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The Sexual Offences (Protection of Children) Amendment Bill 2002 (Qld): Strengthening Notification and Reporting Requirements under the Criminal Law Amendment Act 1945

Research Brief No 2002/34 discusses amendments to the Criminal Law Amendment Act 1945 to expand the powers of courts to require ongoing reporting by child sex offenders, as contained in the Sexual Offences (Protection of Children) Amendment Bill 2002*, introduced into the Queensland Legislative Assembly on 6 November 2002 by Hon R Welford MP, the Attorney-General and Minister for Justice.*

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Research Brief No 2002/34

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1 INTRODUCTION

On 6 November 2002, the Sexual Offences (Protection of Children) Amendment Bill 2002 was introduced into the Queensland Legislative Assembly by Hon R Welford MP, the Attorney-General and Minister for Justice. The Bill:

- amends s 9 of the *Penalties and Sentences Act 1992* by changing the sentencing guidelines to be applied by courts when sentencing child sex offenders;
- creates two new *Criminal Code* offences:
    - maintaining a sexual relationship with a child (**re-drafted s 229B**), and
    - using electronic communication with intent to procure a child under 16 to engage in a sexual act and using electronic communication with intent to provide indecent matter to a child under 16 (**proposed new s 218A** of the Criminal Code);
- increases the penalty for indecent treatment of a child;
- amends the *Criminal Law Amendment Act 1945* to expand the powers of courts to require ongoing reporting by child sex offenders, and
- amends the *Corrective Services Act 2000* to expand the powers of corrections boards to require ongoing reporting by child sex offenders.

This *Research Brief* discusses only the amendments to the Criminal Law Amendment Act 1945. RB No 2002/35 discusses the proposed new Internet offence.

2 BACKGROUND

Section 19 of the Criminal Law Amendment Act 1945 (Qld) was originally inserted into the Act in 1989. It has since been amended once - in 1999. The Queensland Parliamentary Library's *Legislation Bulletin* No 8/99 discussed the history and rationale behind the provision and outlined the changes proposed by the 1999 amending Bill (the Criminal Law Amendment Bill 1999).[1]

Legislation Bulletin No 8/99 also described notification requirements in place in the United States and the United Kingdom, together with proposals made by the Royal Commission into the New South Wales Police Service (the Wood Royal

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[1] The 1999 Bill, as originally introduced to Parliament, was amended in Committee and these amendments are discussed in Parts 3 and 4 of this Research Brief.

Commission) in its *Final Report on the Paedophile Inquiry*, released in August 1997.

This *Research Brief* updates *Legislation Bulletin* No 8/99 by:

- describing the amendments to and in relation to s 19 which are contained in Queensland's Sexual Offences (Protection of Children) Amendment Bill 2002;
- providing a summary of legislation introduced in New South Wales in 2000 (the Child Protection (Offenders Registration) Act) following recommendations of the Wood Royal Commission, and of proposed amendments to the 2000 Act introduced in November 2002; and
- describing recent proposals for notification and/or registration of sex offenders in Victoria, and Australia-wide.

3 THE CURRENT LEGISLATION

Section 19 of the Criminal Law Amendment Act 1945 currently provides that, where a person has been convicted on indictment of an offence of a sexual nature in relation to a child under 16, the trial court, or another court of like jurisdiction, upon application by a Crown law officer, may order that the **offender**:

- is to report the offender's current name and address to the officer in charge of Police at any place specified in the order within 48 hours after being released from custody, and
- thereafter, for as long as is specified in the order, is to report any change of name or address, within 48 hours of that change, to the officer in charge of Police at that place or at another place approved by the Commissioner of Police.

An order will not be made unless the court is satisfied that "*a substantial risk*" exists that the offender will commit another offence of a sexual nature upon or in relation to a child under 16: s 19(2).

3.1 OFFENCES TO WHICH REPORTING ORDERS APPLY

"Offence of a sexual nature" is defined in s 2A(1) of the Criminal Law Amendment Act 1945, inserted by the *Criminal Law Amendment Act 1946* (Qld), as:

> *includ[ing] any offence constituted wholly or partly by an act whereby the offender has exhibited a failure to exercise proper control over the offender's sexual instincts and any offence in the circumstances associated with the committal whereof the offender has exhibited a failure to exercise such proper control over the offender's sexual instincts, and includes an assault of a sexual nature.*

The section is intended to be read with Qld's *Criminal Code* and the *Justices Act 1886* (Qld): s 2A(2).

3.2 WHO MAY MAKE/APPLY FOR AN ORDER

Under s 19(1)(a), the trial court has the **discretion** to make a reporting order. Provisions are also included to ensure that the Crown may make an application for a requirement to be imposed on an offender at a stage subsequent to sentencing[2]: s 19(1)(b). In the latter case, notice that an order is being applied for must be served upon an offender: s 19(3)(a), and the offender or his or her legal representative is entitled to be present at the hearing of the application and, if present, is to be given a reasonable opportunity to be heard: s 19(3)(b).

3.3 MANNER OF REPORTING

When an offender is required to report his name and address to police within 48 hours after being released from custody, this must be done in person: s 19(6). Thereafter, an offender can report the required details in person or by letter sent by registered post: s 19(7).

3.4 OFFENCES

It is an offence to fail to report as ordered, punishable by a fine of 20 penalty units ($ 1500) or six months imprisonment: s 19(8). A prosecution for this offence is to be upon the complaint of a person authorised in writing by the Attorney-General or a person belonging to a class so authorised: s 21(1).

3.5 APPEAL PROVISIONS

It is open to a person against whom an order under s 19(1) has been made to appeal against it as if the order were a sentence given upon the person's conviction: s 19(9)(a). Conversely, where the court has refused to make an order, the Attorney-General may appeal against the refusal: s 19(9)(b).

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[2] The Criminal Code, Evidence Act and Other Acts Amendment Bill (Qld), Second Reading Speech, Hon BD Austin MLA, *Queensland Parliamentary Debates*, pp 3252-3262 at p 3261.

3.6 REVOCATION OF ORDER

Section 19A allows a person who is subject to a s 19 order to apply to have the order revoked. The application is to be made to the court that made the order, or a court of like jurisdiction: s 19A(1), which may revoke the order "*if it is satisfied beyond a reasonable doubt that there no longer exists a substantial risk that the offender will commit an offence of a sexual nature*": s 19A(3).

Section 19A was inserted during the Committee stage of the debate on the Criminal Law Amendment Bill 1999 after a question had been raised by the Parliamentary Scrutiny of Legislation Committee in its *Alert Digest* No 11 of 1999. Moving the amendment in Committee, Hon MJ Foley, the then Attorney-General, explained that under s 19(9)(a):

> *… a reporting order under section 19(1) is not a sentence or part of a sentence, but the offender does have the right to seek leave to appeal or an extension of time to seek leave to appeal as if the order were a sentence. Therefore, in most cases this provision would safeguard a person who feels aggrieved by the making of an order under section 19(1).*
>
> *However, I did recognise that with the removal of the 10-year ceiling on reporting, as a consequence of removing the application of the Criminal Law (Rehabilitation of Offenders) Act 1986, such persons will have to report for the duration of the order even if their circumstances change dramatically; for example, if the person subsequently suffers some major physical disablement. Therefore, I agreed to move this amendment in Committee. It will allow offenders to apply to the court that made the order to have the order revoked if the court is satisfied beyond reasonable doubt that there no longer exists a substantial risk that the offender will thereafter commit any further offences of a sexual nature.*
>
> *The proposed test is tied in part to the ground on which the order may be made in the first place, that is, that there exists a substantial risk that the offender will thereafter commit a further offence of a sexual nature against a child under 16 years of age. If a person has been required to report because the court was satisfied that such a substantial risk exists, then some degree of certainty that no such risk persists should be required before the order is revoked.*
>
> *…my amendment requires that the offender will also need to show that there no longer exists a substantial risk that the offender will thereafter commit any further offence of a sexual nature. It would make a mockery of the proposed revocation provision if a judge had to revoke an order if an offender was no longer a risk to children but was still a risk to adults.*[3]

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[3] Hon MJ Foley MLA, Criminal Law Amendment Bill 1999 (Qld), Committee stage, *Queensland Parliamentary Debates*, 9 December 1999, pp 6256-6259, p 6256.

