Parliamentary Committees



Protecting Queenslanders from Violent and Child Sex Offenders Amendment Bill 2018

Report No. 32, 56th Parliament
Legal Affairs and Community Safety Committee
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Legal Affairs and Community Safety Committee

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Acknowledgements

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Abbreviations

Act (or DPSOA or DPSO Act)	*Dangerous Prisoners (Sexual Offenders) Act 2003*
BAQ	Bar Association of Queensland
Criminal Law Amendment Act (or CLAA)	*Criminal Law Amendment Act 1945*
FLP	fundamental legislative principle
LSA	*Legislative Standards Act 1992*
QAI	Queensland Advocacy Incorporated
QLS	Queensland Law Society

Chair's foreword

This report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Protecting Queenslanders from Violent and Child Sex Offenders Amendment Bill 2018.

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

On behalf of the committee, I thank those organisations who made written submissions on the Bill and those who appeared at the public hearing. I also thank our Parliamentary Service staff.

I commend this report to the House.

Peter Russo MP

Chair

Recommendation

Recommendation **2**

The committee recommends the Protecting Queenslanders from Violent and Child Sex Offenders Amendment Bill 2018 not be passed.

1 Introduction

1.1 Role of the committee

The Legal Affairs and Community Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility are:

- Justice and Attorney-General
- Police and Corrective Services
- Fire and Emergency Services.

The *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles.[2]

The Protecting Queenslanders from Violent and Child Sex Offenders Amendment Bill 2018 (Bill) was introduced into the Legislative Assembly and referred to the committee on 19 September 2018. The committee is to report to the Legislative Assembly by 19 March 2019.

1.2 Inquiry process

On 16 October 2018, the committee invited stakeholders and subscribers to make written submissions on the Bill. Three submissions were received (see Appendix A).

The committee received a public briefing on the Bill from Mr David Janetzki MP, Member for Toowoomba South, on 29 October 2018.

The committee received written advice from Mr Janetzki MP in response to matters raised in submissions, on 27 November 2018 and 20 February 2019.

The committee held a public hearing on 3 December 2018 to receive evidence from, and ask questions of, Mr Nick Collyer, Systems Advocacy, Queensland Advocacy Incorporated.

The submissions, correspondence from Mr Janetzki MP and transcripts of the briefing and hearing are available on the committee's webpage.

1.3 Policy objectives of the Bill

The objectives of the Bill are to:

- introduce a framework so that court-ordered Division 3 supervision orders are indeterminate rather than fixed term
- enable the Governor in Council to review a supervision order, and on the review, decide the supervision order no longer applies if the Governor in Council is satisfied the released prisoner is no longer a serious danger to the community
- establish 'indeterminate supervision orders' to enable supervision requirements to apply to a released repeat sex offender, by operation of law, and

1 *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

2 *Parliament of Queensland Act 2001*, s 93(1).

- ensure that paramount importance is given to the safety and protection of the community.[3]

1.4 Private Member consultation on the Bill

The explanatory notes state that: 'The LNP consulted the Queensland Law Society on the Bill'.[4] When introducing the Bill, Mr Janetzki MP advised that:

> *We have consulted various legal practitioners in formulating the approach contained in this bill. The Queensland Law Society was advised of the bill prior to our announcement over the weekend and was granted a briefing prior to the bill's introduction today.*[5]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

Recommendation

The committee recommends the Protecting Queenslanders from Violent and Child Sex Offenders Amendment Bill 2018 not be passed.

3 Explanatory notes, p 1.

4 Explanatory notes, p 2.

5 Queensland Parliament, Record of Proceedings, 19 September 2018, p 2599.

2 Examination of the Bill

This section of the report outlines the Bill's proposed amendments and discusses issues raised during the committee's examination of the Bill.

2.1 Amendments to *Dangerous Prisoners (Sexual Offenders) Act 2003*

The Bill proposes to amend the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Act) for particular purposes.

2.1.1 Objects of the Act

The Bill proposes to amend the objects of the Act.

2.1.1.1 Current law

Section 3 of the Act provides that the objects of the Act are:

(a) *to provide for the continued detention in custody or supervised release of a particular class of prisoner to ensure adequate protection of the community; and*

(b) *to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation*.

2.1.1.2 Proposed amendments

Clause 3 of the Bill proposes to amend section 3 of the Act by omitting the word 'adequate' and replacing it with the words: '...the safety and…' The explanatory notes advise that: '…the word adequate… implies a lower threshold than paramount'.[6]

Clause 4 proposes to insert new section 3A 'Safety and protection of community paramount in decisions under this Act' providing that: 'An entity making a decision under this Act must give paramount consideration to the safety and protection of the community'. The explanatory notes state that: 'These provisions reflect the principles introduced in Victoria's recently introduced legislation, the *Serious Offenders Act 2018*'.[7]

2.1.1.3 Issues raised in submissions

In relation to the proposed amendment of section 3 of the Act, the Bar Association of Queensland (BAQ) considered the existing wording to be appropriate:

> *It is not apparent to what degree (if any) the change to the object of the Act to ensure "*the safety and protection of the community*" would alter the operation of the DPSO Act. Given the substantial body of jurisprudence established under the existing object of the DPSO Act, it is inadvisable, in the Association's view, to alter the object of the Act without a substantial reason for doing so.*[8]

With respect to the proposed insertion of new section 3A into the Act, BAQ expressed the view that:

> *…the determination of community expectations and finding an appropriate balance between the competing considerations of the liberty of the person and community protection in any particular case can be given effect to by the judiciary, without the need to designate that the safety and protection of the community must be considered paramount over other competing considerations.*[9]

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6 Explanatory notes, p 3.

7 Explanatory notes, p 2.

8 Submission 1, p 2.

9 Submission 1, p 2.

Similarly, the Queensland Law Society (QLS) submitted that:

> *…the job of balancing competing interests of community safety and the liberty of an individual appropriately lies with the court. In our view, we do not think that it is necessary to mandate that paramount consideration be given to the safety and protection of the community.*

2.1.1.4 Member's response

In response to BAQ's submissions on clause 4, Mr Janetzki MP commented that:

> *The proposed additional provision aims to unambiguously emphasise that the safety of the community is paramount in making any decision. Clause 4 aligns with section 5 of Victoria's recently introduced* Serious Offenders Act 2018 *(Vic), which provides that 'in making any decision under this Act, a person or body must give paramount consideration to the safety and protection of the community'.*[10]

In response to the issues raised by QLS, Mr Janetzki MP stated that clause 4 aims to unambiguously emphasise that the safety of the community is paramount in making any decision:

> *Clause 4 mirrors section 5 of Victoria's* Serious Offenders Act 2018*, which provides that 'in making any decision under this Act, a person or body must give paramount consideration to the safety and protection of the community'.*[11]

2.1.2 Supervision orders

The Bill proposes to amend provisions of the Act relating to supervision orders.

