

**Child Protection (Offender
Reporting - Publication of
Information) Amendment Bill 2013**

Report No. 57

Legal Affairs and Community Safety Committee

March 2014

Legal Affairs and Community Safety Committee

Chair	Mr Ian Berry MP, Member for Ipswich
Deputy Chair	Mr Peter Wellington MP, Member for Nicklin
Members	Miss Verity Barton MP, Member for Broadwater Mr Bill Byrne MP, Member for Rockhampton Mr Sean Choat MP, Member for Ipswich West Mr Aaron Dillaway MP, Member for Bulimba Mr Trevor Watts MP, Member for Toowoomba North
Staff	Mr Brook Hastie, Research Director Mrs Ali Jarro, Principal Research Officer Mrs Kelli Longworth, Principal Research Officer Mr Greg Thomson, Principal Research Officer Ms Debbie Mohi, Executive Assistant
Technical Scrutiny Secretariat	Mr Peter Rogers, Acting Research Director Mr Karl Holden, Principal Research Officer Ms Tamara Vitale, Executive Assistant
Contact details	Legal Affairs and Community Safety Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3406 7307
Fax	+61 7 3406 7070
Email	lacsc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/lacsc

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Abbreviations

Abbreviations

Bill	Child Protection (Offender Reporting - Publication of Information) Amendment Bill 2013
Committee	Legal Affairs and Community Safety Committee
QCSLAN	Queensland Child Safety Legislation Action Network
PACT	Protect All Children Today
BAQ	Bar Association of Queensland
OIC	Office of the Information Commissioner
QLS	Queensland Law Society
Western Australian Act	<i>Community Protection (Offender Reporting) Act 2004 (WA)</i>

Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Child Protection (Offender Reporting - Publication of Information) Amendment Bill 2013.

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

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on this Bill.

I commend this Report to the House.

A handwritten signature in black ink, consisting of a stylized 'I' and 'B' followed by a horizontal line and a diagonal stroke.

Ian Berry MP

Chair

Recommendations

Recommendation 1

2

The Committee recommends the Child Protection (Offender Reporting - Publication of Information) Amendment Bill 2013 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 18 May 2012 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 include:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Public Safety Business Agency.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

1.2 Referral

The Child Protection (Offender Reporting - Publication of Information) Amendment Bill 2013 (Bill) was a Private Members' Bill introduced into the Legislative Assembly by the Member for Dalrymple, Mr Shane Knuth MP and referred to the Committee on 12 September 2013.

As no reporting date was fixed by the Legislative Assembly or Committee of the Legislative Assembly, in accordance with the Standing Order 136(1), the Committee was required to report back to the Legislative Assembly by 12 March 2014.

1.3 Inquiry process

To assist with its examination of the Bill, the Committee wrote to Mr Knuth MP inviting further comments from him on the Bill. No further advice was received from Mr Knuth MP.

The Committee also identified and consulted with likely stakeholders on the Bill and wrote to the Premier seeking his assistance in coordinating a whole of Government submission on the Bill. The Premier advised the Committee the Government would not be providing a submission on the Bill.²

The Committee received six submissions from stakeholders (see **Appendix A**).

Both Mr Knuth MP and the Queensland Police Service (QPS), on behalf of the government, were invited to provide the Committee with a response to the submissions. No further information was received from Mr Knuth MP. The QPS declined to comment on the Bill.

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

² Letter from the Honourable Campbell Newman MP, Premier of Queensland, 28 November 2013.

1.4 Policy objectives of the Child Protection (Offender Reporting - Publication of Information) Amendment Bill 2013

The primary objectives of the Bill are to create a means by which the information may be disclosed to the community concerning certain categories of reportable offenders, dangerous sexual offenders and other persons considered to be a risk to the lives or sexual safety of other persons.

To achieve these objectives, the Bill amends the Child Protection (Offender Reporting) Act 2004 and the Dangerous Prisoners (Sexual Offenders) Act 2003.

1.5 Consultation

The Explanatory Notes tabled with the Bill do not state whether any consultation has taken place on the Bill.

