

# Child Protection (Offender Reporting) Amendment Bill 2013

## Explanatory Notes

### Short Title

The short title of the Bill is the Child Protection (Offender Reporting) Amendment Bill 2013.

### Objectives of the Bill

The policy objective of the Bill is to confirm and strengthen police powers to conduct random audits to ensure compliance with reporting obligations under the provisions of the *Child Protection (Offender Reporting) Act 2004* and thereby increase reportable offenders' *certainty of apprehension* (emphasis added) for any non-compliance. To achieve this objective the Child Protection (Offender Reporting) Amendment Bill 2013 (the Bill) will:

1. Amend the *Child Protection (Offender Reporting) Act 2004* to insert two new provisions under Part 6 'Other matters': Insert-
  - 74C Police functions include ensuring compliance with reporting requirement; and
  - 74D Power to enter and search premises without consent or warrant to ensure compliance.

### Reasons for the Bill

Queensland's child protection offender register (the register) commenced in 2005 and is used to record the relevant personal particulars of reportable offenders as obliged to be reported under the provisions of the *Child Protection (Offender Reporting) Act 2004*.

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

This accurately indicates the recent rates of non-compliance and supports the legitimate need for improved, evidence based, measures to increase compliance, especially in consideration of the continually increasing numbers of reportable offenders in the community.

## **Achievement of the Objectives**

The Bill achieves the stated policy objective by way of the proposed amendments.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the criminal law reform.

## **Estimated Cost for Government Implementation**

Any costs in relation to the amendments will be met from existing agency resources.

## **Consistency with Fundamental Legislative Principles**

In respect of Fundamental Legislative Principles, one matter to consider in whether proposed legislation has sufficient regard to the rights and liberties of individuals is whether the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

The proposed provision 74D, if enacted, will enable police officers to enter and search the premises of a reportable offender without consent or a warrant. It also enables police officers to enter without consent or a warrant in cases where the reportable offender is sharing the premises with another person or other persons. It is deemed this provision (i.e. 74D) is necessary however to reduce the rates of non-compliance. This also takes into consideration effective compliance management of the continually increasing number of reportable offenders in the community. It is also stressed that any infringement upon the rights and liberties of individuals is outweighed by the need to protect children who may be exposed to harm and/or abuse because of non-compliance. Specifically, without this provision a reportable offender's non-compliance may go undetected over a prolonged period of time.

It should be noted that the fundamental purpose of the *Child Protection (Offender Reporting) Act 2004* is, in part, *to reduce the likelihood that reportable offenders will reoffend* (emphasis added). The proposed amendments will significantly contribute toward that purpose.

As stated Queensland's child protection offender register commenced in 2005 and is used to record the relevant personal particulars of reportable offenders as obliged to be reported under the provisions of the *Child Protection (Offender Reporting) Act 2004*. Significantly, as at June 2013 there were 4,193 offenders recorded on the register.<sup>2</sup> Comparatively, as at 30

June 2010 there were 3,543 offenders registered in Queensland. This indicates the continually increasing number of reportable offenders in the community.

As mentioned, from the commencement of the register in 2005 and until June 2010, there had been a total of 1,523 breaches of reporting obligations under the *Child Protection (Offender Reporting) Act 2004*.<sup>1</sup> This accurately indicates the recent rates of non-compliance over a considerable period of time and supports the legitimate need for improved, evidence based, measures to increase compliance. To this end and ultimately to protect children, the policy objective of the Bill is to confirm and strengthen police powers to conduct random audits to ensure compliance with reporting obligations and thereby increase reportable offenders' *certainty of apprehension* (emphasis added) for any non-compliance.

Underpinning this policy objective and the Bill is a consistent finding in deterrence research that increases in the certainty of apprehension and punishment demonstrate a significant deterrent effect. However, studies of deterrence also suggest that the threat of imprisonment, as a standalone measure, only generates a *small general deterrent effect* (emphasis added). To be clear, research indicates that increases in the severity of penalties, such as increasing the length of terms of imprisonment (e.g. mandatory 20 year sentencing introduced through the Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012), do not produce a corresponding increase in deterrence. For this reason improved, evidence based, measures are required to increase compliance by reportable offenders in the community.

This research and rationale have been applied to inform the Bill, proposing amendments to the *Child Protection (Offender Reporting) Act 2004*. It has been purposefully designed to increase reportable offenders' *certainty of apprehension* for any non-compliance. It is asserted that this can only be achieved by enabling police officers to enter and search premises without consent or a warrant. Several limitations have been imposed on the exercise of the power though to mitigate the inconsistency with Fundamental Legislative Principles, specifically-

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

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

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

Overall the Bill will improve the management of reportable offenders in the community and ultimately serve to improve child protection in Queensland.

### **Consultation**

There has been no formal consultation.

### **Consistency with legislation of other jurisdictions.**

The Bill does not introduce uniform or complementary legislation.

---

<sup>1</sup>Elmes, G. [Child Protection \(Offender Reporting\) And Other Legislation Amendment Bill](#) 9 Mar 2011, p.498

<sup>2</sup>Queensland Police Service, [Annual Report 2011/2012](#) p.14

# Notes on Provisions

## Part 1 Preliminary

*Clause 1* establishes the short title to the Act as the *Child Protection (Offender Reporting) Amendment Act 2013*.

## Part 2 Amendment of *Child Protection (Offender Reporting) Act 2004*

*Clause 2* provides that the Act amends the *Child Protection (Offender Reporting) Act 2004*.

*Clause 3* amends Part 6 'Other matters' by inserting new sections-

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