2.1.2.1 Current law

'Division 3 orders' are defined in the Act to mean a 'continuing detention order' or a 'supervision order'.

A 'supervision order' means:

(a) a supervision order made under section 13(5)(b), or

(b) a further supervision order, being an order made under section 19D.

Section 13 of the Act applies if, on the hearing of an application for a division 3 order, the court is satisfied the prisoner is 'a serious danger to the community' in the absence of a division 3 order.[12]

Subsection (2) provides that a prisoner is a serious danger to the community, if there is an unacceptable risk that the prisoner will commit a serious sexual offence if the prisoner is released from custody or if the prisoner is released from custody without a supervision order being made.

2.1.2.2 Proposed amendments

Clause 5 proposes to amend section 13 to include new subsections (4A) and (4B) which provide that:

- in deciding whether there is an unacceptable risk the court must not have regard to 'the means of managing the risk' or 'the likely impact of a division 3 order on the prisoner', and
- when making a division 3 order, the court may decide that a prisoner is a serious danger to the community even if the likelihood that the prisoner will commit a serious sexual offence is less than more likely than not.

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[10] Mr David Janetzki MP, Member for Toowoomba South, correspondence dated 27 November 2018, p 1.

[11] Mr David Janetzki MP, Member for Toowoomba South, correspondence dated 20 February 2019, pp 1-2.

[12] Section 13(1), *Dangerous Prisoners (Sexual Offenders) Act 2003.*

2.1.2.3 Issues raised in submissions

In BAQ's view, the express removal of any consideration of the 'means of managing the risk' or the 'likely impact of a division 3 order on the prisoner' is antithetical to the proper administration of justice:

> *The practical ability to engage a prisoner in the community or administer an order are appropriate considerations and consideration of them is necessary in order to make an assessment of whether the community can be protected from risk.*[13]

The QLS shared similar views, submitting that the matters proposed to be removed from consideration by a court are important considerations that should inform the making of division 3 orders:

> *It is essential to consider these matters to ensure the objects of the DPSOA are achieved. To remove these considerations is at odds with the proper administration of justice.*
>
> *The drafting in proposed 4B of "... is less than more than likely than not" is not sufficiently clear or precise for legislation of this nature.*[14]

2.1.2.4 Member's response

In response to BAQ's opposition to the express removal of any consideration of the 'means of managing the risk' or the 'likely impact of a division 3 order on the prisoner', Mr Janetzki MP commented that:

> *It is necessary to reaffirm that section 13(4) of the DPSOA, which clause 5 amends, contains the factors the court must consider in determining whether the prisoner is a serious danger to the community. The safety of the community is paramount, and to achieve this principle, it is necessary to expressly exclude the court from turning its mind to the impact the order will have on the prisoner.*
>
> *Clause 5 of the Bill aligns itself with section 14(2)(b) of the* Serious Offenders Act 2018 *(Vic), which expressly provides what the court must not have regard to, including 'the means of managing the risk' and 'the likely impact of a supervision order on the offender'.*[15]

2.1.3 Period of supervision order

2.1.3.1 Current law

Section 13A(1) provides that, if the court makes a supervision order, the order must state the period for which it is to have effect. Subsection (2) specifies certain matters a court must not have regard to when fixing the period.[16] Subsection (3) provides that the period can not end before 5 years after the making of the order or the end of the prisoner's period of imprisonment, whichever is the later.

2.1.3.2 Proposed amendments

Clause 6 proposes to omit section 13A, so that a court must not fix a period to the supervision order.[17]

2.1.3.3 Issues raised in submissions

The BAQ considered the fixing of the period of a supervision order to be an important safeguard:

> *There are provisions currently in place that allow for the extension of orders in appropriate cases. This framework ensures appropriate judicial consideration is given to any application to extend orders. Because of the length of time the DPSO Act has now been in operation, Queensland courts*

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13 Submission 1, pp 2-3.

14 Submission 3, p 4.

15 Mr David Janetzki MP, Member for Toowoomba South, correspondence dated 27 November 2018, p 1.

16 Namely, whether or not the prisoner may become subject of an application for a further supervision order or a further supervision order.

17 Explanatory notes, p 3.

> *are now being called upon to consider the making of further orders in appropriate cases.* Fardon *is illustrative of the operation of the current framework where the Court of Appeal overturned a decision of the Supreme Court of Queensland not to set a hearing for the determination of whether a further supervision order was required.*[18]

Similarly, QLS did not support the removal of section 13A, submitting that the current legislative requirement to fix the period of supervision orders must be maintained:

> *To remove this requirement would remove an important safeguard, preventing the indefinite detention of individuals. The provision also sets out the mechanism by which further supervision orders may be made, following appropriate judicial consideration on whether an application for a further supervision order should be granted.*[19]

2.1.4 Effect of supervision order

2.1.4.1 Current law

Section 15 provides that a supervision order or interim supervision order has effect in accordance with its terms:

(a) on the order being made or on the prisoner's release day, whichever is the later, and

(b) for the period stated in the order.

2.1.4.2 Proposed amendments

The Bill proposes consequential amendments to remove references to a supervision order from section 15 (schedule 1) and inserts new section 14A 'Effect of supervision order' (clause 7). The explanatory notes state that:

> *Clause 7 inserts a new provision into the* DPSOA *which provides that a supervision order has effect in accordance with its stated terms. The supervision order applies at the time the prisoner is released or the date the order is made, whichever is the later. The supervision order continues until such time the Governor in Council decides under s 19B(4) that the supervision order no longer applies to the released prisoner.*[20]

2.1.4.3 Issues raised in submissions

The BAQ raised concerns about the constitutionality of the Bill, submitting that clause 7 proposes that:

> *…all existing supervision orders (that under the DPSO Act have been ordered by a judge to be for specific period) be automatically converted into indefinite orders that only the Executive has the ability to remove. The Association is concerned that granting the Executive power to determine when a supervision order is extinguished, particularly, in relation to pre-existing judicially created orders for supervision of a determinative length may render the legislation unconstitutional. This change at least creates a risk that the legislation would be held to offend the* Kable *principle.*[21]

The QLS did not support proposed section 14A, conveying concerns similar to those raised by BAQ:

> *In our view, granting the Executive the power to determine when a fixed-term judicial supervision order may be extinguished, might not be constitutionally valid or accord with the principle identified in* Kable v Director of Public Prosecutions (NSW) *(1996) 189 CLR 51.*

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18 Submission 1, p 3.

