

Child Protection (Offender Reporting) Bill 2004

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The *Child Protection (Offender Reporting) Bill 2004* (the Bill) generally fulfils the Queensland component of a national child protection registration scheme. The Bill requires child sex offenders, and other defined categories of serious offenders against children, to keep police informed of certain personal details for a period of time after they are released into the community. The purpose of this legislation is to reduce the likelihood that offenders will re-offend and to assist the investigation and prosecution of any future offences that they may commit.

Means of Achieving Policy Objectives

The legislation will make it mandatory for child sex offenders to report certain personal details to police when they are released into the community. The information will be kept on a register that is maintained by police. This is the Queensland component of a national child protection register that will enable police from all Australian jurisdictions to track the movements of offenders who may seek to avoid compliance with the scheme.

Alternative Means of Achieving Policy Objectives

As this Bill represents the Queensland component of a national child protection registration scheme there is no alternative means of achieving the policy objectives.

Estimated Cost of Implementation for Government

The total estimated cost to Queensland government departments to implement the proposal in Queensland is \$1.5M.

Consistency with Fundamental Legislative Principles

The legislation will have a retrospective effect in that at the date of commencement, persons who are in custody or on post-prison community based release, community based sentence, existing continuing detention or supervision orders under the *Dangerous Prisoner (Sexual Offenders) Act 2003*, or on existing section 19 reporting orders under the *Criminal Law Amendment Act 1945* after being convicted of sexual offences against children or other specified offences will be required to register with police regardless of when the offence was committed. This may appear inconsistent with the fundamental legislative principle that legislation have sufficient regard to the rights and liberties of individuals and not impose obligations retrospectively.

Although mandatory, the new scheme is akin to the existing scheme in section 19 of the *Criminal Law Amendment Act 1945*. The purpose of the scheme is not punishment and mandatory registration is not a form of sentence. A similar argument applies to prisoners subject to the *Dangerous Prisoners (Sexual Offenders) Act 2003*, which also includes those serving a sentence of imprisonment which predates the commencement of that Act.

The issue of additional punishment and retrospectivity has been considered in the context of section 19 of *Criminal Law Amendment Act 1945*. The Queensland Court of Appeal in *R v C* [2002] QCA 156 held that an order under section 19 is not intended to impose a form of punishment but rather its purpose was protective or a vulnerable part of the community. In light of that, this legislation can have retrospective application in a similar way to the recent amendments to section 19.

The retrospective application of registration schemes has been judicially tested in the United States of America, with the United Kingdom scheme considered by the European Commission of Human Rights. In each case, the registration requirements were found not to impose additional punishment.

There is no legislative review of mandatory reporting obligations. As the reporting obligations and reporting periods are prescribed by the legislation, the determination of a reportable offender's obligation is prescribed by the legislation and not by police. In this regard, this is not considered to be a breach the Legislative Standards Act. The Act also provides that the Police Commissioner provide an internal review on application where a person believes the decision to place a reportable person on the register has been made in error. The provisions of Judicial Review will still apply.

Consultation conducted in Development of the Bill

No community consultation was undertaken in relation to this Bill.

Where there are potential implications on the roles of government departments, these departments were consulted in respect to the relevant portions of the Bill.

NOTES ON PROVISIONS

Specific provisions

Part 1 - Preliminary

Short title

Clause 1 specifies the short title of the Bill.

Commencement

Clause 2 provides that the Bill is to commence on a day to be fixed by proclamation.

Purpose and outline

Clause 3 describes the purpose and outline of the Bill. It provides that the purpose is to require particular offenders who commit sexual or other serious offences against children to keep police informed of their whereabouts and other personal details for a period of time after their release into the community. The intent of this is to reduce the likelihood that they will re-offend and to facilitate the investigation and prosecution of any future offences they may commit.

The Bill provides for the establishment of a child protection register to be administered and maintained by the police. Offenders who are sentenced for reportable offences after the commencement date are to report specified personal details for inclusion in the register, and this requirement is

extended to particular offenders sentenced for reportable offences before that date.

The registration places an onus on the individual, after the initial registration, to update any changes to their personal information. It further requires that they report to an approved police complex at least on an annual basis. The registration process extends for a period of time ranging from four years to life, dependent upon the type of offence, number of offences and re-offending of the individual. Juvenile offenders will be subject to half the registration period of adult offenders.

The Bill also allows for the recognition of the period of reporting obligations imposed under the laws of foreign jurisdictions. A registered person, who is leaving their respective jurisdiction to travel overseas for any period of time, or interstate for a period in excess of 14 days, is required to advise police of their intended destination and a contact address. Within the national framework, police will be able to advise the jurisdiction of that person's impending arrival and intelligence databases can be appropriately updated. If overseas travel is involved, the Australian Federal Police will notify the respective border authorities within that country, dependent upon the perceived risk.

Notes in text

Clause 4 provides that a note in the text of this legislation is part of the statute.

Part 2 – Interpretation

Reportable offender defined

Clause 5 defines a reportable offender as being a person whom a court has sentenced for a reportable offence after the commencement date. This provision applies to certain people who are reportable offenders for the purposes of equivalent laws outside of Queensland, even though they are not reportable offenders under this Bill.

A person is also a reportable offender if they are an existing reportable offender, a corresponding reportable offender, a New South Wales reportable offender, or subject to an offender reporting order.

Unless a person is a reportable offender because they are either an existing reportable offender, a corresponding reportable offender, a New South Wales reportable offender or a person subject to a child protection registration order, a person is not a reportable offender merely because they are a person to whom a court has made a finding of guilt but has not recorded a conviction for a class 1 or class 2 offence under section 12 of the *Penalties and Sentences Act 1992*, or section 183 of the *Juvenile Justice Act 1992*. This includes an equivalent order under the laws of a foreign jurisdiction. Neither is a person on whom a sentence has been imposed for a single class 2 offence if that sentence did not include a term of imprisonment, including one that is subject to a home detention order or its equivalent in a foreign jurisdiction. This also applies to a sentence that did not require that the person be under the supervision of a supervising authority or another person or body.

Similarly, these conditions apply to a person, who as a juvenile, committed a single offence involving an act of indecency, or a single offence of possessing or publishing child pornography either in Queensland or under the laws of a foreign jurisdiction. This also applies to a person, who as a juvenile, committed a single offence that falls within a class of offence that the regulations state is an offence for the purposes of this provision, including an offence under the law of a foreign jurisdiction.

Also, a person is not a reportable offender if they are receiving protection under a foreign witness protection law specified under a regulation for the purposes of this provision, or if they have the same status as that sort of person under an order made under a corresponding Act specified under a regulation for the purposes of this provision.

A person ceases to be a reportable offender if the finding of guilt relating to the only offence that makes the person a reportable offender under this legislation is quashed or set aside by the court. Similarly, a person, to whom a court has made a finding of guilt but has not recorded a conviction for a class 1 or class 2 offence, or a person on whom a sentence has been imposed for a single class 2 offence if that sentence did not include a term of imprisonment, ceases to be a reportable offender if their sentence for that offence is reduced or altered, had the amended sentence been the original sentence. Also, a person's status as a reportable offender ceases if they are subject to a offender registration order that is quashed on appeal. A similar situation applies to a person who has been subjected to a forensic order and an offender reporting order has been made with the forensic order. Should the forensic order be revoked then the person also ceases to be a reportable offender.

