, that the role of non-government entities, such as PACT, is acknowledged and included in these amendments.<sup>56</sup>*

### **Wide and discretionary information sharing framework**

In the absence of a definition in the proposed Act of what constitutes an 'entity', the definition in the *Acts Interpretation Act 1954* would apply. An entity would include an individual, a corporation, and an unincorporated body.<sup>57</sup>

It is uncertain whether such a wide definition was intended for information sharing under the proposed Act. The explanatory notes could be interpreted to express an intention to limit information sharing to government and non-government agencies, 'associated with the management and monitoring of offenders, and those with a direct role in protecting children at risk':<sup>58</sup>

*...an extended information sharing framework [is] designed to allow government and non-government agencies to give and receive information relevant to a reportable offender. The exchange of pertinent offender information will reduce some of the impost on those departments who are responsible for the management of reportable offenders in the community.<sup>59</sup>*

However, as the explanatory notes do not outline the intended operation of the extended information sharing framework, it is unclear if widening of the framework was intended to be restricted to government and non-government 'agencies', or to be extended to also include individuals and private organisations. It is also unclear if the framework is intended to be restricted only to organisations associated with the monitoring of reportable offenders or the direct protection of children, or extended to any individual or organisation that may hold or request information.

Proposed sections 74D and 74E of the Bill, as currently drafted, allow the commissioner to request information from and provide information to any individual, corporation, or unincorporated body, other than a health entity. There is no legislative safeguard to limit information sharing only to entities associated with the monitoring of reportable offenders or the protection of children. Rather, the Bill leaves it to the discretion of the commissioner to decide who may be directed to provide information, and to whom information may be given.

This could, for example, allow the commissioner to direct a reportable offender's relative to give the commissioner information about the offender, and the relative would be required under proposed section 74D, to give the information to the commissioner.

The committee sought advice from the QPS about the wide and discretionary information sharing provisions in the Bill. The QPS advised:

*It is recognised that this definition [of an entity] is very broad. While there is no restriction on the type of information which can be received by the police commissioner, there are limitations on the information which the police commissioner can give to an entity.*

*Information sharing is vitally important to ensure children are adequately protected. The breadth of the provision allows the police commissioner to determine who should receive information about a reportable offender.<sup>60</sup>*

<sup>56</sup> Submission 1, p 4.

<sup>57</sup> *Acts Interpretation Act 1954*, sch 1.

<sup>58</sup> CCC, *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008*, 2014, p 32.

<sup>59</sup> Explanatory notes, p 2.

<sup>60</sup> Queensland Police Service, correspondence dated 14 February 2017, attachment p 1.

### **Committee comment**

The committee noted that the Bill significantly widens the entities that are required to give the commissioner information, and to whom the commissioner may give information, to any individual, corporation or unincorporated body, except health entities. There are no legislated safeguards in the Bill to limit the entities included in the widened information sharing framework.

The committee acknowledged the advice from the QPS that ‘information sharing is vitally important’ and the ‘breadth of the provision allows the police commissioner to determine who should receive information about a reportable offender’. The committee recognised the importance of the information sharing framework for effectively monitoring reportable offenders and enhancing protections for children.

The committee also noted that the Bill provides the police commissioner with wide discretion to require information to be provided, and to disclose information to anyone, and not only to the entities involved in monitoring reportable offenders and the protection of children.

The committee recommends that the Minister clarify the intended operation of sections 74D and 74E of the proposed Act in relation to who must provide information to the commissioner and who the commissioner may disclose information to. The committee noted that the most effective mechanism to restrict the scope of the information sharing power may be an amendment to the Bill to limit non-government entities to organisations associated with the monitoring of reportable offenders or the protection of children.

#### **Recommendation 3**

The committee notes that the Bill enables the police commissioner to direct any entity or individual, other than a health entity, to provide information about a reportable offender, and to disclose information to any entity or individual, other than a health entity.

The committee recommends that during the second reading debate the Minister clarify the intended operation of proposed sections 74D and 74E of the proposed Act, regarding who must give information about a reportable offender to the police commissioner, and to whom the commissioner may disclose information.

### **Exclusion of health entities**

The Bill clearly excludes health entities from information sharing in respect of both the requirement to give information to the commissioner, and the disclosure of information by the commissioner. The explanatory notes do not explain why health entities have been excluded from the widened information sharing framework. In relation to the requirement to give information to the commissioner, the committee assumed that health entities are excluded to protect the confidentiality of a reportable offender’s personal health information.

However, specifically excluding the commissioner from disclosing information about a reportable offender to health entities may limit the protection of children at risk. Queensland Health is a core member agency of Suspected Child Abuse and Neglect (SCAN) teams. The purpose of the SCAN team is ‘to enable a coordinated, multi-agency response to children where statutory intervention is required to assess and meet their protection needs’.<sup>61</sup> The disclosure of information about a reportable offender to a health entity may assist to ensure the safety of children in the care of a hospital or health service.

For example, if a child is admitted to hospital with injuries allegedly caused by a family member, that person may consequently be subject to a prohibition order that prevents unsupervised contact with the child. Under proposed section 74E the commissioner could not advise the hospital that the order prohibits unsupervised contact between the offender and the child.

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<sup>61</sup> Department of Communities, Child Safety and Disability Services,  
<https://www.communities.qld.gov.au/childsafety/partners/our-government-partners/suspected-child-abuse-neglect-scan-team-system>

Similarly, if a reportable offender was subject to a prohibition order that prevented them from seeking paid or voluntary work at a hospital where children are treated, proposed section 74E would not enable the commissioner to disclose to the hospital that the offender is subject to an order prohibiting them from working there.