19 Submission 3, p 4.

20 Explantory notes, p 3.

21 Submission 1, p 3, including a reference to *Kable v Director of Public Prosecutions (NSW)* [1996] HCA 24; (1996) 189 CLR 51.

> *The legislative provisions discussed in* Pollentine v Bleijie *do not confer upon the Executive the power to compel courts to make certain orders. However, proposed section 14A provides the Executive with the power to automatically convert all existing judge made supervision orders to indefinite orders that can only be extinguished by the Governor in Council.*[22]

Queensland Advocacy Incorporated (QAI) noted that the Bill potentially departs from fundamental legislative principles because:

> *…it mandates administrative rather than judicial power to review indeterminate supervision, undermining the separation of powers and the necessary checks and balances critical to the effective operation of our Westminster-based political system.*[23]

2.1.4.4 Member's response

Mr Janetzki MP made the following response:

> *The BAQ and QAI have raised concerns about the constitutionality of the Bill with respect to granting the Governor in Council the power to determine when a supervision order ceases to have effect. The Bill reflects the principles contained in section 18 of the* Criminal Law Amendment Act 1945 *(CLAA).*
>
> *In a recent High Court decision,* Pollentine v Bleijie *[2014] HCA 30, the High Court held that section 18 of the CLAA was not invalid on the ground that it was contrary to Chapter Ill of the Constitution, by way of infringing the Kable principle. Section 18 of the CLAA empowers the court to direct an offender found guilty of an offence of a sexual nature committed upon or in relation to a child to be detained for an indeterminate period. The offender cannot be released until the Governor in Council is satisfied on the report of 2 medical practitioners that it is expedient to release the offender.*
>
> *The court emphasised that while a court may direct the detention but not the release of an offender under section 18, the court has discretion whether to direct detention. Similarly, under the Bill, the court still is the only entity with the discretion to impose a supervision order.*
>
> *The court also reasoned that the release of an offender was not subject to the unconfined discretion of the Executive and does not lack sufficient safeguards. Rather, a decision to release is dependent upon medical opinion about the risk of an offender reoffending, and the decision is subject to judicial review. The same safeguards are present under the Bill.*[24]

2.1.5 Reviews of supervision orders

2.1.5.1 Current law

Part 2, division 4A 'Extending supervised release' consists of the following sections:

- section 19B 'Attorney-General may apply for further supervision order'
- section 19C 'Requirements for application'
- section 19D 'Application of provisions for division 3 orders'
- section 19E 'Fixing of period of further supervision order', and
- section 19F 'Effect of further supervision order'.

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22 Submission 3, p 5.

23 Submission 2, p 4. See section 3 of this report for further consideration of issues of fundamental legislative principle relating to the Bill.

24 Mr David Janetzki MP, Member for Toowoomba South, correspondence dated 27 November 2018, pp 1-2.

2.1.5.2 Proposed amendments

Clause 8 proposes to omit Part 2, division 4A and replace it with a new division 4A 'Reviews of supervision orders'.

New division 4A, consisting of new sections 19B-E, details when the Governor in Council must review supervision orders:

- In relation to a released prisoner subject to a supervision order made after the commencement of the Act, the Governor in Council must review the released prisoner's supervision order 5 years after the order is made by the court, with subsequent annual reviews thereafter.[25]
- On the review, if the Governor in Council is satisfied that the released prisoner is no longer a serious danger to the community, the Governor in Council may decide that the supervision order no longer applies to the released prisoner.[26]
- In relation to a released prisoner currently subject to a supervision order made before the commencement of the Act, that is, if the period fixed under repealed section 13A has not ended on commencement, the Governor in Council must review the supervision order during the last 6 months of the released prisoner's supervision order.[27]
- On the review, if the Governor in Council is satisfied that the released prisoner continues to be a serious danger to the community, the Governor in Council may decide that the supervision order continues in accordance with its terms and until the Governor in Council decides that it no longer applies to the released prisoner.[28]
- There must be subsequent annual reviews while a released prisoner's supervision order continues to have effect.[29]

New section 19D provides that, in deciding whether a released prisoner is a serious danger to the community (which relates to reviews of supervision orders made both before and after commencement), the Governor in Council must have regard to the matters mentioned in section 13(4)(aa) to (j) in the Act and any report produced for the review under new section 19E.

New section 19E provides that, for the purposes of the review, the released prisoner must be examined by 2 psychiatrists.

2.1.5.3 Issues raised in submissions

The BAQ considered the periodic review of supervision orders made after commencement, as provided for in the proposed section 19B, after the first five years and each year, thereafter, would provide some kind of safeguard against unduly long orders:

> *These repetitive reviews would, however, need to be both thorough and expedited given the number of orders that would need to be reviewed. The current system of reviews takes considerable time and effort and is done when the Executive has determined that there is a need for the Attorney-General to make an application for a further order at the expiration of the fixed period. The Association is concerned that to require reviews of every order, rather than allowing*

[25] Proposed section 19B(1)-(3).

[26] Proposed section 19B(4).

[27] Proposed section 19C(1)-(3).

[28] Proposed section 19C(4).