It is irrelevant, whether or not a person may lodge, or has lodged an appeal in respect of a finding of guilt, sentence or child protection order.

Reference to a person upon whom a sentence has been imposed for a single class 2 offence that did not involve imprisonment or some form of supervision, includes a reference to more than one offence of the same kind arising from the same incident. Similar circumstances apply to offenders who, as a child, commit a single offence involving an act of indecency or a single offence involving child pornography.

Existing reportable offender defined

Clause 6 defines an existing reportable offender as being a person who, before the commencement date, has been sentenced for a reportable offence who is either serving a term of imprisonment or subject to a supervision order. This will include offenders subject to continuing detention orders and supervision orders under the *Dangerous Prisoner (Sexual Offenders) Act 2003*. Also included in the existing reportable offender category are those persons who, immediately before the commencement date, were subject to a reporting order made under section 19 of the *Criminal Law Amendment Act 1945*. However, it should be noted that this provision does not apply to offenders who have not had a conviction recorded under section 12 of the *Penalties and Sentences Act 1992* or section 183 of the *Juvenile Justice Act 1992*.

Corresponding reportable offender defined

Clause 7 defines corresponding reportable offender as being a person who had at any time been in a foreign jurisdiction and at that time had been required to report to the corresponding registrar in that jurisdiction for a longer period than the person would be required to report under this legislation, regardless of whether that time was before or after the commencement of this provision.

This proviso applies if the corresponding reportable offender is a person who would, if they were still in that foreign jurisdiction, be required to report to the corresponding registrar in that jurisdiction for a longer period than the person would be required to report under the provisions of this legislation, because this is the recognised foreign reporting period.

Moreover, this definition applies to a person who falls within a class of person to whom a regulation states is a corresponding reportable offender.

New South Wales reportable offender defined

Clause 8 defines a New South Wales reportable offender as being a person who, had they been in New South Wales at a time before the date stated in a regulation for the purposes of this section and whose reporting obligations under the New South Wales Act had begun at that time. A person whom the regulation prescribes as not being a New South Wales reportable offender is not included in this definition. A regulation may prescribe a date before the commencement date.

Reportable offence defined

Clause 9 defines a reportable offence as being either a class 1 offence, or a class 2 offence. Also included in this definition is an offence that is neither a class 1 or class 2 offence but it is considered to be serious enough to warrant the court making an offender reporting order. An example of this is an offender who approaches a child, douses them with petrol and then sets the child alight.

Finding of guilt defined

Clause 10 provides that a reference to a finding of guilt in relation to an offence committed by a person is a reference to a court making a formal finding of guilt in relation to the offence, or in the case of there having been no formal finding of guilt before the conviction, a court convicting a person of the offence. Similarly, it applies to a court accepting a plea of guilty from the person in relation to the offence, or accepting an admission of guilt from a person for the purpose of the offence being taken into account under section 189 of the *Penalties and Sentences Act 1992* or section 157 of the *Juvenile Justice Act 1992*. This also applies to the equivalent provisions of the laws of a foreign jurisdiction.

However, any reference to a finding of guilt does not include a finding of guilt that is later quashed or set aside by a court.

References to other terms and concepts

Clause 11 provides that for the purposes of this legislation, offences arise from the same incident only if they are committed within a single period of 24 hours and against the same person.

A reference to doing a thing in person is a reference to doing the thing by personal attendance at a place. It does not include attending a place by telephone or some other electronic means.

Definitions

Clause 12 provides that the dictionary in schedule 3 defines particular words in this Bill.

Part 3 – Offender Reporting Orders

Clause 13 makes provision for a court to make an offender reporting order for a person who is found guilty of an offence that is neither a class 1 nor class 2 offence that requires that person to comply with the reporting obligations of this legislation. This includes a court making a forensic order in relation to a person suffering from a mental illness. A court may only make the order if it is satisfied that the person poses a risk to the lives or sexual safety of one or more children, or children in general. To this end it is not necessary for the court to be able to identify a risk to particular children, or a particular class of children. The court may only make the order if it imposes a sentence in relation to the offence, other than where there is a finding of guilt but no conviction is recorded. The order must be made concurrently with the sentence. A court may only make the order if it receives an application from the prosecution for the imposition of the order.

If a court has made an offender reporting order against a person, then the person may appeal against the making of the order under chapter 67 of the Criminal Code as if it were a sentence pronounced upon a person who has committed an indictable offence. Conversely, if a court has refused to make an offender order against a person, then the Attorney-General may appeal against the refusal under chapter 67 of the Criminal Code as if it were a sentence pronounced on the conviction of a person for an indictable offence.

If the court has made an offender reporting order against a forensic patient, then that person may make an appeal under chapter 8, part 2 of the *Mental Health Act 2000* as if the order were a decision of the Mental Health Court. Conversely, if a court has refused to make an offender reporting order against a forensic patient, then the Attorney-General may make an appeal against the decision under chapter 8, part 2 of the *Mental Health Act 2000* as if the order were a decision of the Mental Health Court. In either case, any reference to the Mental Health Court is to be understood as a reference to the court that made the offender reporting order.

Moreover, in the case of forensic patients, if they are subject to an offender reporting order, then that order ends if the forensic order is revoked under section 203 of the *Mental Health Act 2000*.

For the purposes of the provisions pertaining to all reporting obligations, a person (other than a forensic patient) who is subject to an order under this clause is deemed to have been found guilty of a class 2 offence.

Part 4 – Reporting Obligations

Division 1 – Initial Report

When initial report must be made

Clause 14 provides that a reportable offender must initially report their personal details to the Commissioner of Police within the following time periods:

- a. a reportable offender, other than a corresponding reportable offender, who enters government detention in Queensland on or after the commencement date as a consequence of having been sentenced for a reportable offence and who ceases to be in government detention whilst in Queensland is required to report within 28 days of being released from government detention;
- b. a reportable offender, other than a corresponding reportable offender, in government detention in Queensland immediately before the commencement date and who ceases to be in government detention whilst in Queensland is required to report 90 days after the commencement date or 28 days after they are released from government detention;
- c. a reportable offender, other than a corresponding reportable offender, who is in Queensland on the commencement date, but who is not in government detention at that time must report within 90 days after the commencement date or, if they are given written notice of their reporting obligations, within 72 days after that date, within 28 days after they are given notice;

- d. a reportable offender (other than a corresponding reportable offender) who is subject to an offender reporting order must report within 28 days of the order being made;
- e. any other reportable offender who is sentenced for a reportable offence in Queensland is required to report 28 days after they are sentenced for the reportable offence;
- f. any other reportable offender who enters Queensland from a foreign jurisdiction and who has not previously been required to report their details to police must report within 14 days of entering and remaining in Queensland for 14 or more consecutive days, not counting any days spent in detention; and
- g. a corresponding reportable offender who has not previously reported their details to police and who is in Queensland on the date on which they become a corresponding reportable offender must report within 28 days of having become a corresponding reportable offender or 28 days after they are released from detention, whichever is the later.

Notwithstanding the aforementioned provisions, a reportable offender must report their personal details to the police before leaving Queensland unless they enter the State from a foreign jurisdiction and remain for less than 14 consecutive days, not counting any days spent in government detention.