3.6.1 Time Limit on Application for Revocation of Order

No time limit for the bringing of an application to have a s 19 reporting order revoked is prescribed by the legislation. As explained by the Minister during debate on the 1999 amendments:

> *…The Bill does not specify a time limit under which a person can bring such an application. What has to be understood is that this is a matter for the court. Where an application that is vexatious or frivolous is made, the court has ample power to deal with it. The court has the power to ensure that the matter is not unduly wasteful of the court's time and is not an undue abuse of process. The law regulating the abuse of process applies both in civil and criminal jurisdictions.*[4]

3.6.2 Ground for Bringing an Application

The only ground for making an application to have a s 19 reporting order revoked is that there no longer exists a substantial risk that the offender will commit an offence of a sexual nature: s 19A(2).

4 HISTORY OF THE PROVISION

Section 19(1) of the Criminal Law Amendment Act 1945 was originally inserted into the Act in 1989 by the *Criminal Code, Evidence and Other Acts Amendment Act 1989*, following recommendations made by the then Director of Public Prosecutions Mr Des Sturgess QC in his 1985 report: *An Inquiry into Sexual Offences Involving Children and Related Matters* (see p 117).

The history of the provision and the extent to which its use had been invoked between 1989 and 1999 has been covered in more detail in the Queensland Parliamentary Library's *Legislation Bulletin* No 8/99.

4.1 THE 1999 AMENDMENTS

4.1.1 Name and Address to be Notified

Section 4 of the Criminal Law Amendment Act 1999 amended s 19 of the Criminal Law Amendment Act 1945 to include the requirement that an offender subject to a reporting order must, upon release from custody, report his or her current **name** (as well as his or her address - ie the requirement under s 19 as originally enacted).

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[4] Criminal Law Amendment Bill 1999 (Qld), Committee stage, p 6257.

Thereafter, an offender to whom a reporting order applies must also report any **change of name** (as well as any change of address).

As explained when the Bill was introduced, the additional power to order an offender to report his or her change of name:

> *… was designed in response to the fact that paedophiles sometimes change their names to avoid detection or scrutiny and to enable them to get close to children even after having been convicted.*[5]

4.1.2 Effect of Rehabilitation Period

The *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) allows the notional sealing of criminal records in certain circumstances. Offenders who are ordered to serve a period not greater than 30 months in custody, or who have not been ordered to serve any period in custody, are eligible for rehabilitation under the Act: s 3(2). For adults, the rehabilitation period is usually 10 years, and for juveniles, it is usually five years: s 3(1). Subject to certain exceptions, convictions may not be disclosed once the rehabilitation period has expired: ss 6 & 7, and person or bodies responsible for determining a person's fitness to be admitted to a profession or occupation are to disregard convictions in relation to which the rehabilitation period has expired unless the person being assessed is expressly required by law to disclose his or her criminal history, or the person or body making the assessment is expressly required by law to take into the account the criminal history of the person to be assessed: ss 9 & 9A.

Section 4 of the Criminal Law Amendment Act 1999 omitted s 19(5) which had provided that, where a rehabilitation period was capable of running under the Criminal Law (Rehabilitation of Offenders) Act in relation to a conviction for which a reporting order was made, then when the rehabilitation period expired, the reporting order would also expire.

As explained in the Minister's Second Reading Speech to introduce the 1999 amendments:

> *… subsection (5) will be repealed so that if a rehabilitation period is capable of running under the Criminal Law (Rehabilitation of Offenders) Act 1986 in relation to a conviction for which a reporting order has been made under section 19(1), then the expiration of that period will no longer override the reporting order.*
>
> *This is not to deny the importance of rehabilitation. Rather it is to ensure that the sentencing court's intention will be given effect to.*

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[5] Hon MJ Foley MLA, Second Reading Speech, Criminal Law Amendment Bill 1999 (Qld), *Queensland Parliamentary Debates*, 25 August 1999, pp 3476-78, p 3477.

> *The Court is uniquely placed to give due weight both to the rehabilitation of the offender and to the protection of the community and thereupon to make the appropriate reporting period under section 19. If a court orders an offender to report for a lengthy period, it will not be cut short by the rehabilitation period.*[6]

4.1.3 Section 19A inserted

As previously outlined in Part 3.6 of this Brief, the Criminal Law Amendment Bill 1999 was amended in Committee by the insertion of a new s 19A, following concerns raised by the Scrutiny of Legislation Committee in its *Alert Digest* No 11 of 1999. Section 19A allows a person who is subject to a s 19 order to apply to have the order revoked. The application is to be made to the court that made the order, or a court of like jurisdiction, which may revoke the order "*if it is satisfied beyond a reasonable doubt that there no longer exists a substantial risk that the offender will commit an offence of a sexual nature*".

5 THE PROPOSED LEGISLATION

5.1 BACKGROUND

In its 2001 election policy statements prior to its re-election for a second term, the Beattie Government included as a key point in its "Tough on Crime, Tough on the Causes of Crime: 2001 and Beyond" Policy Statement to respond to the Project Axis report on paedophilia[7] by (inter alia) "*Examining options to encourage the courts to make greater use of s 19 of the Criminal Law Amendment Act 1989*".[8]

5.2 TEST TO BE APPLIED WHEN IMPOSING AN ORDER

Section 19(2) of the Criminal Law Amendment Act 1945 currently provides that a s 19(1) reporting order is not to be made unless the court is satisfied that a **substantial risk** exists that the offender will commit another offence of a sexual nature upon or in relation to a child under 16 years of age.

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6 Hon MJ Foley MLA, Second Reading Speech, Criminal Law Amendment Bill 1999 (Qld), *Queensland Parliamentary Debates*, 25 August 1999, p 3477.

7 Queensland Crime Commission and Queensland Police Service, *Child Sexual Abuse in Queensland: the nature and extent*, Project Axis, Volume 1, June 2000 and *Child Sexual Abuse in Queensland: responses to the problem*, Project Axis, Volume 2, June 2000.

8 *Tough on Crime, Tough on the Causes of Crime: 2001 and Beyond*, 21 pp, "Executive Summary", pp 2-3 at p 2 (Labor Party Policies Queensland, 2001).

In R v C [1999] QCA 458, it was held on appeal that, on the evidence before the sentencing judge, she could not have been satisfied that there was a substantial risk that the offender would commit another offence of a sexual nature on or in relation to a child under 16. In that case, the appellant pleaded guilty to two offences under s 210 of the Criminal Code (indecent dealing) involving his five year old daughter, and to counts involving the showing of a pornographic video to his daughter and four other children on two occasions. On appeal it was held that, having regard to the absence of previous criminal history and the small number of offences involved, the sentencing judge could not have been satisfied simply on the facts which were before her, there being no expert evidence before her, that a s 19 reporting order could be made.[9]

Clause 21 of the Sexual Offences (Protection of Children) Bill 2002 amends s 19(2) of the Criminal Law Amendment Act 1945 by omitting the word "substantial". Under the proposed change, the court must only be satisfied that **a risk** (rather than a substantial risk) exists that an offender will commit a further offence.

As explained in the Explanatory Notes to the Bill:

> *Given that the purposes of section 19 is the protection of children, rather than the punishment of the offender, it is submitted that the lower threshold will give the court greater flexibility in determining on whom orders are imposed. The making of an order under section 19 is not mandatory, even if the court decides that there is a risk an offender may re-offend. However, the court, in appropriate cases, should have the capacity to make an order despite not being satisfied that there is a substantial risk that the offender may commit another offence against a child under 16 years of age.*[10]

5.3 SEXUAL OFFENDER TO REPORT AT REGULAR INTERVALS

Clause 23 inserts a **proposed new 19A** into the Criminal Law Amendment Act 1945. By **Clause 22**, the existing s 19A is re-numbered s 19B.

Proposed new s 19A sets out the requirements that may be imposed under a reporting order. These are now extended to give courts the power to require an offender to report to police at nominated intervals (ie "**at the stated frequency for the stated period**") after his or her release from custody: **proposed new s 19A(5)**.

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9 R v C [1999] QCA 458, No 264 of 1999, 2 November 1999, p 10.