[29] Proposed section 19C(5).

them to cease in the absence of an application to extend them, would in many instances be unnecessary overreach.[30]

The QLS was concerned about the financial and administrative burden that would be created by proposed section 19B(2): 'In our view, it is more appropriate to allow supervision orders to come to an end, unless an application to extend a supervision order has been made'.[31]

In relation to the proposed provision about reviews (section 19D), BAQ argued that the Bill is unclear about the practical manner by which reviews would be conducted by the Governor in Council:

The proposed legislation does not specify what material would be considered beyond that referred to in s 19D(2), whether a hearing would be conducted with an opportunity to have any psychiatric evidence tested under cross-examination, and whether legal representation would be allowed.[32]

Similarly, the QLS was concerned by the lack of clarity provided in the Bill about the process and methodology to be used by the Governor in Council in conducting reviews:

It is unclear what types of reports will be adduced and whether the person subject to the supervision order will have the opportunity to be heard. If a hearing takes place, we would strongly recommend that the person subject to the supervision order will have the opportunity to test the evidence and be legally represented. Failure to provide such safeguards does not accord with the rules of natural justice and procedural fairness.[33]

2.1.5.4 Member's response

In response to the issues raised, Mr Janetzki MP submitted that there would not be a significant change in the amount of resources required to undergo a 5-year periodic review of a supervision order:

Currently, the Attorney-General must decide whether to make an application for a continuing supervision order within 6 months of the supervision order ceasing. In doing so, it would necessary for the Attorney-General to determine whether the released prisoner remains a serious danger to the community. Such an assessment would also entail considerable time and effort to ensure that proper consideration is given to the level of risk of reoffending and the safety of the community. The requirement that every released prisoner be examined by 2 psychiatrists every 5 years will increase the workload for reporting psychiatrists, however this provision is necessary to safeguard the released prisoners from unnecessary supervision.

Clause 8, section 19D(2) is unambiguous in its application. That is, the Governor in Council can only have regard to the same factors that the court can have regard to when deciding whether a released prisoner is a serious danger to the community.[34]

2.1.6 Definitions

2.1.6.1 Proposed amendments

Clause 9 proposes to insert new section 43AAA (before existing section 43AA) in Part 4A 'Offences' to include definitions for 'released prisoner' and 'relevant order'.

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30 Submission 1, p 3.

31 Submission 3, p 5.

32 Submission 1, p 3.

33 Submission 3, pp 5-6.

34 Mr David Janetzki MP, Member for Toowoomba South, correspondence dated 27 November 2018, p 2.

2.1.7 Indeterminate supervision orders for repeat offenders

2.1.7.1 Proposed amendments

Clause 10 proposes to insert a new Part 4B 'Indeterminate supervision orders for repeat offenders'

'Repeat offender' is defined to mean an offender who is convicted of two or more serious sexual offences committed by the offender when the offender was an adult.[35]

Division 2 applies to a repeat offender who is: a prisoner detained in custody serving a period of imprisonment, or subject to a division 3 order.

New section 43AL provides that a repeat offender is, by operation of law and without specific order, subject to the following requirements:

(a) the requirement that the repeat offender wear a device for monitoring the repeat offender's location (a 'monitoring device requirement'), and

(b) the following requirements (the 'other requirements') —

(i) a requirement that the repeat offender must not, without reasonable excuse, be within 200m of a school

(ii) a requirement that the repeat offender must not live within 1km of a place, where children are regularly present, published on the department's website, such as schools, parks and shopping centres

(iii) a requirement that the repeat offender report to a corrective services officer once every month, and

(iv) a requirement that the repeat offender must not leave or stay out of Queensland without the permission of a corrective services officer.

The above requirements are an 'indeterminate supervision order'.

An indeterminate supervision order takes effect for a repeat offender who is a prisoner, on the prisoner's release day, or for a repeat offender subject to a division 3 order, on the day on which the division 3 order ends.[36]

The repeat offender is subject to the 'monitoring device requirement' of the indeterminate supervision order indefinitely.[37] The 'other requirements' will apply to the repeat offender until the Attorney-General decides by review under new section 43AQ(2) that the other requirements no longer apply.[38]

Division 3 provides for the review of indeterminate supervision orders.

According to the explanatory notes:

> *A released repeat offender must be examined once every 3 years by 2 psychiatrists for the purposes of ascertaining the level of risk that the repeat offender will commit an offence of a sexual nature. The Attorney-General must give the examination report to the repeat offender. The Attorney-General may decide the other requirement still apply if the Attorney-General decides that subjecting the repeat offender to the indeterminate supervision order continues to be in the public interest.*[39]

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35 Proposed section 43AJ.

36 Proposed section 43AM(1).

37 Proposed section 43AM(2).

38 Proposed section 43AM(3).

39 Explanatory notes, p 4, detailing proposed sections 43AO-AQ.

Division 4 provides for the effect of a division 3 order on an indeterminate supervision order. The explanatory notes state that: 'The Attorney-General may still apply to the court for a division 3 order in relation to a prisoner. These divisions do not affect the power of the court to make a division 3 order in relation to a prisoner'.[40]

2.1.7.2 Issues raised in submissions

Definition of 'repeat offender'

The BAQ observed that the definition of 'repeat offender' would include a person who has committed two serious sexual offences on the same day and dealt with in the same sentence proceeding.[41] The QLS stated that it was exceptionally concerned by the broad definition and the unintended consequences that might occur by application of the definition provided in the Bill.[42] Similar to BAQ, QLS noted that '…a repeat offender might include an individual who has been convicted of two serious sexual offences within the same proceeding'.[43]

QAI stated that the Bill: 'Covers too broad a range of repeat offences and fails to distinguish between relatively minor repeat offences and serious repeat offences'.[44]

Effect of indeterminate supervision order

The BAQ observed that the effect of indeterminate supervision orders is that, after their release, 'repeat offenders' will automatically be required to wear a monitoring device, report to a corrective services officer every month, not leave Queensland without the permission of a corrective services officer, and comply with conditions relating to where they are permitted to live:

> *Other than the wearing of a monitoring device, these requirements are to continue indefinitely until the Attorney-General decides to remove the order. In the case of a monitoring device, the proposed Part 4B provides no means for this requirement to cease, such that every person caught by the provision will be required to wear a monitoring device for the rest of their life.*
>
> *The mandatory requirements in indeterminate supervision orders appear to the Association to be too general in their scope, especially when one considers the number and diversity of the offenders likely to become subject of the new indeterminate supervision orders. For example, requiring monthly reporting conditions by the proposed s 43AL(1)(iii) would unnecessarily reduce the administrative authority of Queensland Corrective Services to determine the appropriate level of contact in any given instance.*
>
> *Putting aside questions of advisability, there is a real question about the need for the creation of this new Part in the DPSO Act, given the existing obligations upon reportable offenders under the Child Protection Act. This Act is designed exactly for the purpose of allowing authorities an appropriate level of awareness of an offender's movements and alterations to appearance.*
>
> *In addition, s 13A of the Child Protection Act allows the Police Commissioner to make an application to a court for a prohibition order in respect of a relevant sexual offender who has engaged in concerning conduct. Such an order may, pursuant to s 13FA of the Child Protection Act, require a respondent to wear a tracking device, reside at a particular residence and submit to psychological treatment.*[45]

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40 Explanatory notes, p 4.