1.6 Should the Bill be passed?

Standing Order 132(1) requires the Committee to determine whether to recommend the Bill should be passed.

The Committee has considered the form and policy intent of the Bill and for the reasons outlined in Part 2 of this Report, the Committee does not consider the Bill should be passed.

The Committee considers that further research into the issues being dealt with by the Bill must occur before the Bill is considered by the Parliament. A review of the entire child protection offender reporting regime should occur by the QPS to ensure that evidence based policy is brought forward that deals with this matter in an holistic approach and not in a piecemeal manner.

Recommendation 1

The Committee recommends the Child Protection (Offender Reporting - Publication of Information) Amendment Bill 2013 not be passed.

2. Examination of the Child Protection (Offender Reporting- Publication of Information) Amendment Bill 2013

2.1 Police Commissioner to keep a website

The Bill establishes a regime under which the Police Commissioner is to keep a publicly accessible website for the purpose of publishing information about reportable offenders, in accordance with the provisions of the Bill.³

The Explanatory Notes provide a reportable offender is:

A person whom a court sentences for a reportable offence. A reportable offence is an offence which comprises of a sexual or serious element involving a child or an incapable person as listed in Schedules 1 and 2 of the Criminal Law (Sexual Offences) Act 1978.

A reportable offender can also include offenders who come to reside in Queensland from other jurisdictions and persons whom the court has ordered to comply with the Act. As well as reportable offenders, this Bill will apply to dangerous sexual offenders and other offenders upon the authorisation of the Minister for Police.⁴

The provisions are similar to amendments made to the *Community Protection (Offender Reporting) Act 2004* (WA) (the Western Australian Act) in 2012 on passage of the Community Protection (Offender Reporting) Amendment Bill (No. 2) 2011. That Bill set up a similar website in Western Australia which has been in operation since October 2012.

2.2 Publication of personal information

The Bill enables the Police Commissioner to publish personal information about reportable offenders, if he is satisfied:

- a. the offender has contravened the offender's reporting obligations; or
- b. in purported compliance with the reporting obligations,⁵ the offender has reported information that is false or misleading in a material way,

and the offender's whereabouts are not known to the police commissioner.⁶

The information able to be published includes the personal details of the reportable offender which are set out in existing section 16 (1) of the *Child Protection (Offender Reporting) Act 2004* except for the details reported under section 16(1)(e) – which are the names of any children who generally reside in the same household as the offender.⁷

The details that may be published are extensive and include the following:

- the offender's name and other name or alias that the offender has been known by;
- the period when the offender was known by any other name;
- the offender's date of birth;
- the offender's address;

³ Proposed section 74AE.

⁴ *Explanatory Notes*, Child Protection (Offender Reporting – Publication of Information) Amendment Bill 2013, page 1.

⁵ Contained in Part 4 of the *Child Protection (Offender Reporting) Act 2004*.

⁶ Proposed section 74AF.

⁷ Proposed section 74AF (4).

Examination of the Bill

- details of the offender’s employment;
- details of any offender’s affiliation with any club or organisation that has child membership or child participation;
- detail of the offender’s vehicle – make, model, colour, registration number;
- details of any tattoo or permanent distinguishing marks;
- whether the offender has ever been found guilty in any foreign jurisdiction of a reportable offence or of an offence that required the offender to report to an official for that other offence;
- if the offender has been in government detention since the offender was sentenced or released from government detention for a reportable offence or corresponding reportable offence—details of when and where the government detention occurred;
- details of any carriage service (within the meaning of the *Telecommunications Act 1997* (Cwlth)) used or intended to be used by the offender; and details of any internet service provider or carriage service provider (within the meaning of the *Telecommunications Act 1997* (Cwlth)) used or intended to be used by the offender;
- details of the type of any internet connection used, or intended to be used, by the offender, including whether the connection is a wireless, broadband, ADSL or dial-up connection;
- details of any email addresses, internet user names, instant messaging user names, chat room user names or any other user name or identity used or intended to be used by the offender through the internet or another electronic communication service; and
- the passport number and country of issue of each passport held by the offender.⁸