If more than one circumstance mentioned applies to a reportable offender, the initial report must be made within the shorter of the periods mentioned.

When new initial report must be made by offender whose previous reporting obligations have ceased

Clause 15 makes provision for where a reportable offender's reporting period has expired but they are then sentenced for another reportable offence by stipulating that they must report their personal details to the police within 28 days of being sentenced for the reportable offence, or should they be in government detention, within 28 days of being released, whichever occurs later.

In the case of a reportable offender's reporting period expiring, but they then become a corresponding reportable offender who must continue to comply with the reporting obligations imposed by that jurisdiction for any period, then they must report their details to the police within 28 days of becoming a corresponding reportable offender. Alternatively, if they are in

government detention, they must report within 28 days of being released, whichever case is the later.

In the case of a reportable offender whose reporting obligations are suspended by a suspension order, or an equivalent order in a foreign jurisdiction, and that order ceases to have effect as a result of the offender being made subject to a further offender registration order, or being found guilty of a reportable offence, or becoming a corresponding reportable offender who must continue to comply with the imposed reporting obligations, the original order that ceased to have effect is revived. Therefore the reportable offender must report their personal details to the police within 28 days after the order ceases to have effect, or if they are in government detention, within 28 days of being released into the community, whichever is the later.

If a reportable offender is not in Queensland at the time they would be required under the preceding circumstances to report their personal details to police, then they must report their personal details within 14 days of entering and remaining in Queensland for 14 or more consecutive days, not counting any days that they might spend in government detention.

A reportable offender must report their personal details to the police before leaving Queensland unless they enter the State from a foreign jurisdiction and remain for less than 14 consecutive days not counting any days that might be spent in government detention.

Personal details that are to be reported

Clause 16 provides that the details the reportable offender must report are:

- a. their name, together with any other name by which they are, or have previously been, known;
- b. in respect of each name other than their current name, the period during which they were known by that other name;
- c. their date of birth;
- d. the address of each of the premises at which they generally reside, or if they do not generally reside at any particular premises, the name of each of the localities in which they can generally be found;
- e. the names and ages of any children who generally reside in the same household as that in which they generally reside, or with who they have regular unsupervised contact;

- f. if they are employed: the nature of their employment; the name of their employer; and the address of each of the premises at which they are generally employed, or if they are not generally employed at any particular premises, the name of each of the localities in which they are generally employed;
- g. details of their affiliation with any club or organisation that has child membership or child participation in its activities;
- h. the make, model, colour and registration number of any motor vehicle owned by, or generally driven by them;
- i. details of any tattoos or permanent distinguishing marks that they have, including details of any tattoo or mark that has been removed or changed;
- j. whether they have ever been found guilty in any foreign jurisdiction of a reportable offence or of an offence that required them to report to a corresponding registrar or been subject to a corresponding offender reporting order and, if so, where that finding occurred or that order was made;
- k. if they have been in government detention since they were sentenced or released from government detention in respect of a reportable offence or corresponding reportable offence, details of when and where that custody occurred;
- l. if, at the time of making a report, they leave, or intend to leave to travel elsewhere in Australia on an average of at least once a month, irrespective of the length of any such absence, they must in general terms provide the reason for travelling as well as the frequency and destination of the travel.

A reportable offender does not generally reside at any particular premises unless they reside at those premises for at least 14 days, whether consecutive or not, in any period of 12 months. Similarly, a child does not generally reside in the same household as a reportable offender unless they reside together in that household for at least 14 days, whether consecutive or not, in any period of 12 months. Moreover, a reportable offender does not have regular unsupervised contact with a child unless they have unsupervised contact with the child for at least 14 days, whether consecutive or not, in any period of 12 months. Likewise, a reportable offender is not generally employed at any particular premises unless they are employed at those premises for at least 14 days, whether consecutive or not, in any period of 12 months. Correspondingly, a reportable offender does not generally drive a particular motor vehicle unless the person drives

that vehicle on at least 14 days, whether consecutive or not, in any period of 12 months.

A person is employed if they: carry out work under a contract of employment; carry out work as a self-employed person or as a sub-contractor; carry out work as a volunteer for an organisation; undertake practical training as part of an educational or vocational course; or carry out work as a minister of religion or any other capacity for the purposes of a religious organisation.

A person is an employer if they arrange, in the course of business, for the reportable offender to be employed by another person, or they engage the reportable offender under contract to carry out work.

Persons required to report under corresponding Act

Clause 17 applies to a person, other than a protected witness, who has been required to report to a corresponding registrar, irrespective of whether they are a reportable offender for the purposes of this statute.

Unless the reporting obligations imposed by this section have previously been complied with, then the offender must contact a person nominated by the police commissioner by either telephone or some other prescribed means within seven days of entering and remaining in Queensland. Details pertaining to contacting the nominated person will be available by contacting any police station.

The nominated person contacted must advise the person whether they are a reportable offender for the purposes of this legislation and of any reporting obligations that they have incurred because of it.

A person coming from another jurisdiction is not guilty of the offence of failing to comply with reporting obligations if they are not a reportable offender for the purposes of this legislation or they have not been notified of that reporting obligation. Similarly, they are not deemed to have failed to comply with reporting obligations if they do not remain in Queensland for 14 or more consecutive days, not counting any days that they may have spent in government detention. Likewise, if they report in accordance with the original reporting obligations they are regarded as having complied with these requirements.

Division 2 – Ongoing reporting obligations

Reportable offender must report annually

Clause 18 provides that a reportable offender must report their personal details to the police each year. Moreover, a reportable offender must make the report by the end of the calendar month in which the anniversary of the date on which they first reported in accordance with this legislation or a corresponding Act falls. For example, if J first reported his personal details to the police on 11 May 2004, then he will be required to make a further report of those details on or before 31 May 2005, 31 May 2006, etc.

Should a reportable offender have been in government detention since they last reported their personal details, then the details that they report must include details of when and where that government detention occurred. In the case where a reportable offender's reporting period expires, but they receive a new sentence for a reportable offence and are therefore required to report again, then the reference to the date upon which they first reported is to be read as a reference to the date on which they first reported in respect of the current reporting period.

Reportable offender must report changes to relevant personal details

Clause 19 provides that a reportable offender must report to the police any change in their personal details within 14 days of that change having occurred. For the purposes of reporting a change to their personal details, the reportable offender must advise police if a change occurs in respect to the place where the reportable offender or a child generally reside, or when the reportable offender has unsupervised contact with a child, or the place where the reportable offender is generally employed, or to the motor vehicle that they usually drive.

Should a change occur in the personal details of a reportable offender while they are not in Queensland, then they must report that change to police within 14 days of entering and remaining in Queensland for 14 or more consecutive days, not counting any days they might have spent in government detention. This provision does not apply to a protected witness.

Should a reportable offender be in custody for 14 or more consecutive days, they must report their personal details to police within 28 days of

being released from government detention, or before leaving Queensland, whichever event is sooner.

Intended absence from Queensland to be reported

Clause 20 provides that if a reportable offender intends to leave Queensland for 14 or more consecutive days to travel elsewhere in Australia, or alternatively if they intend leaving Queensland to travel outside of Australia then they must report their travel intentions to police.