41 Submission 1, p 3.

42 Submission 3, p 6.

43 Submission 3, p 6.

44 Submission 2, p 3.

45 Submission 1, p 4.

Additionally, QLS did not support the mandatory imposition of the obligations under proposed section 43AL for all repeat offenders:

> *The view of the Society in relation to mandatory sentencing is well-established. In accordance with this view, the Society has been a long-standing advocate for judicial discretion. The reasons for our support for judicial discretion are based on cogent evidence and are clearly detailed in our mandatory sentencing policy paper. In line with our opposition to mandatory sentencing, we called for a commitment to refrain from the creation of new mandatory sentencing regimes and to take steps to repeal current mandatory sentencing regimes in our 2015 and 2017 Call to Parties Statements.*
>
> *It is in line with this position that the Society re-emphasises the need to maintain flexibility in the sentencing process when sentencing an offender for an offence arising from the death of a child. This requires the preservation of judicial discretion in sentencing for these offences.*
>
> *Mandatory sentencing regimes undermine sentencing guidelines as set out in section 9 of the* Penalties and Sentences Act 1992*. The* Penalties and Sentences Act 1992 *states that sentences may be imposed on an offender to an extent or in a way that is just in all the circumstances. In circumstances where judicial discretion is fettered by the mandating of a sentence, the court is unable to impose a sentence that is just in all the circumstances and is transparent.*
>
> *It is essential that judicial discretion be maintained for sentencing in all criminal matters, including those arising from the death of a child. A mandatory sentence, by definition, prevents a court from fashioning a sentence appropriate to the facts of the case.*[46]

The QLS contended that the obligations detailed in proposed section 43AL are onerous and that the Bill: '…is unclear on whether these requirements will come to an end or whether an individual will be subject to these obligations for the rest of their lives'.[47]

Despite supporting in-community monitoring of people who may be a danger to others because of repeat sexual offences, QAI considered that the monitoring should be court ordered, and not be indefinite unless certain level of risk has first been assessed and determined:

> *Indiscriminate monitoring 'until they die' is contrary to natural justice, contrary to the principle that any offender must be allowed the possibility of rehabilitation without undue constraint, and does not adequately safeguard the person's rights and freedoms when balanced against the rights and freedoms of others. It amounts to a form of additional punishment that is offensive to the fundamental tenets of our law, and contrary to the obligations assumed by Australia under the ICCPR.*[48]

QAI submitted that the Bill relies on the deployment of monitoring devices that may be either inefficient or do not function and denies offenders the privacy required if they are ever to rehabilitate.[49] It recommended that legislation takes into account the particular circumstances of offenders who have disabilities:

> *Where responsibility for the monitoring and management of offenders who have disabilities is not aligned with a responsibility for the provision of disability support care and services, the result may be detrimental to the person's care and compromise the protection of the community.*
>
> *…*

46 Submission 3, pp 6-7.

47 Submission 3, p 6.

48 Submission 2, p 3.

49 Submission 3, p 3.

To impose permanent monitoring conditions is to deny them the most basic civil rights, to again treat them as non-persons, and provides no guarantee of reduced recidivism. Instead of focusing on models that are primarily restrictive and punitive, we recommend that Queensland considers the need for:

- *Better-informed risk assessment, and*
- *more support and treatment programs for high-risk offenders.*[50]

Examination of repeat offender

Commenting on the requirement in proposed section 43AO, which requires that each person subject to an indeterminate supervision order submit to two psychological examinations at least every three years, BAQ submitted that:

The cost of having two psychiatrists examine each repeat offender on an indeterminate supervision order at least once every three years would be costly and burdensome on the administering agency and affiliated agencies.[51]

Review of supervision order by Attorney-General

The BAQ further noted that, under proposed section 43AQ: '…the Attorney-General be the sole decision maker as to whether a person is subject to continuing obligations, other than the monitoring device which can never be removed'.[52]

2.1.7.3 Member's response

In response to issues raised in relation to proposed section 43AO, which requires repeat offenders to be examined once every 3 years, Mr Janetzki MP stated that it is an important safeguard for repeat offenders subject to an indeterminate supervision order:

The psychiatric examination is necessary to assist the Attorney-General in the decision-making process and will also ensure only those repeat offenders who present an unacceptable risk will continue to be supervised.[53]

In response to the issues raised by QLS, Mr Janetzki MP stated that:

Clause 10 defines a repeat offender to mean 'an offender who is convicted of two or more serious sexual offences committed by the offender when the offender was an adult. 'Serious sexual offence' is further defined in the DPSO Act to mean an offence of a sexual nature, whether committed in Queensland or outside Queensland involving violence; or against a child; or against a person, including a fictitious person represented to the prisoner as a real person, whom the prisoner believed to be a child under the age of 16 years.[54]

2.1.8 Review of amendments

2.1.8.1 Proposed amendments

Clause 11 inserts a new provision into the Act providing that the amendments to the Act included in the Bill must be reviewed 3 years after commencement.[55]

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50 Submission 3, p 4 and 8.

51 Submission 1, p 4.

52 Submission 1, p 4.

53 Mr David Janetzki MP, Member for Toowoomba South, correspondence dated 27 November 2018, p 2.

54 Mr David Janetzki MP, Member for Toowoomba South, correspondence dated 20 February 2019, p 2.

55 Proposed section 51A.

2.1.8.2 Issues raised in submissions

Although agreeing that a review of the operation and impact of the amendments which the Bill would effect, were it to be enacted, is an appropriate proposal, BAQ submitted that:

> *…given that the review would essentially be in relation to the actions of the Attorney-General under the legislation, consideration should be given to the review being conducted by a person or body other than the Attorney-General.*[56]

2.1.9 Transitional provisions and consequential amendments

2.1.9.1 Proposed amendments

Clause 12 proposes to insert new Part 10, including transitional provisions, after section 65.

