Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022

Explanatory Notes

Short title

The short title of the Bill is the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022.

Policy objectives and the reasons for them

The main objectives of the Bill are to:

- ensure the provisions of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (the Act), which underpin the child protection registry scheme reflect changing offending patterns and behaviours; and
- enhance the ability for the Act and the *Police Powers and Responsibilities Act 2000* (PPRA) to provide for the protection of the lives of children and their sexual safety.

The Act requires offenders who are convicted of sexual or other serious offences against children (reportable offenders) to keep police informed of their whereabouts, and their personal details, for a prescribed period. The purpose of reporting under the Act aims to reduce the likelihood that the reportable offender will re-offend and to facilitate the investigation and prosecution of any future offences they may commit.

The Act:

- establishes a child protection register;
- requires reportable offenders to provide and update specified personal details for inclusion in the register;
- provides for periodic reporting and reporting of any travel outside of Queensland by reportable offenders;
- imposes reporting obligations for prescribed periods, depending on the number and severity of offences committed and other relevant factors;
- allows for the recognition of reporting obligations under foreign laws; and
- allows orders to be made against particular offenders who commit other particular serious offences against children or who engage in concerning conduct.

The Act is regularly reviewed by the Queensland Police Service (QPS), with expert input from the QPS Child Protection Offender Registry (the QPS Registry), to ensure it remains contemporary and continues to meet its purpose.

Through such regular reviews of the Act, the QPS has identified advances in technology that can be exploited by reportable offenders, changes in how offending is occurring as a consequence of the COVID-19 pandemic, and opportunities to enhance the protection of children through the child protection registry scheme.

Technology based offending

Advances in technology have provided new ways for child sexual offenders to engage, groom and offend against children without leaving their home. This type of engagement has become more prevalent since the commencement of the COVID-19 pandemic. Other advances, such as masking applications, provide an opportunity for child exploitation material to be held in a vault or a black hole on a digital device without detection.

The Act must respond to advances in technology that could be exploited by convicted child offenders to hide their offending and weaken the framework for monitoring reportable offenders. The amendments will enable police to respond in a way that prevents and disrupts evolving offending behaviours.

Anonymising software

Anonymising software sanitises information and search histories on a digital device by encrypting or removing personally identifiable information from data sets to allow the user to remain anonymous. A person using anonymising software can freely access, disseminate or receive information without their personal information, including their geolocation, being revealed to others. Anonymising software is also required to access the dark web.

This type of software provides a platform for child sex offenders to remain undetected as they target and groom children, disseminate child exploitation material and/or participate in directed child abuse through the dark web. While it is recognised that anonymising software can provide some security for internet users, it acts in opposition to the purposes of the Act by removing the visibility of reportable offenders and compromising the ability for police to effectively monitor online activities. For example, reportable offenders can contact a child online and commence grooming the child for the purposes of obtaining sexual content from, or engaging in sexual contact with, a child.

The use of anonymising software can directly impede strategies designed to promote the protection of children by preventing police from identifying at-risk offenders in a timely manner and employing early intervention strategies aimed at preventing re-offending, such as referral to a specialist external agency or increased monitoring or reporting.

Consequently, the Bill requires the possession or use of anonymising software to be reported as a personal detail under Schedule 2 of the Act.

End to end encryption services such as IMessage or WhatsApp are not considered to be anonymising software; however, they are reportable applications under Schedule 2 of Act. Incognito browsing functions built into web browsers or anti-virus software, that don’t have a virtual privacy network included in the software, are not considered to be anonymising software as they do not sanitise information in the same way as anonymising software.

Vault and black hole applications

Vault and black hole applications are designed to hide sensitive information downloaded from an electronic communications platform such as the Internet or cloud storage and/or held on a digital device. Vault applications are designed to look like a common desktop icon such as a calculator. By comparison, black hole applications hide other sensitive applications such as a vault application, from view.

These types of applications can provide an additional layer of security for members of the community who are legitimately storing sensitive information on a digital device. However, they also allow child sexual offenders to secrete child exploitation material or other child-related sexual offending on their digital devices without detection by a casual observer.

The Bill targets the use of vault and black hole applications by requiring reportable offenders to report the details of their possession and use of these applications. This is similar to other details which are required to be reported under items 14 and 15 of schedule 2, of the Act, which require a reportable offender to provide information about the social networking sites, chat rooms and email addresses they use, as well as the details of internet usernames and passcodes/passwords to social networking sites.

Technology based monitoring

Media Access Control address

A Media Access Control (MAC) address is a unique code permanently attached to a digital device. It allows a device to connect to a network and is used as an identifier for other networks. For example, a network will only accept a specific MAC address, regardless of whether the Internet Protocol address for the device is hidden. A MAC address can also be used to find the geographical location of the device.

The information in a MAC address is visible when a device, including a vehicle, is connected to the Internet via Wi-Fi or Bluetooth. The information is used by entities such as Google, to let a driver know where there is traffic congestion by collecting publicly broadcast MAC addresses of the user's router Wi-Fi access points. It is also used by the Department of Transport and Main Roads, through Automated Number Plate Recognition cameras, to monitor performance of the road network and provide generalised information about travel time and congestion to the public.

Extending the parameters of schedule 2 of the Act by requiring the MAC address of all digital devices in the possession of a reportable offender to be reported, will provide monitoring police with greater visibility of not only the digital devices in each reportable offender's possession, but it will also allow police to monitor the whereabouts of at risk offenders who reside in the community.

Reportable offenders who fail to report the MAC address details of digital devices in their possession may be charged under section 50 of the Act and liable to a maximum penalty of 300 penalty units of five years imprisonment. Furthermore, where there is a reasonable suspicion that a reportable offender is in possession of a digital device that has not been reported under the new provision, monitoring police will be able to use their existing powers under the PPRA to search the residence. That is, apply to a court for a warrant to search the residence or engage emergent search powers if there is a suspicion that evidence on the digital devices will be destroyed.

Device inspections – monitoring and thresholds

Police currently have some capacity to interrogate digital devices in the possession of reportable offenders. However, this is limited to an initial 3 month period when a reportable offender has been released from government detention or sentenced to a community based supervision order and then four times in each year if a reportable offender has been convicted of a prescribed internet offence under section 21B of the PPRA such as: using the Internet etc. to procure a child under 16 (section 218A Criminal Code).

Offenders who use an online platform or a digital device to engage in child exploitation or other sexual offences that are not prescribed internet offences, for example, distributing child exploitation material (section 228C Criminal Code), can only be monitored in the same way if a court makes an order for a device inspection, or issues a search warrant for the offender's residence, because it is satisfied the reportable offender poses an increased risk to the lives or sexual safety of children.

Prescribed internet offence

Section 21B of the PPRA prescribes the offences that trigger a device inspection for reportable offenders. While the offences are specific to internet offending, for example section 218A (Using internet etc. to procure children under 16), they do not capture other online offending such as the possession of child exploitation material (section 228D, Criminal Code) or Commonwealth offences such as section 271.4 (Offence of trafficking in children) or section 272.15 (Grooming child to engage in sexual activity outside Australia). Nor does section 21B consider prescribed offences that occur through a device that is not connected to the Internet, such as child exploitation material held on a digital device and distributed through pre-loaded hard drives.

Currently, where police are concerned there is an elevated risk of re-offending in connection with offences that are not prescribed under section 21B of the Act, they are required to apply to a Magistrate for either a device inspection order or a search warrant. A search warrant is far more intrusive as it allows police to undertake a complete search of a residence or place, including part of the residence or place used by a person other than the reportable offender. A search warrant also allows police to seize devices for a forensic inspection.

Device inspections allow police to be proactive in identifying change in an offender's risk profile such as viewing or downloading child-related data. It can also identify the presence of child exploitation material on the device which provides police with an opportunity to disrupt and prevent offending behaviour.

Continuing to limit the offences that are considered as prescribed internet offences does not prevent other forms of offending that occurs online and through pre-loaded devices. Nor does it recognise the clear shift from contact offending to online/device offending that has arisen since the commencement of the COVID-19 pandemic, as reported by the Australian Federal Police.

Extending the parameters of prescribed offences under section 21B to include child exploitation material offences, child trafficking and other grooming recognises the recidivist aspect of this type of offending as well as the human element where children continue to be exploited to produce content. Downloading and sharing this material continues to perpetuate the child exploitation industry.

The application of the new offences as prescribed offences will operate retrospectively to ensure the current cohort of offenders convicted of these offences are subject to a higher level of monitoring by police. Furthermore, all offences prescribed under section 21B will operate regardless of whether the offending occurred through an electronic communication network, such as the Internet, or is held on a standalone device such as a storage device or thumb drive. To accommodate this, a prescribed internet offence will be referenced as a prescribed offence.

Presentation of each digital device for inspection

Reportable offenders convicted of an offence that is prescribed under section 21B of the PPRA, are subject to device inspections up to four times in each year. During the inspection, a reportable offender is required to provide 'a' digital device to police. Additional inspections can occur if a device inspection order is made by a Magistrate due to an increased risk to the lives or sexual safety of children.

In theory, reportable offenders will present all digital devices in their possession for the purposes of a device inspection. However, the QPS Registry reports that there are some reportable offenders who present a single locked device, such as a mobile phone, at the front door of their residence for inspection. This practice undermines the purpose of the Act and inhibits the capacity for the QPS Registry to engage early intervention strategies to reduce the likelihood a reportable offender will reoffend during their reporting period.

Requiring the presentation of 'each' device in the possession of a reportable offender aims to restrict the practice of producing one device. A new requirement to report the MAC address of all digital devices in the possession of a reportable offender will assist police to identify the number of devices that are required to be inspected.

Entering the residence of a reportable offender to undertake a device inspection – section 21A of the PPRA

The Bill extends section 21A of the PPRA to allow police to enter the residence of a reportable offender for the purposes of a device inspection under section 21B of the PPRA. While police have a power to enter the residence of a reportable offender to verify personal details required under the Act, such as passwords to internet or social media sites, it does not extend to device inspections, unless those inspections coincide with the verification of personal details.

The ability to prevent police entry to a residence to undertake a device inspection reduces the effectiveness of section 21B and acts in opposition to the purpose of the Act by restricting the ability for police to identify online activity that may indicate the offender poses a risk to the lives or sexual safety of children.

The new entry provision does not convey a power to search the residence or access parts of the residence, other than for the purpose of conducting a device inspection. This extends to parts of the residence that is occupied by another person such as a tenant of the residence.

Reporting information

Reportable offenders are required to make an initial report of their personal details to police in person within the timeframes prescribed under Schedule 3 of the Act. The information which comprises an initial report is contained in Schedule 2 of the Act and must be made in person.

Periodic reports are then made in February, May, August and November each year. Periodic reports require reportable offenders to either confirm or update their personal details. Changes to personal details that occur outside of the mandated reporting months must also be reported under section 19A of the Act.

Reports about personal details, other than an initial report, can be made in numerous ways. For example:

- by calling a dedicated 1300 telephone number;
- through an approved electronic reporting method, such as online to a dedicated QPS webpage;
- facsimile;
- mail;
- email;
- in person:
    - at a police station in the locality where a reportable offender resides;
    - to the offender's monitoring police officer;
    - to a person approved by the Police Commissioner.

The collection of reports is delegated to the Officer in Charge of the QPS Registry. Flexible reporting is designed to increase compliance with the mandated reporting requirements; however, this has sometimes resulted in reports not being received by the QPS Registry within legislated timeframes. This can occur where reports made at the last minute direct to the Police Commissioner (e.g. via a generic email address) or at a local police station don't reach the QPS Registry on time. This leaves a reportable offender liable to prosecution under section 50 of the Act. Other reporting options such as facsimile are no longer widely used by the QPS.

Simplifying the current reporting process by removing ineffective or obsolete reporting processes and focusing on more contemporary reporting methods such as online, email, telephone and postal reporting will optimise compliance.