In addition, the Bill enables the Police Commissioner to publish a photograph of the offender on the website.⁹

The Police Commissioner must, as soon as practicable, after a reportable offender reports his or her whereabouts to the police under the *Child Protection (Offender Reporting) Act 2004*, remove the prescribed details from the website.¹⁰

2.3 Publication of photograph and locality

Separate to the scheme above, the Bill will also enable the Police Commissioner to publish a photograph of an offender on the website, with a statement about the general area in which they reside if:

- (a) *the offender is subject to a supervision order under the Dangerous Prisoners (Sexual Offenders) Act 2003 and the supervision order does not prohibit such publication; or*
- (b) *the offender is subject to the Child Protection (Offender Reporting) Act 2004 and reoffends sexually against a child; or*

⁸ Section 16(1), *Child Protection (Offender Reporting) Act 2004*.

⁹ Proposed section 74AF (4).

¹⁰ Proposed section 74AF(3).

- (c) *the offender is found guilty of any offence punishable by 5 years or more imprisonment and the publication is authorised by the Minister because the Minister is satisfied that the person poses a risk to the lives or sexual safety of a child or children.*¹¹

In this instance, the person must be given notice, in writing, from the Police Commissioner before the information and photograph is published and allows the person to make submissions or be heard in relation to the proposed publication.¹²

A range of factors may be taken into account by the Police Commissioner in making a publication decision¹³ including the medical, psychiatric, psychological or other assessment relating to the person, and whether there is a pattern or offending behaviour by the person.

The Police Commissioner may remove the photograph and information about the locality of the person at any time, and must remove the photograph and information if the person ceases to be subject to a the *Dangerous Prisoners (Sexual Offenders) Act 2003* supervision order or the person is no longer subject to a provisions of the *Child Protection (Offender Reporting) Act 2004*.

There are an additional range of matters which the Police Commissioner may take into account in deciding whether to publish identifying information about a person under both above schemes including whether the publication would interfere with:

- an investigation by police officers in relation to the person; or
- the person's compliance with reporting obligations; or
- the operation of a community order, a *Dangerous Prisoners (Sexual Offenders) Act 2003* supervision order or another order or requirement under a law to which the person is subject.¹⁴

2.4 Ability to inform a child's parent or guardian whether a person is a reportable offender

The Bill also enables a person to apply to the Police Commissioner to be informed about whether or not a person specified in the application is a reportable offender.¹⁵ The Police Commissioner must be satisfied the specified person has regular unsupervised contact (defined to be at least three days in a period of one year) with the child of the applicant in order for the Police Commissioner to inform the application whether or not the person is a reportable offender.¹⁶

2.5 Review mechanisms of commissioner's decisions

The Bill contains an internal review mechanism of decisions by the Police Commissioner to publish personal information under sections 74AF or 74AG, whereby a person may write to the Police Commissioner and ask for the Commissioner to review a decision.¹⁷

Similarly, the Bill contains a review mechanism whereby a person who believes the Police Commissioner has incorrectly advised a parent or guardian that the person is a reportable offender, to apply to the Police Commissioner with a request for him to provide correct information.¹⁸

¹¹ Proposed section 74AG.

¹² Proposed section 74AG(2).

¹³ Proposed section 74AG(4)(6).

¹⁴ Proposed section 74AI.

¹⁵ Proposed section 74AJ.

¹⁶ Proposed section 74AK.

¹⁷ Proposed section 74AL.

¹⁸ Proposed section 74AM.

2.6 Offences

The Bill creates a number of new offences as a consequence of establishing the website.

Under the Bill, it will be an offence for a person to engage in any conduct, otherwise than in private, by which the person intends to create, promote or increase animosity towards, or harassment of, a person as an identified offender.¹⁹ The offence will carry a maximum penalty of 10 years imprisonment.

