Queensland Government response to the Crime and Corruption Commission review of the operation of the Child Protection (Offender Prohibition Order) Act 2008

December 2015

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PREFACE

The *Child Protection (Offender Prohibition Order) Act 2008* (CPOPO Act) allows a court to make an order prohibiting relevant sexual offenders from engaging in conduct which poses a risk to the lives or sexual safety of one or more children, or children generally. The type of conduct which may be prohibited by the courts can include ordinary activities such as using the internet, visiting a playground or residing with children.

Section 60 of the CPOPO Act requires that the operation of the Act be reviewed after five years of operation. The Crime and Corruption Commission (CCC) commenced this review in June 2013. The outcomes of the review were tabled in Parliament on 19 December 2014.

The CCC has made 17 recommendations for change, nine of which involve legislative amendments. The remaining recommendations, with the exception of recommendations five and nine, apply to the internal policy of the Queensland Police Service (QPS). Recommendation five proposes changes for the courts and recommendation nine proposes the establishment of a joint working group to review the processes used by the QPS and Queensland Corrective Services (QCS) to manage offender compliance.

The government has considered each of the recommendations in consultation with those departments who are required to administer and apply the legislation. In particular, the QPS, as the operational administrator of the CPOPO Act, and QCS, as the initial compliance manager for reportable offenders who are subject to a probation, court or Parole Board order.

Additional consultation was undertaken with the following government departments:

- Department of the Premier and Cabinet (DPC0;
- Department of Justice and Attorney-General (DJAG);
- Department of Communities, Child Safety and Disability Services;
- Department of Aboriginal and Torres Strait Islander Partnerships;
- Queensland Treasury;
- Queensland Health; and
- Public Safety Business Agency (PSBA).

The valuable contribution provided by the community and child protection advocates during the review of the CPOPO Act has also been taken into consideration during the preparation of the government's response.

While the government supports all of the recommendations made by the CCC, four of those recommendations (5, 7, 8 and 10) either require further consideration to ensure the implementation of these recommendations is viable and sustainable or have been achieved in an alternative manner.

The following 13 recommendations are supported in full by the government:

Recommendation 1: Combine the CPOPO Act and CPOR 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 (OPO), these obligations continue to apply for the duration of the OPO.

Recommendation 3: Amend the CPOPO Act to clarify the definition of concerning conduct.

Recommendation 4: Amend, as a priority, section 7.19 of the Queensland Police Service (QPS) Operational Procedures Manual to include a simple explanation of the statutory law in the CPOR and CPOPO Acts, and guidance on when to apply for an OPO 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 6: Review all QPS training materials relevant to the CPOPO, paying particular attention to the issues raised in this review.

Recommendation 9: Establish a joint working group to review the processes used by the QPS and Queensland Corrective Services (QCS) 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 11: Amend the CPOPO Act to improve information sharing between the QPS and relevant agencies, and between the QPS and members of the public.

Recommendation 12: Amend section 7.18 of the Operational Procedures Manual to improve information sharing about OPOs under sections 43 and 47 of the Act.

Recommendation 13: 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 OPO;
(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; and
(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 OPO, or treat refusal as failure to comply with an OPO.

Recommendation 14: Amend the CPOPO Act to align the offence provision with the penalty for failing to comply with CPOR Act reporting obligations.

Recommendation 15: Amend the CPOPO Act and section 7.19 of the Queensland Police Service 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 CPOPO Act to clarify the ambiguities about OPOs made by consent.

Recommendation 17: Amend the CPOPO 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; and
(c) by incorporating protections similar to those contained in the *Domestic and Family Violence Protection Act 2012* or the *Evidence Act 1977*.

The following four recommendations are supported in part or in principle by the government.

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 OPO in any individual case.

Recommendation 7: Amend the QPS Commissioner's Guidelines to provide more guidance about the types of situations when authorised QPS members may disclose 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 police are identifying and monitoring offenders who may meet the requirements for an offender reporting order under section 13 of the CPOR Act.

Recommendation 10: Amend the wording of the flag linked to the records of reportable offenders in the Queensland Police Records and Information Management Exchange (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 Registry.