The explanatory notes state that:

> *Clause 12 clarifies that a reference to a supervision order includes a reference to a further supervision order made under this Act before the commencement. Clause 12 also clarifies that ss 3A and 13 apply to a decision relating to an application made but not decided before the commencement (an existing application). Clause 12 also withdraws any application for a further supervision order that has been made but not finally dealt with. In addition, when applying part 4B, it does not matter whether any or all the two or more serious sexual offences were committed, or the offender was convicted, before or after the commencement of the Act.*[57]

Schedule 1 'Consequential amendments' provides for:

> *…the omission and insertion of words and phrases contained in the* DPSOA*. The Schedule provides for new definitions, including 'indeterminate supervision order', 'monitoring device requirements', 'other requirements', 'released prisoner', 'relevant order', 'repeat offender' and 'supervision order'.*[58]

2.1.9.2 Issues raised in submissions

The BAQ submitted that the effect of the proposed transitional provisions is that an offender who has committed two or more serious sexual offences will be considered a repeat offender, regardless of when the offences were committed:

> *The repeat offender will then be subject to an indeterminate supervision order if they are someone who is also "*a prisoner detained in custody serving a period of imprisonment or subject to a division 3 order*".*
>
> *The combination of proposed ss 43AJ, 43AK and 69 has the effect that an offender who committed two serious sexual offences (even against an adult) as a 18 year old in 1980, commits no further sexual offences, but who enters custody for entirely non-sexual offences (such as fraud) in 2019 would be a repeat offender, for the purposes of the Act, and would be subject to an indeterminate supervision order upon release from custody. That person would have to wear a monitoring device for the rest of their life. They also could not be within 200 metres of a school, could not live within one kilometre of a place where children are regularly present such as a park or shopping centre, would be required to report to a corrective services officer every month, and not leave Queensland without permission until the order is no longer considered necessary. This would seem to be a period of at least three years, as when the repeat offender is required to be assessed by two psychiatrists, the Attorney-General would be obliged to consider those reports.*[59]

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56 Submission 1, pp 4-5.

57 Explanatory notes, p 4.

58 Explanatory notes, p 4.

59 Submission 1, p 5.

2.1.10 General views of submitters

The BAQ respectfully submitted that:

> *…the existing framework for the preventative detention and supervision of those who have been convicted of serious sexual offences has been shown to be appropriate and adequate for the task of protecting the community and properly bestows the responsibility for assessment of risk on the judges tasked with considering evidence that is presented and tested in court, rather than upon the Executive.*[60]

In its conclusions, BAQ stated that it possessed:

> *…concerns about the effect of the proposed Bill upon the existing balance of the interests of personal liberty and the protection of the community under the present system of preventative detention and supervision of offenders.*
>
> *The Association also has concerns that the procedures brought into place by the Bill would be expensive and would impose a considerable (and, in the Association's view) unnecessary burden upon general components of the Queensland justice system including resources of the community corrections system which currently contributes to the protection of the Queensland community by working to enhance the rehabilitation of former prisoners and by reducing the number of prisoners who lapse into reoffending.*
>
> *In the Association's view, the Bill would also have the detrimental effect of allocating large quantities of community corrections resources in the manner provided in the Bill. Not only has this the potential to require increased taxation to pay for the necessary resources, it also has the effect of making resource allocation decisions by legislative fiat. Resource allocation decisions of this kind are better made at a level where careful adjustments can be made according to the particular needs of the particular case.*[61]

In conclusion, QAI supported:

> *…the intent of the bill to provide protection to the community and peace of mind to victims. These goals, however, must be balanced with fundamental rights that we all share in a democratic society: to privacy, to freedom from unreasonable government interference, to due process.*
>
> *People with disability who have been convicted of sexual offences often have terrible childhood histories of abuse and neglect in segregated environments, and have been denied even the possibility of normal intimate relations by a society that sees them as non-persons, not worthy of education or a normal life in the community. To impose permanent monitoring conditions is to deny them the most basic civil rights, to again treat them as non-persons, and provides no guarantee of reduced recidivism…*[62]

The QLS observed that the Bill seeks to amend the Act, relying on the High Court decision of *Pollentine v Bleijie* [2014] HCA 30. However, the QLS held '…significant concerns that aspects of the current Bill may not be constitutionally valid as it goes beyond the scope and structure of the grounds described in *Pollentine*'.[63]

2.2 Constitutionality

As can be noted in the earlier sections of this report, submissions have raised concerns as to the constitutional validity of the Bill.

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60 Submission 1, p 2.

61 Submission 1, p 5.

62 Submission 2, pp 7-8.

63 Submission 3, p 1.

2.2.1 Issues raised in submissions

The QLS observed that in the High Court decision of *Pollentine v Bleijie* [2014] HCA 30 the Court did uphold the constitutional validity of section 18 of the Criminal Law Amendment Act and deemed the provision did not infringe the principle identified in *Kable v Director of Public Prosecutions* (NSW) (1996) 189 CLR 51.[64]

The QLS further submitted that, in that regard, the High Court dealt with a number a matters relating to that legislation, including the key issue of whether the legislation was an impermissible delegation of the sentencing task of the Court, and therefore inconsistent with the institutional integrity of the Court.[65] After citing and reproducing paragraphs 43 to 45 of the unanimous judgment, the QLS summarised as follows:

> *In short compass, the two key features the Court required for validity on implementing a protective arrangement is that:*
>
> - *the court must not be bound or compelled by legislation to make the order; and*
> - *the over-riding condition for determination of release must be the 'danger to the community' based on medical opinion on the reduction of risk of reoffending.*[66]

The QLS stated that there a number of aspects where the Bill goes beyond those considerations and significant constitutional concerns are raised.[67] In its view, these include aspects of clauses 5 and 6 of the Bill and proposed sections 19C, 19D, 43AL, 43AM(3) and 43AQ.[68]

2.2.2 Member's response

In response to the issues raised by QLS, Mr Janetzki MP referred to clause 19D of the Bill, which:

> *...ensures the condition for determination of release is reliant on, among other things, medical opinion on the reduction of risk of reoffending.*
>
> *Clause 5 mirrors Victoria's* Sex Offender Act 2018*, which expressly provides that the court must not have regard to the means of managing the risk or the likely impact of a supervision order on the offender.*
>
> *The proposed section 19D(2) is unambiguous in its application. That is, the Governor in Council can only have regard to the same factors that the court can have regard to when deciding whether a released prisoner is a serious danger to the community.*
>
> *The proposed section 43AO, which requires repeat offenders to be examined once every 3 years, is an important safeguard for repeat offenders subject to an indeterminate supervision order. The psychiatric examination is necessary to assist the Attorney-General in the decision-making process and will also ensure only those repeat offenders who present an unacceptable risk will continue to be supervised.*[69]

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64 Submission 3, p 1.