As restricting the provision of information to health entities under section 74E may affect health entities' capacity to ensure the safety of children in their care, the committee sought advice from the QPS about the rationale for preventing information being given to health entities. The QPS advised:

*...after considering the Committee's comments around information sharing with Queensland Health, it is proposed to ... extend the parameters of section 74E to allow the police commissioner to give information to Queensland Health about a reportable offender...<sup>62</sup>*

#### Committee comment

The committee notes the QPS advice about the exclusion of health entities from receiving information about reportable offenders from the police commissioner, and recommends that proposed section 74E be amended to permit the commissioner to disclose information about reportable offenders to health entities, if it is necessary to ensure the safety of children or the offender.

#### Recommendation 4

The committee recommends that the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 be amended to allow the commissioner to give information about reportable offenders to Queensland Health and Hospital and Health Services, if it is necessary to ensure the safety of a child or the offender.

#### Prescribed entities disclosing information to other persons

Clause 34 relocates section 44 of the Prohibition Order Act to the proposed Act and renumbers it as 74F. These provisions allow a 'prescribed entity' that has received information from the commissioner about a reportable offender, to give that information to another person if it is necessary for them to perform a duty under a relevant Act.

Section 44 currently specifies four prescribed entities and four corresponding relevant Acts, one for each prescribed entity.

Prescribed entities	Relevant Acts
chief executive (child safety)	<i>Child Protection Act 1999</i>
chief executive (communities)	<i>Youth Justice Act 1992</i>
chief executive (education)	<i>Education General Provision Act 2006</i>
chief executive (employment and screening)	<i>Working with Children (Risk Management and Screening) Act 2000</i>

The proposed section 74F specifies five prescribed entities but only three corresponding relevant Acts; no relevant Act is specified for the chief executive (communities) or the chief executive (corrections).

Prescribed entities	Relevant Acts
chief executive (child safety)	<i>Child Protection Act 1999</i>
chief executive (communities)	-
chief executive (corrective services)	-
chief executive (education)	<i>Education General Provision Act 2006</i>
chief executive (justice)	<i>Youth Justice Act 1992</i> or the <i>Working with Children (Risk Management and Screening) Act 2000</i>

The absence of relevant Acts for two prescribed entities appears anomalous, as a prescribed entity may only give information to a person if it is necessary for them to perform a duty under a relevant Act. The

<sup>62</sup> Queensland Police Service, correspondence dated 14 February 2017, attachment p 2.

committee therefore sought advice from the QPS about how the revised new section 74F was intended to operate.

The QPS advised that:

*...it appears that an omission has been made during drafting which will preclude the chief executive (communities) and the chief executive (corrective services) from secondary disclosing for a purpose other than to an approved teacher...*

*The drafting error will be addressed .... to reflect that a relevant Act for the chief executive (communities) is the Youth Justice Act 1992 and a relevant Act for the chief executive (corrective services) is the Corrective Services Act 2006.<sup>63</sup>*

After further consideration of the information sharing provisions, QPS later advised the committee:

*... that the current wording of section 74F may not fully effect the intent of the provision ... to allow information given to a government entity or an entity with (sic) is funded fully or partly by the Commonwealth or a state government to be disclosed to another person for the purposes of performing a function or service of the person's employment.<sup>64</sup>*

### **Committee comment**

The committee noted the QPS advice that the drafting of proposed section 74F may not give effect to the intended policy, which would be to allow any government entity or an entity funded, fully or partly, by the Commonwealth or a state government that receives information from the commissioner, to disclose that information to another person for the purpose of the person's employment.

The committee acknowledged that if such an amendment was made, this would remove the apparent inconsistency in the Bill whereby two prescribed entities did not have a corresponding relevant Act. The committee also noted that while the QPS proposal for amendment would extend the number agencies that may disclose information to another person, the extension would only apply to government entities and entities funded by the Commonwealth or a state government. This limitation may ensure the offender's right to privacy is appropriately balanced against the objective of protecting children.

The committee recommends that proposed section 74F be amended to correct the drafting error and ensure that the *Youth Justice Act 1992* is a relevant Act for the chief executive (communities) as well as the chief executive (justice), and that the *Corrective Services Act 2006* is a relevant Act for the chief executive (corrective services).

#### **Recommendation 5**

The committee recommends that the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 be amended to ensure that the *Youth Justice Act 1992* is a relevant Act for the chief executive (communities), and that the *Corrective Services Act 2006* is a relevant Act for the chief executive (corrective services).

### **Commissioner giving information about prohibition orders**

Clause 34 relocates and renumbers section 47 of the Prohibition Order Act to the proposed Act. Section 47 currently allows the commissioner to give information about a prohibition order to:

- a parent of a child reportable offender, and
- a parent or guardian of a child protected by the order.

Proposed new section 74I widens the persons to whom the commissioner may give information to any person the commissioner considers it necessary in order to reduce the risk to the lives or sexual safety of children.

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<sup>63</sup> Commissioner of Police, correspondence, 23 January 2017, pp 3 – 4.

<sup>64</sup> Commissioner of Police, correspondence, 14 February 2017, p 2.