10 Sexual Offences (Protection of Children) Amendment Bill 2002 (Qld), *Explanatory Notes*, p 6.

As explained in the Second Reading Speech: "*This will permit the police to be fully aware of the location of child sex offenders*."[11]

Where an offender is required to report at regular intervals, the offender must report in person: **proposed new s 19A(6)(a)** unless the police officer to whom the offender must report has given prior consent to the report being made by telephone or in another way: **proposed new s 19A(6)(b)**. The police officer may only consent to the offender reporting other than in person if the offender is ill or has another good reason for not reporting personally: **proposed new s 19A(7**).

5.4 OFFENCES

Section 19(8) of the Criminal Law Amendment Act 1945 is amended by virtue of **Clause 21** by the addition of the proviso "without reasonable excuse".

Under the proposed amendment, a person will now be liable to a fine or imprisonment under the Act for failing to comply with a s 19 reporting order only if they fail to do so without a reasonable excuse. The offence provision in the NSW legislation is similarly worded (see 17 of the Child Protection (Offenders Registration) Act 2000). Section 17(2) of the NSW Act also specifically requires a court hearing a charge that a person has failed to comply with their reporting obligations to have regard to certain matters, including the person's age and whether the person has a disability that affects the person's ability to understand or comply with their obligations.

5.5 TRANSITIONAL PROVISIONS

Clause 26 of the 2002 Bill inserts a **proposed new Part 5, Division 2** (ss 24 & 25) into the Criminal Law Amendment Act 1945. Under **proposed new s 25**, a reporting order will be able to be made under s 19 as amended by the proposed Sexual Offences (Protection of Children) Amendment Act whether the conviction for which the reporting order is made occurred before or after the amendments commence. In the recent Queensland Court of Appeal case of *R v C* [2002] QCA 156, it was held (McPherson JA and Philippides J concurring) that, as section 19 is not a punitive provision, it can have a retrospective effect, without offending ss 11(2) and s 16 of the Criminal Code[12] (s 11(2) provides that when there is a change in the law, the punishment that may be imposed can be no greater than was

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[11] Sexual Offences (Protection of Children) Amendment Bill 2002 (Qld), Second Reading Speech, p 4443.

[12] Sexual Offences (Protection of Children) Amendment Bill 2002 (Qld), *Explanatory Notes*, pp 8- 9.

authorised by the law as it previously was and no greater than is authorised by the subsequent law; s 16 provides that a person cannot be punished twice for the same act or omission).

R v C involved an appeal against sentence, one of the two grounds of appeal being that the sentencing judge had erred in making an order under s 19(1) of the Criminal Law Amendment Act 1945 because s 19 was not in force when the offences in question were committed. Section 19 was enacted in 1989; the offences committed by the applicant were said to have been committed between 1972 and 1976; and the convictions were recorded and sentences imposed in December 2001. In her judgment, Philippides J stated:

> *… the relevant consideration for the purposes of s 11(2) of the Criminal Code is not whether an order made under s 19(1) of the Act is part of the sentence imposed on an offender, but whether it is a "punishment". …*
>
> *I do not consider that the purpose of s 19 of the Act is to punish or penalise an offender. Rather, the purpose of the provision is protective. That is, its purpose is to protect a vulnerable part of the community, being children under 16 years of age, from circumstances where they are at risk of being the subject of sexual offences. So much is made clear by s 19(2) of the Act, which specifies the only circumstances in which an order may be made, as being where a court is satisfied that a substantial risk exists that the offender in question will commit a further sexual offence on a child under the age of 16. This view of s 19 of the Act is supported by the fact that, pursuant to s 19(2) of the Act , an order may be made under s 19(1) of the Act, not only when sentence is imposed by the trial judge upon conviction, but also at some other time after conviction, by an authorised person.*
>
> *The protective purpose of s 19 of the Act is also highlighted by the carefully circumscribed conditions surrounding the release of any information that a person is subject to an order made under s 19, the details of any sexual offence of which such person has been convicted and, indeed, any other relevant information about that person. Nor can the effect of s 19 of the Act be said to be punitive in the sense that it imposes any restriction on the offender's movements or personal liberty.*
>
> *Furthermore, if an order under s 19 of the Act were to be viewed as punishment, an order made other than by the court of trial upon an application pursuant to s 19(1)(b) of the Act would offend s 16 of the Criminal Code, which provides that a person cannot be punished twice for the same act or omission. It follows that such an order would be irreconcilable with s 16 of the Code, unless that provision of the Code is considerably modified by s 19 of the Act.*[13]

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[13] *R v C* [2002] QCA 156, pp 12-13.

6 UNITED KINGDOM

6.1 BACKGROUND

In the United Kingdom, the suggestion that notification requirements should be placed on sex offenders was first advanced by the Police Superintendents Association of England and Wales.[14] Attempts by Labour Opposition Members to introduce Private Members' Bills to establish a national register of paedophiles in February and June 1996 were unsuccessful.[15] However, in June 1996, the British Home Office released a public Consultation Document on the *Sentencing and Supervision of Sex Offenders*. Included among the proposals was the suggestion that convicted sex offenders should be required to notify the police of their address and any change of address. The Consultation Document stated that:

> *The purpose of requiring convicted sex offenders to notify the police of any change of address would be to ensure that the information on convicted sex offenders contained within the police national computer was fully up to date. At the moment, information held in the National Criminal Record collection will only contain the last address known to the police, usually the one at which the offender was residing when he was convicted. The major drawback with the records as they stand at present is that the local police have no means of learning from them whether a convicted sex offender has moved into their area.*[16]

The Sex Offenders Bill was subsequently introduced by the Government and received Royal Assent on 21 March 1997. Subsequently, a series of amendments were made by the *Criminal Justice and Court Services Act 2000* with a view to strengthening various aspects of the 1997 Act. These amendments are contained in Schedule 5 to the Criminal Justice and Court Services Act. Also in 2000, the Sex Offenders Act was amended in part by the *Sexual Offences (Amendment) Act*. The following discussion of the provisions of the United Kingdom Sex Offenders Act 1997 is based on the Act as assented to, unless otherwise stated.

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14 House of Commons, *Hansard Debates*, 27 January 1997, Columns 23-24.

15 The Sexual Offences against Children (Register of Offenders) Bill was introduced on 27 March 1996 and the Paedophiles (Registration and Miscellaneous Provisions) Bill was introduced on 12 June 1996. Both Bills only reached the First Reading stage: House of Commons *Sessional Information Digest 1995-96*.

16 Great Britain. Home Office, *Sentencing and Supervision of Sex Offenders: A Consultation Document*, June 1996, p 8.

6.2 NOTIFICATION REQUIREMENTS

Part 1 of the *Sex Offenders Act 1997*, as originally enacted, required prescribed categories of sex offenders to notify the police of their name and home address within 14 days of their conviction or the commencement of the legislation: s 2(1). ("Home address means a person's sole or main residence in the United Kingdom or where a person doesn't have such a residence, premises that he visits regularly: s 2(7).) Under the Criminal Justice and Court Services Act 2000, there was a reduction from 14 days to 3 days in the period during which initial notification must be made. The Criminal Justice and Court Services Act 2000 also inserted a new requirement that initial notification would only be permissible in person: s 2(5).

6.2.1 Changes of Name or Address

After initial notification, subsequent changes of name and home address must be notified within 14 days: s 2(2)(a) & (b). Subsequent notification of changes of name and address can be made by letter or in person: s 2(5).

6.2.2 Other Premises

Persons subject to the legislation must also advise police of any other address in the United Kingdom where the person has stayed for a period or periods totalling 14 days in any 12 months: s 2(2)(c) & s 2(7).

6.2.3 Travel Abroad

The Sex Offenders (Notice Requirement) (Foreign Travel) Regulations 2001, made under the Criminal Justice and Court Services Act 2000, now require sex offenders subject to the requirements of the Sex Offenders Act 1997 to also notify the police if they travel abroad for a periods of eight days or more.[17] As explained in a Home Office Circular:

> *The purpose of requiring offenders subject to the 1997 Act to notify the police of their intention to travel abroad is twofold. Firstly, hitherto offenders found to have been absent from their registered address have been able to claim that they were abroad at the time and so the requirement to notify name and address did not apply. Secondly, it is important to take steps to try to ensure that sex offenders from the United Kingdom do not target children in other countries as a result of the stricter regime in place here. The new requirements will enable the police to make a*

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[17] The Regulations came into force in the UK on 1 June 2001.