The government thanks the CCC for its work on this review.

IMPLEMENTATION OF THE RECOMMENDATIONS

The Minister for Police, Fire and Emergency Services and Minister for Corrective Services (the Minister) will be responsible for the implementation of the review recommendations. The Minister will be accountable to government for delivering the recommendations within the set timeframes.

The Minister will establish an interdepartmental working group in accordance with recommendation 9. Priority activities will include to review:

- the application of 'recent concerning conduct' in line with recommendation 3;
- processes used by QPS and QCS to manage reportable offenders with a view to achieving full compliance with relevant legislation and policy and improving the efficiency and effectiveness of the management of reportable offenders;
- the extent to which the definition of 'prescribed entity' should include those agencies detailed in section 159M of the *Child Protection Act 1999* and/or other State or Federal agencies, in line with recommendation 11; and
- information sharing provisions in line with recommendation 11.

The terms of reference the joint working group will be agreed by the Minister in consultation with the Police Commissioner and the Director-General, DJAG. The composition of the joint working group could include:

- QPS – representative from Child Safety and Sexual Crime Group, State Crime Command.
- QCS – representative from High Risk Offender Management Unit.
- DJAG – representative from Strategic Policy.

Additional agency representatives to be invited to address specific recommendations.

The joint working group will report to the Minister on the progression of CCC recommendations as supported by government, within six months of composition.

A legislation team will liaise with the working group to progress legislative amendments required to give effect to the recommendations as supported by government or that may impact on the working group's policy review. The legislation team will report to the Minister.

It is anticipated that new legislation will be introduced into Parliament in the latter part of 2016.

The QPS and QCS will be responsible for the development and implementation of internal policy and training to address issues which have been identified through the review and to support the new legislative regime. Those policy issues which have been highlighted as a priority in the CCC report will be implemented within six months of this response. The implementation of the remaining QPS and QCS internal policy and training will coincide with the commencement of the new legislation.

The development and implementation of internal policy and processes specific to other government departments will be the responsibility of that department. It is proposed that the implementation of those policies and processes will coincide with the commencement of the

new legislation unless a change to the internal policy is deemed a priority by the working group or the responsible department.

Stakeholder engagement will form a key component of the implementation process. In this regard, comment and advice on any policy proposals will be sought from key stakeholders.

ACRONYMS

CCC	Crime and Corruption Commission
CPOPO Act	*Child Protection (Offender Prohibition Order) Act 2008*
CPOR Act	*Child Protection (Offender Reporting) Act 2004*
OPO	Offender Prohibition Order
QCS	Queensland Corrective Services
QPS	Queensland Police Service
QPRIME	Queensland Police Records and Information Management Exchange

REFERENCES TO TERMS

For the purposes of this document

A relevant sexual offender means a person who:

- is a reportable offender under the CPOR Act;
- would have been a reportable offender under the CPOR Act if the person's sentence for a reportable offence had not ended before the commencement of section 5 of the CPOR Act;
- would be a reportable offender if all the reporting periods under section 8(d) of the CPOR Act had not ended.

Reportable offender means a person who:

- is required to report under the CPOR Act.

Recommendation 1

Combine the CPOPO Act and CPOR 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.

Response

Supported.

The CPOPO Act and the CPOR Act regulate the activities of offenders who have been convicted of sexual and other particular offences against children. While it is not uncommon for one piece of legislation to refer to or incorporate another to achieve its full effect, the CCC report highlights the difficulties of operating intrinsically linked processes across separate legislative regimes.

During the review of the CPOPO Act, the CCC identified that there was limited understanding of how the Acts link to provide a greater level of protection to children; that there was confusion around when a period of reporting for a reportable offender who is the subject of an OPO concludes; and that there are inconsistent penalty provisions for offences which were substantially similar.

The protection of children in our community is a paramount concern for this government. In this regard, the government supports the recommendation made by the CCC.

Combining the CPOPO Act and the CPOR Act provides an opportunity to not only address those inconsistencies and ambiguities identified through the CCC report, but to also strengthen the policing and criminal justice system response to those relevant sexual offenders who engage in concerning conduct.