It is recognised that some reportable offenders live remotely or do not have reliable access to telephone or internet services. These offenders will continue to liaise with their dedicated monitoring officer to ensure that their reports are made in the way that is most accessible to them or in line with section 33 of the Act.

Other reportable offenders may be disadvantaged owing to physical or psychological impairment, comprehension or other impairment. Current provisions under sections 67C and 67D of the Act allow the Police Commissioner to suspend the reporting obligations of a person who is a child or under legal guardianship or a person with a mental illness, cognitive or physical impairment where those offenders do not pose a risk to the lives or sexual safety of children.

In all cases, a reportable offender will be provided with written information about where and how they are to make their reports under the Act.

Changes to reporting obligations for at risk reportable offenders

Reportable offenders are not required to report any changes to their location or place where they generally reside until they reside or are located at the place for at least seven days in a one year period, regardless of whether the days are consecutive. Once this threshold is met, a reportable offender has an additional seven days to report

the change. There is no requirement for reportable offenders to report any place they stay for short periods of time or any travel within Queensland.

The current reporting regime allows reportable offenders to stay in multiple locations in Queensland for short periods of time, while maintaining a 'general residence' elsewhere, without being required to report the details of those short stays. This raises concerns for the QPS when an offender is engaging in behaviours which present an increased risk to the lives or sexual safety of children.

Allowing the Police Commissioner to give a reportable offender a written notice requiring them to report a change in their personal details related to places they are staying and/or localities where they can be found for 3 or more consecutive days, within 24 hours after the change occurs aims to address these concerns.

This requirement does not automatically apply to a reportable offender but could be enlivened where the offender is assessed as posing an elevated risk to the lives or sexual safety of children or an increased likelihood of reoffending. Risk is assessed by QPS behavioural specialists using empirically validated static and dynamic risk assessment tools to allow resources to be focussed on those reportable offenders who are engaging in behaviours that indicate a risk to children in the community.

This risk based approach is consistent with the approach taken to offenders who have been subject to a division 3 order under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (post-DPSOA reportable offender) who are required to report changes that relate to any premises where they generally reside, or a locality where the offender can generally be found, within 24 hours after the change happens.

Where reports can be made – Reporting obligations notice

Section 26 of the Act sets out how reports must be made. In particular, an initial report must be made in person and each periodic report must be made in a way stated in a notice given to the reportable offender under section 54(5) (Notice to be given to reportable offender) of the Act. Other reports that are required to be made can be made in person or in another way allowed under a regulation or by the Police Commissioner.

With the exception of making a periodic report, section 54(5) only allows the Police Commissioner to give a notice about a reportable offender's obligations under the Act and the consequences for failing to comply with those obligations. The notice is not intended to specify where and how reports need to be made generally for each offender.

Reporting obligations will differ for each reportable offender. Some reportable offenders, who pose a higher risk of re-offending against a child, may be required to report more frequently and/or in person at a stated place. Those offenders who are detained under the *Mental Health Act 2016* may be permitted to report at another location. Allowing a reporting obligations notice to contain information about where a report is to be made and how it is to be made considers the individual circumstances of each reportable offender and ensures they have the information they need to meet their obligations under the Act.

Requirement to provide information upon conviction under section 50 of the Act

When a reportable offender fails to report changes to personal details, they commit an offence under section 50 of the Act. Between August 2016 and July 2020, 1,612 breaches under section 50, were heard in the Magistrates Courts, with a further 26 matters heard in the higher courts. Of these 1,589 were convicted. Reportable offenders who are convicted under section 50 are never required to provide the information that was the subject of the offence.

While the QPS Registry may have some oversight of the information that was not reported, after the fact, the full extent of the information deficit may never be known leaving a gap on the child protection register. For police to be able to effectively monitor the whereabouts and activities of reportable offenders it is paramount that information on the child protection register be complete. The information reported by reportable offenders is also available to corresponding Registrars where a reportable offender visits or relocated to another Australian jurisdiction and is used by QPS behavioural specialists to identify changes in risk allowing police to engage early prevention measures aimed at disrupting and preventing re-offending.

Accordingly, it is proposed to require a reportable offender to report the information associated with a conviction under section 50 within seven days of a finding of guilt by a court. An offender who fails to comply commits an offence and is liable to a maximum penalty of 5 years imprisonment or 300 units. This penalty is consistent with other offence provisions in the Act.

Additionally, where an offender is sentenced to a period of imprisonment as a consequence of failing to report under section 50, the offender will be required to report the information within seven days of the release from custody.

Information collection and sharing

Information held on the National Child Offender System is regulated under the Act and is limited to people and organisations responsible for protecting the lives or sexual safety of children. This includes government and other entities under sections 74E and 74F and corresponding offender Registrars in all Australian jurisdictions under section 71.

The Police Commissioner may also approve the disclosure of information about an offender reporting order or an offender prohibition order to another person, including a parent of a child, where it is considered appropriate to reduce the risk to the lives, or sexual safety, of children under section 74I. Information can also be disclosed for a purpose of the Act or another Act under section 70.

Information exchange provisions in the Act require regular review and amendment as necessary to continue to protect for the lives and sexual safety of children.

Reportable information collected by Queensland Corrective Services (QCS)

Section 15 (Provision of personal details by corrective services) of the Act allows the chief executive (corrective services) to provide to the Police Commissioner the details of where a reportable offender was residing before their custody. However, this information may differ upon discharge. Currently QCS cannot obtain or share information about a reportable offender's intended general residence or a place where they will generally be able to be located after the offender's discharge from custody. In circumstances where a reportable offender fails to make an initial report of their

personal details, there is no current information or intelligence about the offender's likely location unless they come to the attention of police for another matter.

Allowing the chief executive (corrective services) to request information about a reportable offender's intended general residence or locality upon their discharge from custody does not imbue a requirement. Section 14 of the Act allows up to seven days to make an initial report after release from custody. If the report is not made within that timeframe, charges under section 50 'Failure to comply with reporting obligations' of the Act may be brought against the offender.

Where information is provided, the chief executive (corrective services) will provide this information to the Police Commissioner, and it will be taken to be part of a reportable offender's initial report for the purposes of section 14 of the Act.

Information sharing with Australian Government Departments

The Australian Government departments of Home Affairs, Australian Border Force and the Australian Federal Police play an important role disrupting and preventing child exploitation that occurs overseas by an Australian resident, for example, child exploitation web sites which may be administered in Australia or have Australian members. Furthermore, these departments are responsible for ensuring reportable offenders do not import prohibited items such as child-like sex dolls or travel outside of Australia without the authority of the registrar attached to the jurisdiction where the reportable offender resides.

Currently, the Department of Home Affairs and Australian Border Force can receive direct information about reportable offenders during joint investigations between the QPS and the department. In addition to this, the Australian Federal Police receives information about international travel under section 24 of the Act. Any other information about a reportable offender must be requested by an Australian Government department on each occasion it is required This commonly occurs during child exploitation investigations that do not involve the QPS.

Extending the current information sharing provisions to include the departments of Home Affairs, Australian Border Force and the Australian Federal Police, to mirror information that is given to registrars in state and territory jurisdictions, ensures that relevant and contemporary information about a reportable offender can be provided directly to those departments to facilitate the investigation and disruption of global child sex exploitation activities.

Reportable offender's rights in relation to register – section 73

Currently, section 73 of the Act places an obligation on the Police Commissioner to give a reportable offender all of the information in relation to the offender that has been reported and is held on the child protection register, this includes information about reportable contact with children such as the child's name and date of birth, any telephone number or email address for the child.

Part of the purpose of the Act is to protect the lives or sexual safety of children by reducing the likelihood of reoffending. Giving personal information about a child to a reportable offender is counterintuitive to that purpose.

Removing identifying information about a child when a request is made under section 73 preserves the safety of children. For reference purposes, the reportable offender

will be provided with the first initial of the first and last name of the child and the date of the contact only.

*Giving a Notice of Reporting Obligations – Child Protection (Offender Reporting and Offender Prohibition Order) Regulation 2015 (*the *Regulation)*

Section 13 of the Regulation states who must give a reportable offender a notice of reporting obligations, offender reporting order, or a notice of any changes to the notice of reporting period. For example, where an offender reporting order is made under section 13 of the Act, the court is required to serve the offender reporting order. If the reportable offender is a prisoner or subject to a supervision order, a notice of reporting period is served by QCS and if the reportable offender is a child, the chief executive of the department in which the *Youth Justice Act 1992* is administered. Otherwise, the police commissioner is responsible for service of the notice of reporting obligations.

Currently section 13 of the Regulation does not recognise the service of a notice of reporting obligations on reportable offenders who are detained in an immigration detention centre to await deportation because of their offending against children. Where these offenders successfully appeal their deportation decision there is no capacity for the QPS to locate where they have relocated to.

Accordingly, allowing the chief executive of the department in which the *Migration Act 1958* (Cwlth) is administered as an entity who can give a reportable offender a notice of reporting obligations, will ensure that all reportable offenders will be cognisant of their obligation under the Act.

Offender Reporting Orders

Part 3 (Offender reporting orders) of the Act comprises of section 13 which allows a court to make an offender reporting order where a person is found guilty of an offence, that is not a prescribed offence under schedule 1 of the Act. These offences generally have an element of harm that present a significant risk to the lives or sexual safety of children A court may make an order under section 13 of the of its own initiative or upon application. Section 13 permits the prosecution to make an application at any time within 6 months after the court imposes the sentence for the offence or makes the forensic order. Furthermore, section 13 also provides the mechanism for the person whom against the order is made to appeal.

Restructuring section 13 provides an opportunity to present the information in an easily read format. While the information remains substantially similar, additional information about what a court is required to consider before making an offender reporting order better aligns Part 3 with Part 3A of the Act.

Evidentiary processes

There is currently no authority to allow a certificate or affidavit of service of a notice of reporting obligations on an offender to be considered evidence in a proceeding under the Act. The officer who served the notice is required to give evidence in chief in a relevant proceeding against the offender.

Unless the service of a particular reporting obligations notice is contested, the Bill removes the requirement for a police officer who served the reporting obligations notice to attend court in person. Section 77(3) currently permits statements by the prosecution regarding the service of documents on a reportable offender to be evidence of the matters stated therein. The amendments to 77(3) extends the

evidentiary provision to now include a reporting obligations notice. The defendant is still afforded natural justice under section 77(5) to challenge a statement made by the prosecution under section 77(3).

Streamlining how evidence is presented in proceedings for non-contentious matters is consistent with the evidentiary provisions relating to the service of other documents under the Act.

Defining Terms

Vehicles

The Act does not include a definition of motor vehicle for the purposes of reporting personal details under Schedule 2. While a clear definition exists under the *Transport Operations (Road Use Management Act) 1995* and the Criminal Code, neither provides all the details that are required to ensure fulsome reporting.

Any proposed definition needs to take into account all types of vehicles used by a reportable offender and the purposes for which they are used. Requiring a reportable offender to report the details of items such as caravans and trailers, regardless of whether they are attached to a vehicle, will provide police with information about the make, model and registration and will assist police meet their obligations under section 3(1A)(b)(ii) of the Act, which aims to facilitate the investigation and prosecution of future offences committed by a reportable offender.

Username

Schedule 2 item 15 of the Act requires a reportable offender to report 'an internet username, including a username or identity associated with an instant messaging service, chat room or social networking site'. To provide greater clarity, the Bill expands the details of what constitutes a username to include the unique name, number or other identifier used by an internet-based application or the electronic communication service to identify the user's account with the application or service.

Social networking site

The Bill amends Schedule 5 of the Act to include a definition of social networking site. The additional information, including examples of what is a social networking site, seeks to assist reportable offenders better identify the information required to be reported under the Act.

Minor and consequential amendments

Receipt of information

Section 28 of the Act details the information which the police officer or other person receiving the report is required to provide in a receipt to a reportable offender after a report is made under Part 4. An amendment made to section 28(2)(c) in 2017 removed (i) which required a person receiving a report from a reportable offender to physically sign a receipt issued at the conclusion of the report. The Bill addresses the typographical error by renumbering section 28(2)(c). There are no changes to the policy or operation of the provision.