It will also be an offence for a person to engage in any conduct, otherwise than in private, that is likely to create, promote or increase animosity towards, or harassment of, a person as an identified offender. This offence will carry a maximum penalty of 2 years imprisonment.²⁰

‘animosity towards’ is defined in the Bill as meaning ‘hatred of or serious contempt for’; and

‘harassment’ is defined to include ‘threat, serious and substantial abuse and sever ridicule’.

A third offence is created in that it will be an offence to display, distribute or publish –

(a) *Identifying information about a person published on the website in accordance with proposed sections 74AF or 74AG; or*

(b) *Information, about whether or not a person is a reportable offender, provided by the commissioner under the application process in proposed section 74AJ or 74AM.*²¹

The maximum penalty for this offence is two years imprisonment.

2.7 Review of the operation of the Bill

Similar to the Western Australian Act, the Bill includes a provision requiring a Ministerial Review of the operation and effectiveness of the provisions in the Bill as soon as is practicable after 3 years after the commencement of the Bill.

2.8 Transitional provisions

The Bill provides a process for persons who have a supervision order or interim supervision order applying to them at the commencement of the Bill, whereby they are able to apply to the court for an order that prescribed information is not to be published under the Bill and that the requirements of their supervision order should be amended.²²

2.9 Issues raised in submissions

Of the six submissions received on the Bill, none were supportive of the policy proposals. A range of concerns with the proposal were raised and are outlined below under separate sub-headings.

Application to children

The Acting Commissioner for Children and Young People and Child Guardian raised concerns with clause 74AF in the sense that the clause would capture 17 year olds, who in Queensland are not considered to be children under the *Youth Justice Act 1992*. The Acting Commissioner pointed out this is a distinct difference to the regime in Western Australia.²³

¹⁹ Proposed section 74AN.

²⁰ Proposed section 74AN.

²¹ Proposed section 74AO.

²² Clause 12.

²³ Commission for Children and Young People and Child Guardian, Submission No. 4, page 1.

This issue was also raised by the Queensland Law Society (QLS), who considered there was a risk that persons at the lower end of the scale of offending could be caught by the provisions. The QLS gave the following example:

...a 17 year old may be in a sexual relationship with a 15 year old. The 17 year old may be charged and convicted of the offence of carnal knowledge with a child under 16 pursuant to s215 of the Criminal Code 1899 and may be subject to the provisions of this Bill.²⁴

The QLS also noted that persons with mental health issues and intellectual disabilities would also be caught by the provisions in the Bill.

The detrimental impact of personal details and pictures of 17 year olds being placed on a publicly accessible website must be considered in greater depth prior to this Bill being considered by the Parliament.

Effect on rehabilitation

As highlighted by the QLS, the Bill will potentially have an adverse impact on the principle of rehabilitation – which forms one of the sentencing principles under section 9 of the *Penalties and Sentences Act 1992*.²⁵ The QLS considered those who are living in the community under supervision orders may become alienated and stigmatised if they were publicly identified in accordance with the provisions of the Bill.

Following on from the previous issues, the Acting Commissioner for Children and Young People and Child Guardian submitted that rehabilitation of offenders is of vital importance, especially in the case of young offenders. The Acting Commissioner recommended the Bill be amended so that it does not apply to 17 year olds so as to allow young offenders to be given every opportunity to be successfully rehabilitated.²⁶

Privacy implications – breadth of information which can be published

Both the QLS and the Office of the Information Commissioner (OIC) were concerned with the breadth of information that could be published on the website.

The QLS stated:

The Society is concerned with the breadth of sensitive information about a person which can be published. An unintended consequence of releasing such information is that these details may be collected and used for identity theft purposes, which is an important reason why there are strict safeguards and control of access to information held by government agencies and other organisations.²⁷

The OIC similarly submitted that the privacy of offenders and third parties may be compromised to a greater extent than that required to achieve the policy objective of the Bill. The OIC submitted that further consideration, consistent with the objectives of the Bill was required to determine what information reported in the register would be necessary to be made public, in order to enable the community to be protected.²⁸

²⁴ Queensland Law Society, Submission No. 3, page 3.