### Protection from liability for giving information

Clause 34 moves section 48 of the Prohibition Order Act to the proposed Act and renumbers the section as 74J. Section 48 currently protects a person from civil, criminal and administrative liability, if they honestly give information in compliance with the provisions of the Prohibition Order Act.

Proposed section 74J in clause 34 extends the protection from liability to any person 'who honestly gives the commissioner information about a reportable offender', removing the requirement for the information to be given 'in compliance with' the Act.<sup>65</sup>

### 3.3.4 Extending police powers

#### Taking fingerprints

Clause 18 amends section 30 of the Offender Reporting Act to allow a police officer to take a reportable offender's fingerprints when the offender is making an initial report. Taking fingerprints at this time will facilitate the reportable offender enrolling in, and using, an automated electronic reporting device. The fingerprints will form part of the logon to verify the user and prevent unauthorised access.

#### Taking photographs of the reportable offender and reportable items

Clause 19 amends section 31 of the Offender Reporting Act to allow a police officer to require a reportable offender be photographed at a time other than when receiving a report from the person. The clause also authorises a police officer to photograph an item the reportable offender is required to provide information about, such as a car the offender has recently purchased.

The committee noted that the provision allowing an item to be photographed specifies that the photograph must be taken by a police officer, while the provision regarding photographing the reportable offender does not specify a restriction on who may take the photograph. The explanatory notes did not assist in understanding the apparent distinction. The committee sought advice from the QPS about the reasons for the apparent distinction between who may photograph an item, and who may photograph the reportable offender. The QPS advised:

*This amendment should not be construed to indicate that only police officers may take photographs of reportable information. Section 612 'Assistance in exercising powers' of the Police Powers and Responsibilities Act 2000 authorises a police officer exercising a power under an Act to seek the help of assistants reasonably required to perform a function of the police service. This section may be relied upon to allow a police officer to engage another to take photographs of reportable information if required.*<sup>66</sup>

#### Access information

Clause 22 inserts a proposed new section 51B to require a reportable offender to give a police officer access to an electronic device they possess or have access to if the officer suspects the reportable offender has committed an indictable offence under the proposed Act. An electronic device includes any device that can store or access information, such as a smart phone.

The proposed section requires a reportable offender to:

- provide the officer with physical access to the device and information to gain access to data stored on the device, such as passwords
- allow the officer to examine information on the device to determine if it could be evidence of a relevant offence (a sexual or other serious crime against children or an offence under the proposed Act), or
- allow the officer to make a copy of information on the device that could be evidence of a relevant offence, or to convert the information to another format to make it understandable.

<sup>65</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 34; *Child Protection (Offender Prohibition Order) Act 2008*, s 48.

<sup>66</sup> Queensland Police Service, correspondence dated 23 January 2017, p 5.

A reportable offender will commit an offence if they fail to provide the access requested unless they have a reasonable excuse. The privilege against self-incrimination is precluded as a reasonable excuse - a reportable offender is not excused from complying with the request on the basis that providing access to the device might incriminate them or expose them to a penalty. A person who fails to comply with the requirement to provide access, without a reasonable excuse, is liable for a maximum penalty of \$36,570 or 5 years imprisonment.

The proposed new section 51B was supported by PACT.<sup>67</sup> However, the Queensland Council for Civil Liberties submitted that 'to the extent that this power authorises a police officer to require a person to provide the password to their phone or other electronic device, it is an abrogation of the right to silence'.<sup>68</sup> The submission also stated that a warrant should be required:

*Ordinarily police are required to obtain a warrant to access a phone where consent is refused.*

*These devices contain enormous amounts of personal information, most of which will be completely irrelevant to the police enquiry. The need to examine the phone should be proven to the ordinary standard to the satisfaction of a Magistrate and the offender should have recourse to the court to ensure that irrelevant material on the phone is not used by the police.*<sup>69</sup>

To safeguard the rights of reportable offenders, the Bill restricts the power to request access information to 'police officers who are responsible for the management of reportable offenders in the community or have been authorised by the commissioner to exercise those powers'.<sup>70</sup>

In addition, the Bill requires a post-search approval application to a magistrate, in accordance with existing requirements under the *Police Powers and Responsibilities Act 2000* (the PPR Act).<sup>71</sup> A magistrate may only make an order approving the search if they are satisfied that:

- the police officer, before exercising the power, had a reasonable suspicion of the commission of a relevant offence, and it was likely the evidence would be concealed or destroyed, or may have caused someone injury, or
- it is in the public interest to make the order, having regard to the nature of the evidence found.<sup>72</sup>

If the magistrate does not grant the post-search application approval order, the reportable offender will not have committed an offence if they failed to provide access information to the police officer.<sup>73</sup>

The details of the search must also be recorded in the register of enforcement acts under existing requirements of the PPR Act.<sup>74</sup>

These amendments implement, in part, recommendation 13 of the CCC review:

*Consider amending the relevant legislation to:*

- (a) provide police with the power to search, seize and require access information without a warrant, when there is a reasonable suspicion of a breach of an [offender prohibition order]*
- (b) provide police with the power to require a person at the premises to provide access information for seized or detained computers or electronic equipment*
- (c) make the penalty for failure to comply with a direction to provide access information equivalent to the penalty for failure to comply with an [offender prohibition order], or treat refusal as failure to comply with an [offender prohibition order].*<sup>75</sup>

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<sup>67</sup> Submission 1, p 3.

<sup>68</sup> Submission 2, p 1.

<sup>69</sup> Submission 2, p 2.

<sup>70</sup> Explanatory notes, p 6; Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 22.