Fingerprints

Section 30 of the Act allows a police officer to take fingerprints from a reportable offender when the offender makes an initial report or if the officer is not reasonably

satisfied of the person's identity when taking a report in person. The intent of section 30 is to ensure the Police Commissioner has fingerprint information for all reportable offenders.

Simplifying the current fingerprint process by allowing fingerprints to be taken by a police officer when a reportable offender makes a report under Part 4 of the Act removes ambiguity without imposing additional requirements on police or reportable offenders.

Reporting by remote offenders

Section 33 of the Act allows a reportable offender, who resides more than 100 kilometres from the nearest police station that is not a restricted police station, to make a report that is required to be made in person, to be made outside the prescribed time limit where the police commissioner agrees to allow the report to be made at a specific time, that is after the time limit and at a specified place.

References to restricted police station will become obsolete following amendments to sections 18 – 26 of the Act and sections 5 - 8 of the Regulation about how reportable offenders will make their reports. The amendments focus on the use of technology such as email and online reporting, with telephone and standard mail also accepted. In person reporting will only be required for an initial report, some additional periodic reporting or where there is a need to see the offender to verify reported changes such as an address or identifying particular. In the latter circumstances, the police investigator monitoring the reportable offender will attend the reportable offender's residence to verify these changes.

Information given by the Police Commissioner to government and other entities

Section 74E(1) allows the Police Commissioner to give information about a reportable offender, including a registered corresponding order, to an entity, including government agencies, for the purpose of the Act. The information the Police Commissioner can provide to another entity under section 74E includes the offender's name, date of birth, the term of any order, any prohibited conduct, a photograph and anything necessary to allow the entity to identity the offender to ensure the safety of a child in the entity's care or the offender.

The information provided under section 74E(1) can be given orally or in writing. However, section 74E(2) requires that if the Police Commissioner gives information about an order to an entity and that order is later varied or revoked, the Police Commissioner must give written notice of the variation or revocation to the entity. The Bill overcomes the inconsistency with section 74E(1) by allowing any information provided under section 74E(2) to similarly be given either orally or in writing.

Annual report about the use of device inspection powers

Section 808A of the PPRA requires the Police Commissioner to prepare a report about the use of device inspection powers under section 21B to the Minister each year. The Minister is required to table that report in the Legislative Assembly within 14 sitting days of receipt. The report includes information such as the number of inspections undertaken, what triggered the inspection, the date and time of the inspection and any action taken as a consequence of the inspection.

Section 808A will reflect the new requirement that reportable offenders produce all digital devices in their possession for inspection under section 21B of the PPRA.

Recognition of offender reporting schemes in overseas jurisdictions

Currently the Act only recognises corresponding reportable offenders from within Australia. This allows overseas offenders to relocate to Australia with no reciprocal reporting obligations.

Amending the Act to recognise international child offender reporting schemes as corresponding schemes for Queensland ensures consistent monitoring of offenders who commit sexual or particular other serious offences against children, regardless of where the offence was committed.

Achievement of policy objectives

The Bill achieves its objectives by amending the following legislation:

- *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* to:
    - prescribe criteria the court may consider when making an offender reporting order under part 3;
    - allow QCS, to request information from a reportable offender about their residence, or localities where they will generally be located, prior to their discharge from custody under section 15;
    - allow the Police Commissioner to issue a written notice requiring a reportable offender to report the details of a premises they stay or location they can be found, that is not a place where they generally reside, for three or more consecutive days, within 24 hours of the change occurring under new section 19B;
    - modernise and standardise requirements around where and how reportable offenders make reports under sections 21, 25 and 26;
    - remove personal information about a child when a request for information is made under section 73;
    - allow a statement that a reportable offender was served with a reporting obligation notice to be evidence under section 77 unless challenged;
    - require reportable offenders who are convicted of failing to comply with reporting obligations under section 50 to make a report of the personal details that were the subject of the offence within 7 days after conviction;
    - allow the QPS Police Commissioner to share information on the child protection register with the Department of Home Affairs, Australian Border Force and the Australian Federal Police, where the information is for a purpose under the Act;
    - require a reportable offender to report the details of any anonymising software that is used or possessed;
    - require a reportable offender to report the possession/use of all vault applications and the MAC address of each device in their possession or in a vehicle usually driven by reportable offenders under schedule 2;
    - amend schedule 5 to include definitions to support the amendments; and
    - minor and technical amendments.

- *Police Powers and Responsibilities Act 2000* to:
    - provide an express power for police to enter a reportable offender's residence to inspect all digital devices under section 21A;
    - require a reportable offender subject to digital device inspections to present all digital devices for inspection by police under section 21B;
    - expand the list of prescribed offences for section 21B; and
    - expand section 808A to include information about the production of digital devices under section 21B.
- *Child Protection (Offender Reporting and Offender Prohibition Order) Regulation 2015*
    - ensure that offenders in other jurisdictions are only considered corresponding reportable offenders in Queensland for offences committed against or in respect of a child;
    - recognise all overseas jurisdictions with comparable child offender reporting schemes as corresponding reporting schemes in Queensland;
    - amend how reports are to be received; and
    - allow a notice of reporting obligations to be served by the chief executive of the department that administers the *Migration Act 1958* (Cwlth).

Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004

Offender Reporting Orders

The Bill amends Part 3 of the Act by restructuring section 13 into two divisions. Division 1 applies to the making of offender reporting orders while Division 2 applies to appeals of decisions.

Division 1, new section 12A provides a definition of an offender reporting order which was previously found in section 13(1). An offender reporting order requires the person to comply with the reporting obligations under the Act.

New section 12B (Making offender reporting order – conviction for offence other than prescribed offence) consists of relevant parts from former sections 13(1), (2), (3), (4) and (10). This section allows a court to make an offender reporting order where a person has been found guilty of an offence, that is not a prescribed offence. The period of compliance is determined under section 36 of the Act.

New section 12C (Making offender reporting order – forensic order) consists of relevant parts from former sections 13(1), (2), (3) and (9). This section allows a court to make an offender reporting order when it has made a forensic order under the *Mental Health Act 2016* in relation to an offence that is not a prescribed offence, in relation to the person. An offender reporting order that is made in concert with a forensic order ends simultaneously with the forensic order.

Sections 12B and 12C both place particular requirements on the court prior to making an offender reporting order which were previously found in sections 13(2) and (3). In particular, the person poses a risk to the lives or sexual safety of one or more children, or of children generally or if it was an offence related to child abduction, the context was not familial and making the order is appropriate. The definition of child abduction

offence includes sections 354 (Kidnapping), 363 (Child-stealing) and 363A (Abduction of a child under 16) of the Criminal Code and is now contained in schedule 5 (Dictionary).

Section 12D includes the following new information the court must consider when determining whether an offender reporting order is appropriate. This information is substantially similar to the information a court must consider before making an offender prohibition order under Part 3A:

- the nature and seriousness of the conduct the subject of the proposed reporting order and when it happened;
- for each offence to which the proposed order relates;
    - the age of the respondent, the age of the victim and the differences in their ages when the offences were committed;
    - the relationship, if any, between the respondent and the victim of the offence;
- the respondent's criminal history, including its seriousness;
- the respondent's circumstances, including;
    - the access the respondent has to children, including access through their employment;
    - the respondent's needs in relation to accommodation, employment, health and mental health; and
- any other circumstances deemed appropriate by the court.

New section 12E now comprises section 13(5) and (5A) which allows the court to make an offender reporting order on its own initiative or on application by the prosecution. The six-month timeframe associated with making an application for an offender reporting order remains.

Division 2 addresses the appeal process for the prosecution and the offender. Sections 12F and 12G comprise of section 13(6) and (7) allowing an appeal against the making of an offender reporting order by the defendant and an appeal against the refusal to make an offender reporting order by the Attorney-General. Both parties may appeal the decision either under chapter 67 (Appeal – pardon) of the Criminal Code or under the *Mental Health Act 2016*.

With the exception of section 12D, the provisions contained in restructured Part 3 are consistent with the current section 13.

Reporting processes

Section 15 – Reporting general residence to QCS

The Bill amends section 15 of the Act to allow the chief executive (corrective services) to make inquiries with a reportable offender about their general residence or localities where they may be found upon their discharge from custody. The information collected from a reportable offender by the chief executive (corrective services) will be given to the Police Commissioner and is taken to be part of a reportable offender's initial report.

New section 19B - Requirement to report each change in premises or locality at which offender stays or can be found

The Bill inserts section 19B to allow the Police Commissioner to give a reportable offender a notice requiring them to make a report of a premises they stay or a place they can be generally located, that is not a place where they 'generally reside', for a maximum of three days within 24 hours of the change happening.

Before giving the reportable offender a reporting obligations notice to report under section 19B, the Police Commissioner must be reasonably satisfied that the increased reporting is necessary to protect the lives or sexual safety of children.

An amendment to schedule 4 will allow a reportable offender to review a decision of the Police Commissioner to require the additional reports to be made, under part 4A of the.

Sections 21, 25 and 26 - How reports are made

The Bill amends sections 21 (Change of travel plans while out of Queensland to be given), 25 (Where reports must be made) and 26 (How reports must be made) to reflect contemporary reporting processes used by the QPS Registry.

The Bill amends section 21 by replacing subsection (3), which details the ways in which a report can be made, to require a reportable offender to report in a way allowed under a regulation. Section 5 (Change of travel plans while out of Queensland to be given—Act, s 21(3)) of the Regulation, allows a reportable offender to report the change to the address to the offender's case manager or another person nominated by the Police Commissioner, or by mail, telephone to a telephone number approved by the Police Commissioner or an approved electronic reporting method. Section 5 will be amended to coincide with changes to section 21 and will require a reportable offender to make a report of a change of travel by telephone, email, approved electronic reporting method or by post to:

The Registrar
Child Protection Offender Registry
GPO Box 1440
BRISBANE QLD 4001

The Bill replaces sections 25 and 26 of the Act to reflect changes to the way in which reportable offenders will receive information about their reporting requirements and how they will be required to report. In particular section 25 (Initial report must be made in person) requires a reportable offender to make an initial report in person at a police station stated in an initial reporting obligations notice under section 54A(1), which is a new section detailing what can be included in a notice given to a reportable offender by the Police Commissioner.

The change removes reporting at a police station for reports other than an initial report and provides a more tailored approach to reporting under section 54 and proposed section 54A.

Section 26 details how reports other than an initial report will be made by a reportable offender. That is, in the way stated in a notice under new section 54A or in a way allowed under a regulation. These amendments will remove the requirement for in person reporting at a police station and simplify how reports will be made.

A new section 26A (Reportable offender with disability may be assisted to make report) is comprised of section 26(4) and (5). The new section allows a reportable offender, who has a disability that makes it impactable to make their reports under Part 4 of the Act, to be assisted in making those reports by a parent, guardian, carer or another person nominated by the reportable offender.

The parent, guardian, carer or nominated person can accompany a reportable offender making a report in person or can make another report, such as a change in personal details, on their behalf.

Offences under the Act

Requirement to provide information

The Bill amends section 50 (Failure to comply with reporting obligations) by inserting new subsection (5) to allow the Police Commissioner to give a reportable offender who has been convicted of an offence under section 50 a reporting obligations notice under section 53A(3). A reporting obligations notice will require the reportable offender to report the personal details that were subject of the conviction.

New subsection (6) details 'unreported information' for the purposes of subsection (5). That is, change in personal details or other information the reportable offender was required to report under a reporting obligation the offender is convicted of failing to comply with.

Subsections (7) and (8) sets out the information that must be included in a reporting obligations notice for the purposes of subsection (5) and the manner in which the report is to be made. The information must be reported in seven days after being given a notice or within seven days after release from government detention for the offence.

Compliance with the requirement imposed under subsection (5) is considered to be a reporting obligation. Failure to comply with the requirement may result in the offender being charged under section 50(1) and liable to a penalty of 300 penalty units or 5 years imprisonment.