²⁵ Queensland Law Society, Submission No. 3, page 2.

²⁶ Commission for Children and Young People and Child Guardian, Submission No. 4, page 1.

²⁷ Queensland Law Society, Submission No. 3, pages 2 and 3.

²⁸ Office of the Information Commissioner, Submission No. 5, page 5.

The OIC submitted:

The purpose for which QPS obtains and uses the personal details of reportable offenders is different to the purpose for which the community would need information about reportable offenders.

The breadth and detail of the information needed by QPS to fulfil its functions under the CPOR Act does not necessarily translate as necessary for the community's purposes as outlined in the Bill.

For example, section 16(1) (m) of the CPOR Act requires the reportable offender to provide QPS with the details of any carriage service²² used or intended to be used by them. This information can be of use to QPS in seeking information from the carriage service on, for example, the offender's internet usage. QPS needs this information; the community, however, would have no use for information about which internet provider the reportable offender uses.

It is a truism that the more information published about an individual the more the individual's privacy is compromised. With the exception of section 16(1)(e) of the CPOR Act, the Bill allows the Police Commissioner to publish 'any or all of the prescribed personal details of a reportable offender', regardless of whether or not they would be of any use in furthering the stated purpose of the Bill.

Publication of personal information which is not required to fulfil the purpose of the Bill would unnecessarily compromise the privacy of the reportable offender. A significant amount of the offender's personal details contained in the register reflect, and are of use for, only the law enforcement purpose of the CPOR Act and have no relevance to the information needs of the community.²⁹

The OIC suggested that 'personal details' which can be published on the website should be restricted to those details which directly serve the purposes of the community as set out in the Bill.

Protect All Children Today (PACT), while generally being supportive of legislation that increases protection for vulnerable children and young people, expressed concern over the potential for human error to occur in the administration of the proposed website.³⁰

PACT submitted its concerns:

...whereby innocent peoples' details are disclosed or innocent people with similar names or appearances to an offender being mistakenly identified, opening them up to unwarranted harassment and victimisation. The potential for increases in breaches to an individual's rights to privacy also need to be accommodated through clear safeguards and checks to ensure that the correct information is being disclosed to avoid innocent people being targeted and victimised.³¹

²⁹ Office of the Information Commissioner, Submission No. 5, page 6.

³⁰ PACT, Submission No. 1, page 1.

³¹ PACT, Submission No. 1, page 1.

Third Party information

The OIC also considered the 'personal information' to be published on the website should not include any information that could be considered as third party information.³² Examples provided which would be caught by the provisions of the Bill are as follows:

- the name and address of the reportable offender's employer and the employment address.³³
- the make, model, colour and registration number of any motor vehicle owned by someone else, but which is generally driven by the offender.³⁴

The QLS shares the same concerns stating:

It is also of concern that workplace details may be published which could affect innocent third parties such as the owner and other employees who may be associated with the person. There may be negative consequences for the operation of the business if community members avoid attending or dealing with the business, or alternatively disruptions from members of the community may occur. Again, we are unsure of how the release of this information will enhance public safety.³⁵

As submitted by the OIC, while the QPS would benefit having access to this information to fulfil their duties, it is difficult to understand why the general community should also need to have access to this information.

Potential for vigilante behaviour

A number of submissions³⁶ expressed concern that the release of offenders' personal information on the proposed website could lead to an increase in vigilante behaviour, unwarranted harassment and victimisation.

In its submission,³⁷ the QLS referred to an Article in *The West Australian* which quoted Dr Cathy Kezelman, President of the Adults Surviving Child Abuse Organisation in Western Australia. Dr Kezelman voiced concerns over similar provisions in the Western Australian Act, stating:

There are a number of dangers with a website like this...There's a risk of what people do with the information and whether there's a sense of community panic if they find out there's an offender living in the area and decide to take the situation into their own hands, so it needs to be very well policed.³⁸

In relation to the potential for vigilantism, PACT submitted:

We believe that Corrections, Probation, Parole and Police are best placed to monitor offenders, not the community. If there are currently insufficient resources allocated, the Government should move resources into this much needed area, rather than shift responsibility onto community members.