<sup>71</sup> Explanatory notes, p 6; Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 22.

<sup>72</sup> *Police Powers and Responsibilities Act 2000*, s 162.

<sup>73</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 22.

<sup>74</sup> Explanatory notes, p 6; *Police Powers and Responsibilities Act 2000*, s 678.

<sup>75</sup> CCC, *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008*, 2014, p 36.

## Inspecting devices

Clause 42 inserts a proposed new section 21B in the PPR Act to allow a police officer to inspect an electronic device in the possession of a reportable offender who has been:

- released from detention, or sentenced to a supervision order, in the previous three months, or
- convicted of a prescribed internet offence such as accessing child pornography.

This cohort of reportable offenders represents the greatest risk of reoffending, and the intent of inspections is to identify activity that constitutes or may lead to offending behaviour, with the objective of preventing and disrupting crime before it occurs.<sup>76</sup>

An inspection may also be carried out if the police officer is granted a device inspection order by a magistrate. An order, authorising the inspection of any devices, may only be made if the magistrate is satisfied there is an increased risk that the reportable offender will engage in conduct that may constitute a sexual or other serious crime against children.

In relation to the power for police to inspect devices, PACT submitted:

*This proactive early intervention could lead to identified offenders accessing much needed rehabilitative support services to assist them to address their offending behaviours. These practices would lead to the better protection of vulnerable children and young people, enabling police to focus their efforts on higher risk offenders.*<sup>77</sup>

Inspections involve attaching a software program that scans the device and produces a report of the 'websites and social media sites accessed, browser searches undertaken, any instant messaging services used, chat rooms accessed, an account of image files on the computer, and identifies any software or hardware linked to the device'.<sup>78</sup>

To safeguard the rights of reportable offenders, the inspection power is limited to within three months of the offender being released from detention, or sentenced to a supervision order, or in the case of internet offences, to four inspections within any 12 month period.<sup>79</sup> Additionally, any reportable offender who believes that the use of the inspection process constitutes an abuse of power can make a formal complaint to CCC or the Ethical Standards Command of the QPS.<sup>80</sup>

The details of inspections must be recorded in the register of enforcement acts under existing requirements of the PPR Act,<sup>81</sup> and a report, detailing the number of inspections carried out and any action subsequently taken in relation to the reportable offender, must be tabled in Parliament annually.<sup>82</sup>

### 3.3.5 Administrative, technical and clarifying amendments

The Bill proposes a range of amendments that seek to improve the operation and streamline the administration of the offender reporting legislation including:

- clarifying that the making of an offender prohibition order is a civil process - questions of fact are to be decided to the civil standard of the 'balance of probabilities', and the *Uniform Civil Procedure Rules 1999* apply (other than for a temporary order)<sup>83</sup>

<sup>76</sup> Explanatory notes, pp 10-11.

<sup>77</sup> Submission 1, p 5.

<sup>78</sup> Explanatory notes, p 11.

<sup>79</sup> Explanatory notes, p 11; Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 42.

<sup>80</sup> Explanatory notes, p 11.

<sup>81</sup> Explanatory notes, p 11; *Police Powers and Responsibilities Act 2000*, s 678.

<sup>82</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 46; Explanatory notes, p 11.

<sup>83</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 36. Explanatory notes, pp 9-10.

*This amendment implements recommendation 15 of the CCC review to 'Amend the [Prohibition Order] Act ... to clarify aspects of the civil application process, standard of proof and rules of evidence, and allow concurrent hearings'.*

- allowing an application for an offender prohibition order to be dealt with concurrently to a criminal proceeding if the conduct that is the basis for the application is the same conduct on which the criminal offence is based<sup>84</sup>
- clarifying that an offender prohibition order may be made with the consent of both parties, without considering or being satisfied of specified matters, unless it is not in the interests of justice to make the order<sup>85</sup>
- increasing the penalty for failing to comply with an offender prohibition order to align with the penalty for failing to comply with reporting obligations<sup>86</sup>
- removing the requirement for the commissioner to provide a notice of the length of a reportable offender's reporting obligation after each report<sup>87</sup>
- removing the requirement for the receiving police officer's name and signature to be included on the receipt of a report<sup>88</sup>
- requiring reportable offenders to advise the commissioner of personal details that no longer apply to them, such as if they sell their car<sup>89</sup>
- allowing a person to act on behalf of a reportable offender, with the offender's written consent, regarding obtaining a copy of information held on the NCOS, or seeking an amendment of that information,<sup>90</sup> and
- providing that the period of authority for an assumed identity for an authorised civilian remains in force until the authority expires or is cancelled, consistent with authorities for police officers.<sup>91</sup>

### Consequential amendments

The Bill makes consequential amendments to a number of Acts, primarily to update references to the name of the proposed Act and to reflect changes to terms and definitions as a result of amalgamating the Offender Reporting Act and the Prohibition Order Act.

#### ***Working with Children (Risk Management and Screening) Act 2000***

The committee has identified a potential issue with proposed amendments to the *Working with Children (Risk Management and Screening) Act 2000*. Schedule 1 of the Bill amends the term 'CPOPOA disqualification order' in three provisions of the Working with Children Act to 'offender reporting disqualification order'. The term 'offender reporting disqualification order' is not defined in the Bill. The Bill replaces the term 'CPOPOA disqualification order' in the dictionary of the Working with Children Act with the term 'offender prohibition disqualification order'.

