

Queensland



**SEXUAL OFFENCES
(PROTECTION OF
CHILDREN) AMENDMENT
ACT 2003**

Act No. 3 of 2003

Queensland



SEXUAL OFFENCES (PROTECTION OF CHILDREN) AMENDMENT ACT 2003

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Queensland



**Sexual Offences (Protection of Children)
Amendment Act 2003**

Act No. 3 of 2003

An Act to amend the criminal law, and for other purposes

[Assented to 4 March 2003]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Sexual Offences (Protection of Children) Amendment Act 2003*.

2 Commencement

(1) Part 1A commences on assent.

(2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

PART 1A—AMENDMENT OF BAIL ACT 1980

2A Act amended in pt 1A

This part amends the *Bail Act 1980*.

2B Insertion of new s 10B

After section 10A—

insert—

‘10B No costs order

‘(1) A court may not make any order concerning costs in a bail proceeding.

‘(2) It does not matter whether the bail proceeding started, or the relevant offence was committed, before or after the commencement of this section.

‘(3) In this section—

“**bail proceeding**” includes—

- (a) an application under this Act; and
- (b) an application to grant, enlarge, vary or revoke bail under another Act; and
- (c) an appeal to the Court of Appeal from an order made on an application mentioned in paragraph (a) or (b).¹

2C Amendment of s 28B (Warrant authority to apprehend defendant on other charges)

Section 28B, ‘28A(1)(a)’—

omit, insert—

‘28A(1)(a), (b), (c) or (e)’.

2D Amendment of s 33 (Failure to appear in accordance with undertaking)

Section 33(1)(b) and (3)(b)(i), ‘28A(1)(a)’—

omit, insert—

‘28A(1)(a), (b), (c) or (e)’.

2E Insertion of new s 39

After section 38—

insert—

‘39 Provision concerning references to s 28A(1)(a)

‘(1) It is declared that, during the relevant period, the *Acts Interpretation Act 1954*, section 14H¹ applied so that the reference to section 28A(1)(a) in sections 28B and 33² included a reference to section 28A(1)(b), (c) and (e).

1 *Acts Interpretation Act 1954*, section 14H (References taken to be included in reference to law)

2 Sections 28B (Warrant authority to apprehend defendant on other charges) and 33 (Failure to appear in accordance with undertaking)

‘(2) Without limiting subsection (1), if a defendant was apprehended during the relevant period under an affected warrant, subsections (3) and (4) apply.

‘(3) Section 28B is taken to have applied in relation to the affected warrant as if the reference in section 28B to a warrant issued under section 28A(1)(a) included a reference to the affected warrant.

‘(4) If the defendant was convicted of an offence against section 33, section 33 is taken to have applied, in relation to the defendant and the proceedings for the offence against section 33, as if the references in section 33 to a warrant issued under section 28A(1)(a) included a reference to the affected warrant.

‘(5) In this section—

“**affected warrant**” means a warrant issued before the commencement date under old section 28A(1)(a)(ii), (iii) or (iv) or during the relevant period under section 28A(1)(b), (c) or (e).

“**commencement date**” means the date the *Criminal Law Amendment Act 2002*, the schedule, amendments of the *Bail Act 1980* commenced.

“**old**”, in relation to a provision, means the provision as in force from time to time before the commencement date.

“**relevant period**” means the period beginning on the commencement date and ending immediately before the commencement of this section.’.

PART 2—AMENDMENT OF CORRECTIVE SERVICES ACT 2000

3 Act amended in pt 2

This part amends the *Corrective Services Act 2000*.

4 Insertion of new s 132A

Chapter 5, part 1, before section 133—

insert—

‘132A Definitions for pt 1

‘In this part—

“prescribed prisoner” means a prisoner who is serving a sentence for an offence of a sexual nature in relation to a child under the age of 16 years.

“reporting period”, for a prescribed prisoner, means a period not extending past the end of the prisoner’s period of imprisonment.’.

