

Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016

Explanatory Notes

FOR

Amendments to Be Moved During Consideration in Detail By The Honourable Mark Ryan MP, Minister for Police, Fire and Emergency Services and Minister for Corrective Services.

Title of the Bill

Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016.

Objectives of the Amendments

The main purpose of the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 (the Bill) is to give effect to certain recommendations made in the Crime and Corruption Commission report titled: *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008* and to establish a cohesive and holistic response to the management of reportable offenders in the community. Amendments are proposed to the Bill to further support its objectives and to address minor technical and drafting errors in the Bill.

The amendments to the Bill will:

- Clarify when a person stops being a reportable offender;
- Extend the current information sharing provisions to allow the police commissioner to give certain information to the chief executive of the department in which the *Hospitals and Health Boards Act 2011* is administered and a Hospital and Health Service under this Act;
- Define prescribed entities as they relate to offender prohibition orders and disclosing information;
- Extend the definition of 'protected witness' to include an alleged victim of the offence who was under 16 years when the offence occurred, irrespective of the victim's age when giving evidence;
- Make minor technical amendments to Schedule 1, Amendment of other Acts, under the *Working with Children (Risk Management and Screening) Act 2000* to omit

references to 'offender reporting' and replace with 'offender prohibition' and refer to 'offender prohibition disqualification order' rather than 'offender reporting disqualification order';

- Amend the Bill to refer to the *Mental Health Act 2016* rather than the repealed *Mental Health Act 2000*.

Achievement of Objectives

When a person stops being a reportable offender

Clause 8 (Amendment of s 8 (When a person stops being a reportable offender)) expands the circumstances in which a person will stop being a reportable offender to include at the end of all reporting periods of an offender reporting order or offender prohibition order. Clause 8 provides that an offender, who is not an existing reportable offender when an offender prohibition order is made, is considered a reportable offender for the term of the order.

However due to a technical oversight the current provision in the Bill only references those reportable offenders who are subject to an offender reporting order or an offender prohibition order. The Bill does not clarify that a person continues to be a reportable offender until **all** processes which make the person a reportable offender have ended.

Clause 8 will be amended to make a minor change to the wording of the provision to make it clear that a person stops being a reportable offender at the end of all reporting periods to which the person is subject, including under an offender prohibition order.

Extend the current information sharing provisions

Clause 34 of the Bill will insert section 74E (Police commissioner may give information to government and other entities). This amendment will extend current information sharing provisions to allow the police commissioner to give information about a reportable offender to government and other entities. The Bill, in its current form, continues to exclude the chief executive of the department in which the *Hospital and Health Boards Act 2011* is administered and a Hospital and Health Service under that Act, from this information sharing process.

Excluding Queensland Health from the information sharing framework may inadvertently affect their response to child victims and reportable offenders who are receiving medical treatment. Whilst the police commissioner has the capacity to give information to Queensland Health under section 74I, the amendment streamlines the information sharing provision to include all government departments.

Section 74E will be amended to allow the police commissioner to give information to the chief executive of the department in which the *Hospital and Health Boards Act 2011* is administered and a Hospital and Health Service under that Act in the same manner as other government and entities.

Define prescribed entities as they relate to offender prohibition orders and disclosing information

Clause 34 of the Bill will insert section 74F (Disclosing information about offender prohibition orders) to allow the police commissioner to give information about an offender prohibition order to a prescribed entity. In the Bill, prescribed entity includes the chief executive (corrective services), the chief executive (justice), the chief executive (child safety), the chief executive (education) and the chief executive (communities). The scope of the provision does not include those prescribed entities which operate within government and the community, to provide vital support to reportable offenders and children who are victims of reportable offences. To be effective, the information-sharing framework must include those prescribed entities associated with the management and monitoring of offenders and the protection of children at risk.

Accordingly, an amendment is proposed to section 74F definition of **prescribed entities** to specify that in this provision 'prescribed entity means the chief executive of a government entity or another entity that is wholly or partly funded by the State or the Commonwealth'. This will allow prescribed entities who provide services to offenders and victims, to receive timely information about an offender prohibition order, where it is necessary and appropriate for the police commissioner to give that information.

Extend the definition of protected witness

Clause 36 of the Bill inserts section 77B (Cross-examining protected witnesses). This amendment provides that part 2, division 6 (Cross examination of protected witnesses) of the *Evidence Act 1977* will apply to a proceeding under this Act. Unfortunately, the parameters of part 2, division 6 of the *Evidence Act 1977* do not specifically apply to adult victims who were under the age of 16 years when the alleged sexual or particular other serious offences took place.