Information sharing

Release of information - Department of Home Affairs, Australian Border Force and the Australian Federal Police

The Bill extends section 24 (Information about international travel to be given to the AFP) to include the Police Commissioner to give the Australian Government Departments of Home Affairs and Australian Border Force as departments who can receive information about the proposed international travel by a reportable offender.

Section 71 (Release of information to corresponding registrar) of the Act has also been amended to allow personal information held on the child protection register about a reportable offender to be given to the Department of Home Affairs, Australian Border Force and the Australian Federal Police where the information is being used for a law enforcement purpose.

Giving information to a reportable offender – section 73

The Bill amends section 73 by inserting a new subsection to limit the personal information that can be given to a reportable offender about reportable contact with a child when a request is made for reportable information. Accordingly, the Bill restricts

this information to the first initial of the child's first and last name and the date of the reportable contact.

A minor amendment to subsection (4) will clarify that the information given to a reportable offender is only in relation to the details held on the child protection register.

Court processes

Evidentiary provisions

The Bill amends section 77 (Evidentiary provisions) to allow a statement by the prosecution that information held on the child protection register that a stated person was a reportable offender, is evidence of that matter.

Furthermore, sections 77(3) and (4) are amended to allow a certificate or affidavit to be given by the prosecution stating that a reporting obligations notice was given to a reportable offender on the date stated by a stated person. The amendments are consistent with the evidentiary provisions about the service of other documents under the Act.

The amendments do not affect the application of sections 50 (Failure to comply with reporting obligations), 51A (Failing to comply with offender prohibition order), and 61 (Failure to comply with procedural requirements does not affect reportable offender's obligations) on a court proceeding under the Act.

Reportable information

The Bill extends the information that is required to be reported under schedule 2 (Personal details for reportable offenders) of the Act to include the details of any anonymising software that is possessed or used during the reporting period, any caravan or trailer resided in or towed by a vehicle, the possession or use of any vault or black hole applications on a digital device and the MAC address of any vehicle regularly driven by a reportable offender and every digital device in the possession of a reportable offender or to which the offender has access to.

MAC Address, Caravans and Trailers for a Vehicle

The Bill amends schedule 2, item 9 to require a reportable offender to report, in addition to the make, model, colour and registration number of each vehicle owned or driven by a reportable offender for at least seven days in a one year period, any caravan or trailer a reportable offender generally resides in or is towed by a vehicle owned or driven by a reportable offender for at least seven days in a one year period.

Item 9 also required a reportable offender to report the MAC address of a radio or other electronic communication device that is part of or installed in each vehicle.

Possession and or use of anonymising software, vault and black hole applications and MAC addresses in relation to digital devices.

The Bill amends schedule 2 by inserting a new item 15A which requires a reportable offender to report the details of software applications stored on the device, or that can be accessed using the device, that is designed, or used, to hide information stored on the device and to hide the location or communication of a person who administers or uses a network, device or other digital device.

Furthermore, item 15A requires a reportable offender to report the MAC address of each device in the possession of a reportable offender. The definition of 'digital device

has been amended to ensure the scope of digital device is appropriate to the purpose of the Act and does not include devices such as digital scales and devices that use smart technology such as smart refrigerators.

Defining terms for the Act

The Bill inserts the following definitions under schedule 5 (Dictionary) to aid in the interpretation of current and new provisions of the Act.

Minor and technical amendments

Amendments to sections 28, 30, 74E, 74F and new Part 4AA the Act have been made to address the following administrative issues:

- renumbering section 28(2)(c) from (ii) – (iv) to (i) – (iii) to address a typographical error. This is consistent with numbering formats under the Act;
- removing section 30(1)(b)(ii) which allows fingerprints to be taken from a reportable offender if a police officer is not reasonably satisfied about their identity when making a report in person. A police officer will retain the capacity to take fingerprints when a reportable offender makes an initial report;
- relocation of offences and proceedings to new Part 4AA. This new part is a drafting decision which will assist in the interpretation of the Act;
- removing the word 'written' in section 74E(2) to allow a change or revocation of an offender reporting order. A similar amendment has been made to section 74F(4) by including the word 'orally' to allow information about an offender prohibition order to be given orally or in writing;
- replacing the reference to 'notice of reporting obligations' with 'reporting obligations notice' and 'initial reporting obligations notice' across the Act.

Child Protection (Offender Reporting and Offender Prohibition Order) Regulation 2015

Corresponding reportable offenders

The Bill amends sections 3 (Prescribed classes of persons who are corresponding reportable offenders – Act, s 7) and 16 (Definition of corresponding Act) of the Regulation to include a person who is required to report to a corresponding registrar in a jurisdiction outside of Australia as a corresponding reportable offender in Queensland. The Bill also amends sections 3 and 16 to state that a person is only a corresponding reportable offender for offences committed in respect of a child or in relation to a person the offender believed was a child.

How reports are to be made under the Act

The Bill combines sections 5 (Change of travel plans while out of Queensland to be given—Act, s 21(3)) and section 8 (How reports must be made – Act, s 26(2)) into a new section 5 (How reports must be made—Act, ss 21 and 26) to direct how reports are required to be made under the Act.

The new section 5 removes facsimile as a reporting option and inserts an address for reports to be made by post. New section 5 also allows the details of how reports are made to be included in a notice given to a reportable offender under new section 54A of the Act.

Sections 6 (Police commissioner may direct report to be made at stated police station – Act s 25(1)(b)) and 7 (Restricted police stations – Act s 25(3)) of the Regulation are omitted to reflect changes to the Act which removes reporting at a police station as a reporting option unless directed by the Police Commissioner in a notice under new section 54A of the Act.

Serving a notice of reporting obligations under the Act

The Bill amends section 13 (Who must give notice to reportable offender—Act, s 54(3)) to include the chief executive of the department in which the *Migration Act 1958* (Cwlth) is administered as an entity who can give a reportable offender a reporting obligations notice under section 54 of the Act.

Police Powers and Responsibilities Act 2000

Device inspections

Section 21A -Power to enter residence of reportable offender

The Bill amends section 21A (Power to enter for *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004)* of the PPRA to provide an express entry power for police who are authorised to conduct a device inspection under section 21B of the PPRA.

The amendment to the heading of section 21A reflects modern drafting processes and does not impact the operation of the provision.

Sections 21B- Power to inspect storage devices

The Bill amends section 21B(2) to allow a police officer to require a reportable offender to produce, or otherwise make available, each digital device in their possession and to inspect that device. In addition to the requirement to produce each device for inspection, the parameters which comprise a prescribed internet offence have been changed to include offending that occurs through a pre-loaded digital storage device or other storage device. Accordingly, a prescribed offence will include current offences which occur through the internet and offences which are committed using a pre-loaded device of child exploitation material.

The definition of prescribed offences is extended to include new offences that will be considered triggering offences for a device inspection. These offences act retrospectively to capture current reportable offenders who have previously been convicted of the new offences.

Amendments to section 68 of the Act will require the Police Commissioner to give a reportable offender a written notice that the information about the offender's obligation to present every digital device in their possession for a device inspection has been included on the child protection register. A reportable offender who is aggrieved by a decision of the Police Commissioner to include a reportable offender for a device inspection under the new offences prescribed for 21B(5)(b), (d) and (f) can appeal that decision under Part 4A of the Act.

Device inspection orders – section 21C

New section 21C (Magistrate may make device inspection order for reportable offender) comprises of the current device inspection order provisions under section 21B(3) and (4). The new section does not change the current policy which allows a magistrate to make a device inspection order outside the parameters of section

21B(1)(a) and (b). A device inspection order can only be made if the magistrate is satisfied there is an elevated risk a reportable offender will engage in conduct that may constitute a reportable offence.

A definition of reportable offence has been relocated from section 21B(6) to clarify the parameters of section 21C.

Reportable offenders who fail to comply with a direction of a police officer under section 21B(2)(a) will commit an offence under new section 21D (Offence to contravene requirement to produce digital device). The new offence is an indictable offence with a maximum penalty of 300 penalty units or 5 years imprisonment which is commensurate with all penalties under the Act.

Minor and technical amendments

Section 808A PPRA – Annual report about use of device inspection powers

The Bill amends section 808A(2) of the PPRA to include the requirement given by a police officer to produce each digital device in the possession of a reportable offender. The information about the use of the requirement will be included in the annual report which is tabled by the Minister in the Legislative Assembly.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than by legislative change.

Estimated cost for government implementation

It is anticipated that there will be a financial impost due to the amendments. Additional staff may be required by the QPS Registry to manage the increase in technology based, and telephone, reporting. This will be offset by streamlining reporting processes, and a reduction in the need for low-risk offenders to report face-to-face any changes to travel and personal particulars. It is expected that changes to Part 3 of the Act may see a rise in the number of offender reporting orders following broader information that the courts can consider. This may result in a need for additional QPS resources, including police investigators, to monitor offenders in the community.

The costs associated with the additional ongoing management can be met through financial resources provided to the QPS Registry by the Queensland Government. The QPS receives $5.72 million annually to finance the ongoing costs associated with the monitoring of post-DPSOA offenders on the child protection register. This financial support will continue to facilitate the work of the QPS Registry to meet the purpose of the Act and ensure that monitoring activities are targeted based on enhanced intelligence gathering and analysis.

Consistency with fundamental legislative principles

The amendments have been drafted with due regard to the *Legislative Standards Act 1992* (LSA). While some of the amendments may be considered to engage section 4 of the LSA, they are considered necessary to achieve the objectives of the Bill.

Amendments to the Child Protection (Offender Reporting and Offender Prohibition Order) Act

S 4(2) LSA – whether the legislation has regard to the rights and liberties of individuals

Reporting changes in personal details – new section 19B

Requiring reportable offenders to report the details of every place they stay or can be located for a period of three or more consecutive days, may impact on the rights and liberties of reportable offenders in the community. The amendment recognises that some reportable offenders will use the current reporting period of seven days to report a change in a place where they generally reside for seven or more days, to engage in short stays at places without being required to report the details of those stays.

The purpose of the Act is to reduce the likelihood of re-offending and facilitate the investigation of future offending. To achieve this, the QPS requires information about the location of reportable offenders and the activities they are engaging in.

It is not anticipated that every reportable offender will be captured by the provision. The Police Commissioner must first be satisfied that the additional reporting is necessary because of the risk a reportable offender poses to the lives or sexual safety of children and then give the reportable offender a notice detailing the new obligation.

MAC Address – schedule 2

The proposed amendment will require the reportable offender to report the MAC address that is part of or installed in every vehicle owned or regularly driven by the offender as well as each digital device in their possession that is used for the purpose of social networking and/or file sharing or storage. This may be seen as a breach of the fundamental legislative principle that legislation has regard to the rights and liberties of individuals.

The information in the MAC address can be used to identify the location of a person through a digital device or radio in a vehicle. The requirement to provide a MAC address is similar to other requirements under schedule 2 of the Act, which obligate a reportable offender to report their internet service provider, any social media sites used or intended to be used and the passwords to those sites.

Providing the MAC address of digital devices used by reportable offenders for social networking or file sharing or storage will assist police investigators during device inspections under section 21B of the PPRA. Where it is identified that a reportable offender has a new device or no longer has a device, this can be recorded during the device inspection to ensure the child protection register has up to date information about each reportable offender.

Further, it will allow police to operate preventatively in situations where a reportable offender, who is also the subject of an offender prohibition order, engages in prohibited behaviour such as being at a place where children are. In turn, it can provide valuable assistance to quickly locate, through the use of the vehicle MAC address, a reportable offender who has abducted a child.

Any breach of fundamental legislative principles is justified in the furtherance of the objectives of the Act. Keeping police informed of a reportable offender's personal details and whereabouts following the offender's release back into the community,

reduces the likelihood that the offender will re-offend and facilitates the investigation and prosecution of any future offences that the offender may commit.