5 Amendment of s 142 (Conditions for release to work orders)

(1) Section 142(1), after ‘include’—

insert—

‘any of the following conditions’.

(2) Section 142(1)(a)(iii), ‘or’—

omit.

(3) Section 142(2)—

renumber as section 142(5).

(4) Section 142—

insert—

‘(2) Without limiting subsection (1), a release to work order for a prescribed prisoner, must include a condition requiring the prisoner to report the prisoner’s name, address and employment details—

- (a) within 48 hours of the prisoner’s release, to the officer in charge of a police station decided by the corrective services officer supervising the prisoner; and
- (b) at a frequency and for a reporting period, decided by the corrections board, to the officer in charge of a police station decided by the corrective services officer supervising the prisoner.

‘(3) For subsection (2), the prescribed prisoner must report to the officer in charge—

- (a) personally; or

- (b) with the consent of the officer in charge given before the report is required to be made—by telephone or in another way.

‘(4) For subsection (3)(b), the officer in charge may consent to the prescribed prisoner reporting other than personally only if the prisoner is ill or has another good reason for not reporting personally.’.

6 Amendment of s 143 (Conditions for home detention orders)

(1) Section 143(1), after ‘include’—

insert—

‘any of the following conditions’.

(2) Section 143(1)(a)(ii), ‘and’—

omit.

(3) Section 143(3)—

renumber as section 143(6).

(4) Section 143—

insert—

‘(3) Without limiting subsection (1), a home detention order for a prescribed prisoner must include a condition requiring the prisoner to report the prisoner’s name, address and employment details—

- (a) within 48 hours of the prisoner’s release, to the officer in charge of a police station decided by the corrective services officer supervising the prisoner; and
- (b) at a frequency and for a reporting period, decided by the corrections board, to the officer in charge of a police station decided by the corrective services officer supervising the prisoner.

‘(4) For subsection (3), the prescribed prisoner must report to the officer in charge—

- (a) personally; or
- (b) with the consent of the officer in charge given before the report is required to be made—by telephone or in another way.

‘(5) For subsection (4)(b), the officer in charge may consent to the prescribed prisoner reporting other than personally only if the prisoner is ill or has another good reason for not reporting personally.’.

7 Amendment of s 144 (Conditions for parole orders)

(1) Section 144(2) to (4)—

renumber as section 144(5) to (7).

(2) Section 144—

insert—

‘(2) Without limiting subsection (1), a parole order for a prescribed prisoner must include a condition requiring the prisoner to report the prisoner’s name, address and employment details—

- (a) within 48 hours of the prisoner’s release, to the officer in charge of a police station decided by the corrective services officer; and
- (b) at a frequency and for a reporting period, decided by the corrections board, to the officer in charge of a police station decided by the corrective services officer.

‘(3) For subsection (2), the prescribed prisoner must report to the officer in charge—

- (a) personally; or
- (b) with the consent of the officer in charge given before the report is required to be made—by telephone or in another way.

‘(4) For subsection (3)(b), the officer in charge may consent to the prescribed prisoner reporting other than personally only if the prisoner is ill or has another good reason for not reporting personally.’.

8 Insertion of new ss 144A and 144B

After section 144—

insert—

‘144A Commissioner to be advised about release of prescribed prisoner

‘A corrections board must, as soon as practicable after a prescribed prisoner is released under a post-prison community based release order made after the commencement of this section, give the commissioner—

- (a) a copy of the order for the prisoner; and
- (b) information about the prisoner’s name and address.

‘144B Officer in charge to advise if prescribed prisoner fails to report

‘(1) This section applies if, without reasonable excuse, a prescribed prisoner released under a post-prison community based release order made after the commencement of section 144A fails to report to the officer in charge of a police station as required by the prisoner’s order.