The committee noted that the consequential amendments made by the Bill to the *Disability Services Act 2006* and the *Education (Queensland College of Teachers) Act 2005* replaces the term 'CPOPOA disqualification order' with the term 'offender prohibition disqualification order', not 'offender reporting disqualification order'.

The committee sought advice from the QPS regarding the amendment to the Working with Children Act, and the QPS confirmed that the amendments contain a drafting error – the amendments to the Working

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<sup>84</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 36; Explanatory notes, pp 9-10.

<sup>85</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 11; Explanatory notes, pp 8-9.

*This amendment implements recommendation 16 of the CCC review to 'Amend section 21 of the [Prohibition Order] Act to clarify the ambiguities about [offender prohibition orders] made by consent'.*

<sup>86</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 22; Explanatory notes, p 9.

*This amendment implements recommendation 14 of the CCC review to 'Amend the [Prohibition Order] Act to align the offence provision with the penalty for failing to comply with the [Offender Reporting] Act reporting obligations'.*

<sup>87</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cls 25-26; Explanatory notes, p 6.

<sup>88</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 17; Explanatory notes, p 5.

<sup>89</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 12; Explanatory notes, p 5.

<sup>90</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cls 32-33; Explanatory notes, p 7.

<sup>91</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cls 43-44; Explanatory notes, p 12.

with Children Act should replace the term ‘CPOPOA disqualification order’ with the term ‘offender prohibition disqualification order’ rather than ‘offender reporting disqualification order’.<sup>92</sup>

### **Committee comment**

The committee noted that QPS confirmed a drafting error in the proposed amendments to Working With Children Act (Schedule 1 of the Bill), and recommends that the amended references to ‘an offender reporting disqualification order’ in items 1, 2 and 5 of the amendments to the Working with Children Act be amended to ‘an offender prohibition disqualification order’.

#### **Recommendation 6**

The committee recommends that Schedule 1 of the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 be amended to replace ‘an offender reporting’ disqualification order in items 1, 2 and 5 of the amendments to the Working with Children Act with ‘an offender prohibition’ disqualification order.

### ***Mental Health Act 2000***

The committee also noted that the *Mental Health Act 2016* commenced on 5 March 2017.<sup>93</sup> The *Mental Health Act 2016* repealed and replaced the *Mental Health Act 2000*. As a result, the consequential amendment in Schedule 1 of the Bill relating to the *Mental Health Act 2000* is not necessary as the provision the Bill proposes to amend has been repealed.

#### **Recommendation 7**

The committee recommends that Schedule 1 of the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 be amended to remove the consequential amendment to the *Mental Health Act 2000*, as this Act was repealed on 5 March 2017.

<sup>92</sup> Queensland Police Service, correspondence dated 14 February 2017, attachment p 3.

<sup>93</sup> Mental Health Legislation Amendment Bill 2016, explanatory notes, p 1.

## 4 Compliance with the Legislative Standards Act

### 4.1 Fundamental legislative principles (FLPs)

Section 4 of the *Legislative Standards Act 1992* states that fundamental legislative principles (FLPs) 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 FLPs to the Bill and brings the following to the attention of the Legislative Assembly.

#### 4.1.1 Rights and liberties of individuals

Clause 34 of the Bill widens the entities that are required to give the commissioner information, and to whom the commissioner may give information, to any entity except health entities or where legal privilege applies. As the Bill does not define who is an entity, under the *Acts Interpretation Act 1954* an entity would include an individual, a corporation, and an unincorporated body.

Other than health entities or where there is legal privilege, there is no legislated limitation on information sharing: who may be directed to provide information, and who information may be given to, is at the discretion of the commissioner.

Clause 34 also widens the persons to whom the commissioner may give information about a prohibition order from a parent or guardian of a child reportable offender or child protected by the order, to any person to whom the commissioner considers it necessary to give information in order to reduce the risk to children.

#### FLP issues

Legislation should have sufficient regard to the rights and liberties of individuals.<sup>94</sup> The right to privacy, and privacy and confidentiality issues, have been identified ‘as relevant to consideration of whether legislation has sufficient regard to the rights and liberties of individuals’.<sup>95</sup>

The proposed new sections 74D and 74E, authorising or requiring the sharing of information between the commissioner and effectively any individual, corporation, or unincorporated body, clearly impacts upon reportable offenders’ right to privacy, potentially in breach of the FLP requiring legislation have sufficient regard to individuals’ rights and liberties. The right to privacy of individuals who are directed to provide information to the commissioner may also be contravened depending on the nature of the information they are required to provide.

The explanatory notes acknowledged that widening the information sharing framework raised potential FLP issues, but indicated it was justifiable:

*The amendments which extend the current information sharing provisions to allow the police commissioner to require information from any government or non-government entity and to give information to those entities and members of the community could be seen as abrogating a reportable offender’s right to privacy. However in addressing concerns raised by the CCC in its report on the operation of the CPOPOA [Prohibition Order Act], the amendment was mindful of who could give and receive information about a reportable offender.*<sup>96</sup>

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<sup>94</sup> *Legislative Standards Act 1992*, s 4(3).

<sup>95</sup> Office of the Queensland Parliamentary Counsel, *Fundamental legislative principles: the OQPC notebook*, 2008, p 113.

<sup>96</sup> Explanatory notes, p 18.