65 Submission 3, p 1.

66 Submission 3, p 2.

67 Submission 3, p 2.

68 Submission 3, pp 2-3.

69 Mr David Janetzki MP, Member for Toowoomba South, correspondence dated 20 February 2019, p 1.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

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

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

The committee has examined the application of the fundamental legislative principles (FLPs) to the Bill. The committee brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

3.1.1.1 Proportionality and personal liberty

Clauses 8 and 10 introduce a review of supervision orders and impose requirements on a person subject to the order, including requiring a person to wear a monitoring device, to report to a corrective services officer monthly, and seek permission to leave or stay out of Queensland. Conditions can also restrict places where the person can live and frequent.

Potential issues of fundamental legislative principle

Proportionality

Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation.

Personal liberty

The right to personal liberty is the most elemental and important of all common law rights.[70]

A person subject to an order will have a number of requirements and restrictions imposed on them as a result of the supervision order being reviewed. The review process does not allow the person to present their case (see the below discussion on issues of fundamental legislative principle relating to natural justice).

As the supervision order is indefinite, an unfavourable result in the review process will mean that the person will continue to have the requirements and restrictions imposed on them.

The requirements imposed on a person under an indeterminate supervision order are extremely onerous and would impact on that person's ability to live a normal life. The person would be unable to live in certain areas (less than one kilometre from places where children are regularly present) and to be in any area within 200m of a school.

In addition, the person would be required to wear a monitoring device indefinitely,[71] be required to report to a corrective services officer monthly and require permission to leave or stay outside of Queensland.

These are all significant impositions on a person's freedom, given that the person has been released from prison. In the explanatory speech, Mr Janetzki MP, Member for Toowoomba South, noted in

[70] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook,* p 96.

[71] Clause 10 (section 43AM(2).

relation to GPS monitoring: 'These orders will be in place indefinitely to ensure that … they will at least be GPS monitored until they die'.[72]

The explanatory speech recognises that while the GPS monitoring is indefinite, the other indeterminate supervision order will be reviewed by the Attorney-General at least once every three years and will include the involvement of two psychiatrists.[73]

The speech also notes that the Bill introduces indefinite supervision, rather than indefinite detention, until such time as the Attorney-General is satisfied that the prisoner does not pose an unacceptable risk to the community. The Attorney-General, when making this decision, must give paramount consideration to the safety and protection of all.[74]

3.1.1.2 Administrative power and natural justice

Clause 8 introduces section 19B which relates to a review of supervision order made after the commencement. Section 19C relates to a review of a supervision order made before the commencement.

In these sections, the Governor in Council must review a person's supervision order within 5 years after the order is made in the court and each year after. A supervision order is of an indeterminate period as a result of the proposed amendment to section 13A (clause 6).

The Governor in Council, in deciding whether a prisoner is a serious danger to the community, must have regard to the same matters the court would consider in imposing a supervision order[75] and any report produced by the two psychiatrists.

Potential issues of fundamental legislative principle

Natural justice and decision subject to review

Legislation should be consistent with the principles of natural justice which are developed by the common law and incorporate the following three principles:

- something should not be done to a person that will deprive them of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker
- a decision maker must be unbiased, and
- procedural fairness should be afforded to the person, meaning fair procedures that are appropriate and adapted to the circumstances of the particular case.[76]

Legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review. The OQPC Notebook states:

> *Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.*[77]

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72 Queensland Parliament, Record of Proceedings, 19 September 2018, p 2598.

73 Queensland Parliament, Record of Proceedings, 19 September 2018, p 2598.

74 Queensland Parliament, Record of Proceedings, 19 September 2018, p 2598.

75 These are set out in subsection 13(4) *Dangerous Prisoners (Sexual Offenders) Act 2003*

76 Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 25.

77 Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 18.

Portfolio committees have expressed their opposition to removing the right of review, and took particular care to ensure the principle that there should be a review or appeal against the exercise of administrative power. Where ordinary rights of review were removed, thereby preventing individuals from having access to the courts or a comparable tribunal, the former committee took particular care in assessing whether sufficient regard had been afforded to individual rights, noting that such a removal of rights may be justified by the overriding significance of the objectives of the legislation.[78]

The Bill aims to introduce the review of supervision orders within 5 years after the order is made by the court and annual reviews thereafter. The review is undertaken by the Governor in Council and a supervision order will continue indefinitely if the Governor in Council decides that the prisoner is a serious danger to the community.

The prisoner will receive notice of the outcome of the review under new section 19D(3), but does not have review rights in relation to the decision made by the Governor in Council (other than a judicial review). [79] It should be noted that a person has appeal rights afforded to them under section 31 of the Act in relation to the decision to impose the supervision order by the court.

The prisoner also does not have an opportunity to present their case or be represented in the review of a supervision order. By contrast, in relation to supervision orders, the prisoner may:

- file material in relation to a preliminary hearing[80]
- receive detailed reasons for the making of the supervision orders[81]
- apply for amendment of the orders[82]
- have a lawyer act in an appeal under the Act. [83]

None of these requirements apply to a review of a supervision order undertaken by the Governor in Council.

Further, under the existing section 19B, the Attorney-General must apply for a further supervision order for the prisoner. Under the proposed legislation, there is no requirement for the Governor in Council to apply for a further supervision order.

The explanatory notes provide this justification:

> *…the Governor in Council's decision to continue a supervision order is not subject to the unconfined discretion of the Executive and does not lack sufficient safeguards. Rather, any decision made will be based on the statutory criteria, including the consideration of medical opinion about the risk of an offender reoffending. In addition, any administrative decision made is judicially reviewable.*[84]

3.1.1.3 Rights and liberties of individuals, the separation of powers and judicial independence

Sections 19B and 19C in clause 8 introduce a review of supervision order process, whereby the decision whether an indeterminate supervision order continues is made by the Governor in Council.

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78 Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 19.

79 Judicial review tests the legality of the decision and whether the official had power to make it and made it fairly, without error of law or failure to consider something relevant. It doesn't re-decide the matter on its merits.

80 *Dangerous Prisoners (Sexual Offenders) Act 2003,* s 6.