‘(2) The officer in charge of the police station must, as soon as practicable after the officer becomes aware of the failure to report, advise the corrective services officer supervising the prisoner of the failure.’.

9 Replacement of ch 7, pt 1 hdg (Continuation of Regional Boards)

Chapter 7, part 1, heading—

omit, insert—

**‘PART 1—TRANSITIONAL PROVISIONS FOR ACT
NO. 63 OF 2000**

‘Division 1—Continuation of Regional Boards’.

10 Renumbering of ch 7, pts 2 and 3

Chapter 7, parts 2 and 3—

renumber as Chapter 7, part 1, divisions 2 and 3.

11 Amendment of s 256 (Conditions of continuing appointments)

Section 256, ‘part’—

omit, insert—

‘division’.

12 Insertion of new ch 7, pt 2

Chapter 7—

insert—

‘PART 2—TRANSITIONAL PROVISION FOR SEXUAL OFFENCES (PROTECTION OF CHILDREN) AMENDMENT ACT 2003

‘274A Post-prison community based release orders

‘(1) A condition that must be included in a relevant release order for a prescribed prisoner under section 142(2), 143(3) and 144(2) must be included for each order made after the commencement of this section.

‘(2) Subsection (1) applies for a relevant release order regardless of when the application for the order was made and despite any expectation a prisoner may have not to be subject to the condition.

‘(3) In this section—

“relevant release order” means a release to work order, a home detention order or a parole order.’.

13 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

‘ **“prescribed prisoner”** for chapter 5, part 1,³ see section 132A.

“reporting period” for chapter 5, part 1,⁴ see section 132A.’.

3 Chapter 5 (Post-prison community based release), part 1 (Orders)

4 Chapter 5 (Post-prison community based release), part 1 (Orders)

PART 3—AMENDMENT OF CRIMINAL CODE

14 Code amended in pt 3

This part amends the Criminal Code.

14A Amendment of s 1 (Definitions)

Section 1—

insert—

‘ **“computer generated image”** means electronically recorded data capable, by way of an electronic device, of being produced on a computer monitor, television screen, liquid crystal display or similar medium as an image, including an image in the form of text.

“indecent matter” includes indecent film, videotape, audiotape, picture, photograph or printed or written matter.

“picture” includes image including computer generated image.’.

15 Amendment of s 210 (Indecent treatment of children under 16)

(1) Section 210(2), ‘10’—

omit, insert—

‘14’.

(2) Section 210(3) and (4), ‘14’—

omit, insert—

‘20’.

16 Amendment of s 218 (Procuring sexual acts by coercion etc.)

Section 218(3)—

omit, insert—

‘(3) Subsection (2) is not limited to sexual intercourse or acts involving physical contact.’.

17 Insertion of new s 218A

After section 218—

insert—

‘218A Using internet etc. to procure children under 16

‘(1) Any adult who uses electronic communication with intent to—

- (a) procure a person under the age of 16 years, or a person the adult believes is under the age of 16 years, to engage in a sexual act, either in Queensland or elsewhere; or
- (b) expose, without legitimate reason, a person under the age of 16 years, or a person the adult believes is under the age of 16 years, to any indecent matter,⁵ either in Queensland or elsewhere;

commits a crime.

Maximum penalty—5 years imprisonment.

‘(2) The adult is liable to 10 years imprisonment if the person is—

- (a) a person under 12 years; or
- (b) a person the adult believes is under 12 years.

‘(3) For subsection (1)(a), a person engages in a sexual act if the person—

- (a) allows a sexual act to be done to the person’s body; or
- (b) does a sexual act to the person’s own body or the body of another person; or
- (c) otherwise engages in an act of an indecent nature.

‘(4) Subsection (3) is not limited to sexual intercourse or acts involving physical contact.

‘(5) For subsection (1)(a), it is not necessary to prove that the adult intended to procure the person to engage in any particular sexual act.