³² Office of the Information Commissioner, Submission No. 5, page 6.

³³ By virtue of section 16(1)(f), Child Protection (Offender Reporting) Act 2004.

³⁴ By virtue of section 16(1)(h), Child Protection (Offender Reporting) Act 2004.

³⁵ Queensland Law Society, Submission No. 3, page 3.

³⁶ PACT, Submission No. 1, page 1; Queensland Law Society, Submission No. 3, page 2; Commission for Children and Young People and Child Guardian, Submission No. 4, page 1.

³⁷ Queensland Law Society, Submission No. 3, page 3.

³⁸ *WA Sex offender website operating*, *The West Australian*, 15 October 2012.

*Whilst we appreciate the view that any adverse effects on the rights or liberties of sex offenders is justified with reference to community protection considerations, we express concern that this view places too much power on the community and facilitates a vigilante approach.*³⁹

The Commission for Children and Young People and Child Guardian referred to research on similar international offender identity publication models – advising that such schemes can inadvertently encourage a vigilante mentality amongst the community and hinder rehabilitation efforts for publically identified offenders.⁴⁰

PACT also submitted it was their ‘firm view that the release of information via a website will not adequately protect vulnerable children’ and that ‘vigilantism may result in offenders going underground to protect their privacy and physical safety, posing greater risk to the community and vulnerable children.’⁴¹

It is acknowledged the Bill contains offences to deter or prevent vigilantism however as submitted by the Bar Association of Queensland (BAQ), the offence provisions are widely drawn. The BAQ considered:

*... [the offences] include not encouraging ridicule of, nor creating animosity towards sex offenders. Humour is something that is very difficult to control and should not be the subject of the criminal law. The offence provisions are so widely drawn that they may well inhibit press freedom and general discussion regarding sex offending. This might even raise constitutional issues. Violence by members of the community against persons who offended sexually is already a crime under the criminal law as is stalking or other serious harassment. The anti-vigilante provisions should be redrawn entirely so as not to prevent frank and open discussion regarding sex offending.*⁴²

In relation to the proposed offences, it PACT also believed it would be very difficult to police. PACT considered the available research on the matter indicated the threat of penalty has not prevented vigilantism in other jurisdictions.⁴³

Indirect identification of the family of offenders or victims

The BAQ considered there was a real risk that the publication of information including names, photographs, and general area where sex offenders live will indirectly lead to the identification of victims of sex offences.⁴⁴

The BAQ stated:

Long experience of members of the Association in both prosecuting and defending sex offenders, including child sex offenders lead to the following observations. The vast majority of child sex offenders ingratiate themselves using existing family or friendship networks to gain access to child victims. "Grooming" of child victims is unfortunately typical. However, offenders who opportunistically abduct children from streets are, thankfully, comparatively rare.

³⁹ PACT, Submission No. 1, page 1.

⁴⁰ Commission for Children and Young People and Child Guardian, Submission No. 4, page 1.

⁴¹ PACT, Submission No. 1, pages 1 and 2.

⁴² Bar Association of Queensland, Submission No. 6, page 3.

⁴³ PACT, Submission No. 1, page 3.

⁴⁴ Bar Association of Queensland, Submission No. 6, page 2.

The fact that child sex offenders are almost always known to their victims creates great difficulty in identifying them in a manner which does not identify the victim. For example, if an offender ingratiates himself into his wife or female partner's family for the purpose of procuring victims it may well lead people who are familiar with that family to identify the victim or victims. There is a real risk that if the persons identify who the victims were that it will become known in the victim's greater social network. This is undesirable as it will further traumatise the victim. This is particularly so in small communities or where the person offended against a particular group of children, for example, at a school.⁴⁵

Will the amendments actually enhance public safety?

The actual foundation for the Bill, that it will enhance public safety, was also questioned in submissions.