The former Scrutiny of Legislation Committee (SLC) referred to Parliament, without express objection, provisions authorising or requiring particular entities to share information relating to child protection. While the provisions clearly impacted on individuals' rights, the SLC noted the legislation's underlying rationale, including the principle that 'the protection and care needs of children take precedence to the protection of an individual's privacy'.<sup>97</sup>

However, the legislation the SLC referred without express objection, dealt with information sharing between government departments and prescribed entities, and introduced or expanded 'appropriate confidentiality provisions, restricting the use to which information supplied under the Bill's provisions may be put'.<sup>98</sup>

### Committee comment

The committee noted that authorising or requiring the sharing of information about a reportable offender between the commissioner and any individual, corporation, or unincorporated body would constitute a contravention of the person's right to privacy.

As noted earlier in this report, the committee identified that the Bill provides for a much wider power than that which was recommended in the CCC report. The focus of the CCC recommendation was in relation to the commissioner effectively garnering information from, and sharing information with, entities who deal with reportable offenders or who provide safety to children. However, the Bill does not restrict information sharing to entities involved in the monitoring of reportable offenders and the protection of children, rather the information sharing framework is limited only by the discretion of the commissioner.

While the committee acknowledged the advice from the department that the 'breadth of the provision allows the police commissioner to determine who should receive information about a reportable offender', the committee also considered that the breadth of the provision may not have sufficient regard to the rights and liberties of individuals.

#### 4.1.2 Protection against self-incrimination

Clause 22 of the Bill inserts a proposed new section 51B, which authorises a police officer who reasonably suspects that a reportable offender has committed an indictable offence under the proposed Act, to require that reportable offender to give the officer access to a storage device. Failing to comply with the requirement, without a reasonable excuse, is an offence punishable by a maximum penalty of \$36,750 (300 penalty units) or 5 years imprisonment.

The proposed new section provides that it is not a reasonable excuse to fail to comply with the requirement on the basis that complying might tend to directly or indirectly incriminate the reportable offender or expose them to a penalty.<sup>99</sup>

### FLP issue

Legislation should provide appropriate protection against self-incrimination.<sup>100</sup> The common law privilege against self-incrimination allows a person to refuse to provide documents or answer questions if the documents or answers may incriminate them or tend to expose them to a penalty. The privilege is 'based upon the deep-seated belief that those who allege the commission of a crime should prove it themselves and should not be able to compel the accused to provide proof against himself'.<sup>101</sup> Legislation that impacts on the common law protection against being compelled to self-incriminate may interfere with the rights and liberties of the individual.<sup>102</sup>

<sup>97</sup> Office of the Queensland Parliamentary Counsel, *Fundamental legislative principles: the OQPC notebook*, 2008, p 113, citing Scrutiny of Legislation Committee, *Alert Digest*, 2004 No 7.

<sup>98</sup> Scrutiny of Legislation Committee, *Alert Digest*, 2004 No 7, pp 2-3.

<sup>99</sup> Child Protection (Offender Reporting) and Other Legislation Amendment Bill, cl 22.

<sup>100</sup> *Legislative Standards Act 1992*, s 4(3)(f).

<sup>101</sup> *Environmental Protection Authority v. Caltex Refining Co Pty Limited* (1993) HCA 74, 23.

<sup>102</sup> Office of Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs – Self-incrimination*, p 3.

Excluding the protection afforded against self-incrimination is potentially justifiable if –

- *the questions posed, or the information required, concern matters which are peculiarly within the knowledge of the persons to whom they are directed, and which would be difficult or impossible for the Crown to establish by any alternative evidential means*
- *the Bill prohibits use of the information obtained in prosecutions against the person, and*
- *in order to secure this restriction on the use of the information obtained, the person should not be required to fulfil any conditions (such as formally claiming a right).<sup>103</sup>*

The proposed new section 51B expressly excludes the protection against self-incrimination in relation to providing a police officer access to a storage device, in breach of the FLP requiring that legislation provide appropriate protection against self-incrimination.

The explanatory notes acknowledged that excluding the protection against self-incrimination raised potential FLP issues, but indicated it was justifiable:

*...to assist police keep pace with the ever evolving range of internet based sexual offences against children, including the possession or distribution of child exploitation material, the production of child exploitation material, online grooming and solicitation of children, including cybersex, and conspiring with others to commit these types of offences and/or to carry on a business which involves these types of offences.*

...

*It is not possible for the police to properly assess and manage the risks posed by reportable offenders without the legislative authority to access information which is stored on devices.<sup>104</sup>*

The explanatory notes also stated that the Bill would safeguard the rights of reportable offenders by requiring a police officer to apply to a magistrate for a post-search approval order, approving the requirement to provide the access information.

*A person will not commit an offence for failing to provide access information in circumstances where an approval for the requirement is not granted by a magistrate.<sup>105</sup>*

### **Committee comment**

The committee noted that requiring a reportable offender to provide access information (eg passwords) to a police officer may result in the offender providing information that will form the basis of a prosecution against them.

Under usual circumstances a person would not be compelled to assist law enforcement to find evidence to use against them, and can raise the protection against self-incrimination as an excuse for why information is not provided. Here, the committee noted that the excuse is removed and reportable offenders would be compelled to provide the access information even though they are effectively providing a mechanism for the police officer to obtain evidence against them.

In this circumstance, the information required (passwords and access information) concern matters peculiarly within the knowledge of the reportable offender, and would be difficult or impossible to establish by any alternative evidential means. In this respect the committee considered the exclusion of the protection against self-incrimination was arguably justified, although it is noted there does not appear to be any 'use' or 'derivative use' protection afforded to the information, meaning that any information obtained could then be used as evidence against the reportable offender in subsequent prosecutions.