> *sensible judgement about whether to pass information about the risk an offender poses to other jurisdictions in order to prevent an offence from being committed overseas.*[18]

6.2.4 Date of Birth

As well as notifying their name and address, persons to whom the legislation applies must also provide their date of birth: s 2(3). The National Society for the Prevention of Cruelty to Children (NSPCC) suggested the inclusion of a "domestic profile" as part of the information to be notified.[19] One commentator, Cathy Cobley, noted:

> *It was argued that this would help combat registration of mere postal addresses and would obviously act as a useful trigger to warn the relevant authorities if there were vulnerable children in the household. Admittedly domestic profiles may well change more rapidly than actual addresses, but if the measures are to be effective in protecting children, one would have thought this is a fundamental piece of information that should be recorded and its omission is regrettable.*[20]

6.2.5 Power to Take Fingerprints and Photographs on Initial Notification

By virtue of the Criminal Justice and Court Services Act 2000, the Sex Offenders Act 1997 was amended to provide a new power for the police on initial notification to take fingerprints and photographs of offenders: s 2(6A).

6.3 DURATION OF THE REQUIREMENT TO NOTIFY

The period of time for which an offender must provide notification details depends upon the sentence which has been imposed and is specified in the Table to s 1(4) of the Sex Offenders Act. For example, an indefinite period of notification is imposed upon offenders sentenced to a term of imprisonment of 30 months or more. Those sentenced to a shorter period of imprisonment are required to register for a finite period (10 years if the sentence exceeds six months, and seven years where the sentence imposed is six months or less). A caution and a non-custodial penalty results in registration for five years.

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[18] United Kingdom. Home Office Circular 20/2001: 'Criminal Justice and Court Services Act 2000: Amendments to the Sex Offenders Act 1997' downloaded on 15 November 2002 from <http://www.homeoffice.gov.uk/circulars/2001>

[19] NSPCC, quoted in House of Commons, *Hansard Debates*, 25 February 1997, Column 220.

[20] Cathy Cobley, 'Keeping track of sex offenders - Part 1 of the Sex Offenders Act 1997', *Modern Law Review*, September 1997, pp 690-699 at p 694.

6.3.1 Young Sex Offenders

For sentences of under 30 months, the relevant registration periods (above) are halved for young sex offenders (ie offenders under 18): s 4. Young offenders who have been sentenced to life imprisonment or to a term of 30 months or more will, like adult offenders, be required to register for life.

Prior to the introduction of the UK legislation, organisations such as the National Association for the Development of Work with Sex Offenders and the Association of Chief Officers of Probation expressed the view that it was inappropriate to include children on a register of sex offenders. Other associations including the National Society for the Prevention of Cruelty to Children, Barnado's, the Save the Children Fund and the National Children's Bureau expressed extreme disappointment at the Bill's inclusion of young offenders, on the ground that there were more appropriate methods to deal with young offenders and extra stigmatisation could be detrimental to a child offender's prospects of rehabilitation. Despite the objections voiced, the Government indicated that it would not support a proposed amendment under which registration requirements would not apply to a person under 16 years of age unless a court directed otherwise.[21]

6.4 OFFENCES TO WHICH THE SEX OFFENDERS ACT APPLIES

The offences which will invoke the requirement to register are set out in Schedule 1 to the Act. They include:

- sexual offences against children, including child pornography offences, and
- serious sexual offences against adults, including rape, and indecent assault for which a sentence of at least 30 months imprisonment has been imposed.

The *Sexual Offences (Amendment) Act 2000* (UK) added an offence against s 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust) to the list of offences which attracted notification requirements.

The debate on the Bill indicates that it was designed to protect children in particular.[22] However, as Cobley points out:

> *The inclusion of other sex offenders within the provisions of the notification requirements merited little discussion which is, perhaps, understandable, given the fact comparatively few sexual offences are restricted to child victims, although the*

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[21] House of Commons, *Hansard Debates*, 25 February 1997, Columns 235-239.

[22] House of Commons, *Hansard Debates*, 27 January 1997, Column 26.

> *age of the victim may be relevant for sentencing purposes. Rape remains rape, whether the victim is seven or seventy and it would appear anomalous to restrict the notification requirements to rapists whose victims were below a certain age.*[23]

6.5 ENFORCEMENT PROVISIONS

Section 3 of the Sex Offenders Act, as originally enacted, provided that a person to whom the notification provisions apply was liable on summary conviction to a fine, or to imprisonment for not more than six months, or both, if he or she failed without reasonable excuse to comply with the notification requirements or provided information which he or she knew to be false.

This provision remains but the Criminal Justice and Court Services Act 2000 increased the maximum penalty for a failure to comply with the Act's requirements to five years imprisonment and/or a fine on conviction on indictment.

6.5.1 Young Sex Offenders

Young sex offenders required to register under the legislation cannot be sentenced to imprisonment for non-compliance: s 4(4).

7 NEW SOUTH WALES

7.1 THE WOOD ROYAL COMMISSION

In its *Final Report on The Paedophile Inquiry*, issued in August 1997, the Royal Commission into the New South Wales Police Service (the Wood Royal Commission) rejected the introduction of legislation providing for registration and community notification along the lines of the much publicised American Megan's Law. Instead, the Commission supported "… *a more controlled and co-ordinated system for the storage and release upon a needs basis of information concerning convicted or suspected paedophiles*".[24]

Accordingly, the Commission recommended, inter alia:

- that consideration be given to introducing a system for the compulsory registration with the Police Service of all convicted child sex offenders, to be accompanied by requirements for:

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[23] Cobley, p 692.

[24] New South Wales. Royal Commission into the New South Wales Police Service (Wood Royal Commission), *Final Report Volume V: The Paedophile Inquiry*, August 1997, p 1226.

- changes of name and address to be notified, and for
- verification of the register,

after consultation with the Police Service, the Office of the Director of Public Prosecutions, Corrective Services, the Privacy Committee and other interested parties [25] (Recommendation 111);

- that encouragement be given to the establishment of a National Index of Intelligence about paedophile offenders for use by law enforcement agencies, through the agency of the Australian Bureau of Criminal Intelligence[26] (Recommendation 117), and
- that the Police Service be empowered to give a warning to relevant government departments, agencies and community groups relating to the presence of a person convicted or seriously suspected of child sexual assault offences, subject to guidelines to be established in consultation with the Privacy Committee, where reasonable grounds exist for the fear that that person may place a child or children in the immediate neighbourhood of the offender in serious risk of sexual abuse[27] (Recommendation 118). The Wood Royal Commission supported the adoption of guidelines of the kind adopted by the North Wales Police and considered in *R v Chief Constable for the North Wales Police and Others: ex parte AB and Another* (1997) 3 WLR 724, stating that :

  The release of warnings on a case by case basis, and in response to a genuine threat, is far preferable to the Megan's law approach …[28]

7.2 THE CHILD PROTECTION (OFFENDERS REGISTRATION) ACT 2000

The NSW *Child Protection (Offenders Registration) Act 2000* was enacted in response to Recommendation 111 of the Wood Royal Commission[29] and gave effect to a key commitment in the Carr Government's 1999 child protection policy, "Protecting our Children". Introducing the Bill to the New South Wales Legislative Assembly in June 2000, the then Minister for Police stated:

All child sex offender registration schemes require child sex offenders in the community to inform government agencies, usually police, of changes to certain personal details. There are currently more than 60 such schemes worldwide. Child sex offender registration schemes recognise that many child sex offenders, when released into the community, may pose a further risk to child safety. Studies of child sex offender behaviour show a high rate of recidivism, which is even more alarming given the low rate of reporting of child sex offences. Currently all the American States have registration schemes, as do most Canadian provinces. The United Kingdom Sex Offenders Act 1997 established a registration scheme in the United

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25 Wood Royal Commission, pp 1248-9.