At least 7 days before leaving Queensland, the reportable offender must report their intended travel to the police and must provide details of each State, Territory or country that they intend visiting while outside of Queensland, as well as the approximate dates during which they intend being in each of those places. Also they must report each address or location at which they intend to reside in these places that they visit, and to the extent that they are known, the approximate dates during which they intend residing at those addresses or locations. Additionally, reportable offenders are required to report to police the approximate date upon which they intend returning to Queensland if that is their intention, or if they do not intend returning to Queensland, a statement of that intention.

Should circumstances arise that make it impracticable for a reportable offender to make the report 7 days before they leave, then it is sufficient compliance with the aforementioned requirements if the reportable offender reports the required information to police at least 24 hours before the intended travel.

Changes of travel plans while out of Queensland to be given

Clause 21 makes provision for the reportable offender reporting obligations if they decide to change their travel plans while they are outside of Queensland. These provisions apply if a reportable offender is outside of Queensland and they decide to extend a stay elsewhere in Australia beyond 13 days or to change any details given to police about their intended absence from Queensland. As soon as practicable after making the decision, offenders must report the required details to the police. This includes those details as they relate to the travel that has already been completed.

Provision is also made that a reportable offender must make the report by facsimile or email sent to the police or to any other address permitted by the regulations, or by any other manner permitted by the regulations.

Reportable offender to report return to Queensland or decision not to leave

Clause 22 outlines the provisions that apply to a reportable offender who is required to report that they intend leaving Queensland for 14 or more consecutive days to travel elsewhere in Australia or outside of Australia. In the case of the reportable offender who has left Queensland, they must report their return to Queensland to police within 14 days after entering and remaining in Queensland for 14 or more consecutive days, not counting any days they might have spent in government detention.

Should the reportable offender decide not to leave Queensland, then they must report their change of intention to police within 14 days of deciding not to leave.

Report of other absences from Queensland

Clause 23 requires reportable offenders to inform police of regular interstate travel arrangements. This provision applies if, at the time of reporting their intention to leave Queensland, the reportable offender either leaves, or intends to leave, this jurisdiction to travel elsewhere in Australia on an average of at least once a month, irrespective of the length of such an absence. They must also report to police their reason for travelling and the frequency and destination of their intended travel.

Information concerning international travel to be given to the AFP

Clause 24 provides that as soon as practicable after receiving any report of a reportable offender's intention to travel outside of Australia, the Police Commissioner must ensure that a copy of the report is given to the Commissioner of the Australian Federal Police. This capacity to share information will be used to counter child sex tourism.

Division 3 – Provisions applying to all reporting obligations**Where report is to be made**

Clause 25 provides for reports to be made at any police station in the locality in which the reportable offender is currently residing. Should a direction be given, in accordance with the regulations as to the police

station to which the report is to be made, then the report must be made at the police station so directed or at some other place approved by the Police Commissioner. For example, the Police Commissioner may approve all authorised mental health service providers under the *Mental Health Act 2000* to be approved places for forensic reportable offenders to report. Where forensic reportable offenders are unable to attend a police station due to their treatment needs, police may take the forensic patients report at an authorised mental health service.

A “restricted police station” is a police station, or one that falls within a class of police station, that the regulations state is not to be used as a venue for the purposes of registering reportable offender without the consent of the Police Commissioner. Should the police station in the locality in which a reportable offender is currently residing be a restricted police station, then the reportable offender may make the report to that station with the consent of the Police Commissioner. Alternatively, the reportable offender may report at the next nearest police station that is not a restricted police station. This provision will not apply if alternate reporting arrangements are approved under Clause 26.

How reports to be made

Clause 26 provides that a reportable offender must make the required initial report and annual report in person. This also applies to a report involving a change of address of the premises at which the reportable offender generally resides, or if they do not generally reside at any particular premises, of the localities in which they can generally be found. Similarly, this provision also applies to a report regarding the acquisition of, or removal or change to any tattoo or distinguishing mark that the reportable offender may possess.

Any other report that a reportable offender may be required to make, may be made either in person or in any other way permitted either by the regulations or the police commissioner. This applies generally, as well as in particular cases. The report being made by the reportable offender, in person, may only be received by a police officer or a person approved for that purpose by the Police Commissioner in the prescribed manner.

Should the reportable offender have a disability that makes it impracticable for them to make a report, then any parent, guardian, carer or other person nominated by the reportable offender to accompany them, may make the report on their behalf. Similarly, the same conditions apply to a disabled reportable offender who is allowed to make a report other than in person in accordance with the manner prescribed by this provision.

Right to privacy and support when reporting

Clause 27 provides that a person making a report at a police station or a place approved by the Police Commissioner is entitled to make the report in a place that is out of the hearing of members of the public and they are entitled to be accompanied by a support person of their own choosing. If the reportable offender does not possess an adequate degree of proficiency with the English language, then a police officer, or another person receiving the report, may arrange for an interpreter to be present when the person is making a report. This police officer, or other person, must not allow an interpreter to be present when a person is making a report unless the interpreter has signed an undertaking not to disclose any information derived from the report unless required or authorised by or under any Act or law to do so.

Receipt of information to be acknowledged

Clause 28 provides that as soon as practicable after receiving a report, the police officer, or other person receiving the report, must provide written acknowledgement of the making of the report. This acknowledgement must then be given to the person making the report. It must include the name and signature of the police officer, or other person, who received the report, as well as the date, time and the place where the report was received. The acknowledgement must also include a copy of the information that was reported and a copy of the record of any agreement made under this provision.

In the case of a report not being made in person, then the police officer or the other person who received the report, must as soon as practicable, give the person making the report a unique reference number and record that number on the relevant reportable offender's file as well as on the acknowledgement.

The Police Commissioner may make an agreement with the reportable offender as to the manner in which any reference number or acknowledgement required may be given. The Police Commissioner must ensure that there is a method for recording an agreement made at the time. Any reference number or acknowledgement that is required to be given in accordance with the agreement, while ever it remains in force, is also to be recorded. Any divergence from this requirement can only be undertaken with the written consent of the reportable offender. The Police Commissioner must ensure that a copy of every acknowledgement is kept.

Additional matters to be given

Clause 29 provides that if a report is to be made in person, the person making the report must also present proof of their identity. If the person is the reportable offender, they must produce their drivers licence, if any, or any other form of identification or any other documents specified by the regulations to verify and support the details being made in the report as well as providing a passport style photograph of their head and face. If the person making the report is not the reportable offender, then that person must produce their driver's licence, if any, or another form of identification specified by the regulation for the purpose of this provision.

The police officer receiving the report may waive the requirement for the reportable offender to produce proof of their identity or a photograph if they agree to allow their fingerprints to be taken either immediately before or after the report is made. Alternatively, if the police officer is otherwise satisfied about the reportable offender's identity, then the production of documents supporting the proof of their identity may also be waived.

Provision is also made for the police officer receiving the report to make a copy of any document that is presented for inspection.

If the report is to be made in any manner other than in person, then the regulations must specify the circumstances in which the information concerning the identity of either the reportable offender or the person making the report must be made. This also applies to the manner in which any documentation verifying or supporting the details of the report must be given, however this may not require an original document to be provided.