Requirement to report the possession or use of anonymising software

It is proposed to create a new provision in the Act requiring a reportable offender to report the possession, or use of, anonymising software during their reporting period. Failure to declare the information may result in a charge under section 50, failure to comply with reporting obligations, and attract a maximum penalty of five years imprisonment or 300 penalty units. This is commensurate with other offences under the Act. This may be considered a breach of section 4(2)(a) of the LSA.

Anonymising software sanitises information and search histories by encrypting or removing personally identifiable information from data sets to allow the user to remain anonymous online. The user of anonymising software can freely disseminate or receive information online without their personal information, including their geolocation, being revealed. This type of software provides a platform for child sex offenders to remain undetected as they target and groom children, disseminate child exploitation material and participate in directed child abuse through the dark web.

Allowing the unchecked possession of anonymising software is contrary to the purpose of the Act as it hinders police from adequately monitoring the activities of reportable offenders.

Vault and black hole applications – schedule 2

Schedule 2 of the Act outlines the personal information a reportable offender must provide police, including details of internet service providers, telephone numbers, social networking sites, email addresses, internet usernames. and the passwords to those media accounts. These details provide police with some capacity to monitor the online presence of reportable offenders. The proposed amendments to schedule 2 are similar to the current provision. In addition, it will require a reportable offender to report the possession and/or use of vault and black hole type applications during their reporting period.

This proposal ensures that the Act remains contemporary and recognises new technology. It does not provide any additional powers to police.

Any breach of fundamental legislative principles is balanced by the need to ensure reportable offenders are declaring the types of devices and applications that can be used to facilitate and conceal their offending.

Amendments to the *Police Powers and Responsibilities Act 2000*

Section 4(2) LSA – whether the legislation has regard to the rights and liberties of individuals

Section 4(3)(g) LSA - whether the legislation imposes obligations retrospectively

Expand the scope of offences for which a device may be inspected – s 21B PPRA

The proposed amendment will expand the device inspection offences prescribed under 21B. The power to inspect will include a number of additional offences, if the offence was facilitated through an electronic communications network, or digital device offences that involved using a digital device to commit the offence.

While the COVID-19 pandemic has reduced direct physical access to children, offenders are using technology to manipulate children to make their own sexual abuse content. The content is then held for ransom for more explicit content. Inspecting the information held on electronic devices allows police to act preventatively and disrupt the making and distribution of child abuse material.

For police to effectively act upon the spike in child abuse material circulating on the dark web and encrypted applications the legislation must be adapted to encompass the current offending behaviour of those reportable offenders who have been identified as committing these type of offences. This retrospective application may be seen as breaching the rights and liberties of these offenders.

However, the retrospectivity is justified as reportable offenders who have used the internet and digital devices to commit offences against children previously cannot be effectively monitored by police unless there is a level of compliance and inspection available to police during the offender's reportable period under the Act. Offenders who are captured under the retrospectivity of the proposal and new reportable offenders captured under the proposed offences will be able to review a decision to include them for the device inspection regime under section 74 of the Act.

Section 4(3)(e) LSA confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer

Power to enter premises to inspect digital devices – section 21A PPRA

The proposed amendment will permit a police officer to enter the residence of a reportable offender to inspect a digital device. This may be seen as a breach of the fundamental legislative principles with regard to the rights and liberties of individuals (section 4(2)(a)) and entry of a person's premises should only be permitted with the occupier's consent or under a warrant issued by a judge or other judicial officer (section 4(3)(e)).

Section 21B of the PPRA in its current form does not operate as intended. Police may attend a reportable offender's residence and ask to inspect their digital devices. If the offender declines, there is no power for police to enter the residence to inspect the devices. The proposal aligns the provision with its intended purpose, which will allow police officers conducting device inspections to enter the residence and see every device in possession of the reportable offender. The proposal does not confer the power to search any part of the residence unless there is a reasonable suspicion that evidence will be destroyed or a warrant is issued by a Magistrate for that purpose.

The inspection role is primarily undertaken by the officer responsible for the ongoing monitoring of that offender or an officer attached to a Child Protection Investigation Unit. The amendment will ensure that the legislation regarding device inspections operates in the way it was intended by allowing police to enter the residence of a reportable offender to inspect devices in their possession or to which they have access.

Section 4(3)(f) whether the legislation provides appropriate protection against self-incrimination

New section 21D is an offence provision which applies where a reportable offender does not comply with a requirement to produce digital devices under section 21B. The

provision states that self-incrimination is not a reasonable excuse for contravening the requirement.

The exclusion of the privilege against self-incrimination is similar to section 51B of the Act and section 197 of the *Crime and Corruption Act 2001*. A person who fails to comply with a direction to provide access information will be liable to a maximum penalty of 300 penalty units or five years imprisonment.

The 2015 Queensland Organised Crime Commission of Inquiry highlighted non-compliance with orders under section 154 of the PPRA, which requires a person to provide access information to a digital device. In particular, the Commission of Inquiry noted that the power (to require access information) provided by section 154 of the PPRA, combined with the offence provision in section 205 of the Criminal Code, provides insufficient disincentive to offenders who have more to lose by complying. For example, an offence under section 228B (Making child exploitation material) of the Criminal Code carries a maximum penalty of 14years imprisonment.

As a consequence of the Queensland Organised Crime Commission of Inquiry, amendments were made to the Act to remove self-incrimination as a reasonable excuse for offences which require police to access digital devices and now to present digital devices. The amendments are considered imperative to the purposes of the Act and will only impact offenders who have been convicted of offences that are prescribed offences under section 21B of the PPRA.

Consultation

A consultation draft of the Bill was circulated with the following stakeholders:

- Aboriginal and Torres Strait Islander Legal Service;
- Act for Kids;
- Bar Association of Queensland;
- Bravehearts Foundation Limited;
- DV Connect;
- Forensic and Clinical Psychology Centre;
- Legal Aid Queensland;
- Protect All Children Today;
- Queensland Aboriginal and Torres Strait Islander Child Protection Peak;
- Queensland Advocacy Incorporated;
- Queensland Council for Civil Liberties;
- Queenslanders with Disability Network;
- Queensland Indigenous Family Violence Legal Service;
- Queensland Law Society;
- Queensland Police Union of Employees; and
- Queensland Police Commissioned Officers' Union of Employees.

Stakeholder feedback was taken into account in finalising the Bill.

Consistency with legislation of other jurisdictions

The provisions of the Bill are generally consistent with the offender reporting schemes in other Australian jurisdictions. The following amendments step away from the nationally consistent approach to reflect changes in offending behaviour:

- new section 19B (Requirement to report each change in premises or locality at which offender stays or can be found) of the Act allows the Police Commissioner to issue a notice to a reportable offender, to report any changes to a place where they generally reside or localities where they can be found for three or more consecutive days, within 24 hours after the change occurs.
- section 50 (Failure to comply with reporting obligations) of the Act, allows the Police Commissioner to give a reporting obligations notice to reportable offenders requiring the information that is the subject of a conviction under section 50 to be reported within seven days of conviction or seven days from release from custody.
- section 73 (Reportable offender's rights in relation to register) of the Act to remove the identifying information of children with whom the reportable offender reported contact under schedule 2 of the Act.
- schedule 2 (Personal details for reportable offenders) of the Act requires a reportable offender to report the details of any anonymising software, vault or black hole applications possessed or used and to report the media access control address for every digital device in their possession or that is part of or attached to any vehicle owned or regularly driven.

Notes on provisions

Part 1 – Preliminary

1. Short title

Clause 1 states the short title of the Bill as the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2022*.

Part 2 – Amendment of *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*

2. Act amended

Clause 2 states that Part 2 of the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2022* amends the Act.

3. Replacement of pt 3 (Offender reporting orders)

Clause 3 replaces part 3 (Offender reporting orders) which sets out the circumstances for considering, making and appealing an offender reporting order. Part 3 comprises of section 13.

Clause 3 separates part 3 into two divisions. Division 1 'Making offender reporting orders', includes new sections 12A – 12E and Division 2 'Appeals', introduces sections 12F and 12G, provides avenues for appeals.

Division 1 – Making offender reporting orders

Section 12A – Offender reporting order defined

Clause 3 inserts new section 12A which states that a person subject to an offender reporting order is to comply with the reporting obligations imposed under the Act.

Section 12B – Making offender reporting order – conviction for offence other than prescribed offence

Clause 3 renumbers section 13 as section 12B and sets out the circumstances for making an offender reporting order where a person is convicted of an offence that is not a prescribed offence under schedule 1 of the Act. That is, the court must record a conviction and impose a sentence for the offence.

Where the court does not record a conviction for the offence, section 12 (Court to consider whether or not to record conviction) of the *Penalties and Sentences Act 1992* and section 183 (Recording of conviction) of the *Youth Justice Act 1992* apply. For the purposes of section 12 of the *Penalties and Sentences Act*, the decision not to record a conviction under the Act does not prevent the court making an order, while section 183 of the *Youth Justice Act* acts to direct when a conviction may or must not be made in relation to a child offender.

The court may make an offender reporting order under section 12B, where the parameters of subsection (1) have been met and the court is satisfied on the balance of probabilities that the person poses a risk to the lives or the sexual safety of 1 or more children or of children generally or if the offender reporting order is in relation to a child abduction offence under sections 354, 363 or 363A of the Criminal Code, the offending was not familial, for example by a parent, caregiver or other family member and it is appropriate to make the order. There is no requirement for the court to identify a child or particular class of children to whom the offender poses a risk.

An example of what is considered appropriate in terms of making an offender reporting order has been included in 12B(2). That is, the commission of the offence was not merely incidental. This example mirrors the example under the current section 13(2)(b)(ii).

The court must also consider the matters mentioned in section 12D, before making an offender reporting order. These matters allow the court to consider a range of circumstances that form part of the offending including. the relationship with the child, the age of the offender and the victim, the nature of the offending, the offender's criminal history and personal circumstances.

Section 12C – Making offender reporting order – forensic order

Clause 3 inserts section 12C which is comprised of current section 13(1)(b), (2), (3) and (9) and allows a court to make an offender reporting order for a person if a forensic order is also made by the court under the *Mental Health Act*. Before making an offender reporting order in this instance, the court must be satisfied on the balance of probabilities that the person poses a risk to the lives or sexual safety of one or more children or of children generally and consider the matters set out in 12D.

Where an offender reporting order is made in relation to an offender who is subject to a forensic order, the offender will be considered a reportable offender under the Act unless the forensic order is revoked under section 441 (Decisions) of the *Mental Health Act*. When this occurs, all reporting obligations for the person under the Act end.

Section 12D - Matters court must consider before making offender reporting order

Clause 3 inserts a new section 12D. This new information is consistent with the information a court must consider before making an offender prohibition order under part 3A of the Act. It requires the court to consider a broad range of information to determine whether an offender reporting order is appropriate in the circumstances. The information includes the history between the offender and the child victim, the age of the child victim when the offending occurred, the seriousness of the offending, the seriousness of the offender's previous criminal history, the offender's access to children through employment, the accommodation, health and mental health needs of the offender and any other information the court considers is appropriate.

Section 12E - Court may act on own initiative or application

Clause 3 inserts section 12E (Court may act on own initiative or application). Section 12E is comprised of section 13(5) and (5A) and allows the court to make an offender reporting order on its own initiative, or on application by the prosecution. An application by the prosecution can be made within six months after the day the court imposes a sentence or makes a forensic order in relation to an offence that is not a prescribed offence under schedule 1 of the Act.

Division 2 - Appeals

Section 12F – Appeal under Criminal Code

Clause 3 inserts section 12F (Appeal under Criminal Code). Section 12F comprises of section 13(6) and allows a person, subject to an offender reporting order to appeal a decision of the court to make an offender reporting order under Chapter 67 (Appeal – pardon) of the Criminal Code. Similarly, the Attorney-General may also appeal under Chapter 67 where the court refuses to make an offender reporting order under section 12B.