26 Wood Royal Commission, p 1249.

27 Wood Royal Commission, p 1249.

28 Wood Royal Commission, p 1245, paras 18.151 - 152.

29 Wood Royal Commission, 'Summary of Recommendations', pp 1317-1334 at p 1330.

> *Kingdom. Child sex offender registration schemes have received some consideration in Australia.*
>
> *Queensland has a limited registration scheme, where courts, in certain circumstances, may order that sex offenders report their name and address details to police. In 1997 the Wood royal commission recommended that consideration be given to the introduction of a system for the compulsory registration with police of all convicted child sex offenders, to be accompanied by requirements for the notification of changes of name and address, and for the verification of the register. The royal commission supported the registration scheme being developed along the lines of the United Kingdom Sex Offenders Act 1997. It did not support the Megan's law approach adopted in the United States of America, where registration information is frequently available to the public.*
>
> … *The* [Child Protection (Offenders Registration) *bill establishes the first full child sex offender registration scheme in Australia, which will serve as a role model for other States and Territories.*[30]

7.2.1 Scope of the Act

Section 3 of the Act defines keys words and phrases used in the Act.

Child

"Child", for the purpose of the legislation, refers to any person under the age of 18.

Registrable Offences

Offences which attract registration are termed registrable offences. Registrable offences are split up into Class 1 and Class 2 offences.

Class 1 offences comprise the most serious offences, including child murder, offences involving sexual intercourse with a child, and an offence against s 66EA (persistent sexual abuse of a child) of the *Crimes Act 1900* (NSW). As outlined in the Second Reading Speech:

> *A number of child sex offender registration schemes also extend to child murder. The Government sees a clear need for this position to be adopted in New South Wales. Some child murders have an underlying sexual motivation, but there may be conviction for a sexual offence. There is not a more dangerous or despicable sex offender than one who murders his victim. There is a high rate of recidivism amongst such offenders, with United States of America research showing 53 per cent*

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[30] Hon Mr Whelan MP, Second Reading Speech, Child Protection (Offenders Registration) Bill 2000 (NSW), Legislative Assembly, *New South Wales Parliamentary Debates*, pp 6475-6479 at p 6475-76.

> *of offenders who abduct and murder a child have committed previous violent and sexual crimes against children.*[31]

Class 2 offences extend to acts of indecency against or in relation to a child where the offence is punishable by imprisonment for 12 months or more, possession and publication of child pornography, child prostitution offences (other than offences committed by a child prostitute) and to child kidnapping, as elucidated upon in the Second Reading Speech:

> *The bill … reflects research that demonstrates a link between child kidnappings and child sex offending. The New South Wales Judicial Commission's study of sentencing trends for kidnapping offences shows that persons convicted of kidnapping offences are convicted for concurrent sexual and indecent assaults more frequently than any other offence.*
>
> *These figures are even more alarming, as in some kidnappings the victim escapes before they can be abused or the abuse is not reported or proved. Like a number of United States schemes, the bill extends to the kidnapping of children. The bill does not, however, seek to cover complicated custody and access matters that are better resolved through the Family Court. Registration in those cases will not help the children, their family, or the police. Accordingly, the bill excludes kidnappings when the kidnapper has had a previous care relationship with the child.*[32]

People who attempt, conspire or incite to commit a registrable offence will also be required to register under the Act.[33]

Registrable Persons

A registrable person under the Act means a person found guilty of a registrable offence, with certain exceptions eg:

- persons whose convictions have been quashed or set aside by a court
- first-time Class 2 offenders who receive only a fine or unsupervised good behaviour bond
- children found guilty of a single indecency offence
- persons against whom a registrable offence has been proved, but where a court has dismissed the charge under s 10 of the *Crimes (Sentencing Procedure) Act 1999* or s 33(1)(a) of the *Children (Criminal Proceedings) Act 1987*.

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31 Hon Mr Whelan MP, Second Reading Speech, Child Protection (Offenders Registration) Bill 2000 (NSW), Legislative Assembly, p 6476.

32 Hon Mr Whelan MP, Second Reading Speech, Child Protection (Offenders Registration) Bill 2000 (NSW), Legislative Assembly, p 6476.

33 In s 3 of the Act, see subsection (c) of the definition of Class 1 offence and subsection (f) of the definition of Class 2 offence.

7.2.2 Notification and Reporting Obligations

Part 2, Division 1 of the Act makes informing a person of their reporting obligations the responsibility of the sentencing court and the supervising authorities. The Commissioner of Police may cause written notice to be given to a registrable person of his or her reporting obligations if the Commissioner suspects that the person may not have received notice, or may otherwise be unaware of those obligations. Part 2, Division 2 of the Act specifies the notification and reporting obligations of persons to whom the Act applies (registrable persons).

Section 9 of the Act sets out the categories of personal information that must be provided to police, where applicable:

Name and Previous Names

For example, registrable persons must advise police of their name, and any other names by which they have previously been known: s 9(1)(a). As explained in the Second Reading Speech to introduce the legislation:

> *This is consistent with a number of United States registration schemes, and recognises that persons with a criminal history frequently operate under assumed names, or change their name by deed poll, to avoid police or community attention.*[34]

Where Resident

Registrable persons under the Act must also provide the address of each of the premises at which the person generally resides; where the person does not generally reside at any particular premises, then they must provide the name of each of the localities in which they can generally be found: s 9(1)(c). As explained in the Second Reading Speech: "*This allows police to better monitor such offenders and investigate offences in areas near where the offender lives"*.[35]

Other Relevant Personal Information

Registrable persons must also provide their date of birth: s 9(1)(b) and information on where they work, the nature of their employment and the name of their employer: s 9(1)(d). The Act also requires them to provide information on the make, model, colour and registration number of any motor vehicle they own or usually drive: s 9(1)(e). As explained in the Second Reading Speech: "*This reflects*

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[34] Hon Mr Whelan MP, Second Reading Speech, Child Protection (Offenders Registration) Bill 2000 (NSW), Legislative Assembly, p 6477.

[35] Hon Mr Whelan MP, Second Reading Speech, Child Protection (Offenders Registration) Bill 2000 (NSW), Legislative Assembly, p 6477.

United States research that found that many child sex offenders offend in or from their vehicles".[36]

7.2.3 When Information is to be Provided

Section 10 specifies when the information is to be provided. For instance:

- Registrable persons who become inmates, detainees or forensic patients as a result of having been found guilty of a registrable offence must notify the Commissioner of Police within 28 days after the person is released into the community: s 10(1)(a).
- Registrable persons who were under some form of correctional (controlled) supervision at the time the provision commenced had 90 days from the time of commencement to register: s 10(1)(c).

The Act's registration and reporting provisions also extend to offences committed outside New South Wales that, if committed in New South Wales, would be registrable offences.[37] As explained in the Second Reading Speech:

> *Research has shown that paedophiles are often highly mobile. The New South Wales scheme will be compromised if offenders from other jurisdictions who move into New South Wales cannot be registered. This will also allow the registration of New South Wales residents who commit registrable offences whilst in other jurisdictions – for example, child sex tourism offences under the Commonwealth Crimes Act.*[38]

Under the legislation, offenders from other jurisdictions entering New South Wales are given 28 days to register: s 10(1)(b).

7.2.4 Changes to Personal Information

If a registrable person's personal details subsequently change, the change must be notified to the Commissioner of Police within 14 days: s 10(2).

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[36] Hon Mr Whelan MP, Second Reading Speech, Child Protection (Offenders Registration) Bill 2000 (NSW), Legislative Assembly, p 6477.

[37] See the definitions of "registrable offence", and Class 1 and 2 offences in s 3 of the Act.

[38] Hon Mr Whelan MP, Second Reading Speech, Child Protection (Offenders Registration) Bill 2000 (NSW), Legislative Assembly, p 6476.

7.2.5 Absences from the Jurisdiction

Section 11 sets out requirements for registrable persons to notify the Commissioner of Police of their intended absences from New South Wales before they depart. As explained in the Second Reading Speech:

> *… registrable persons must inform police of absences from New South Wales before they go. As a number of offenders will live in border regions, or will travel interstate for short periods, only intended interstate absences of 28 days or more must be notified. All overseas trips must be notified, irrespective of length. This will also assist in the investigation of child sex tourism offences.*[39]

A registrable person who leaves New South Wales for more than 28 days must notify the Commissioner of Police of his or her return within 14 days after the person re-enters the state: s 10(3).