Power to take fingerprints

Clause 30 makes provision for a police officer receiving a report that is being made in person to take the fingerprints of the reportable offender if they are not reasonably satisfied about the identity of the reportable offender. If the police officer has examined all of the material related to the identity of the reportable offender and they continue to have concerns about the identity of the reportable offender, then they, or another person authorised by them, may take the fingerprints of the person in question.

Power to take photographs

Clause 31 makes provision for the police officer receiving the report in person to require the reportable offender to be photographed. This includes having the person expose any part of their body to enable that part to be photographed by the officer, or a person authorised by the officer.

However, a police officer cannot require a reportable offender to expose their genitals, the anal area of their buttocks, or in the case of females or transgender people who identify as females, their breasts.

Retention of material for certain purposes

Clause 32 makes provision for the Police Commissioner to keep copies of any documents, fingerprints or photographs related to the reportable offender. These materials may be used for law enforcement, crime prevention or child protection purposes.

Reporting by remote offenders

Clause 33 makes specific provision for a reportable offender who resides more than 100 kilometres from the nearest police station that is not a restricted police station. These provisions include that a reportable offender need not comply with a time limit concerning the making of a report in person if they or the person making the report on their behalf, contact the police before the time limit expires. Similarly, the Police Commissioner may agree to allow the report to be made at a specific time that is after the expiration of the time limit at an agreed specified place. An agreement may also be made, before the specific time, for the reportable offender to provide the police with the required information by telephone or some other agreed means of communication. The Police Commissioner must ensure that there is a method of recording all agreements that are made under these circumstances.

Without limiting these agreements, the recording method adopted must result in a written record that is identified by a unique reference number and includes when and where each agreement was made. This written record should also identify the person who enters into any agreement and contain the terms of the agreement.

In the event of an agreement being made under this provision, the police must ensure that the reportable offender is provided with the required reference number and that there is a method for recording all of the information provided.

Division 4 – Suspension and extension of reporting obligations

Suspension and extension of reporting obligations

Clause 34 makes provision for any obligation that is imposed upon a reportable offender to be suspended for any period during which they are either in government detention, or outside of Queensland. When outside of Queensland, the reportable offender is still required to report a change of travel plans in accordance with Clause 21 and if they are a protected witness the obligations under division 9. This also applies to a reportable offender who is subject to an order exempting them from reporting obligations or an equivalent order in a foreign jurisdiction.

The period for which a reportable offender's reporting obligations continue is extended by any length of time for which those obligations are suspended because they have been in government custody.

Division 5 – Reporting period

When reporting obligations begin

Clause 35 makes provision for a reportable offender's reporting obligations to begin when the reportable offender is sentenced for the offence, when an offender reporting order is imposed upon them, or when they cease to be in government detention in relation to the offence, whichever is the latter, for an existing reportable offender these events may have happened before the commencement date. In the case of a forensic patient, the reporting obligations begin when the offender reporting order is imposed upon them.

Length of reporting period

Clause 36 makes provision that a reportable offender must continue to comply with the reporting obligations imposed for:

1. eight years if they have only ever been found guilty of a single class 2 offence; or
2. 15 years if they have only been found guilty of a single class 1 offence, or have ever been found guilty of more than a single reportable offence that is not subject to a lifetime registration; or

3. the remainder of their life if they are a reportable offender in respect of:
 - a. a class 1 offence and they subsequently commit and are found guilty of another reportable offence; or
 - b. a class 2 offence and they subsequently commit and are found guilty of a class 1 offence; or
 - c. a class 2 offence and they subsequently commit and are found guilty of another class 2 offence, and if they have ever been found guilty of three or more class 2 offences.

Provision is also made that a lifetime registration does not apply if the reportable offender was not given notice of their reporting obligations under this legislation or a corresponding Act before they committed the subsequent offence.

Provision is made that a reference to an offence extends to one that is committed before the commencement of this clause.

For the purposes of this section, two or more offences arising from the same incident are to be treated as a single offence, and two or more offences arising from the same incident are to be treated as a single class 1 offence if at least one of those offences is a class 1 offence.

In the case of an existing reportable offender, in order to work out when their reporting obligations cease, their reporting obligations in relation to a reportable offence are taken to have commenced when they were either sentenced for the offence or when the order under section 19 was imposed or when they ceased being in government custody for the offence.

Notwithstanding anything to the contrary in this provision, in the case of forensic patients who are subject to the reporting obligations of an offender reporting order, they must continue to comply with those obligations until they cease to be a reportable offender.

Reduced period applies for juvenile reportable offenders

Clause 37 makes provision that the reporting periods specified in the previous section do not apply to a person who was a juvenile at the time they committed each reportable offence. For these offenders, a reporting period that is half of that which would otherwise apply to an adult offender for a comparable reportable offence. A reporting period of seven and a half years instead of life applies to juvenile offenders.

Extended reporting period if reportable offender still on post-prison community based release

Clause 38 provides that this provision applies to a reportable offender who is on post-prison community based release in respect of a reportable offence and the reporting period for that offence will end before the expiry of the sentence of imprisonment to which the post-prison community based release relates. Despite anything to the contrary, the reporting period is extended until the expiry of the term of imprisonment to which the post-prison community based release relates.

Reporting period for corresponding reportable offenders

Clause 39 makes provision for a corresponding reportable offender to be required to continue to comply with the reporting obligations imposed by this provision for the recognised foreign reporting period previously mentioned. For the purposes of this section, if a corresponding reportable offender is a corresponding reportable offender under the laws of more than one jurisdiction, then the recognised foreign reporting period is the longest period for which they would be required to report to the corresponding registrar of a foreign jurisdiction.

Reporting period for New South Wales reportable offenders

Clause 40 provides that a New South Wales reportable offender must continue to comply with the reporting obligations imposed for the period that they are required to report in accordance with the New South Wales Act. However, in the case of a New South Wales reportable offender who is sentenced for a reportable offence, either on or after the date specified in the regulations, they must continue to comply with the period of reporting obligations imposed by this provision. This also applies to a New South Wales offender who becomes a corresponding reportable offender. In either case, the reporting period is either that imposed by the New South Wales Act or the period that they are required to report in accordance with this provision, whichever is the longer.

Division 6 – Exemptions from reporting obligations**Supreme Court may exempt particular reportable offenders**

Clause 41 provides that this division applies to a reportable offender who is required to continue to comply with the reporting obligations imposed by

this part for the rest of their life. However, if a period of 15 years has passed since the offender was last sentenced or released from government detention in relation to a reportable offence or a corresponding reportable offence, whichever is the later, then the offender may apply to the Supreme Court for an order suspending their reporting obligations. It should be noted that the 15 years does not include any period during which the reportable offender was in government detention.

Similarly, if the offender did not become the subject of a life-long reporting period under a corresponding Act while in a foreign jurisdiction before becoming the subject of a life-long reporting period in Queensland, then they may also apply to the Supreme Court for an order suspending their reporting obligations.

An offender who is not subject to post-prison community based release in relation to a reportable offence may also make an application to the Supreme Court for an order suspending their reporting obligations.

Order for suspension

Clause 42 provides that upon receiving the application of an eligible reportable offender mentioned in Clause 41(2), the Supreme Court may make an order suspending the offender's reporting obligations. However, the court must not make the order unless it is satisfied that the offender does not pose a risk to the safety of children.