Section 12G – Appeal under *Mental Health Act 2016*

Clause 3 inserts section 12G (Appeal under *Mental Health Act 2016*). Section 12G comprises of section 13(7) and (8) and allows an appeal of a decision by the court to make or refuse to make a forensic order for a person under the *Mental Health Act 2016* in relation to an offence that is not a prescribed offence under schedule 1 of the Act.

Subsection (3) clarifies that the decisions made under the *Mental Health Act* are a decision of the Mental Health Court. Chapter 13 (Appeals) of that Act applies to decisions about forensic orders.

4. Amendment of s 13D (Matters court must consider before making prohibition order)

Clause 4 amends section 13D by relocating the definition of 'charge' and 'criminal history' to schedule 5 (Dictionary) of the Act. The relocation is a consequence of the use of 'criminal history' in 12C. The definition of 'charge' is only used in relation to criminal history and is relocated for completeness.

5. Amendment of s 13R (Explaining and giving notice of offender prohibition order to respondent)

Clause 5 amends section 13R(4) by changing terminology regarding notices that are given to reportable offenders under section 54. Subsection (4) replaces the words 'a notice complying with section 54 (a section 54 notice)' with 'an initial reporting obligations notice'. There are no policy changes as a consequence of the changed wording.

6. Amendment of s 13S (Giving respondent copy of offender prohibition order dealt with in respondent's absence)

Clause 6 amends section 13S(4)(b) by replacing the reference to section 54(5) with 'initial reporting obligations notice'. The change in wording is a consequence of the separation of section 54 into two sections, section 54 and section 54A. Section 54 applies only to a reporting obligations notice that is given to a reportable offender for section 14 (When reportable offender must make initial report) while section 54A directs the way in which reporting is to be made. The amendment does not change the operation of the provision.

7. Amendment of s 13ZA (Action by registrar and police commissioner after registration of corresponding order)

Clause 7 amends section 13ZA(3)(b) by replacing the reference to section 54(5) with 'initial reporting obligations notice'. The change in wording is a consequence of the separation of section 54 into two sections, section 54 and section 54A. Section 54 applies only to a reporting obligations notice that is given to a reportable offender for section 14 (When reportable offender must make initial report) while section 54A directs the way in which reporting is to be made. The amendment does not change the operation of the provision.

8. Amendment of s 14 (When reportable offender must make initial report)

Clause 8 amends section 14(2) and (4) by replacing the reference to section 54(5) with 'an initial reporting obligations notice'. The change in wording reflects the separation of section 54 into two distinct sections. Section 54 only deals with initial reporting notices.

9. Amendment of s 15 (Provision of personal details by corrective services)

Clause 9 inserts three new subsections. Subsection (1A) allows the chief executive (Corrective Services) to ask a reportable offender for an address where they will reside or the localities where they can be found after their release from government detention. Under subsection (1B) the request for these details may be made either orally or in writing on or before a reportable offender is released from QCS custody.

New subsection (1C) provides that a reportable offender is not required to comply with a request by the chief executive (Corrective Services) for details about the offender's intended residence or location upon release.

Where a reportable offender gives information to the chief executive (Corrective Services) under (1A), the chief executive may give the information to the Police Commissioner. This information will be considered part of a reportable offender's initial report, in the same way as information is collected from a reportable offender when they enter government detention.

Clause 9 renumbers section 15 as a consequence of the new amendments.

10. Amendment of s 19 (When periodic report must be made)

Clause 10 replaces the words 'written notice' in section 19(3) with 'reporting obligations notice' to align with the new section 54A (Reporting obligations notice) which sets out when the Police Commissioner must give a reporting obligations notice, including changes to those obligations. The amendments do not change how section 19 operates.

11. Insertion of new s 19B

Clause 11 inserts a new section 19B (Requirement to report each change in premises or locality at which offender stays or can be found) which requires a reportable offender to report a change in premises or locality, that is not where the offender generally resides, within 24 hours of the change occurring. The Police Commissioner must be satisfied that the requirement is necessary to protect the lives or sexual safety of children.

Subsection (1) allows the Police Commissioner to require a reportable offender to report the details set out in subsection (3). Those details are the change in premises where the reportable offender stays that is not their general residence, or locality where the reportable offender can be generally found, for a period of three or more consecutive days.

Under subsection (2) the requirement to report these details is imposed on a reportable offender when the Police Commissioner gives them a reporting obligation notice under new section 54A(3).

Subsection (3) sets out the information that is required to be reported by a reportable offender where they receive a reporting obligations notice from the Police Commissioner under subsection (2) about reporting each change in premises where the reportable offender stays that is not their general residence, or locality where the reportable offender can be generally found if they do not have a general residence, for a period of three or more consecutive days, within 24 hours of the change occurring.

12. Amendment of s 21 (Change of travel plans while out of Queensland to be given)

Clause 12 amends section 21(3) by removing the requirement to make a report of a change of travel plans while out of Queensland by fax or email to the Police Commissioner or to another address allowed under a regulation. Rather, a reportable offender will report the change in a way allowed under a regulation. Section 5 of the Regulation operates for section 21 by providing ways in which changes to travel can be made including, allowing a change to be by telephone, mail, email, an approved electronic reporting method or in another way published on the QPS website.

13. Amendment of s 24 (Information about international travel to be given to the AFP)

Clause 13 amends section 24 to include the Australian Border Force Commissioner and the secretary of the Department of Home Affairs, as Australian Government departments able to receive information about a reportable offender's intention to travel outside of Australia. The heading of section 24 has been amended to reflect the giving of information to Commonwealth agencies.

14. Amendment of pt 4, div 3, hdg (Provisions applying to all reporting obligations)

Clause 14 amends the heading of Division 3 (Provisions applying to all reporting obligations) to 'Other provisions applying to all reporting obligations'. The amendment reflects that reporting provisions are also contained in Part 4, Division 2 (Ongoing reporting obligations) under Subdivisions 3 (Reporting change in personal details) and 4 (Other reporting).

15. Replacement of ss 25 and 26

Clause 15 replaces section 25 (Where reports must be made) and section 26 (How reports must be made) which detail where and how reportable offenders can make their reports and inserts a new section 26A (Reportable offender with disability may be assisted to make report).

Section 25 – Initial report must be made in person

Clause 15 amends section 25 to apply only to initial reports made by a reportable offender, rather than how all reports are to be made by a reportable offender. In this regard, subsection (1) requires an initial report to be made in person at a police station stated in the reporting obligations notice given to the reportable offender under section 54. Subsection (2) details who can receive an initial report from a reportable offender, that is, a police officer or a person approved by the police commissioner.

Section 26 – How other reports must be made

Clause 15 amends section 26 which refers to how all other reports are to be made by a reportable offender under Part 4 of the Act. Clause 15 allows information about how reportable offenders are to make their reports to be contained in a notice of reporting obligations that is given to the reportable offender by the Police Commissioner or in a way prescribed by a regulation.

Section 26A – Reportable offender with disability may be assisted to make report

Clause 15 inserts a new section 26A which is comprised of the current section 26(4) and (5). Subsection (1) of section 26A applies to a reportable offender who has a disability and because of that disability it is not practicable for them to make a report under Part 4 of the Act.

Subsection (2) allows a person who is the reportable offender's parent, guardian, or carer or another person nominated by the reportable offender, to either accompany them when they make a report in person or to make another report on their behalf.

Sections 10 (Requirement for report made in person other than by reportable offender) and 12 (Reports not made in person – Act, s 29(5)) of the Regulation provides information regarding the process for allowing another person to make a report on behalf of a reportable offender where that report is required to be made in person.

16. Amendment of s 28 (Receipt of information to be acknowledged)

Clause 16 renumbers section 28(2)(c) to address a drafting anomaly. Currently section 28(2)(c) is numbered from (ii) – (iv). The amendment renumbers section 28(2)(c) to (i) – (iii). The amendment does not change the operation of the provision.

17. Amendment of s 30 (Power to take fingerprints)

Clause 17 amends section 30 to state that a police officer may take, or cause an authorised person to take, fingerprints from a reportable offender. This simplifies section 30 to recognise that fingerprint information may already be held by the QPS. It does not preclude the taking of fingerprints in circumstances where that information is not held by the QPS or there are concerns about the reportable offender's identity.

18. Amendment of s 33 (Reporting by remote offenders)

Clause 18 amends section 33 to reflect the changes in the Bill regarding how reports will be made under the Act. The reference to 'restricted police station' in subsection (1) has been replaced with 'a place stated in a reporting obligations notice' to reflect the repeal of section 7 (Restricted police stations) of the Regulation.

19. Amendment of s 50 (Failure to comply with reporting obligations)

Clause 19 inserts new subsection (5) – (7) to require a reportable offender to make a report of details that were the subject of a conviction under section 50.

Subsection (5) allows the Police Commissioner to give a reportable offender a reporting obligations notice under new section 54A(3) if the reportable offender is convicted under subsection (1) for failing to comply with their reporting obligations. The notice requires a reportable offender to report the information that was the subject of the conviction.

Subsection (6) inserts a new term 'unreported information' for the purposes of subsection (5). The insertion makes it clear that the information the reportable offender is required to report is only that which was the subject of the conviction under subsection (1).

Subsection (7) states the information that must be included in a reporting obligations notice given to a reportable offender under subsection (5), including the information that is required to be reported, how the information is required to be reported and when the information is required to be reported.

Subsection (8) applies new section 26 of the Act to how a report of unreported information is to be made by the reportable offender. New section 26 requires a report, to be made in a way stated in a reporting obligations notice, a way allowed under a regulation, or if the report is to be made in person, at a police station stated in the reporting obligations notice.

New subsection (9) links subsection (5) to subsection (1). This creates an offence for failing to comply with a direction to report the information that resulted in the original conviction under section 50. The maximum penalty for failing to comply with the requirements of the reporting obligations notice under subsection (5) is 300 penalty units or 5 years imprisonment. The reasonable excuse defence under subsection (1) continues to apply to the new offence.

20. Relocation and renumbering of s 51 (False or misleading information)

Clause 20 relocates section 51 to a new Division 1 (Offences) under new part 4AA (Offences and proceeding for offences) as section 67FD. The purpose of the amendment is to co-locate like provisions under one part, there are no policy changes associated with the relocation.

21. Relocation and renumbering of s 51A (Failing to comply with offender prohibition order)

Clause 21 relocates section 51A to a new Division 1 (Offences), under a new part 4AA (Offences and proceedings for offences) as section 67FA. The purpose of the amendment is to co-locate like provisions under one part, there are no policy changes associated with the relocation.

22. Amendment, relocation and renumbering of s 51B (Access information for digital devices)

Clause 22 amends the definition of digital devices under subsection (10) to better align with the new requirement to report the media access control address of each digital device in the possession of a reportable offender and part of or attached to each vehicle owned or regularly driven by a reportable offender. The new definition in (10)(a) links the information stored on the device to the person using the device. New subsection 10(c) limits what is considered a digital device by excluding a device if the *only information stored on or accessed from the device is stored or accessed automatically when the device is used or operated in the usual way*. An example is provided in 10(c) to provide context regarding excluded devices including digital scales and a smart technology refrigerator.

Clause 22 relocates the definition of digital device under section 51B(10) to Schedule 5 (Dictionary). The amendment is in line with modern drafting processes and does not change how the provision operates.

The remainder of section 51B is relocated to a new part 4AA (Offences and proceeding for offences) and renumbered as section 67FC. The purpose of the amendment is to co-locate like provisions under one part, there are no policy changes associated with the relocation.

23. Relocation and renumbering of s 51C (Prohibition on disclosing protected information)

Clause 23 relocates section 51C to new part 4AA (Offences and proceeding for offences) and renumbers the section as 67FE The purpose of the amendment is to co-locate like provisions under one part, there are no policy changes associated with the relocation.

24. Relocation and renumbering of s 52 (No time limit for prosecutions)

Clause 24 relocates section 52 to a new part 4AA (Offences and proceeding for offences) and renumbers the section as 67FF. The purpose of the amendment is to co-locate like provisions under one part, there are no policy changes associated with the relocation.