The new legislation will retain the five year review period. The government notes the importance of regular review to ensure the legislative framework which supports offender reporting and monitoring in Queensland continues to be efficient and effective. A review of the new legislation will be undertaken by the CCC.

Recommendation 2

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

Response

Supported.

The government recognises the reporting status for this particular group of reportable offenders is not specifically stated in the legislation. While section 12 of the CPOPO Act states that an OPO remains in force for five years and takes effect from the day the notice is given to the offender, the linkage between the CPOPO Act and the CPOR Act in terms of the continued reporting status of an offender who is due to complete of a period of reporting, under the CPOR Act prior to the conclusion of an OPO, is not clearly defined.

Reportable offenders who are required to comply with an OPO pose an immediate risk to the lives and sexual safety of children. The government supports amending the legislation to state that a person who is a reportable offender and is the subject of an OPO will continue to report to police until the end of the reporting period currently determined under the CPOR Act or the end of an OPO whichever is the latter.

The ongoing scrutiny recommended by the CCC aligns with the purpose of the CPORA and is also similar to the approach taken in New South Wales, the Northern Territory and the United Kingdom

Recommendation 3

Amend the CPOPO Act to clarify the definition of concerning conduct.

Response

Supported.

The definition of concerning conduct will be amended to include the following:

- *to remove any doubt, it is declared that concerning conduct includes:*
  - *conduct which may or may not constitute a criminal offence;*
  - *conduct which may be a single act.*

In addition to clarifying the parameters of *concerning conduct*, the CCC identified a number of areas in the CPOPO Act where legislative guidance might be beneficial. In particular:

- replacing the words *nature **and** pattern of conduct* in section 8(1)(b)with *nature **or** pattern of conduct*;
- replacing all references in the CPOPO Act to *risk to the lives or sexual safety of children* with *risk to the lives or sexual safety of one or more children, or of children generally*;
- replacing the reference to *risk of committing a reportable offence against a child* in section 42(1)(b) with *risk to the lives or sexual safety of one or more children, or of children generally.*

The government supports introducing these clarifying measures.

The government notes the CCC's commentary regarding 'recent concerning conduct'. While the use of the term 'recent' forms part of the parameters which ensures that the behaviour which is raising concern is not only relevant in terms of the offender's previous preparatory and offending behaviour but also in terms of currency, concerns were raised by members of the QPS, the Queensland Police Union of Employees and the (then) Commission for Children and Young People and Child Guardian about the consistent application and definition of the term 'recent' by police and the courts.

The QPS and the QCS, as part of a joint working group, will review the processes associated with the application of the term 'recent', with a view to identifying any impediments which directly impact on the lives or sexual safety of children. The outcomes of this review are to be reported to the Minister within six months of this response.

The government supports the CCC's recommendation that the current threshold in relation to 'unacceptable risk' be retained and is of the opinion that the object of any new legislation should include a statement which articulates that any risk to the lives or sexual safety of children is unacceptable.

Recommendation 4

Amend, as a priority, section 7.19 of the QPS Operational Procedures Manual to include a simple explanation of the statutory law in the CPOR and CPOPO Acts, and guidance on when to apply for an OPO relative to other options the 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.

Response

Supported.

As a consequence of the CCC review, the QPS will amend relevant internal policy and training material regarding the management of offenders who come under the auspices of the CPOPO and CPOR Acts. The new policy and training will reflect the recommendations made by the CCC as supported by the government.

It is noted the CCC has recommended that recommendation four be dealt with as a matter of priority. In this regard, the QPS will issue an interim guideline to officers in line with recommendation four within six months of this response. The interim guideline will include a simple interpretation of the statutory law and provide guidance on the options available when responding to concerning conduct, to allow police officers to respond in a manner appropriate to the individual circumstances.

The interim guideline will remain in place until the legislative component of amalgamation of the two Acts has been completed.

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 OPO in any individual case.

Response

Supported in principle.