‘(6) Also, for subsection (1)(a), it does not matter that, by reason of circumstances not known to the adult, it is impossible in fact for the person to engage in the sexual act.

5 “indecent matter” is defined in section 1.

‘(7) For subsection (1), it does not matter that the person is a fictitious person represented to the adult as a real person.

‘(8) Evidence that the person was represented to the adult as being under the age of 16 years, or 12 years, as the case may be, is, in the absence of evidence to the contrary, proof that the adult believed the person was under that age.

‘(9) It is a defence to a charge under this section to prove the adult believed on reasonable grounds that the person was at least 16 years, or 12 years, as the case may be.

‘(10) In this section—

“**electronic communication**” means email, Internet chat rooms, SMS messages, real time audio/video or other similar communication.

“**procure**” means knowingly entice or recruit for the purposes of sexual exploitation.’.

18 Replacement of s 229B (Maintaining a sexual relationship with a child)

Section 229B—

omit, insert—

‘229B Maintaining a sexual relationship with a child

‘(1) Any adult who maintains an unlawful sexual relationship with a child under the prescribed age commits a crime.

Maximum penalty—life imprisonment.

‘(2) An unlawful sexual relationship is a relationship that involves more than 1 unlawful sexual act over any period.

‘(3) For an adult to be convicted of the offence of maintaining an unlawful sexual relationship with a child, all the members of the jury must be satisfied beyond reasonable doubt that the evidence establishes that an unlawful sexual relationship with the child involving unlawful sexual acts existed.

‘(4) However, in relation to the unlawful sexual acts involved in an unlawful sexual relationship—

- (a) the prosecution is not required to allege the particulars of any unlawful sexual act that would be necessary if the act were charged as a separate offence; and
- (b) the jury is not required to be satisfied of the particulars of any unlawful sexual act that it would have to be satisfied of if the act were charged as a separate offence; and
- (c) all the members of the jury are not required to be satisfied about the same unlawful sexual acts.

‘(5) If the child was at least 12 years when the crime was alleged to have been committed, it is a defence to prove the adult believed on reasonable grounds the child was at least the prescribed age.

‘(6) An adult can not be prosecuted for the crime without a Crown Law Officer’s consent.

‘(7) An adult may be charged in 1 indictment with—

- (a) the offence of maintaining an unlawful sexual relationship with a child (the “**maintaining offence**”); and
- (b) 1 or more other offences of a sexual nature alleged to have been committed by the adult in relation to the child in the course of the alleged unlawful sexual relationship (the “**other offence or offences**”).

‘(8) The adult charged in 1 indictment as mentioned in subsection (7) may be convicted of and punished for any or all of the offences charged.

‘(9) However, if the adult is—

- (a) charged in 1 indictment as mentioned in subsection (7); and
- (b) sentenced to imprisonment for the maintaining offence and for the other offence or offences;

the court imposing imprisonment may not order that the sentence for the maintaining offence be served cumulatively with the sentence or sentences for the other offence or offences.⁶

‘(10) In this section—

⁶ See the *Penalties and Sentences Act 1992*, section 155 (Imprisonment to be served concurrently unless otherwise ordered).

“offence of a sexual nature” means an offence defined in section 208, 209, 210 (other than section 210(1)(e) or (f)), 215, 222, 349, 350 or 352.⁷

“prescribed age”, for a child, means—

- (a) if the unlawful sexual relationship involves an act that constitutes, or would constitute (if it were sufficiently particularised), an offence defined in section 208 or 209—18 years; or
- (b) in any other case—16 years.

“unlawful sexual act” means an act that constitutes, or would constitute (if it were sufficiently particularised), an offence of a sexual nature.’.