Given the nature of the reportable offender legislation, the committee considered that it is probably appropriate for information obtained under legal compulsion in these circumstances to be used as evidence in a subsequent prosecution, despite this going against usual legal protections.

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<sup>103</sup> Scrutiny of Legislation Committee, *Alert Digest*, 2006 No 6, p 21.

<sup>104</sup> Explanatory notes, p 21.

<sup>105</sup> Explanatory notes, p 21.

## 4.2 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* requires that explanatory notes be circulated when a Bill is introduced into the Legislative Assembly. Section 23 of that Act sets out the information the explanatory notes should contain.

Explanatory notes are used by the committee, other Members of Parliament, and a variety of stakeholders when considering Bills and forming a view about the extent to which they support the proposed legislation. Explanatory notes are also an important form of extrinsic material which may be used to assist in the interpretation of the legislation once in operation. It is therefore important that explanatory notes are clear, accurate, precise and sufficiently detailed to be useful in explaining the policy that a Bill is to implement, and the intended operation of all aspects of a Bill.

Explanatory notes were tabled with the introduction of the Bill. While the notes were fairly detailed, identified some potential FLP issues, and outlined the consultation carried out in relation to the Bill, there were also some significant issues that detracted from the usefulness of the explanatory notes.

### 4.2.1 Clear and precise explanatory notes

#### ***Errors and inaccurate references***

The explanatory notes contain numerous references to incorrect sections of the legislation, and inaccurate references to legislative amendments, limiting the usefulness of the explanatory notes in understanding the proposed amendments and their intended operation. In some instances these errors were not only unhelpful, they caused confusion.

For example, the explanatory notes state the Bill amends section 6 of the Prohibition Order Act, renumbered to section 13A of the proposed Act, to:

*‘replace the word “and” with the word “or” as it applies to a dual limb which requires the court to be satisfied that, having regard to the nature **and** pattern of conduct recently engaged in the offender poses a risk...’*

However, this amendment is to section 8 of the Prohibition Order Act, not section 6, renumbered to section 13C of the proposed Act, not section 13A.

Another example is the statement in the explanatory notes that clause 31 amends section 68(3) of the Offender Reporting Act by replacing the words of paragraph (d) ‘the CrimTrac Agency established under the *Public Service Act 1999* (Cwth), section 65’ with ‘the Australian Criminal Intelligence Commission’.<sup>106</sup> However, the words of section 68(3)(d) are incorrectly cited: the paragraph currently reads ‘the Australian Crime Commission established under the Australian Crime Commission Act 2002 (Cwth), section 7’. It is noted that the Australian Crime Commission is the legal name for the Australian Criminal Intelligence Commission.<sup>107</sup>

A further example is that the explanatory notes state that the amendment to ‘section 44 (74F) allows non-government agencies to give information about a reportable offender to a third party funded by the agency’. However, the proposed section 74F applies only to ‘prescribed entities’, which are all chief executives of government departments. This section would not allow agencies other than the five prescribed chief executives to disclose information.

#### ***Details of amendments***

There are instances where the explanatory notes contain no detail on the reasons for some policy objectives. For example, the explanatory notes state that amendments to improve information sharing ‘allow the police commissioner to give information to and receive information from government and non-government agencies’.<sup>108</sup> However, the Bill prohibits health entities from giving or receiving information,

<sup>106</sup> Explanatory notes, p 34.

<sup>107</sup> Australian Government, Australian Criminal Intelligence Commission, *Legislation*, [www.acic.gov.au/about-us/legislation](http://www.acic.gov.au/about-us/legislation), last accessed 20 January 2017.

<sup>108</sup> Explanatory notes, p 9.

and there is no explanation of the policy rationale for excluding health entities from the extended information sharing framework. As discussed earlier in this report, the QPS has subsequently acknowledged drafting errors in the information sharing provisions of the Bill.

The *Notes on provisions* section of the explanatory notes contain numerous instances where amendments to cross-references made necessary by the renumbering of sections were highlighted, but amendments to the content of the provisions were not identified. For example the description of amendments to proposed section 74F notes cross-reference changes resulting from the provision being renumbered from 44 to 74F, but does not identify that the chief executive (corrective services) and the chief executive (justice) have been added as prescribed entities.

There were also instances where provisions amended by the Bill were omitted, and other instances where provisions had duplicate entries. For example, the description of the consequential amendments to the *Education (Queensland College of Teachers) Act 2005* contains five instances where the description of an amendment is duplicated.

#### **4.2.2 Consistency between explanatory notes and the Bill**

Perhaps of most concern were the instances where the explanatory notes stated the Bill contains provisions that it does not in fact contain.

For example the explanatory notes state the Bill inserts a definition for ‘protected witness’ in section 77B(3),<sup>109</sup> however the Bill does not contain a definition for ‘protected witness’. Similarly the explanatory notes state the Bill inserts a definition for ‘non-government entity’ in schedule 5 of the Offender Reporting Act,<sup>110</sup> however the Bill does not insert a definition for non-government entity.

The committee notes the advice from the QPS that an erratum to the explanatory notes will be tabled, removing the references to the Bill inserting a definition for ‘non-government entity’.<sup>111</sup>

#### **Committee comment**

The committee does not consider that the explanatory notes were sufficiently clear to comply with section 23 of the *Legislative Standards Act 1992*.