When deciding whether or not to make the order, the court must take a number of factors into account, including the seriousness of the offender's reportable offences and corresponding reportable offences, as well as the period of time that has elapsed since the offences were committed. The court must also take into consideration the age of the offender in relation to the age of the victims of the offence and when the offences were committed. Moreover, the offender's present age and total criminal record, along with any other matters that the court considers appropriate, must be considered as well.

Commission for Children and Young People and Child Guardian is party to an application

Clause 43 provides that the Commission for Children and Young People and Child Guardian (the Commission) is entitled to be a party to any proceedings for an order made under this division. The Commission may make submissions in opposition to, or support of, the order being made. Moreover, as soon as is practicable after receiving an application under this

division, a registrar of the Supreme Court must notify the commission of the application.

In relation to the preparation of the submissions, the Commission may direct a government entity or local government to give it information relevant to an assessment of whether the applicant poses a risk to the safety of children. The government entity or local government must give the commission the information that is sought.

Police to be notified of order

Clause 44 provides that a registrar of the Supreme Court must notify the Police Commissioner of the terms of any order made under this division, unless of course the Police Commissioner is a party to the application.

No costs to be awarded

Clause 45 provides that the Supreme Court may not award costs in relation to a proceeding taken under this division.

Right of appeal

Clause 46 provides that in respect to a question of law, any party to a proceeding under this division may appeal to the Court of Appeal regarding any decision of the Supreme Court in the proceedings.

Restriction on right of unsuccessful applicant to re-apply for order

Clause 47 provides that in the case of the Supreme Court refusing to make an order under this division, the reportable offender is not entitled to make a further application to the court until five years have elapsed from the date of the refusal, unless the court orders otherwise at the time the refusal is made.

When order stops having effect

Clause 48 provides that an order made under this division stops having effect if the reportable offender is made the subject of an offender registration order or is found guilty of a reportable offence after the order has been made. This also applies to a registrable offender who becomes a corresponding registrable offender who must continue to comply with the

reporting obligations imposed by recognised corresponding foreign jurisdiction for any period.

A suspension order that has stopped having effect because of the aforementioned provision will be revived if the finding of guilt that caused the order to stop having effect is quashed or set aside by the court. Moreover, in the case of an order that has stopped having effect because the reportable offender was made the subject of a offender registration order which is subsequently quashed or overturned, may also have the suspension order revived. Similarly, if the guilty verdict in respect to the offence that resulted in the offender registration order being made against the offender is quashed or set aside, then the suspension order may also be revived.

For the purposes of this section, it is irrelevant whether or not a person may, or has, lodged an appeal in relation to a finding of guilt or offender registration order.

Application for a new order

Clause 49 provides that if an order ceases to have effect because of the provisions of clause 48, then the reportable offender may apply for a new order under this provision. A registrable offender to whom the Supreme Court has refused to make an order does not apply to this provision.

Should an order stop having effect because the registrable offender is found guilty of a registrable offence or becomes a corresponding registrable offender who must continue to comply with the imposed reporting obligations, then an application made under this division may be made for a new order when a period of 15 years has passed since the reportable offender was last sentenced or released from government detention for a registrable offence.

Division 7 – Offences

Failure to comply with reporting obligations

Clause 50 makes provision that a reportable offender must not fail to comply with any of their reporting obligations without having a reasonable excuse. The maximum penalty is 150 penalty units or imprisonment for 2 years, or both.

In determining whether a person had a reasonable excuse for failing to comply with their reporting obligations, the court before which the proceedings are being heard is to have regard to a number of matters including the person's age and whether they have a disability that affects their ability to understand, and therefore comply with, those reporting obligations. The court must also consider whether the form of notification given to the reportable offender about their obligations was adequate to inform them of what was required of them given their circumstances. The court may also take into consideration any matter specified by the regulations for the purpose of this provision, as well as any other matter it believes to be appropriate under the circumstances.

It should be noted that it is a defence to proceedings for an offence of failing to comply with a reporting obligation if it is established at the time the offence was alleged to have taken place, the person had either not received notice and was otherwise unaware of this obligation. This defence can be established either by, or on behalf of, the person charged with the offence.

False or misleading information

Clause 51 provides that a person must not furnish information that they know to be false or misleading in a material particular. The maximum penalty is 150 penalty units or imprisonment for 2 years, or both.

However, this provision does not apply to information given in a document, if when providing that document, the person advises the recipient, about how the information is false or misleading and if the person can provide correct information. In a proceeding against a person under this provision, it is sufficient to state that the information was false or misleading without specifying whether it was false or whether it was misleading.

No time limit for prosecutions

Clause 52 provides despite anything to the contrary in the *Justices Act 1886*, a proceeding for an offence under this legislation may be commenced at any time.

Bar to prosecution for failing to report leaving Queensland

Clause 53 makes provision for this section to apply if a reportable offender leaves Queensland and is found guilty of failing to report their presence in a foreign jurisdiction as required by a corresponding Act. The reportable offender is not to be prosecuted for a failure to comply with the

requirement that they report their intended absence from Queensland in respect to the travel out of Queensland.

Division 8 – Notification of reporting obligations

Notice to be given to reportable offender

Clause 54 provides that a reportable offender is to be given written notice of their reporting obligations and the consequences that may arise if they fail to comply with those obligations.

A reportable offender is to be given a notice under this section as soon as practicable after they have been sentenced for a reportable offence, made subject to an offender reporting order, or released from government detention. In respect of the latter, it does not matter whether they have been in government detention for a reportable offence or otherwise. Also, they must be given notice under this provision if they enter Queensland and they have not previously been given notice of their reporting obligations in Queensland. A reportable offender must similarly be given notice if they become a corresponding reportable offender whilst they are in Queensland.

A notice under this provision is to be given by the entity specified in the regulations, but unless it is the court that made the offender reporting order, the regulation must not specify a court to be an entity. However, an entity is not required to give a notice under this section if the notice has already been given by another person or body. Notwithstanding anything to the contrary, the regulations may provide that a notice given under this provision is not required to specify the reporting period for the offender, if the regulations require that a notice containing that information be given to the offender at the time they report their personal details to the police.

Courts to provide sentencing information to Police Commissioner

Clause 55 provides that this provision applies if a court imposes any sentence or makes any order that has the effect of making a person a reportable offender for the purposes of this statute. Similarly, this provision applies if the court makes any order in relation to a reportable offender that has the effect of removing the person from the scope of this statute.

The court must also ensure that the details of the sentence or order are provided to the police as soon as is practicable after it has made the order.

It is sufficient for the verdict and judgement record to be supplied to the police commissioner.

In this provision, a “court” does not include a court of a foreign jurisdiction.

Notice to be given when reporting period changes

Clause 56 provides that this section applies to a reportable offender whose reporting period has changed since they were last notified of their reporting period in Queensland. The Police Commissioner must give written notice to the reportable offender as soon as is practicable after the change. In no case must the written notice be given later than the time the offender next reports in accordance with this legislation.

Supervising authority to notify police commissioner of personal details

Clause 57 provides that the Police Commissioner may direct a supervising authority to provide police with the personal details of a reportable offender. This provision sanctions the supplying of the stated personal details by the supervising authority to the police. By way of an example, should the police be unable to locate a reportable offender who has failed to report, then the police commissioner may ask the supervising authority for that person’s address.