19 Insertion of new ch 76

After chapter 75—

insert—

‘CHAPTER 76—TRANSITIONAL PROVISION FOR SEXUAL OFFENCES (PROTECTION OF CHILDREN) AMENDMENT ACT 2003

‘713 Transitional provision for Sexual Offences (Protection of Children) Amendment Act 2003—unlawful sexual relationship

‘On a charge of an offence as defined in section 229B, evidence of an unlawful sexual act or acts done before the commencement of this section may be admitted for the purpose of deciding whether unlawful sexual acts done after the commencement of this section establish the existence of an unlawful sexual relationship.’.

⁷ Section 208 (Unlawful sodomy), 209 (Attempted sodomy), 210 (Indecent treatment of children under 16), 215 (Carnal knowledge with or of children under 16), 222 (Incest), 349 (Rape), 350 (Attempt to commit rape) or 352 (Sexual assaults)

PART 4—AMENDMENT OF THE CRIMINAL LAW AMENDMENT ACT 1945

20 Act amended in pt 4

This part amends the *Criminal Law Amendment Act 1945*.

21 Amendment of s 19 (Sexual offender to report name and address)

(1) Section 19(1) from ‘may order’—

omit, insert—

‘may make a reporting order against the offender.’.

(2) Section 19(2), ‘substantial’—

omit.

(3) Section 19(6) and (7)—

omit.

(4) Section 19(8), after ‘subsection (1)’—

insert—

‘without reasonable excuse’.

(5) Section 19(8) and (9)—

renumber as subsection (5) and (6).

22 Renumbering of s 19A (Application for revocation of order)

Section 19A—

renumber as section 19B.

23 Insertion of new s 19A

After section 19—

insert—

‘19A Requirements under reporting order

‘(1) A reporting order may impose requirements under subsection (2) or (5) or both subsections.

‘(2) A reporting order may require the offender—

- (a) to report the offender’s current name and address to the officer in charge of police at a stated place within 48 hours after being released from custody; and
- (b) afterwards, for the stated period, to report any change of name or address, within 48 hours of the change taking place, to the officer in charge of police at that place or at another place approved by the commissioner.

‘(3) For subsection (2)(a), the offender must report to the report officer personally.

‘(4) For subsection (2)(b), the offender must report to the report officer—

- (a) personally; or
- (b) by letter signed by the offender and sent by registered post addressed to the report officer.

‘(5) A reporting order may require the offender—

- (a) to report to the officer in charge of police at a stated place within 48 hours after being released from custody; and
- (b) afterwards, at the stated frequency for the stated period, to report to the officer in charge of police at that place or at another place approved in writing by the commissioner.

‘(6) For subsection (5), the offender must report to the report officer—

- (a) personally; or
- (b) with the consent of the report officer given before the report is required to be made—by telephone or in another way.

‘(7) For subsection (6)(b), the report officer may consent to the offender reporting other than personally only if the offender is ill or has another good reason for not reporting personally.

‘(8) In this section—

“commissioner” means the commissioner of the police service.

“report officer” means the police officer to whom an offender must report under the requirements of a reporting order.

“stated” means stated in the reporting order.’.

24 Amendment of s 20 (Disclosure of offences of sexual nature and other relevant information)

Section 20(6), after ‘subsection (4)’—

insert—

‘without reasonable excuse’.

24A Amendment of s 21 (Complaints for certain offences)

Section 21(1), ‘section 19(8)’—

omit, insert—

‘section 19(5)’.

25 Insertion of new pt 5, div 1 heading

Before section 23—

insert—

‘Division 1—Criminal Law Amendment Act 1999’.

26 Insertion of new pt 5, div 2

Part 5—

insert—

‘Division 2—Sexual Offences (Protection of Children) Amendment Act 2003

‘24 Definitions for pt 5, div 2

‘In this part—

“amending Act” means the *Sexual Offences (Protection of Children) Amendment Act 2003*.

“commencement” means the commencement of section 21 of the amending Act.⁸

‘25 Transitional provision for order under section 19

‘A reporting order may be made under section 19 as amended by the amending Act whether the conviction for which the reporting order is made happened before or after the commencement.’