The government supports the principle of the CCC recommendation. However, it is considered that developing specific guidelines around commonly occurring conditions may inadvertently limit the scope of the prohibitions which are subsequently applied for. Prescribing a suite of conditions may undermine this process and may result in inappropriate restrictions.

The purpose of an OPO is to tailor prohibitions to a specific behaviour or set of behaviours which may pose a risk to the lives or sexual safety of children. These risk identifiers will be different for each offender and it is the responsibility of the applicant police officer to provide a nexus between the concerning conduct and the behaviour to be prohibited.

As an alternative means of achieving to the CCC recommendation, the QPS Operational Procedures Manual (OPM) will be amended to direct police officers to look for risk identifiers that are specific to a particular offender when considering the nature and scope of behaviours to be prohibited by an OPO. The amendment to the QPS OPM will be made within six months of the tabling of this response in Parliament.

The Queensland courts have advised that they will consider the merits of the recommendation.

Recommendation 6

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

Response

Supported.

As a consequence of the CCC review, the QPS will amend all internal policy and training with respect to the management and monitoring of offenders who come under the auspices of the CPOPO and CPOR Acts. The new policy and training will reflect the recommendations made by the CCC as supported by the government.

Where possible, new policy and training will be effected within six months of this response. Any new policies and training which is linked to a legislative response will be introduced with the commencement of the proposed regulatory regime supported in recommendation one.

Recommendation 7

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

Response

Supported in principle.

While the government supports the principle of the CCC recommendation, it is considered that the QPS Commissioner's Guidelines are sufficient as a supporting guide to the legislative provisions which dictate when information about a reportable offender can be disclosed. However, there is a discord between those guidelines and the internal policy of the QPS.

As an alternative means of achieving the CCC recommendation, QPS policy which supports the Commissioner's Guidelines will be amended. The new policy will provide clear guidance as to when the disclosure of information is lawful and appropriate. Given that this recommendation is linked to recommendation 11, the new policy will be implemented to coincide with the commencement of the new regulatory regime, supported in recommendation 1.

Recommendation 8

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

Response

Supported in principle.

While the government supports the principle of the CCC recommendation, the QPS has addressed these concerns in an alternative manner. In particular, the QPS has adopted regular checking through QPRIME to ensure that offenders who may meet the requirements for a reporting order under section 13 of the CPOR Act are identified in a timely manner.

This new practice as well as a 2014 amendment to section 13 to extend the period of time in which an application for a reporting order can be made to a court, has provided greater scope for police to collate the requisite evidence to support an application for a reporting order under the CPOR Act.

Recommendation 9

Establish a joint working group to review the processes used by the QPS and QCS 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.

Response

Supported.

The Minister will be responsible for establishing a working group to review current QPS and QCS processes, with a view to introducing efficient and effective regulatory practices.

The terms of reference, governance structure and composition of the review group will be agreed by the Minister in consultation with the Police Commissioner and Director-General, DJAG within three months of this response.

The working group will provide regular reports to the Minister detailing progress against the recommendations.

Recommendation 10

Amend the wording of the flag linked to the records of reportable offenders in 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 Registry.

Response

Supported in part.

While the government supports the principle of the CCC recommendation, the manner in which reportable offenders are flagged on the QPRIME system is appropriate taking into account the nature and use of the database. However, there is scope to improve awareness of reportable offenders at a local level. Accordingly, the QPS will review the current policy and training to ensure that the information that is recorded on the QPRIME system is relevant and comprehensive.

Recommendation 11

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

Response

Supported.

The government supports introducing legislation to improve information sharing practices. A joint working party represented by the QPS, QCS and other relevant government departments will identify the extent to which a prescribed entity should be able to or required to provide information to the Police Commissioner or the Director-General, DJAG about a reportable offender to assist with:

- determining whether an application for an OPO should be made; or
- the making of an OPO or a temporary OPO; or
- varying or revoking an OPO; or
- serving an application or an order; or
- investigating a breach of an OPO; or
- investigating a breach of any reporting obligations required under the legislation.