To ensure that protected witnesses who are victims of child sexual abuse are not disadvantaged or further victimised during the court proceeding, the proposed amendment will extend the definition of protected witness to include an alleged victim of the offence who was under 16 years when the offence was committed irrespective of the alleged victim's age when giving evidence.

Amendment to Schedule 1, Amendment of other Acts, specifically the *Working with Children (Risk Management and Screening) Act 2000*

Clause 50, Schedule 1, (Amendment to other Acts), of the Bill makes consequential amendments to a range of Acts including the *Working with Children (Risk Management and Screening) Act 2000*. Amendments to the *Working with Children (Risk Management and Screening) Act 2000* reflect the changes which have been made to the offender reporting legislation.

However this clause inadvertently amended references to CPOPOA disqualification order to 'offender reporting' in points 1, 2 and 5. The proposed amendments will rectify the minor drafting errors by referring to 'offender prohibition' rather than 'offender reporting'.

Replace references to the *Mental Health Act 2000* with *Mental Health Act 2016*

On 29 November 2016, the Bill was introduced into Parliament. At that time the *Mental Health Act 2000* operated. However, on 5 March 2017, the *Mental Health Act 2016* commenced, repealing the *Mental Health Act 2000*. The proposed amendments to the Bill removes

references to the *Mental Health Act 2000* and inserts references to the *Mental Health Act 2016* where applicable.

Alternative Ways of Achieving Policy Objectives

There is no alternative way to achieve the policy objectives other than by amending the Bill.

Estimated cost for government implementation

There are no costs associated with these amendments.

Consistency with fundamental legislative principles

The amendments are consistent with the fundamental legislative principles.

Consultation

Consultation was not undertaken on the amendments to the Bill.

Notes on provisions

Amendment 1 amends clause 8, Section 8 of the Bill, under section 8(d) to delete the words ‘the end of all reporting periods of an offender reporting order or offender prohibition order, to which the person is subject’ and inserts the words ‘the end of all reporting periods to which the person is subject, including under an offender prohibition order’.

Amendment 2 amends clause 34 of the Bill by omitting section 74E(3) of the Bill. This amendment will allow the police commissioner to give certain information about a reportable offender to the chief executive of the department in which the *Hospital and Health Boards Act 2011* is administered and a Hospital and Health Service under that Act by virtue of the proposed section 74E(1) of the Bill.

Amendment 3 omits clause 34 section 74F(2) of the Bill and instead inserts ‘The prescribed entity may give the information to a person if the entity reasonably believes the giving of the information is necessary for the person to perform a function for which the person is employed’.

Amendment 4 deletes the words under section 74F(5) ‘authorised to do so under section 51C or the relevant Act’ and inserts the words ‘permitted to do so under section 51C or under another Act’. This amendment is a minor technical amendment made for drafting purposes.

Amendment 5 omits a definition of ‘approved teacher’ that is no longer required and inserts a definition of ‘Act’ to clarify that a reference to an Act will include an Act of the Commonwealth of another State.

Amendment 6 amends the definition of 'prescribed entity' under section 74F(6) by deleting the references to (a) the chief executive (child safety) or (b) the chief executive (communities) or (c) the chief executive (corrective services) or (d) the chief executive (education) or (e) the chief executive (justice) and instead inserts the words (a) 'the chief executive of a government entity or (b) another entity that is wholly or partly funded by the State or the Commonwealth'.

Amendment 7 amends clause 36 of the Bill to insert the words under section 77B 'to a proceeding under this Act as if-(a) a reference to a protected witness included a reference to an alleged victim of the offence who was under 16 years when the offence was committed irrespective of the alleged victim's age when giving evidence and (b) a reference to a person charged were a reference to (i) a reportable offender; or (ii) a respondent in a proceeding under this Act.

Amendment 8 amends clause 39 schedule 5 (dictionary) of the Bill by deleting the reference to the *Mental Health Act 2000* and inserting the *Mental Health Act 2016*.

Amendment 9 amends clause 50-Schedule 1 'Amendment to other Acts' by deleting a reference to the *Mental Health Act 2000* that is no longer needed.

Amendments 10-12 amend *the Working with Children (Risk Management and Screening) Act 2000* by deleting the word 'reporting' in point 1, 2 and 5 and instead inserting the word 'prohibition'.