PART 4A—AMENDMENT OF MAGISTRATES ACT 1991

26A Act amended in pt 4A

This part amends the *Magistrates Act 1991*.

26B Replacement of s 6 (Appointment of acting Magistrates)

Section 6—

omit, insert—

‘6 Appointment of acting magistrates

‘(1) The Governor in Council may, at the request of the chief magistrate, appoint any of the following persons to act as a magistrate—

- (a) a clerk of the court;
- (b) a person qualified to be appointed as a magistrate;
- (c) a person who is, or has been, a judge or magistrate of a court of another State or Territory;
- (d) a person who is, or has been, a judge of a federal court or a federal magistrate;
- (e) a Supreme Court judge, if the Chief Justice consents;
- (f) a District Court judge, if the Chief Judge consents.

⁸ *Sexual Offences (Protection of Children) Amendment Act 2003*, section 21 (Amendment of s 19 (Sexual offender to report name and address))

‘(2) The appointment may be for a specified period or for a specified matter.

‘(3) For the purpose of the person acting as a magistrate—

- (a) this Act and other Acts apply to the person as if the person were a magistrate; and
- (b) the person has all the powers and functions of a magistrate; and
- (c) subject to section 6A(4), the person is to be paid the remuneration and allowances decided by the Governor in Council, not being less than the remuneration and allowances paid to a magistrate.

‘(4) A person who has acted as a magistrate may constitute a Magistrates Court at a place directed by the Chief Magistrate to give judgment in, or otherwise complete, a proceeding heard by the person while acting as a magistrate, despite the fact that the person is no longer a magistrate.

‘6A Acting magistrates who are clerks of the court

‘(1) This section applies if a clerk of the court is appointed to act as a magistrate.

‘(2) The *Public Service Act 1996* does not apply to the clerk while the clerk is acting as a magistrate.

‘(3) The clerk retains all rights that have accrued to the clerk because of the clerk’s employment, or that would accrue in the future to the clerk because of that employment, as if service acting as a magistrate were a continuation of service as a clerk of the court.

‘(4) However, for deciding whether remuneration is payable to a clerk of the court while acting as a magistrate, the *Public Service Act 1996* applies to the person.’.

PART 5—AMENDMENT OF PENALTIES AND SENTENCES ACT 1992

27 Act amended in pt 5

This part amends the *Penalties and Sentences Act 1992*.

28 Amendment of s 9 (Sentencing guidelines)

(1) Section 9(5) and (6)—

renumber as subsections (7) and (8).

(2) Section 9—

insert—

‘(5) Also, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender for any offence of a sexual nature committed in relation to a child under 16 years.

‘(6) In sentencing an offender to whom subsection (5) applies, the court must have regard primarily to the following—

- (a) the effect of the offence on the child;
- (b) the age of the child;
- (c) the nature of the offence, including, for example, any physical harm or the threat of physical harm to the child or another;
- (d) the need to protect the child, or other children, from the risk of the offender reoffending;
- (e) the need to deter similar behaviour by other offenders to protect children;
- (f) the prospects of rehabilitation including the availability of any medical or psychiatric treatment to cause the offender to behave in a way acceptable to the community;
- (g) the offender’s antecedents, age and character;
- (h) any remorse or lack of remorse of the offender;
- (i) any medical, psychiatric, prison or other relevant report relating to the offender;
- (j) anything else about the safety of children under 16 the sentencing court considers relevant.’

29 Insertion of new s 211

Part 14—

insert—

‘211 Transitional provision for the Sexual Offences (Protection of Children) Amendment Act 2003

‘Section 9 as amended by the *Sexual Offences (Protection of Children) Amendment Act 2003*, section 28,⁹ applies to the sentencing of an offender whether the offence or conviction happened before or after the commencement of that section.’.

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⁹ *Sexual Offences (Protection of Children) Amendment Act 2003*, section 28 (Amendment of s 9 (Sentencing guidelines))