7.2.6 Manner in which Personal Information is to be Given

Under the legislation, registration information is to be given to a police officer at a police station in the offender's locality: s 12. As explained in the Second Reading Speech:

> *This will ensure local police are made aware of the offender's presence in their community, better convey to the offender that police are aware of them, ensure registration information is correctly provided and reduce disputes as to whether information was or was not provided.*[40]

Police are required to provide a written acknowledgement that the information has been provided: s 12 (2) & (3) "*… so the offender can prove he complied with his obligations*".[41] The United Kingdom legislation also requires that the provision of information under the notification requirements must be acknowledged in writing: s 2(6) of the Sex Offenders Act 1997; however, the reporting requirements in Part 4 of Queensland's Criminal Law Amendment Act do not appear to make provision for this.

Registration information is required to be given by the offender in person: s 12(5), unless the offender is a child, or has a disability which makes it impracticable to provide the information personally. In these special cases, the legislation allows the information to be given by the person's parent, guardian, carer or another

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[39] Hon Mr Whelan MP, Second Reading Speech, Child Protection (Offenders Registration) Bill 2000 (NSW), Legislative Assembly, p 6477.

[40] Hon Mr Whelan MP, Second Reading Speech, Child Protection (Offenders Registration) Bill 2000 (NSW), Legislative Assembly, p 6477.

[41] Hon Mr Whelan MP, Second Reading Speech, Child Protection (Offenders Registration) Bill 2000 (NSW), Legislative Assembly, p 6477.

nominated person. Section 13 contains modified reporting procedures for registrable persons who are or have been participants in witness protection programs.

7.2.7 Offence Not to Comply

It is an offence under the Act for a registrable person to fail to comply with any of his or her reporting obligations without reasonable excuse: s 17. It is also an offence to provide information that the person knows is false or misleading: s 18. The maximum penalty that can be imposed in both cases is 100 penalty units ($11,000) or imprisonment for 2 years, or both.

Proceedings for offences are to be heard summarily by a Local Court comprised of a Magistrate sitting alone: s 21.

7.2.8 Length of Time for which Reporting Obligations Apply

Section 14 sets out the period for which a registrable person's reporting obligations continue. This ranges from 8 years to life depending upon the nature of the offence and whether the registrable person is a repeat offender.

In the case of offences committed by children, the periods are generally halved: s 14 (6).

7.2.9 Suspension of Reporting Obligations

Section 15 enables the Administrative Decisions Tribunal (ADT) to suspend the reporting obligations of a person whose obligations have continued for at least 15 years and would otherwise continue for life. However, the ADT cannot make such an order unless it considers that the person the subject of the order "*does not pose a risk to the safety of children*": s 16(3). In deciding whether to make an order suspending a registrable person's reporting obligations, the ADT must take into account:

- The seriousness of the offences committed by the registrable person
- The period of time that has elapsed since those offences were committed
- The registrable person's age, the age of the victims of the offences, and the difference in age between the registrable person and his or her victims, at the time the offences were committed
- The registrable person's age now and their total criminal record.

A catch-all provision: s 16(4)(f) provides that the Tribunal is also to take into account "*any other matter the Tribunal considers appropriate*".

7.2.10 Register of Offenders

Section 19 requires the Commissioner of Police to establish and maintain a Register of Offenders. Introducing the Child Protection Legislation Amendment Bill 2002 into the NSW Legislative Assembly recently, Parliamentary Secretary Mr Crittenden MP stated that, as at 5 November 2002:

> *…636 offenders have registered with police, an initial compliance rate of over 95 per cent. The register has been successfully used in a number of investigations*[42]

7.2.11 Review of Act

The Child Protection (Offenders Registration) Act 2000 was assented to on 27 June 2000; however, its substantive provisions did not commence until October 2001.

Section 25 provides for the Ombudsman to monitor the Act and its accompanying regulations for two years after the commencement of s 25 and to furnish a report to the Minister. Section 26(2) obliges the Minister to conduct a review of the Act as soon as possible after the Minister receives the Ombudsman's report. A report on the outcome of that review is to be tabled in both Houses of the NSW Parliament as soon as possible after the review is completed: s 26(3).

7.3 THE CHILD PROTECTION LEGISLATION AMENDMENT BILL 2002

On 12 November 2002, the Child Protection Legislation Amendment Bill 2002 (NSW) was introduced into the NSW Legislative Assembly. The Bill proposes to amend the Child Protection (Offenders Registration) Act 2000 to extend the principal Act's operation to certain spent convictions and to offences involving an intent to commit certain offences already covered by the Act. The Bill also proposes to allow the information which is required to be given by registrable persons under the Child Protection (Offenders Registration) Act 2000 to be given at places other than police stations if the Commissioner of Police approves.

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[42] Mr Crittenden MP, Child Protection Legislation Amendment Bill, Second Reading, Legislative Assembly, *New South Wales Parliamentary Debates*, 12 November 2002, p 91, downloaded on 14 November 2002 from <http://www.parliament.nsw.gov.au>

8 VICTORIA

In May 1995, the Victorian Parliamentary Crime Prevention Committee issued its *First Report upon the Inquiry into Sexual Offences Against Children and Adults*. The Committee's terms of reference required it to analyse the levels of rape and sexual assault that had been reported in the 1992/93 *Victoria Police Annual Report*, examine the causes for the increase and report on initiatives to reduce their level. The First Report focussed on the sexual assault of children.[43] In its chapter on Sentencing, the Committee recommended that all individuals convicted of sex offences as adults should be registered with a Victorian Sex Offender Registry, to be established and maintained by the Victoria Police, for life. The Committee argued:

> *Given the high recidivism rate of sex offenders and their propensity to continue to offend over their lifetime, the State must take whatever steps necessary to reduce the incidence of sexual assault and protect the community.*
>
> *The real threat sex offenders and paedophiles pose to the community will require the state to apply long term monitoring strategies.*[44]

Specifically, the Committee recommended that its model for registration and monitoring should possess the following features:

- All adult offenders convicted of an indictable sexual offence should be registered for life.
- Adolescents against whom a summary sexual offence is found to be proven should be required to be registered for five years.
- Adolescents convicted of an indictable sexual offence should be registered until they are 21, provided they have not re-offended.
- A Sex Offender Registry Review Panel should be established to review the registration status of adolescent sex offenders.
- Registration should cover sex offenders released from custody and offenders serving their sentences in the community.
- Offenders should be notified of their requirement to register by the courts.
- Government departments including Corrections and Courts would be required to advise the Sex Offender Registry when someone was convicted of a sex offence and when the offender was released from prison.
- Sex offenders should be required to appear in person at the registry.
- The information to be registered should include the person's name, date of birth, residential address, source of employment, physical description, set of fingerprints, DNA sample and photograph.

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43 Victoria. Parliament. Crime Prevention Committee, *Combating Child Sexual Assault: An Integrated Model: First Report upon the Inquiry into Sexual Offences against Children and Adults*, Government Printer, Melbourne, 1995, Preamble, p vi.

44 *Combating Child Sexual Assault*, p 260.

- Offenders would be required to register within 10 days of being released or commencing a community based sentence.
- Offenders would be required to notify the Sex Offender Registry of any subsequent changes of address or of source of employment within 10 days of the change.
- Anyone moving into Victoria who has been convicted interstate of a sexual offence would be required to register within 10 days of arriving in Victoria and would be subject to the same registration requirements as Victorian offenders.
- Failing to register or providing false information would be an indictable offence.

Finally, the Committee recommended that the Victorian Attorney-General and the Police Minister lobby for an extension of the sex offender registration program nationally, explaining that:

> *The Committee acknowledges that some limitations will be placed on the effectiveness of a State registration program and that the true potential of registration will only be achieved through a national program.*[45]

8.1 RECENT DEVELOPMENTS

Under recent Victorian proposals, as reported in the media in August 2002, serious sex offenders would have their names listed on a state-wide register, and would be monitored from eight years to life, depending on the severity of the offence committed. Offenders who failed to notify police of changes to their whereabouts or employment status or who provided misleading information would be liable to a maximum fine of $10,000 or two years imprisonment.[46]

9 NATIONAL DEVELOPMENTS

The effectiveness of state registers can be compromised by the ability of offenders to move interstate and go into hiding. New South Wales Minister for Police, Hon Michael Costa MLC, for example, is reported as having stated:

Child sex offenders do not respect state borders. While it might be good for the people of NSW that offenders flee our state laws, they head underground in other jurisdictions.[47]

At the national level, Commonwealth and State Police Ministers are reported to have recently agreed to co-operate in establishing a national register of

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45 *Combating Child Sexual Assault*, p 263.