25. Amendment and relocation of s 52A (Proceedings for indictable offence)

Clause 25 amends section 52A(1) by replacing the reference to offence numbers 50(1), 51(1), 51A(1) or (4), 51B(3) or 51C(3) with ‘indictable offence under this Act’. The amendment recognises that all offences under the Act are indictable.

Section 52A is relocated to new part 4AA (Offences and proceeding for offences), section 67FG. There are no changes associated with the relocation.

26. Amendment, relocation and renumbering of s 52B (Limitation on who may summarily hear a proceeding for an indictable offence and the level of penalty)

Clause 26 amends section 52B by replacing the heading to better reflect the content of the provision in line with modern drafting processes. Accordingly, section 52B will now be headed 'Constitution of court and maximum penalty for indictable offences dealt with summarily'.

Section 52B(1) has also been replaced to simplify the reading of section 52B without changing the operation of the provision. Accordingly, a Magistrates Court, constituted by a magistrate must continue to hear indictable offences under the Act summarily.

Section 52B is relocated to new part 4AA (Offences and proceeding for offences), section 67FH. There are no changes associated with the relocation.

27. Amendment of s 54 (Notice to be given to reportable offender)

Clause 27 amends section 54 to only apply to an initial report. The heading of section 54 has been changed to reflect this.

The reference in subsection (4)(b) to a 'notice under subsection (5)' has been replaced with 'reporting obligations notice'. The new term has the same meaning as the previous notice of reporting obligations.

Subsection (5), which requires the Police Commissioner to give a reportable offender a notice of their reporting obligations and the consequences for failing to comply with those obligations has been omitted from section 54 and is replicated in new section 54A.

Section 54 is renumbered as a consequence of the amendments.

28. Insertion of new s 54A (Reporting obligations notice)

Clause 28 inserts a new section 54A which sets out what a reporting obligations notice must contain. The term reporting obligations notice has the same meaning as the previous notice of reporting obligations.

Subsection (1) links the giving of a reporting obligations notice and initial reporting obligations notice to an event stated in section 54(2) of the Act. The Police Commissioner must give a reportable offender a written notice of their obligations under the Act and the consequences for failing to comply with those obligations.

Subsection (2) prescribes the information that must be included in an initial reporting obligations notice for an initial report.

Subsection (3) allows the Police Commissioner to give a reporting obligations notice to a reportable offender at any other time, thus permitting notices to be given when changes occur to a reportable offender's reporting requirements.

Subsection (4) sets out that a reporting obligations notice may state how reports are to be made and where reports must be made and reflects changes to sections 19, 25, 26 and 50 and new section 19B which will require notices to be given to a reportable offender. Subsection (4) also states the requirement to report information because of a conviction under section 50 must be made in the way stated in section 50(7), that is within seven days after being given a notice to report the information, otherwise, seven days after release from government detention.

Subsection (5) states that a reporting obligations notice applies until the offender's period of reporting ends or the Police Commissioner gives a reportable offender a new reporting obligations notice under section 54A.

Subsection (6) removes the need for a delegation or changes to a delegation about who can give a reportable offender a reporting obligations notice under section 54A. This allows an authorised police officer to give a reporting obligations notice on behalf of the Police Commissioner.

29. Insertion of new part 4AA (Offences and proceedings for offences)

Clause 29 inserts a new part comprising of two divisions containing relocated sections 51, 51A, 51B, 51C,52, 52A, 52B and 77E. The numbering of the offences has been updated to reflect their changed positioning.

Division 1 includes offences under the Act and division 2 deals with proceedings for offences under the Act.

Divsion1 Offences

As detailed in Clauses 20 to 23 and Clause 38 sections 51 (False or misleading information), 51A (Failing to comply with offender prohibition order), 51B (Access information for digital devices), 51C (Prohibition on disclosing protected information) and 77E (Reasonable excuse defence) are relocated and renumbered in part 4AA 67FA (51A), 67FB (77E),67FC (51B), 67FD (51), 67FE (51C).

Division 2 Proceedings for offences

Clause 29 inserts a new division 2 for part 4AA which sets out how the proceedings for an offence under the Act are to be conducted. As detailed in clauses 24 to 26, this new division is comprised of relocated sections 52 (No time limit for prosecutions), 52A (Proceedings for an indictable offence), and 52B (Limitation on who may summarily hear a proceeding for an indictable offence and the level of penalty). These sections have been renumbered to sections 67FF (52), 67FG (52A) and 67FH (52B).

30. Amendment of s 67H (Application for internal review)

Clause 30 amends section 67H to allow a reportable offender who is aggrieved by a decision to include them for a digital device inspection under the new prescribed offences for section 21B of the PPRA to seek an internal review that decision. The grounds on which the review can be made are set out in new subsection (1A).That is, that the offence the offender was convicted of is a relevant offence under section 21B of the PPRA and the determination that the commission of the offence using an electronic communications network or digital device was made in error. New subsection (2) defines a relevant offence for the purposes of section 67H.

Where an offender is aggrieved by the decision of an internal review an appeal of the decision can be made to a Magistrates court under section 67J. An appeal must be made within 28 days after a reportable offender receives a notice of the decision.

31. Amendment of s 68 (Child protection register)

Clause 31 amends section 68(2) of the Act by inserting (ea) to allow information regarding whether a reportable offender has been convicted for a device inspection offence under section 21B of the PPRA to be included on the child protection register. A note is included to clarify the purpose of section 21B.

Clause 31 inserts a new subsection (4) to require the Police Commissioner to give a reportable offender a written notice about the inclusion of information, about the offender's conviction for a device inspection offence under section 21B of the PPRA, on the child protection register.

32. Amendment of s 71 (Release of information to corresponding registrar)

Clause 32 amends section 71 to allow information on the child protection register to be given to the Australian Border Force Commissioner, the Secretary of the Department of Home Affairs and the Commissioner of the Australian Federal Police. New subsection (b) limits the giving of the information to the purpose of investigating or preventing a breach of, or order under, the Act, or the commission of a prescribed offence.

The provision of information to the Australian Government departments is tied to the purposes of the Act in that it may only be given to investigate or prevent a breach of the Act, an order under the Act or the commission of a prescribed offence under schedule 1 of the Act.

The heading of section 71 is amended to include Commonwealth agencies. The amendment reflects the change in who may receive information under this section.

33. Amendment of s 73 (Reportable offender's rights in relation to register)

Cause 33 amends section 73 by inserting a new subsection (2A) which prohibits the Police Commissioner giving a reportable offender information about a child with whom reportable contact has been reported, other than the child's first and last initial and the date of the reportable contact.

A minor amendment to subsection (4) limits the information the Police Commissioner can give a reportable offender to the information reported by the offender in the request under subsection (3).

34. Amendment of s 74 (Review about entry on register)

Clause 34 replaces section 74(1) and (2) of the Act. The information under the new subsection (1) is substantially similar and does not change the circumstances regarding when an application to review the information on the child protection register can be made to the Police Commissioner.

Clause 34 replaces subsection (5)(b) and (c). The new provisions are drafted in line with current drafting practices. In this regard, the reference to the particular decisions under review have been removed and refer to the fact that a decision must be reviewed and the decision must be confirmed or revoked.

The decision under subsection (5) refers to a decision to place a person on the register, the decision about the length of the person's reporting period and the decision that a person was convicted of a device inspection offence under section 21B of the PPRA and was committed using an electronic communication network or digital device.

New subsection (5A) sets out what must be included in a written notice given to a reportable offender after a review of a decision under section 74. This includes the outcome of the decision, the right for a reportable offender to be given a copy of reportable information held on the child protection register and, for the purposes of a decision to include the offender for a digital device inspection under section 21B of the

PPRA, the reason for that decision and the rights of a reportable offender to appeal that decision to a Magistrate.

Clause 34 also replaces subsection (7). Subsection (7) requires the Police Commissioner to ensure any change in a decision must be reflected on the child protection register. A note has been included which provides a direction to sections 67G, 67H and schedule 4 for an offender who seeks to review a decision to include them for a digital device inspection under section 21B of the PPRA.

Section 74 is renumbered as a consequence of the amendments.

35. Amendment of s 74E (Police commissioner may give information to government and other entities)

Clause 35 amends section 74E(2) by removing the word 'written' as it applies to how information given to an entity about a variation or cancellation of an order under parts 3 and 3A. The amendment allows information about any change to be given to an entity either orally or in writing.

36. Amendment of s 74F (Disclosing information about offender prohibition orders)

Clause 36 inserts a new subsection (4A) to allow information given to a person about an offender prohibition order under section 74F to be either orally or written. The change is consistent with an amendment to section 74E (Police commissioner may give information to government and other entities) of the Act.

Minor amendments to subsection (4) removes the word 'written' as it has become obsolete with the insertion of subsection (4A) and subsection (5) by replacing the reference to section 51C with section 67FE to reflect the new part 4AA.

Clause 36(4) renumbers the sections as a consequence of the insertion of new subsection (4A).

37. Amendment of s 77 (Evidentiary provisions)

Clause 37 amends section 77(1)(a) to allow information held on the child protection register that a person was a reportable offender to be evidence of that fact. The amendment links the person before the court to their status as a reportable offender.

Clause 37 amends section 77(3) to allow a statement by the prosecution that a stated police officer gave a reporting obligations notice to a reportable offender on a stated date, to be evidence. Furthermore, subsection (4) has been replaced and extends what is considered evidence in a proceeding under the Act by including an affidavit by a police officer that a reporting obligations notice was given to a stated reportable offender on a stated day.

38. Amendment, relocation and renumbering of s 77E (Reasonable excuse defence)

Clause 38 relocates section 77E to part 4AA (Offences and proceedings for offences) and renumbers the section as 67FB. Minor amendments have been made to replace the reference to section 51A with section 67FA as a consequence of the relocation of that section to part 4AA and to amend the heading to reflect that the reasonable excuse defence applies to offender prohibition orders.

39. Insertion of new pt 7, div 7

Clause 39 inserts transitional provisions for the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2022.

Section 95 – Definitions for division

Clause 39 inserts a new section 95 which defines the terms associated with the transitional provisions. Section 95 provides that the term ***amending Act*** means the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2022; ***former*** means a provision of the Act prior to the commencement of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2022 and ***new*** means a provision that commences as a consequence of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2022.

Section 96 – Existing offender reporting order

Clause 39 inserts section 96 which states that an offender reporting order made under former section 13 of the Act is taken to have been made under section 12B or 12C upon commencement of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2022.

Section 97 – Existing applications for offender reporting order

Clause 39 inserts section 97 which allows existing applications for an offender reporting order under former section 13(5)(b) to continue to apply under section 12E. This allows matters to be heard and decided under the new offender reporting provisions upon the commencement of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2022.

Section 98 - Existing appeals against making of, or refusal to make, offender reporting order

Clause 39 inserts section 98 which allows appeals that have commenced under former section 13(6) or (7) and are not decided upon the commencement of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2022, to continue to be dealt with under the new provisions.

Section 99 - Existing rights of appeal against making of, or refusal to make, offender reporting order

Clause 39 inserts section 99 which allows the appeal periods under section 13(6) and (7) to continue to operate upon the commencement of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2022. Accordingly, the prosecution and the offender can commence an appeal under the new provisions where the previous appeal period under former section 13 had not expired.

Section 100 - Existing notices about reporting obligations given by police commissioner

Clause 39 inserts section 100 which allows a notice of reporting obligations given to a reportable offender under section 54(5) to apply as a new reporting obligations notice under sections 54 and 54A upon the commencement of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2022.

In circumstances where a notice of reporting obligations was given to a reportable offender under section 54(2) because the offender had been sentenced for a reportable offence; or made subject to an offender reporting order or offender prohibition order; or was released from government detention (whether in government detention for a reportable offence or otherwise); or entered Queensland and had not previously been given notice of his or her reporting obligations in Queensland; or became a corresponding reportable offender and was in Queensland at that time, the notice is considered an initial reporting obligations notice under the new section 54A(1) upon the commencement of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2022.