The legislative parameters which define who is required to provide information about an offender under the CPOPO Act and the CPOR Act is limited. The degree to which the definition of prescribed entity will extended to include those agencies detailed in section 159M of the *Child Protection Act 1999* and/or other State or Federal agencies will be discussed by the joint working party.

Information sharing between the QPS and QCS will be extended under the new legislation to allow a cohesive and holistic approach to reportable offender management.

Individuals or agencies who disclose information to either the Police Commissioner or the Director-General, DJAG about a reportable offender should be protected from liability in circumstances where the information is provided in good faith and without malice. Accordingly, the new legislation will provide adequate protection from liability to a person or agency who provides information regarding a reportable offender.

Recommendation 12

Amend section 7.18 of the OPM to improve information sharing about OPOs under sections 43 and 47 of the Act.

Response

Supported.

The government supports an amendment to section 7.18 of the QPS OPM to clearly articulate, when, and to whom, a police officer may disclose information about an OPO. The implementation of the new policy in the QPS OPM will coincide with the introduction of the legislative amendments which have been proposed in recommendation 11.

Recommendation 13

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 OPO;

(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; and

(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 OPO, or treat refusal as failure to comply with an OPO.

Response

Supported.

The government supports the introduction of legislation which provides police with the requisite tools to effectively manage reportable offenders in the community. The manner in which these new powers will be effected in the new legislation will be linked to an appropriate compliance framework to ensure reportable offenders are complying with all of the obligations that are attached to that status.

The government supports the CCC's recommendation that penalty provisions under the CPOPO Act should align with those in the CPOR Act. The new legislation will introduce a consistent penalty regime across all offences in these Acts.

Recommendation 14

Amend the CPOPO Act to align the offence provision with the penalty for failing to comply with CPOR Act reporting obligations.

Response

Supported.

The government supports the introduction of consistent penalty provisions across the offender reporting legislation. The new legislation, as supported in recommendation 1, will introduce a consistent penalty regime across all offences. The current penalty associated with failing to comply with an OPO will increase from a maximum of 2 years imprisonment to a maximum of 300 penalty units or 5 years imprisonment.

In line with the CCC's recommendation, the new legislation will also apply a consistent approach to the manner in which offences are dealt with. Accordingly, the offence of failure to comply with an OPO will be a crime that may be dealt with summarily. The maximum penalty for a summary conviction will be set at 200 penalty units or 3 years imprisonment which is consistent with the current penalty under the CPOR Act.

Recommendation 15

Amend the CPOPO Act and section 7.19 of the Queensland Police Service Operational Procedures Manual to clarify aspects of the civil application process, standard of proof and rules of evidence, and allow concurrent hearings.

Response

Supported.

CPOPO Act

The government supports the recommendation made by the CCC. In this regard, the new legislation as supported in recommendation one, will clearly articulate:

- the role of the *Uniform Civil Procedure Rules 1999* (UCPR) in all OPO proceedings;
- the standard of proof for all OPO applications and processes; and
- the rules of evidence which apply to all OPO proceeding.

The CCC report has highlighted the reluctance of courts to run concurrent proceedings on the basis that it may be interpreted as an abuse of process. The government supports the views cited in the CCC report, that concurrent proceedings may enable the prosecution to use the OPO proceedings to obtain fresh evidence and to test the veracity of its own evidence before the criminal proceedings occur. Allowing concurrent proceedings to occur closes a gap which allows reportable offenders to continue to engage in concerning conduct while associated criminal matters are being deal with. This is an important measure to ensure the protection of the lives and sexual safety of children.

Accordingly, the new legislation will specify that a civil application with an OPO can be dealt with concurrent with a proceeding for a criminal offence upon which the OPO application relies, similar to section 138 of the *Domestic and Family Violence Protection Act 2012* (DFVPA). The aim of this is to ensure that the matters raised in the civil proceedings are not used in the related criminal proceedings without the leave of the court presiding over the criminal proceedings, and this therefore protects the interests of those charged with a criminal offence, by placing limitations on the admissibility of the evidence. It also removes an impediment which may otherwise discourage a court from hearing the civil application before the criminal proceedings are finalised.