46 'Bipartisan support for Vic sex offenders register', *The Age*, 26 August 2002; Larissa Dubecki, 'Monitor for sex offenders', *The Age*, 26 August 2002.

47 quoted in Sophie Morris, 'Pedophiles go on list', *The Australian*, 7 November 2002, p 4.

paedophiles' names and details. In early November 2002, Federal Justice Minister Chris Ellison outlined plans to set up a working party to establish the register and to determine what information should be incorporated and who should be able to access it.[48] The working party is reported to be expected to report back early next year.[49]

It is reported that the national register will build upon the scheme in force in New South Wales and follows the announcement in recent months that a similar scheme would be introduced in Victoria.[50]

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48 Sophie Morris, p 4.

49 Sean Parnell, 'Calls for national abuse list', *Courier Mail*, 7 November 2002, p 5.

50 Sophie Morris, p 4.

APPENDIX A – MINISTERIAL MEDIA STATEMENTS

Hon Peter Beattie MP, Premier and Minister for Trade

4 November 2002

Government toughens laws against child sex predators

Police will have new powers to run special operations against internet paedophiles as part of a radical overhaul of Queensland's laws against child sex offenders.

Closer tracking of convicted child sex offenders after they leave prison also features in a reform package unveiled today by Premier Peter Beattie and Attorney-General and Minister for Justice Rod Welford.

"We are giving our police new powers and our courts new benchmarks to punish those predators who see young children as sexual targets," Mr Beattie said.

"Our maximum penalties for indecent treatment will be the toughest in the nation - 20 years for indecently treating a child under 12 years and 14 years for indecently treating a child under 16 (compared to the current maximums of 14 and 10 years).

"Paedophiles who think they can escape detection by plying their sick trade on the internet had better think twice.

"Under our laws, the "child" they try to lure via the 'net may turn out to be a police officer, because police will have new powers to conduct special operations targeting 'net predators.

"The Government will introduce a new internet offence in the Criminal Code, carrying a maximum penalty of 10 years imprisonment, for:

- using electronic means with the intent to procure a child under 16 to commit a sexual act; or
- using electronic means with the intent to expose a child under 16 to pornography.

"If they succeed in making contact with the child they can be charged with indecent treatment, and face the higher penalties of up to 20 or 14 years in jail, depending on the age of the child.

"Queensland will be the first Australian state with such laws against 'net paedophiles - the only jurisdiction with similar laws is the ACT.

"The Government makes no apologies for these radical actions, because Queensland is no place for paedophiles," Mr Beattie said.

The reforms will be contained in the Sexual Offences (Protection of Children) Bill 2002, which Mr Welford will introduce into Parliament.

Mr Welford said: "When judges sentence child rapists and paedophiles, they will no longer follow the general principle that prison is a "last resort".

"Sexual abuse of a young child can inflict as much - or more - harm as an attack of violence and we believe sentences should reflect that philosophy.

"In line with the commitment we made before the last election, Community Corrections Boards will be required to inform police about the parole of any convicted sex offender, and to order the offender to report to police while under supervision.

"In addition, judges will have new powers to order sex offenders to report regularly and in person to police after they are released from custody," Mr Welford said.

Mr Beattie said: "We are extending the strongest protection to young children by creating a new provision in the rape offence that clarifies that children under 12 do not have the capacity to consent to sexual acts.

"Any sexual penetration of a child under 12 should be charged as rape and will carry a maximum jail term of life imprisonment," Mr Beattie said.

Mr Welford said the Sexual Offences (Protection of Children) Bill 2002 would be followed in 2003 by legislation to improve judicial processes for children who are victims or witnesses.

"We need to make the court system more sympathetic to children involved in sexual abuse cases, to improve their protection and limit trauma and distress.

"Over the next few months, we will be consulting widely with the judiciary, the legal profession and interest groups to finalise a second stage of reforms.

"We are looking at the wider use of closed circuit television or screens, pre-recording of evidence, restrictions on cross-examination, out of court statements and witness support.

"Our package of reforms represents a substantial shift in the way our criminal justice system deals with child sexual abuse at all levels.

"I believe it is important the criminal justice system fulfils its responsibility in providing both a deterrent and ongoing supervision to stop the cycle of abuse," Mr Welford said.

Contact: Greg Milne (AG's office) 3239 3478
Fiona Kennedy (Premier's office) 3224 4500

The Beattie Government's Child Sex Abuse Reforms

A Fact Sheet for Media

The Beattie Government has developed a comprehensive response to community concerns about sexual offences against children.

In the first round of reforms, there will be increased penalties, a new offence targeting sexual predators who use the Internet to lure children and stronger reporting provisions on the whereabouts of sex offenders.

In further reforms in early 2003, there will be greater protection in the court system for children who are victims. The details of these changes will be discussed with stakeholders and finalised over the next four months.

1. Summary of Changes

a) First round reforms

- Changing the principles our courts consider when sentencing a sex offender including removing the current approach that prison is a last resort.
- The creation of a specific new offence to deal with paedophiles who are using the Internet to lure children.
- Tougher penalties for sexual offences and the removal of consent as a defence for sexual acts against young children
- New powers for the judiciary to order sex offenders to report regularly and in person to police after release.
- Community Corrections Boards will be required to advise police when paroling sex offenders.

2. First round reforms - the changes in detail

2.1. Changing the principles our courts consider when sentencing a sex offender including removing the current approach that prison is a last resort.

- The sentencing principles in s.9(2)(a) of the Penalties and Sentences Act will not apply to sexual offences against a child under 16. These principles state that:
  - a sentence of imprisonment should only be imposed as a last resort; and
  - a sentence that allows the offender to stay in the community is preferable.

- The primary considerations for the judiciary in sentencing sexual offences involving children will be mandated in legislation. These will include:

  - the need to deter such behaviour to protect children;

  - the risk of re-offending if a custodial sentence was not imposed;

  - the need to protect the child, or other children, from that risk;

  - the effect of the offence on the victim;

  - the age of the victim;

  - the nature of the offence including any physical harm or the threat of physical harm to the victim or another;

  - the antecedents, age and character of the offender;

  - and any medical, psychiatric, prison or other relevant report in relation to the offender.

2.2 Tougher penalties for sexual offences and a new provision that clarifies young children do not have the capacity to consent to sexual penetration

- The maximum penalty for indecent treatment of a child under 12 will be increased to 20 years imprisonment; for under 16 years a maximum of 14 years imprisonment.

- A change will be made to s348 of the Queensland Criminal Code (the rape offence) to make it clear that a child under 12 does not have the capacity to consent to sexual penetration.

- Any sexual penetration of a child under 12 should now be charged as rape (rather than unlawful carnal knowledge or indecent dealing) and will carry a penalty of life imprisonment.

2.3 The creation of a specific new offence to deal with paedophiles who are using the Internet to lure children.

- It is proposed to create a new offence in the Criminal Code making it an offence to:

  - Use electronic means with the intent to procure a child under 16 to commit an unlawful offence of a sexual nature;

  - Use electronic means with the intent to expose a child under 16 to pornographic material.

- The offence will carry penalties of up to 10 years imprisonment if the offender believes the child is under 12 years; and up to 5 years imprisonment if the offender believes the child is under 16 years.

- This new offence gives police powers to capture paedophiles who attempt to procure children using internet chat rooms. It allows police to carry out special operations for these types of offenders.

- Importantly, paedophiles who actually do contact children (eg. by sending them pornography) can be charged with the more serious offence of indecent treatment which will now carry penalties of up to 20 years imprisonment if the child is under 12 years; and up to 14 years imprisonment if the child is under 16 years.

2.4 New reporting provisions - Community Corrections Boards required to advise police when releasing sex offenders, and the judiciary given new powers to ensure sex offenders report regularly and in person to police after release.

- Changes will also be made to the Corrective Services Act so that community corrections boards (parole boards) must inform police on the release of child sex offenders. The board must also order the offender to report to police while under supervision.

- s.19 of the Criminal Law Amendment Act will be amended to enable judges to order that an offender, when released from custody, report to a nominated police station at regular intervals. Current laws only allow the court to order an offender to report their address within 48 hours of release, and to report any subsequent change of address.