81 *Dangerous Prisoners (Sexual Offenders) Act 2003,* s 17.

82 *Dangerous Prisoners (Sexual Offenders) Act* 2003, s 18.

83 *Dangerous Prisoners (Sexual Offenders) Act 2003,* s 3.

84 Explanatory notes, p 2.

Potential issue of fundamental legislative principle

Previous committees have raised concerns with legislation that may affect or interfere with judicial independence and judicial process.[85]

The Office of the Queensland Parliamentary Counsel have issued a guide to FLPs on the Institutional integrity of courts and judicial independence. The guide refers to the case of *Kable v Director of Public Prosecutions (NSW)* [1996] HCA 24.

There have been other challenges to the validity of legislation based on Kable, including the detention of sexual offenders.[86]

In *Attorney-General (Qld) v Lawrence* [2013] QCA 364, based on the decision in Kable, it was held that amendments made to the *Criminal Law Amendment Act 1945* ('Criminal Law Amendment Act'), were invalid. The law authorised the Governor in Council, on recommendation from the Attorney-General, to make an order authorising the continuing detention of a person who was subject to:

- a continuing detention order under the Sexual Offenders Act; or
- a supervision order if, immediately before the supervision order is made, the person was subject to a continuing detention order under the Sexual Offenders Act.

In this case, the Court of Appeal held that the provisions were invalid because they had the effect of rendering the Supreme Court orders made under the Sexual Offenders Act a provisional order that could be overturned by the executive with an order made under the amended Criminal Law Amendment Act.

A supervision order is imposed by a court under section 13 of the Act. The proposed amendments aim to make the supervision order indeterminate. The review of the supervision order (to decide whether the person is still a serious danger to the community and to keep the order in place) is made by the Governor in Council. This review occurs after five years of the order being imposed by the court and each year after that.

The continuing review (and continuing imposition) of the supervision order is made by the Governor in Council and not by a court. The Governor in Council is required to assess the person in accordance with matters mentioned in section 13(4)(aa) to (j) of the Act. The person must also be examined by two psychiatrists.

The matters in section 13(4)(aa) are the same that the court have regard to when imposing the supervision order. These include the person's criminal history, the risk that the prisoner will commit another serious sexual offence if released into the community and the need to protect members of the community from that risk, among others.

This could be seen to be an inappropriate grant of power to the Governor in Council to make a decision that should arguably be made by the court.

Lawrence case

There are clear similarities with the *Lawrence* case (mentioned in the above section) and the Bill. Both provide for the executive to make a decision in relation to a person subject to a supervision order where the supervision order has already been imposed by a court.

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[85] Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs Institutional integrity of courts and judicial independence*, p 3.

[86] Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs Institutional integrity of courts and judicial independence,* p 3.

However, the legislation in the *Lawrence* case allowed the executive to order continuing detention of a person, whereas under the Bill, a person would be under an indefinite order imposed by the court which is reviewed by the Governor in Council.

There is an argument that, as in *Lawrence,* these proposed provisions would render the order made by the court to impose a supervision order a provisional order subject to executive action.

3.1.1.4 Onus of proof

Proposed section 43AL(1)(b)(i) (clause 10) imposes the requirement on a person subject to a supervision order, that the person not be within 200m of a school without reasonable excuse. (emphasis added.)

Potential issues of fundamental legislative principle

The Bill requires that a person not be within 200m of a school without reasonable excuse. Although it is not specifically stated in the Bill or explanatory notes, it would appear that the person subject to the order would have the onus of proving a reasonable excuse. This could be seen to be a reversal of the onus of proof.

Legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence.

> *For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.*
>
> *For example, if legislation prohibits a person from doing something 'without reasonable excuse', it is generally appropriate for a defendant to provide the necessary evidence of the reasonable excuse if evidence of the reasonable excuse does not appear in the case for the prosecution.*[87]

This issue is not mentioned in the explanatory notes.

3.1.1.5 Retrospectivity

Clause 8 introduces a review of a supervision order made before the commencement of the Act.

Potential issue of fundamental legislative principle

Section 4(3)(g) of the LSA provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively. This fundamental legislative principle follows the presumption at common law that, unless the contrary intention appears, Parliament intends legislation to operate prospectively and not retrospectively.[88]

A person who is subject to an order imposed by a court prior to the commencement of Act, would not expect to be subject to an indeterminate order and for this order to be reviewed under conditions not set in legislation at the time of their hearing.

This could be seen to be a retrospective application of the provision. No further guidance was provided in the explanatory notes or in the explanatory speech.

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87 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

88 Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs Retrospectivity*, p 5.

3.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced and sets out the information an explanatory note should contain.

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

Appendix A – Submitters

Sub #	Submitter
001	Bar Association of Queensland
002	Queensland Advocacy Incorporated
003	Queensland Law Society

Statement of Reservation

The LNP members of the Legal Affairs and Community Safety Committee strongly believe that this bill should be passed.

We respect and thank the Bar Association of Queensland and the Queensland Law Society for their submissions concerning the interests of offenders. However we believe that the public interest is best served by unambiguously emphasising that public safety is the most important consideration in sentencing. This bill meets this need.

The reason why this legislation needs to pass is because the Palaszczuk Labor Government failed to have an adequate plan B to deal with serious repeat and violent offenders like Robert John Fardon. The Attorney-General was caught out and cobbled together a plan that never even went through the proper Committee scrutiny. While Labor's laws might be an improvement on what was previously legislated, they still fall far short of what is needed to protect the community.

The Bill is well drafted and takes into account the updated High Court precedents in relation to indefinite detention, following the Pollentine decision in 2014.

We know that Fardon is out in the community without a GPS tracker thanks to Labor's weak laws and failing to keep him under strict supervision.

The fact that Fardon was housed in the same street as local primary school and across the road from a child care centre is an absolute disgrace. It shows the inadequacy of the current laws.

We shouldn't rely on an honesty system where these offenders have to self-report. More needs to be done to protect the community, which is why we strongly support the passing of this Bill.

The LNP will always put the rights of the community, particularly children, ahead of the welfare of dangerous and repeat violent sexual offenders.

We believe these offenders should be GPS tracked for life and where necessary under strict supervision.

Labor should stop playing politics and put the safety of vulnerable children first.

James Lister MP
Deputy Chair
Member for Southern Downs

James (Jim) McDonald MP
Member for Lockyer