QPS Policy and Training

Section 7.19 of the QPS OPM will be amended to clarify the civil and criminal aspects of the CPOPO Act. The implementation of the new policy and training will coincide with the introduction of the legislative amendments associated with this recommendation.

Recommendation 16

Amend section 21 of the CPOPO Act to clarify the ambiguities about OPOs made by consent.

Response

Supported

The CCC report has highlighted a number of ambiguities with the application of section 21 of the CPOPO Act. In particular, whether:

- a consent order can be made for all applications and orders under the CPOPO Act;
- a magistrate is required to consider the matters in section 8 before making an OPO by consent, if it is not in the interest of justice to:
    - conduct a hearing; or
    - consider the matters listed in section 9;
- it would be useful to clarify what further criteria must be consider by the court when the interests of justice is not satisfied.

The government concurs with the CCC and supports the recommendation. Accordingly, the new legislation, as supported in recommendation one, will:

- clarify which OPO applications or orders can to be made by consent;
- clarify that a magistrate or court must consider the matters set in section 8(1) when deciding an application for an OPO by consent; and
- clarify what additional further criteria, if any, should be considered by the court when the interests of justice is not satisfied.

The CCC has suggested requiring a court to conduct a hearing to consider the matters in sections 8 and 9 when it is satisfied about the interests of justice criterion. Sections 8 and 9 of the CPOPO Act set the key criteria to determine an OPO application, including:

- whether the respondent is a relevant sexual offender and poses an unacceptable risk to children,
- the nature and scope of the respondent's previous offending behaviour,
- the effect of the order in comparison with the level of risk posed by the respondent or
- the extent to which the application will impact on the respondent's circumstances.

The government supports this suggestion.

Recommendation 17

Amend the CPOPO 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; and

(c) by incorporating protections similar to those contained in the *Domestic and Family Violence Protection Act 2012* or the *Evidence Act 1977*.

Response

Supported.

The CCC report has highlighted a lack of protections for child witnesses under the CPOPO Act. The CCC noted that whilst the provisions under section 9E and 21A of the *Evidence Act 1977* offer some protections for child witnesses, those protections do not preclude the cross-examination of child witnesses by an unrepresented respondent. While sections 21N and 21O of the *Evidence Act 1977* preclude the cross-examination of child witnesses in person by an unrepresented defendant, this is limited to certain criminal matters and does not extend to civil matters.

The government notes that the 2010 Australian Law Reform Commission report on family violence – *Family Violence – A National Legal Response* discussed the cross-examination of child witnesses by unrepresented respondents. In citing research undertaken by the New South Wales Law Reform Commission, the Australian Law Reform Commission noted the following: *To be personally cross-examined by the defendant was seen as having a negative impact on the complainant's ability to answer questions, thus affecting the quality and nature of the evidence received. This is likely to be amplified in those cases where the complainant and the defendant have, or have had, an intimate or family relationship.*

It is government's intent that children who are required to give evidence in any proceeding are not exposed to further trauma which may occur as a consequence of allowing their cross-examination by an unrepresented defendant. In this regard, the government supports the recommendation made by the CCC to amend the offender reporting legislation to preclude the cross-examination of a child witness by a respondent who is unrepresented.

To ensure that a defendant is not disadvantaged by the amendment, the CCC's recommendation that respondents be provided with the opportunity to obtain legal representation prior to the commencement of a proceeding is also supported. These recommendations will be reflected in the new legislation, as supported in recommendation one of this response.

The proposed amendments will consider the parameters of section 21O of the *Evidence Act 1997* and section 151 of the *Domestic and Family Violence Protection Act 2012*. Section 21O of the *Evidence Act 1977* requires a court to advise a defendant that he or she may not cross-examine a protected witness, which includes a person under the age of 16, and further requires the court to arrange for the defendant to be given assistance by Legal Aid for the cross-examination. Similarly, section 151 of the *Domestic and Family Violence Protection Act 2012* precludes the cross-examination of a child witness unless the respondent in the matter has

arranged for a lawyer to act either for the entire proceeding under that Act or for the purposes of cross-examination of the child witness.