In a Bill which proposes to amalgamate two Acts and simultaneously proposes an array of amendments to the offender reporting framework, clear and precise explanatory notes are essential. The explanatory notes should contain sufficient detail for readers to understand the purpose and intended operation of all aspects of the Bill, and should not contain descriptions of amendments that are not actually in the Bill. Accurate, clear and precise explanatory notes would greatly assist the committee, Members of Parliament, the courts and other stakeholders to understand the legislation.

#### **Recommendation 8**

The committee recommends that accurate, clear, precise and comprehensive explanatory notes for the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 be tabled as a priority. The replacement explanatory notes should satisfy the requirements of section 23 of the *Legislative Standards Act 1992*.

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<sup>109</sup> Explanatory notes, pp 10 and 37.

<sup>110</sup> Explanatory notes, p 35.

<sup>111</sup> Queensland Police Service, correspondence dated 23 January 2017, 4.

## Appendix A – List of witnesses at the public briefing

### Public briefing 1 December 2016

#### Queensland Police Service

- Detective Superintendent Cheryl Scanlon, Operations Commander, Child Safety and Sexual Crime Group.
- Detective Inspector George Marchensini, Child Safety and Sexual Crime Group.
- Senior Sergeant Andrea Reeves, Legislation Branch, Policy and Performance.
- Senior Sergeant Vicki Barrett, Legislation Branch, Policy and Performance.

## Appendix B – List of submissions

Sub No.	Submitter
001	Protect All Children Today Inc
002	Queensland Council for Civil Liberties
003	Crime and Corruption Commission Queensland

## **Appendix C – Recommendations from the Crime and Corruption Commission *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008***

### **Recommendation 1**

Combine the Prohibition Order Act and Offender Reporting Act. The responsible Minister might then consider undertaking a further review of the combined Act at some appropriate point, for example, after a further 3 to 5 years of operation.

### **Recommendation 2**

Revise the relevant legislation to specify that where the offender's reporting obligations are due to cease before the end of an offender prohibition order, these obligations continue to apply for the duration of the offender prohibition order.

### **Recommendation 3**

Amend the Prohibition Order Act to clarify the definition of concerning conduct.

### **Recommendation 4**

Amend, as a matter of priority, section 7.19 of the QPS Operational Procedures Manual to include a simple explanation of the statutory law in the Offender Reporting Act and Prohibition Order Act, and guidance on when to apply for an offender prohibition order relative to other options that can be used to respond to concerning conduct. It should be made as brief and practical as possible, kept in plain English, and include the statutory references in brackets.

### **Recommendation 5**

Consider whether there is merit in developing guidelines for the QPS and the courts about commonly occurring conditions, or prescribing a suite of conditions, some or all of which may be included in an offender prohibition order in any individual case.

### **Recommendation 6**

Review all QPS training materials relevant to the Prohibition Order Act, paying particular attention to the issues raised in this review.

### **Recommendation 7**

Amend the QPS Commissioner's Guidelines to provide more guidance about the types of situations when authorised QPS members may disclose personal information about a reportable offender to a member of the public.

### **Recommendation 8**

Amend section 7.18 of the QPS Operational Procedures Manual to ensure that police are identifying and monitoring offenders who may meet the requirements for an offender reporting order under section 13 of the Offender Reporting Act.

### **Recommendation 9**

Establish a joint working group to review the processes used by the QPS and Queensland Corrective Services to manage reportable offenders. The review should aim to achieve full legislative and policy compliance and improve the efficiency and effectiveness of the management of reportable offenders.

### **Recommendation 10**

Amend the wording of the flag linked to the records of reportable offenders in the QPS information system (QPRIME) to improve the identification of reportable offenders and quality of information recorded, and provide guidance about appropriate action. The amendment should be guided by the child protection offender register.

### **Recommendation 11**

Amend the Prohibition Order Act to improve information sharing between the QPS and relevant agencies, and between the QPS and members of the public.

**Recommendation 12**

Amend section 7.19 of the QPS Operational Procedures Manual to improve information sharing about offender prohibition orders under sections 43 and 47 of the Prohibition Order Act.

**Recommendation 13**

Consider amending the relevant legislation to:

- provide police with the power to search, seize and require access information without a warrant, when there is a reasonable suspicion of a breach of an offender prohibition order
- provide police with the power to require a person at the premises to provide access information for seized or detained computers or electronic equipment
- make the penalty for failure to comply with a direction to provide access information equivalent to the penalty for failure to comply with an offender prohibition order, or treat refusal as failure to comply with an offender prohibition order.

**Recommendation 14**

Amend the Prohibition Order Act to align the offence provision with the penalty for failing to comply with Offender Reporting Act reporting obligations.

**Recommendation 15**

Amend the Prohibition Order Act and section 7.19 of the QPS Operational Procedures Manual to clarify aspects of the civil application process, standard of proof and rules of evidence, and allow concurrent hearings.

**Recommendation 16**

Amend section 21 of the Prohibition Order Act to clarify the ambiguities about offender prohibition orders made by consent.

**Recommendation 17**

Amend the Prohibition Order Act to provide adequate protection to child witnesses:

- by prohibiting a self-represented offender from cross-examining (in person) a child witness in any proceeding under the Act
- by providing that offenders must be given the opportunity to obtain legal representation (either publicly funded or not) in these circumstances
- by incorporating protections similar to those contained in the Domestic Family Violence Prevention Act or the Evidence Act.