APPENDIX B – NEWSPAPER ARTICLES

Title **Pedophiles go on list**

Author **Spohie Morris**

Source **The Australian**

Date Issue **7 November 2002**

Page **4**

Pedophiles' names and details will be listed on a national register to be used by police but never published after state and commonwealth police ministers agreed to co-operate in setting up the database.

Federal Justice Minister Chris Ellison yesterday outlined plans for a working party to establish the Australia-wide register and decide what degree of detail it should involve and whom should be able to access it.

He acknowledged the sensitivity of such a database, with a similar venture in Britain unleashing attacks on presumed pedophiles after it became public.

"We certainly don't want it to become public," Senator Ellison said.

"In the United Kingdom, we've seen examples where vigilante groups have been set up and there have been innocent people targeted."

The national register builds on a scheme already operating in NSW and follows a proposal for a similar scheme in Victoria.

In NSW, 636 child sex offenders are required to report regularly to police and inform them of any changes to their name, employment, vehicle or of any travel plans.

The NSW register contains the names of a further 400 offenders who are still in jail but will be required to report to police regularly on their release.

The period of reporting ranges from eight to 15 years.

The register was set up in 2000 following recommendations made by the Wood royal commission and includes anyone convicted of child murders, sex offences, kidnapping, indecency, child prostitution or pornography.

NSW Police Minister Michael Costa said yesterday that the effectiveness of state registers had been undermined by the ability of offenders to hide out in other states.

"Child sex offenders do not respect state borders," Mr Costa said.

"While it might be good for the people of NSW that offenders flee our state laws, they head underground in other jurisdictions."

Title **Calls for national abuse list**

Author **Sean Parnell**

Source **The Courier-Mail**

Date Issue **7 November 2002**

Page **5**

Senior law enforcement officials will examine whether state and territory child abuse laws can be modified to enable the introduction of a national sex offender register as early as next year.

Federal Justice Minister Chris Ellison yesterday said some states had no register requirement for sex offenders and a national register would prevent pedophiles staying outside the law.

New South Wales has a sex offender register and will lead the working party of law enforcement officials, due to report back early next year.

State police minister Michael Costa said the NSW register had been successful, but a national system was crucial.

"Like all criminals, pedophiles don't respect borders," Mr Costa said.

Australian Council for Civil Liberties president Terry O'Gorman said a national register may discriminate against rehabilitated offenders, or further impact on families where child abuse has occurred.

Senator Ellison said the register, hosted by the Commonwealth's CrimTrac database, would be strictly regulated and police would act as "gatekeeper" to ensure information did not fall into the wrong hands.

Queensland Police Minister Tony McGrady said yesterday the state had upgraded its sex offender laws and regulations and would not agree to a national database if those powers were reduced.

Queensland, the only state yet to sign up, is preparing legislation, which would bring it in line with the Commonwealth model.

Title **Monitor for sex offenders**

Author **Larissa Dubecki**

Source **The Age**

Date Issue **26 August 2002**

Convicted paedophiles and repeat sex offenders might be tracked on a registry for at least eight years, and possibly for the rest of their lives, after their release from prison.

Under legislation to be introduced in the spring session of parliament, a sex offender register, administered by the Victoria Police, would keep track of the workplace and residential address of serious sex offenders.

And in what Police Minister Andre Haermeyer termed the "toughest crackdown on sex offenders in Victoria's history", a victims' register, to be administered by the Department of Justice, would keep victims of sex crimes informed of where the offender was imprisoned and when they were scheduled for release.

Mr Haermeyer said the new laws would protect victims and reflected community concern over sex offences.

Police checks would also be carried out on people who worked with children.

Mr Haermeyer estimated that about 1000 sex offenders would be placed on the register, where they would remain for eight years to life, depending on the nature of the offence and any prior offences.

Failure to keep the police informed of any change in address would be punishable by a fine of up to $10,000 or up to two years' imprisonment.

The tough new measures, based on a New South Wales model, will coincide with the expansion of Victoria's public correctional enterprise CORE sex offender programs.

Opposition police spokesman Kim Wells said the move was "a step in the right direction".

Liberty Victoria president Chris Maxwell, QC said a register could hinder offenders' reintegration into the community and promote vigilante action.

Title **Bipartisan support for Vic sex offenders register**

Source **The Age**

Date Issue **26 August 2002**

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A Victorian government plan for a register of sex offenders has won bipartisan support and could go nationwide.

Serious sex offenders would have their names placed on the new statewide Sex Offender Register, to be run by Victoria Police, with the information available only to police, victims and families of dead victims.

Announcing the plan today, State Police Minister Andre Haermeyer said he has written to other police ministers with a view to setting up a national database.

NSW already has such a register, and its operation was studied by Victorian government officials in drawing up their proposal.

"New South Wales has found it very helpful," Mr Haermeyer's spokesman said.

He said although NSW had backed a national register, it had not placed the issue on the agenda for discussion by police ministers from all states and territories.

Mr Haermeyer had now done so.

The Victorian plan, to be introduced into the spring session of parliament, received the support of the state opposition.

Opposition police spokesman Kim Wells, who retained the portfolio in today's shadow cabinet reshuffle, said it was unacceptable that offenders be released into the community without monitoring.

"The current situation is clearly not working," Mr Wells said.

"I think the government is on the right track."

Mr Wells also backed the plan for a national register, saying it was too easy for an offender to be released from a Victorian jail, then move to NSW.

Those to be registered would include offenders convicted of sexual abuse of a child, child pornography and child prostitution, anyone jailed for two or more sex offences and anyone jailed for a sexual offence involving violence.

Mr Haermeyer said a parallel victims' register would be set up, giving information on status, location and impending release of offenders.

It would be based on self-referral and enable victims to make submissions at parole hearings.

He said the new laws would deny paedophiles access to children in their workplace and would require monitoring of those on the register for eight years to life, depending on the severity of offences.

"These initiatives are the toughest crackdown in Victoria's history," he said.

"Serious sex offenders are a threat to the community - especially our children - and we must do everything we can to minimise the risk that they will re-offend when they are released from prison."

Offenders failing to notify police of changes to their whereabouts, employment status or provide misleading information would be fined up to $10,000 or face up to two years imprisonment.

The government will also increase the number of specialist sex offender case managers to help offenders reintegrate into society.

Comment was being sought from civil liberties groups.

Title **Closer eye on molesters**

Author **Kay Dibben**

Source **The Sunday Mail**

Date Issue **12 November 2000**

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Paedophiles are to be more closely monitored when released from jail.

Confidential information about the whereabouts of convicted child sex offenders would be supplied to police and other agencies, Crime Commissioner Tim Carmody said.

The move follows a joint commission-police report that admitted monitoring of child sex offenders after they left prison was "ad hoc" and inadequate.

Mr Carmody is concerned many offenders are being released without undergoing treatment programs to deter them from re-offending.

The commission's second Project Axis report into child sexual abuse in Queensland has recommended the state government develop a co-ordinated response to the treatment, monitoring and supervision of offenders in the community.

Mr Carmody yesterday revealed the commission soon would share information contained in a confidential report into paedophile networks with other law enforcement agencies.

The report will focus on established and suspected paedophile networks, but commission investigators will continue to track the whereabouts of offenders released from prison.

At present, parolees and those on community orders were monitored for a limited time.

Police kept track of the activities of some sex offenders who left prison and some juvenile aid bureaus kept a database of local sex offenders.

"However, these are not comprehensive and the quality and currency of the information cannot be assured," the report said.

Victims of Crime Association president Jim Parke said lack of monitoring of child sex offenders in the community was of major concern to victims.

Most people assumed that authorities would continue to keep a discreet watch on child sex offenders once they were released, he said.

People's Alliance Against Child Sexual Abuse president Hetty Johnston said it was important for police to monitor released offenders.

"But if they are in need of monitoring, and there is a risk to innocent children, why should they be released?" she asked.

Mr Carmody said a Queensland law allowing courts to order some convicted child sex offenders to report to police after their release was being under-used.

It allows a court to order offenders considered most likely to re-offend to report changes in name and address to police.

But the section, which was toughened late last year, was not used between 1989 and 1997.

Between April 1999 and June this year there were only 19 approved court orders requiring released offenders to report any changes of address to police.

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