Supervising authority to notify Police Commissioner of particular events

Clause 58 provides that as soon as practicable, either before or after a reportable offender begins an unescorted leave of absence, moves out of Queensland or ceases to be in government detention, including because a supervision order has been made, or they cease to be subject to a supervision order, then the supervising authority is to give written notice of the fact to the police commissioner. It does not matter why the reportable offender was in government detention or subject to the supervision order. The notice must include any details required by the regulations.

In the case of a forensic reportable offender the supervising authority is to give written notice when a decision or order is made under sections 173, 186, 203, 289 of the *Mental Health Act 2000*.

Notices may be given by police commissioner

Clause 59 provides that the police may, at any time, cause written notice to be given to a reportable offender of their reporting obligations and the consequences that may arise if they fail to comply with those obligations.

Power of detention to enable notice to be given

Clause 60 provides that this provision applies if the police have reasonable grounds to suspect that a person is a reportable offender and that they either have not been given notice or are otherwise unaware, of their reporting obligations.

If it is necessary to do so, a police officer may detain a person to enable a determination to be made as to whether or not the person is a reportable offender. Should the person be found to be a reportable offender, police should determine whether or not the person has been given notice, or made aware of, their reporting obligations. It will also enable the person to be given notice of those obligations if they were unaware of them.

In detaining a person, the police officer must tell the person why they are being detained and that they are authorised to do so under the provisions of this legislation. The police must also advise the person that they will be released immediately after the purpose of the detention has been fulfilled.

The detained person must not be held any longer than is reasonably necessary to enable the purpose of the detention to be fulfilled. Under no circumstances must the person be held merely because they have refused to sign an acknowledgement stating that they have been given notice of their reporting obligations. After the purpose of the detention has been fulfilled, the person must be released immediately.

Failure to comply with procedural requirements does not affect reportable offender's obligations

Clause 61 provides that, excluding a reportable offender, a failure on the part of any person to comply with any procedural requirement imposed on the person by this part or the regulations does not affect a reportable offender's reporting obligations. In the case of a reportable offender who has not been given notice of a reporting obligation by an official, the objective of this provision is to prevent them from arguing that the obligation does not apply to them because of that failure, providing that there is evidence to suggest that the reportable offender was aware of their obligation by some other way.

If there is no evidence to suggest that the reportable offender was aware of their reporting obligation, then they would have a defence to a charge of failing to comply with a reporting obligation because they genuinely were unaware of this obligation.

Division 9 – Modified reporting procedures for protected witnesses

Who this Division applies to

Clause 62 provides that this division applies to any reportable offender who is currently participating in a witness protection program or the subject of an order in force under this provision declaring that they are a person to whom this provision applies. It also applies to a reportable offender who has been a participant in a witness protection program but in respect of whom an order under this provision is not yet in effect.

With the exception of persons who previously have been taking part in a witness protection program but who no longer are participants, this division also applies to a reportable offender who is receiving protection under a foreign witness protection law specified by the regulations for the purposes of this provision. Similarly, it applies to a person who has an analogous status to a person currently involved in a witness protection program who is subject to an order made under a corresponding Act specified by the regulations for the purposes of this provision.

For the purposes of this division, “witness protection program” has the same meaning as it has in the *Witness Protection Act 2000*.

Report need not be made in person

Clause 63 provides that the requirements of this part have sufficiently been complied with if a reportable offender to whom this division applies, reports the information required of them at the required time and in the manner authorised by the police commissioner for the purposes of this provision. Acknowledgement of the report having been made must be given in a way approved of by the Police Commissioner.

Order about whether this Division applies

Clause 64 makes provision for the making of an order by the police commission in respect to the status of a protected witness. The order must

state who the reportable offender is (or was) and whether they are (or are not) a participant in a witness protection program. This order is made when the reportable offender ceases to be a protected witness. This can be as a consequence of a request from the participant under section 13 of the *Witness Protection Act 2000* to voluntarily withdraw from the program, or when the chairperson of the Witness Protection Program makes a decision that the protection and assistance given to the reportable offender under the program be terminated under section 14 of the *Witness Protection Act 2000*.

Upon making such an order, the police commissioner must take reasonable steps to notify the reportable offender of the terms of the order. A person who receives such a notification may apply in writing to the Police Commissioner for a review of the decision within 28 days of receiving it.

Upon receiving the application for a review of the decision, the Police Commissioner must review the order and either confirm or reverse it. However, before making a decision on the matter, the Police Commissioner must give the applicant a reasonable opportunity to state their case. After having made a decision, the Police Commissioner must give written notice of that decision to the applicant. In the event of the Police Commissioner deciding to confirm the order, then the notice of the decision must inform the applicant of their rights of appeal under this division.

Appeal against order

Clause 65 provides that a person, who is aggrieved by a decision of the Police Commissioner in relation to an order made under this division, may appeal to the Supreme Court against the decision within three days of receiving notice of the decision. The Supreme Court, in determining the appeal, may make any decision that could have been made by the Police Commissioner. Any decision that is made by the Supreme Court in respect of the appeal is final and has effect according to its terms.

When order takes effect

Clause 66 provides that an order that declares that this division applies to a reportable offender is to take effect immediately.

However, an order declaring that this division does not apply to a reportable offender, takes effect at the end of 28 days after the reportable offender is given notice of the order having been made. It also does not apply if a written application for a review of a decision relating to the witness protection program is made before the end of that period, at the end

of three days after the notice is given to the applicant in respect to the review process. Also this provision is not applicable if an appeal is made against an order by a person aggrieved by a decision before the end of that three day period, on the date on which the Supreme Court determines the appeal.

Modification of ongoing reporting obligations

Clause 67 provides that the reporting provisions relating to the personal details that a reportable offender must convey to police and those provisions that relate to the reporting of interstate and international travel apply to a person to whom this division applies as though any reference to them in Queensland were a reference to the jurisdiction in which the person generally resides.

Part 4 – The Register

Child protection register

Clause 68 provides that the Police Commissioner must establish and maintain a child protection register or arrange with another person or body to establish and maintain a child protection register on his or her behalf.

The register is to contain the following information in respect of each reportable offender to the extent that it is known by police:

1. the reportable offender's name and other identifying particulars; and
2. details of each class 1 or class 2 offence of which the reportable offender has been found guilty or with which they have been charged; and
3. details of each offence of which the reportable offender has been found guilty that resulted in the making of a offender registration order; and
4. the date on which the reportable offender was sentenced for any reportable offence; and
5. the date on which the reportable offender was released from government detention in respect of a reportable offence, or

entered or was released from government detention in respect of any offence during their reporting period; and

6. any information reported in respect of the reportable offender under part 4; and
7. any other information that the police consider appropriate to include in the register.

Access to the register to be restricted

Clause 69 provides that the Police Commissioner must ensure that the register is only accessed by a person who is authorised to do so. Moreover, the Police Commissioner must ensure that the personal information in the register is only disclosed by a person with access to the register, or the relevant part of the register, in circumstances authorised by the Police Commissioner or as otherwise required by or under any Act or law.

The Police Commissioner must develop guidelines in relation to the accessing and disclosure of personal information in the register that attempt to ensure that access to the personal information in the register is restricted to the greatest extent that is possible without interfering with the purpose of this legislation. For the purposes of this provision, the register includes any information from any register maintained under a corresponding Act that is accessible by the police, regardless of whether or not that information is physically part of the register. This provision has effect despite any other Act or law to the contrary.