The QLS considered that the Bill may in fact, have an opposite effect relying on the debate around similar laws being progressed in Western Australian. The QLS referred to reported statement's by the Western Australian Police Union President, Mr Russell Armstrong.⁴⁶

Mr Armstrong was quoted as saying the website would be counterproductive and make it harder for police to monitor sex offenders. He was quoted as saying:

Once their name is put onto a database and available to the public they will go underground...

They would move to different locations, wouldn't make contact with police and the only time we would come into contact with them is when they reoffended.⁴⁷

Mrs Beryl Spencer from the Queensland Child Safety Legislation Action Network (QCCLAN) also submitted that there would likely be negative impacts from the proposed amendments including: a false sense of security in communities and offenders going to ground.⁴⁸

The QCCLAN submission referred to a number of research papers on the issue of publication of information about offenders and made reference to Kate Fitch's review of Megan's Law in the United States.⁴⁹ QCCLAN submitted there was no evidence that community notification has resulted in fewer assaults by strangers on children; and that there was some evidence that victims of intra-familial abuse may even be deterred from reporting crimes because of fears related to community notification.⁵⁰

A factsheet entitled '*Is notification of sex offenders in local communities effective?*' released by the Australian Institute of Criminology and accessible on the Queensland Department of Justice and Attorney-General website, states:

Megan's Law has been systematically reviewed by Pawson (2006) and the UK's National Society for the Prevention of Cruelty to Children (Fitch 2006). It was found that the evidence base for the law was weak and that it was developed largely as a response to community agitation (Pawson 2006). There were also variations in implementation from policy makers

⁴⁵ Bar Association of Queensland, Submission No. 6, page 2.

⁴⁶ Queensland Law Society, Submission No. 3, page 2.

⁴⁷ *Johnson defends sex offenders website*, ABC, 8 November 2011, www.abc.net.au/news/2011-11-08/johnson-defends-sex-offenders-website/36527856

⁴⁸ QCCLAN, Submission No. 2, page 2.

⁴⁹ *Megan's Law: Does it protect Children?*, Kate Fitch, www.nspc.org.uk.

⁵⁰ QCCLAN, Submission No. 2, page 2.

through to the community, leading to a lack of uniformity in decision making between similar cases (Pawson 2006).

There was little evidence of impact on sex offending, in particular, of offender recidivism rates being affected by community notification, or of reduced assaults by strangers on children (Fitch 2006). Both studies, however, stressed that program inconsistency made proving the overall efficacy of the measure problematic.⁵¹

2.10 Committee Comment

The Committee accepts the premise for the Bill and agrees that there are a number of concerns in the community about the monitoring and supervision of offenders after being released from detention.

The Committee also accepts from submissions received on the Bill, there are a number of issues with this policy proposal which must be considered in greater detail prior to passing it into law.

Due to the narrow scope of the Bill, as drafted, the Committee does not consider that the Bill will necessarily improve the child protection offender reporting regime in isolation. It is considered that prior to the Parliament considering this Bill with its discrete policy objectives, there needs to be a review of the entire child protection offender reporting regime to determine what, if any, other aspects of the *Child Protection (Offender Reporting) Act 2004* need improvement.

It is for this reason that the Committee does not recommend the Bill be passed and that consideration of any amendments to the *Child Protection (Offender Reporting) Act 2004* and associated legislation be deferred until such time that the QPS has reviewed the operation of the *Child Protection (Offender Reporting) Act 2004* in its entirety. Once such a review has been undertaken, amendments may be brought forward ensuring a more holistic approach to legislative development occurs which will result in stronger, improved laws being made for all Queenslanders.

⁵¹ *Is notification of sex offenders in local communities effective?*, 5 June 2007, Australian Institute of Criminology, <http://www.correctiveservices.qld.gov.au>

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* 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 to the Bill. The Committee brings the following to the attention of the House.

3.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

Potential FLP issues

Right to privacy and proportion and relevance

It is considered that the power to publish information, including names, addresses, photographs of reportable offenders and certain other persons may have a significant impact on the rights and liberties of those persons, including their right to privacy.