Section 101 - Reporting offenders convicted of device inspection offences

Clause 39 inserts section 101 which requires the Police Commissioner to give a reportable offender a written notice under section 68(2)(f) and (4) (clause 30) if the reportable offender was convicted of a device inspection offence under section 21B of the PPRA on commencement of the Bill. The written notice of the person's requirements under section 21B must be given to a reportable offender within 3 months after the Bill commences.

Clause 39 inserts a note which directs the reader to the new review provisions under section 74(2) and (3) which allows a reportable offender to review a decision to include the offender for device inspections under section 21B(5)(d) or (f) of the PPRA.

Section 102 - Existing reviews about entry on register

Clause 39 inserts section 102 which allows a review that was commenced but not decided under section 74 of the Act, to continue to be heard and decided by the Police Commissioner upon the commencement of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2022.

Section 103 - Existing rights of review about entry on register

Clause 39 inserts section 103 which allows the review period under section 74 to continue to operate upon the commencement of the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2022*. Accordingly, a reportable offender can commence a review under section 74(2) and (3), which relates to the decision to include the offender for device inspections under section 21B(5)(d) or (f) of the PPRA, where the previous review period under section 74 had not expired.

40. Schedule 2 (Personal details for reportable offenders)

Clause 40 amends schedule 2 to include additional information that must be reported by a reportable offender and to clarify existing reportable information in the following way:

Item 9 – Reporting of motor vehicle

Item 9 in schedule 2 which applies to the reporting of a motor vehicle has been amended to include the media access control address of a radio or other electronic communication device that is installed in or is part of the vehicle and any caravan or trailer the reportable offender generally resides in or was attached to a vehicle owned or driven by a reportable offender for at least seven days in a one year period.

Item 15 – email and internet user name

Item 15 in schedule 2 which applies to details about email and internet addresses and passwords has been amended to include additional information about what details are required to be reported in relation to electronic communications such as an instant messaging service, chat room or social networking site. In particular, a reportable offender must report *the unique name, number or other identifier used by an internet-based application or the electronic communication service to identify the user's account with the application or service*. This is not the information used by the person to access their account, it is the name generated by the application or service to identify the person. This name is different to the person's public facing name.

Item 15A – Digital devices

Clause 40 inserts a new item 15A which requires a reportable offender to report the details of every digital device in their possession, or they have access to including; the media access control address of each device; and the software or applications designed to hide information on the device such as a device manager or vault application, to hide communications between the offender and another person/s or to hide the network, computer or device, for example, anonymising software. The inclusion of item 15A addresses technology changes which impact offending behaviours.

41. Amendment of sch 4 (Decisions subject to review)

Clause 41 amends schedule 4 of the Act by including a decision under section 19B(1) to require a reportable offender to report each change in the premises where they stay or locality they can be found, as a reviewable decision under the Act and section 68(2)(f) as it applies to a decision to include a reportable offender for a digital device inspection. The review provision for section 68(2)(f) is linked to the amendments to sections 67H.

42. Amendment of Schedule 5 (Dictionary)

Clause 42 amends Schedule 5 to include new and amend existing definitions to support the provisions of the Bill.

Part 3 - Amendment of *Child Protection (Offender Reporting and Offender Prohibition Order) Regulation 2015*

43. Regulation amended

Clause 43 states that Part 3 of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022 applies to the Regulation.

44. Replacement of ss 3 - 5

Section 3 – Corresponding reportable offender defined – Act, s 7

Clause 44 replaces the heading of section 3 'Prescribed classes of persons who are corresponding offenders – Act s 7(c)' to 'Corresponding reportable offender defined – Act, s 7' to align with modern drafting practices.

Clause 44 details the offender reporting Acts in each Australian jurisdiction which make an offender a corresponding reportable offender in Queensland. Clause 44 also

inserts (h) which include an offender who is required to report to a corresponding registrar outside of Australia to allow capture of overseas reportable offenders who travel to Queensland.

A statement at the commencement of section 3 makes it clear that an offender must have been sentenced by a court for an offence committed in respect of a child or a person the offender believed was a child. As a consequence, the references to particular classes of offences under (e), (f) and (g) are not required and have been removed.

Section 4 - How nominated person may be contacted for report required under corresponding Act – Act, s 16

Clause 44 replaces the heading section 4 (Persons required to report under corresponding Act—Act, s 16(2)(b)) with 'How nominated person may be contacted for report required under corresponding Act – Act, s 16. The replacement aligns with modern drafting processes.

The reference to fax under subsection (1)(a) has been removed as a reporting option. The QPS no longer uses fax machines and cannot receive reports in this way.

Other reporting options under section 4(1) and (2) have been amended to reflect how reports are to be made under the Act. This includes reporting by mail to a stated address and by email to an email address approved by the police commissioner or in another way that is stated on the QPS website.

Reports made by mail will be taken to have been made on the date stated on the postmark.

Section 5 - How reports must be made – Act, ss 21 and 26

Clause 44 amalgamates sections 5 and 6 of the Regulation. Accordingly, the heading of section 5 'Change of travel plans while out of Queensland to be given—Act, s 21(3)' is replaced with 'How reports must be made – Act, ss 21 and 26'.

The ways in which reports must be made for sections 21(3) and 26(2) of the Act has been amended by removing the option for reports to be made to the reportable offender's case manager or other person approved by the Police Commissioner. Rather, all mailed reports will be sent to the address prescribed in new section 5(1)(b) and will be taken to have been made on the date stated on the postmark under new subsection (4).

Other ways of making a report for sections 21(3) and 26(2) are set out under subsection (1). With the exception of (1)(e), which allows other ways of making reports to be published on the QPS website, the remaining reporting processes, telephone, email and electronic system, may be approved by the Police Commissioner under subsection (2) and must be stated in a reporting obligations notice under new section 54A of the Act.

45. Omission of ss 6–8

Clause 45 omits sections 6 (Police commissioner may direct report be made at stated police station—Act, s 25(1)(b)), 7 (Restricted police stations—Act, s 25(3)) and 8 (How reports must be made—Act, s 26(2)) of the Regulation. These sections have become redundant as a consequence of amendments to the Act which allows the Police Commissioner to direct how each reportable offender will make their reports.

46. Amendment of s 13 (Who must give notice to reportable offender—Act, s 54(3))

Clause 46 amends section 13 to include the chief executive of the department responsible for the *Immigration Act 1958* (Cwlth). This change will allow the chief executive to give a reportable offender in immigration detention a reporting obligations notice under the Act.

47. Amendment of s 16 (Definition of *corresponding Act*)

Clause 47 amends section 16 by including (h) which recognises offender reporting schemes in jurisdictions outside of Australia.

Part 4 – Amendment of *Police Powers and Responsibilities Act 2000*

48. Act amended

Clause 48 states that part 4 of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022 amends the PPRA.

49. Amendment of s 21A (Power to enter for Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004)

Clause 49 amends section 21A by renaming it 'Power to enter residence of reportable offender', in line with current drafting processes. Clause 49 also amends section 21A(1) by inserting (1)(b) which provides a police officer with the power to enter the residence of a reportable offender for the purposes of carrying out an inspection under section 21B (Power to inspect digital devices for the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004).

50. Replacement of s 21B (Power to inspect digital devices for the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004)

<u>Section 21B - Power to demand production of and inspect digital devices in possession of reportable offender</u>

Clause 50 replaces section 21B to reflect changes in how a prescribed offence is committed and include additional offences which trigger a device inspection under this section.

<u>Section 21C - Magistrate may make device inspection order for reportable offender</u>

The information about a device inspection order made by a magistrate in subsections (1)(c), (3) and (4) is relocated to new section 21C (Magistrate may make device inspection order for reportable offender). In addition to these amendments, the positioning, renumbering and wording of some subsections have changed.

Subsection (2) now comprises the information under subsection (6) definition of 'device inspection order'. There is a minor change in the wording about the powers of a police officer under section 21B which states that a police officer may require a reportable offender to produce *or otherwise make available each digital device* in the reportable offender's possession. This change in wording places an obligation on a reportable offender to produce or make available all of the digital devices in their possession, rather than any device they possess. Failure to comply with a requirement under section 21B(2)(a) without a reasonable excuse is a crime and carries a

maximum penalty of 300 penalty units or five years imprisonment under new section 21D.

The information about the number of device inspections that can be undertaken in a twelve-month period, has been relocated from subsection (2) to subsection (3). In this regard, a police officer may not carry out a device inspection under subsection (1)(b), which applies to a conviction for a device inspection offence, where at least four inspections have been carried out in the previous 12 months. The amendment does not change how this subsection operates.

As a consequence of relocating subsections (3) and (4) to section 21C, subsections (5) and (6) are renumbered to subsections (4) and (5). There are some definition changes which reflect how the device inspections will be applied for offences that occur separate to the internet through a storage device and to reflect new offences for subsection (1)(b).

In particular, subsection (5) relocates the definition of 'device inspection order' to subsection (2). A new definition of *electronic communications network* encompasses a network of computers or devices used for electronic communication or electronic exchange of information regardless of whether the computers or devices are linked to the Internet. This allows storage devices to be recognised as part of an electronic communications network.

Definitions removed under clause 50 are: *Offender Reporting Act*, *reportable offence* and *reportable offender*. These definitions are located under schedule 5 of the Act.

The definition of 'prescribed internet offence' under renumbered subsection (5) has been amended to refer to a 'device inspection offence'. This is a change to recognise the changes to the definition of digital device. Subsection 5 includes new offences for the purposes of subsection (1)(b). The offences under subsection 5(b) and (d) are retrospective and apply to current reportable offenders. An amendment to subsection (6)(b) relocates sections 474.19 (Using a carriage service for child pornography material) and 474.20 (Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service) to subsection (5)(e). These offences were repealed in 2019 by the *Combatting Child Sexual Exploitation Legislation Amendment Act 2019* (Cwlth). The offences will continue to apply where reportable offenders were charged with the offence prior to the repeal for the purposes of a device inspection under subsection (1)(b).

Clause 50 inserts two new sections which relate to device inspections. Section 21C allows a magistrate to make a device inspection order, while section 21D is a penalty provision relating to a failure by a reportable offender to present a device for inspection.

<u>21C Magistrate may make device inspection order for reportable offender</u>

Section 21C (Magistrate may make device inspection order for reportable offender) comprises of information previously contained in section 21B(1)(c), (3) and (4) which allows an application for a device inspection order to be made in circumstances outside section 21B(1)(a) – a reportable offender has been released from government detention or sentenced to a supervision order in the preceding three months, or (1)(b) – has been convicted of an offence that is a device inspection offence for that section.

An application for a device inspection order is made by a police officer to a magistrate and authorises a police officer to inspect every device in the possession of a reportable offender. The magistrate may only make the order if satisfied there is an elevated risk the reportable offender will engage in conduct that will constitute an offence under schedule 1 of the Act against a child or in relation to a child or results in an offender reporting order being made under the amended part 3 of the Act.

A definition of 'digital device' and 'reportable offence' has been included in subsection (4). The definitions refer to Schedule 5 of the Act.

Section 21D - Offence to contravene requirement to produce digital device

Section 21D (Offence to contravene requirement to produce digital device) is a new offence provision which applies a maximum penalty of 300 penalty units or 5 years imprisonment where a reportable offender contravenes a requirement to present every digital device for a device inspection under section 21B(2)(a) without a reasonable excuse. Self-incrimination is a not reasonable excuse for failing to comply with section 21B(2)(a). This aligns with section 51B (Access information for digital devices) of the Act. Section 21D is an indictable offence with a maximum penalty of 300 penalty units or 5 years imprisonment which is commensurate with all offences associated with the Act.

51. Amendment of s 808A (Annual report about use of device inspection powers)

Clause 51 extends section 808A(2) to require an annual report about the use of device inspection powers under section 21B to include information about the requirement to present every digital device made by a police officer to a reportable offender under section 21B(2).