Confidentiality

Clause 70 provides that a person authorised to have access to the register must not disclose any personal information in the register except in circumstances authorised by the Police Commissioner or as otherwise required by or under any Act or law. Maximum penalty 150 penalty units or imprisonment for two years or both.

Release of information to corresponding registrar

Clause 71 provides the police commissioner may release personal information that is contained within the register to a corresponding register for the purposes of a corresponding Act.

Restriction on who may access personal information on protected witnesses

Clause 72 provides that the Police Commissioner must ensure that any personal information in the register about a person who is a protected witness cannot be accessed any other person other than a person who has been authorised by the officer responsible for the day-to-day operation of the witness protection program.

Reportable offender's rights in relation to Register

Clause 73 provides that, upon a request from a reportable offender, the police must provide the reportable offender with a copy of all the reportable information that is held in the register in relation to that reportable offender. The police must comply with this request as soon as practicable after being asked to do so. If the reportable offender finds that any of this information is incorrect, they may ask the police to amend the information. If the police are satisfied that the information is incorrect, then they must comply with the reportable offender's request.

In this provision, "reportable information" means any information supplied to the police by, or on behalf of, the reportable offender that the reportable offender is required to report to the police and that is held in the register.

Review of decision to place person on Register

Clause 74 provides a mechanism by which a person who has been erroneously included in the register can request a review of their circumstances. If a person believes that they have had their personal information placed in the register because of some administrative error, then they may apply to the police commissioner for a review of the decision to place them on the register. This application must be made within 28 days of the person being given notice of their reporting obligations under section 54 and it must be made in writing, giving details of the reason why they believe that their personal information should not be included in the register. Upon having received the aggrieved person's application, the police commissioner must provide the person with a reasonable opportunity to present their case before making a decision on the matter. Following the review of the decision that led to the inclusion of the person on the register, the police commissioner must decide whether to confirm or revoke the decision and provide the person with a written notice of the outcome.

Moreover, the person is to be provided with information regarding their right to receive a copy of all reportable information pertaining to them that is held in the register under the provisions of clause 73. In the event of the police commissioner deciding to revoke the decision, then steps should be taken to ensure that the person's personal details are removed from the register. Any copies of documents, fingerprints or photographs taken from the person under this Act are not to be kept.

Part 6 – Other matters

Exclusion of personal liability

Clause 75 makes provision that a person acting in the administration or execution of this Act does not incur civil liability for an act done honestly and without negligence under this Act. Instead, liability attaches to the State.

Effect of spent convictions

Clause 76 makes provision for the fact that an offence, in respect of which a reportable offender has been found guilty, becomes spent does not affect the status of the offence as a reportable offence for the purposes of this legislation in respect of reportable offenders or any reporting obligations of the reportable offender. For the purposes of this provision, an offence becomes spent if, under a law in any jurisdiction, the reportable offender is permitted to not disclose the fact that they were convicted or found guilty of the offence.

Evidence certificates

Clause 77 provides that in proceedings under this legislation, a certificate signed by the Police Commissioner, or a police officer holding a position designated in writing by the Police Commissioner for the purposes of this provision, certifying that the register at any particular date contained information specified in the certificate. Also the signed certificate can indicate that, during any particular period, a specified person failed to notify information as required by this legislation, is evidence of the details specified in the certificate.

No more than three positions are to be designated at any one time under this provision. For the purposes of this legislation, a certificate that would

be evidence under a corresponding Act that at a specified time, or during a specified period, a person was required to report to a corresponding registrar under that Act is evidence, of the facts stated in the certificate.

Regulations

Clause 78 provides that the Governor in Council may make regulations under this Act

Provision is made for imposing a penalty not exceeding 20 penalty units for a contravention of a regulation.

Part 7 – Consequential Amendments

Division 1 – Corrective Services Act 2000

Act amended in this part

Clause 79 provides that this part amends the *Corrective Services Act 2000*.

Clause 80 provides that section 132A (Definitions for pt 1) is to be omitted.

Clause 81 provides that section 142 (Conditions for release to work orders) section 142(2) to (4) is to be omitted and section 142(5) renumbered as section 142(2).

Clause 82 provides that section 143 (Conditions for home detention orders) section 143(3) to (5) is to be omitted and section 143(6) renumbered as section 143(3).

Clause 83 provides that section 144 (Conditions for parole) section 144(2) to (4) is to be omitted and section 144(1A) to (7) is to be renumbered as section 144(1) to (5).

Clause 84 provides that sections 144A and 144B are to be omitted.

Clause 85 provides for the omission of Chapter 7, part 2.

Clause 86 provides for the insertion of **a new chapter 7 part 4**. After section 274E “Part 4 Child Protection (Offender Reporting) Act 2004” is to be inserted which states that “274F (Transfer of reporting obligations to Offender Reporting Act” will include that this “section applies to a person who, immediately before the commencement of this section, was a

prescribed prisoner subject to post-prison community based release order with a reporting condition” and ‘the person is no longer subject to the reporting condition’. Also for the purposes of the new section, the **Offender Reporting Act** means the *Child Protection (Offender Reporting) Act 2004*, and **reporting condition** means a condition imposed under section 142(2), 143(3) or 144(2).

Clause 87 provides for an amendment to the Dictionary in schedule 3 in that it omits the definitions of ‘prescribed prisoner’ and ‘reporting period’.

Division 2 – Criminal Law Amendment Act 1945

Act amended in this part

Clause 88 provides that this part amends the *Criminal Law Amendment Act 1945*.

Clause 89 provides for the amendment of section 17 (Sexual offender to report name and address) by omitting ‘under section 19(9) or’ from section 17(1).

Clause 90 provides for the omission of ‘Part 4 (Sexual offenders to report)’.

Clause 91 provides for the replacement of part 5, divisions 1 and 2. This will allow the legislation to subsume the people who were subject to section 19 of the *Criminal Law Amendment Act 1945* with insertion of a new section 23 **Transfer of reporting obligations to the Offender Reporting Act**.

Division 3 – Freedom of Information Act 1992

Clause 92 provides that this division amends the *Freedom of Information Act 1992*

Clause 93 amends schedule 1 (Secrecy provisions giving exemption) to include this statute.

Division 4 – Mental Health Act 2000

Act amended in this part

Clause 94 provides that this part amends the *Mental Health Act 2000*.

Clause 95 provides that section 205 (Notice of decision) is amended by Section 205(1) the insertion of ‘(f) if the forensic order was made with an offender reporting order– the commissioner of the police service.’

Clause 96 provides for an amendment to be made to section 288 (Mental Health Court may make forensic order) which inserts a note to the effect of “The Supreme Court judge who constitutes the Mental Health Court may also make an offender reporting order under the *Child Protection (Offender Reporting) Act 2004*, section 13 (Offender reporting orders) with the forensic order.

Schedule 1 – Class 1 offences

Schedule 1 provides a list of offences that are Class 1 offences for the purposes of this Act.

Schedule 2 – Class 2 offences

Schedule 2 provides a list of offences that are Class 2 offences for the purposes of this Act.

Schedule 3 – Dictionary

Schedule 3 provides the Dictionary meanings of terms used for the purposes of this Act.