As a matter of FLPs, the Office of the Queensland Parliamentary Counsel has stated:

... the desirable attitude should be to maximize the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

The Explanatory Notes state:

The publication of personal information impacts on the rights to privacy of individuals and broad immunity provisions for the Police Commissioner against civil or criminal liability may impact on an individual's right to claim injury or defamation caused by the publication of personal information.

However this has to be balanced against liability interfering with a decision to publish information that is in the best interests of community safety.

Publication of personal information is required to provide adequate deterrence ... and the right of the State to publish personal details of known sex offenders is considered an enhancement of community safety.

Any adverse affects on the rights and liberties of sex offenders is justified with reference to community protection considerations.⁵²

The former Scrutiny of Legislation Committee adopted an expansive approach in identifying rights and liberties which included the right to privacy. The Queensland Legislation Handbook provides there should be a balance within legislation between individual and community interests, and the treatment of all persons affected by legislation should be reasonable and fair.

⁵² *Explanatory Notes*, Child Protection (Offender Reporting – Publication of Information) Amendment Bill 2013, page 2.

Fundamental legislative principles

The broad powers for the Police Commissioner to publish personal details about reportable offenders and certain other persons does not on the face of it appear proportionate, appropriate and reasonable to provide a deterrent to sexual offences against children.

The Committee considers the submission by the Office of the Information Commissioner is helpful in this regard. The OIC submitted that consideration should be given to an alternate approach to limit publication of information which would limit both the privacy impacts of publication on the website and the risk of inappropriate behaviour which the Bill seeks to deter.⁵³

The OIC referred to the tiered approach to disclosing information which is contained in the Western Australian Act. That Act contains three tiers with differing levels of access which have been designed to provide specific and targeted information relevant to the community's needs.⁵⁴

Any scheme in place in Queensland should ensure there is an appropriate balance between making information available to the public and protecting the privacy of individuals.

Is the Bill consistent with principles of natural justice?

The principles of natural justice, as developed from the common law, require that something should not be done to a person that will deprive the person of some right, interest, or legitimate expectation of a benefit, without the person being given an adequate opportunity to present the person's case to the decision-maker.

The Committee notes the review mechanisms in the Bill do not provide for external review, for example by a tribunal or court, of a decision to publish information about a reportable offender or certain persons.

Does the Bill confer immunity from proceeding or prosecution without adequate justification?

If protection is needed for persons administering Queensland legislation, the preferred provision provides immunity for actions done honestly and without negligence. In this case, if liability is removed from a person, it is usually declared to be shifted to the State. It is noted that proposed section 74AK does not require an act to be done honestly and without negligence, only that the Police Commissioner acts in good faith.

The Explanatory Notes state:

... the broad immunity provisions for the Police Commissioner against civil or criminal liability may impact on an individual's right to claim injury or defamation caused by the publication of personal information.

However this has to be balanced against liability interfering with a decision to publish information that is in the best interests of community safety.⁵⁵

It is arguable that the Police Commissioner could negligently publish or provide information about a reportable offender, including publishing a photograph that could result in significant impacts on a person.

⁵³ Office of the Information Commissioner, Submission no. 5, page 7.

⁵⁴ Office of the Information Commissioner, Submission no. 5, page 8.

⁵⁵ *Explanatory Notes*, Child Protection (Offender Reporting – Publication of Information) Amendment Bill 2013, page 2.

3.2 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to Explanatory Notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

The Explanatory Notes were light in detail and failed to contain all the information required by Part 4 of the *Legislative Standards Act 1992*. The Explanatory Notes did not state what consultation (if any) had occurred nor what were the results of consultation.

The level of background information and commentary to facilitate understanding of the Bill's aims and origin was satisfactory. The level of detail in relation to the Bills consistency with fundamental legislative principles was unacceptable.

Appendix A – List of Submissions

Sub #	Submitter
001	Protect All Children Today
002	QLD Child Safety Legislation Action Network
003	Queensland Law Society
004	Commission for Children and Young People and Child Guardian
005	Office of the Information Commissioner
006	Bar Association of Queensland