

CHILD PROTECTION (FURTHER REPORTABLE OBLIGATIONS) AND ANOTHER ACT AMENDMENT ACT 2014

EXPLANATORY NOTES

Title of the Bill

Child Protection (Further Reportable Obligations) and Another Act Amendment Act 2014

Objectives of the bill

The Bill allows the police commissioner to apply to a court for a risk assessment order and, as applicable, authorises a court to require a particular reportable offender to participate in an examination by a government psychiatrist. The government psychiatrist is authorised to assess whether the particular reportable offender has a concerning propensity to re-offend and accordingly recommend treatment so as to reduce the likelihood that they will re-offend. Subject to the outcome of the assessment, the court may order that the particular reportable offender participate in treatment. The court may also order that the particular reportable offender's reporting period be extended for up to 5 years if deemed necessary to protect the sexual safety of children in the community.

Furthermore the Bill will amend the Criminal Code to expand the definition of *material* under section 207A to include an inanimate object and thereby ensure the definition remains contemporary in consideration of new forms of child exploitation material.

Reasons for the bill

There is a common misconception among society that child sex offenders are a homogenous group however research validates that child sex offenders are a heterogeneous group. For instance the vast majority of child sexual offenders commit offences against a child victim already known to them but there is another subset that targets children unknown to them. Overall studies suggest that approximately 90 percent of child sex offenders commit crimes against children known to them, with a small 10 percent comprising of offenders who target children unknown to them.

Significantly criminological literature has identified a range of child sex offenders that are more predisposed to re-offending than other types of child sex offenders. Studies have identified the following risks, *inter alia*, for sexual re-offending:

- Prior sexual offences;
- Anti-social personality disorder;
- Victimising a stranger;
- Victimising an extra-familiar individual (i.e. someone who is not related to the offender);
- Victimising a male victim;
- Early onset of sexual offending;

- Engaged in a diverse range of sexual crimes (i.e. not one specific form like exposure); and
- Ongoing deviant sexual preferences (i.e. those that do not conform to societal values such as having sexual feelings towards young children),

The Victorian Law Reform Commission (VLRC) supports the identification of a dangerous subset of child sex offenders that are more inclined to re-offend. The VLRC asserts the greatest predictors for re-offending are for those offenders that start committing crime at an early age, have ongoing deviant sexual preferences, an extensive record of sexual offending, engaged in an array of sexual offences and offend against male child victims.

According to the VLRC current registration schemes are more likely to be effective in achieving their aim of protecting children against sexual abuse if they are strengthened and concentrated on those individuals who pose the most risk to the community. This essentially means that child sex offenders should not be treated as a homogenous group by imposing uniform reporting obligations. Instead, the VLRC suggests that high risk child sex offenders should have a rehabilitative component incorporated into their reporting obligations. There is evidence in the literature that supports such an amendment.

Specifically there is evidence to suggest that sex offender treatment programs are effective in reducing rates of re-offending. In consideration of research it is evident that Queensland's current registration scheme could be improved by incorporating a rehabilitative component for those offenders regarded as high risk reportable offenders and, as applicable, extending their reporting period.

The Bill also proposes to amend the Criminal Code to expand the definition of *material* under section 207A to include an inanimate object. This will ensure the definition remains contemporary in consideration of new forms of child exploitation material. For example, material in the form of a child-like sex doll was recently discovered in New South Wales. For this reason the legal definition of child abuse material needs to be updated to include inanimate objects. Accordingly the Bill updates Queensland legislation to ensure laws capture what is on the market in terms of child exploitation material.

Achievement of the objectives

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

Alternative ways of achieving the 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

The Bill has due regard for fundamental legislative principles, recognising that any infringement upon the rights and liberties of individuals is reasonably outweighed by the need to protect children in the community.

Succinctly the proposed amendments pose a potential imposition on the rights and liberties of reportable offenders in terms of the possibility of them being subjected to a risk assessment order and psychiatric assessment as well as treatment and extended reporting periods.

It is considered of any such impositions any associated breach of fundamental legislative principles is justified though in order to strengthen protection of children from reportable offenders who are legitimately identified as being at risk of re-offending.

Importantly the Bill contains a number of safeguards to ensure that reportable offenders are not unfairly or inappropriately subjected to a risk assessment order, psychiatric assessment, treatment or an extended reporting period unless deemed necessary by a court.

Overall the primary purpose of the *Child Protection (Offender Reporting) Act 2004* is to reduce the likelihood that reportable offenders will re-offend and the proposed amendments will crucially contribute toward this ultimate purpose. Very importantly the Bill will effectively improve the management of reportable offenders in the community and enhance child protection in Queensland.

It will also update Queensland legislation to ensure laws capture what is on the market in terms of child exploitation material and enable offenders to be prosecuted for such offences in accordance with community expectations.

Consultation

There has been no formal consultation.

Consistency with legislation of other jurisdiction

The *Child Protection (Offender Reporting) Act 2004* is substantially uniform or complementary with legislation in other Australian jurisdictions. In recent times though other jurisdictions have diverged from the original national framework. Tailored strategies now exist in different jurisdictions to ensure that individual child sex offender registration schemes remain contemporary and meet community expectations.

Divergence from the national framework was noted by the Australian New Zealand Policing Advisory Agencies (ANZPAA) in September 2012. ANZPAA recognised that at a national level the emphasis has remained on jurisdictional consistency. In this regard the amendments proposed in the Bill takes into account the 2011 review of the Victorian offender reporting legislation by the VLRC as described under the reasons for the Bill.

NOTES ON PROVISIONS

Part 1 Preliminary

Clause 1 Short title

This Act may be cited as the *Child Protection (Further Reportable Obligations) and Another Act Amendment Act 2014*.

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

Clause 2 Act Amended

This part amends the *Child Protection (Offender Reporting) Act 2004*.

Clause 3 Insertion of new pt 4, div 11

insert— **Division 11 Police commissioner may apply for risk assessment Order.**

This division is about risk assessment orders. A ***risk assessment order*** is an order for an assessment of whether either or both of the following (***further treatment***) is necessary to reduce the likelihood that a reportable offender will re-offend and to protect the sexual safety of children—

- (a) treatment for the reportable offender;
- (b) extending the reporting period for the reportable offender for a period of up to 5 years.

A court may make a risk assessment order for a reportable offender on an application made by the police commissioner. The police commissioner may apply at any time before the end of the reporting period for the reportable offender, including the reporting period as extended under this section.

If the court makes the risk assessment order, the order authorises a government psychiatrist to examine the reportable offender to assess whether further treatment is necessary to reduce the likelihood that the reportable offender will re-offend and to protect the sexual safety of children.

The court may, having regard to the report, order the reportable offender to comply with the following reportable obligations—

- (a) an obligation to comply with any treatment recommendation stated in the report;
- (b) an obligation to report for an extended reporting period.

Part 3 Amendment of Criminal Code

Clause 4 Code amended

This part amends the Criminal Code.

Clause 5 Amendment of s 207A (Definitions for this chapter)

Section 207A, definition *material*—

material is to be amended to also include an inanimate object.

Example for paragraph— a child-like sex doll