SEXUAL OFFENCES (PROTECTION OF CHILDREN) AMENDMENT BILL 2002

EXPLANATORY NOTES

General Outline

Objectives of the Legislation

This Bill amends the Criminal Code and the *Penalties and Sentences Act 1992* to ensure that sentences imposed on child sex offenders reflect the significant physical and psychological consequences of these offences. The Bill will also insert two new offences into the Criminal Code to permit the effective prosecution of child sex offenders. Finally, the Bill contributes to improving police intelligence about the movements of convicted child sex offenders by enhancing the powers of courts and corrections boards to require ongoing reporting by child sex offenders.

Reasons for the objectives and how they will be achieved

Child sexual abuse may cause significant psychological and physical harm to both the child victim and the adult survivor. Physical consequences include sexually transmitted disease, pregnancy and genital injuries. However, the social and mental health consequences of child sex abuse may be more profound than the physical consequences to the child.

The joint Queensland Crime Commission and Queensland Police Service report on their inquiry into child sexual abuse (*Project Axis, Child Sexual Abuse in Queensland: The Nature and Extent*, June 2000) briefly summarised the major findings from recent studies of the long term consequences of child sexual abuse. These studies showed that the psychiatric and social problems found in victims included anxiety disorders, post traumatic stress disorders, disassociation disorders, depression, risk of suicide and/or self harm, sexual dysfunction and general relationship problems. The tangible and intangible costs of child sexual abuse to the victim and the community are significant.

Thus, the plight of children who are victims of sexual and physical abuse is an important issue of concern to all members of the community in Queensland. In order to protect our community, it is vital that perpetrators of child sexual and physical abuse are brought to justice by our criminal justice system.

This can only occur if children report the abuse and participate in the court process. If children do not feel safe and supported by our criminal justice system, they will not participate in these processes and there is a very real risk perpetrators will not be brought to justice for their actions.

The Government proposes a comprehensive reform package directed at improving the way the criminal justice system treats child witnesses and ensuring that child sex offenders are detected and punished for their crimes. It is a significant initiative that delivers on this Government's priorities of building safer and more supportive communities and delivering a better quality of life to all Queenslanders. It will be an important achievement of this Government during its term in office.

Reform will occur in two stages. Initially, it is proposed to introduce this Bill, the *Sexual Offences (Protection of Children) Amendment Bill 2002* into Parliament. This Bill will make immediate changes to the sentencing of child sex offenders by changing sentencing principles, increasing penalties and introducing two new offences into the Criminal Code. The Bill also contributes to improving police intelligence about the movements of convicted child sex offenders by enhancing the powers of courts and corrections boards to require ongoing reporting by offenders.

At the time of introduction of this Bill, a consultation draft of the *Evidence (Protection of Children) Amendment Bill 2002* will also be released, containing significant reforms to the law about children's evidence and reform of trial processes and procedures. Given the significant reforms proposed to the criminal justice system, the consultation draft will ensure that all stake-holders, including the judiciary, the legal profession and advocates for child welfare, are informed as to the proposed changes.

Administrative cost to Government of implementation

The reforms to the sentencing of child sex offenders are designed to ensure that child sex offences are recognised as offences equating in seriousness to offences of violence. The sentencing of an offender is a matter for the judiciary. It is not expected the reforms will result in a

significant increase in prisoner numbers to impact on resources of the Department of Corrective Services.

The administration of the reporting requirements under section 19 of the *Criminal Law Amendment Act 1945* and the *Corrective Services Act 2000* will be undertaken by the Queensland Police Service without need for further resources.

Consistency with Fundamental Legislative Principles

Does the legislation have sufficient regard for the rights and liberties of individuals?

New section 218A of the Criminal Code (Using internet etc. to procure children under 16) will permit the Queensland Police Service to conduct operations to detect paedophiles using the Internet to procure children to engage in sexual acts. On one view, the offence countenances the entrapment of offenders. That is, there may be concern that this offence might lead to the commission of offences, which, but for the opportunities presented by the investigators, people would not have committed.

However, there are certain types of offences that are so difficult to detect that a proactive approach by law enforcement is the only means of preventing the criminal activity (for example, undercover covert police agents buying drugs to gather evidence to support charges of drug trafficking).

In *Ridgeway v The Queen* (1995) 184 CLR 19, the case that prompted the Commonwealth to introduce the *Crimes Amendment (Controlled Operations) Act 1996,* the High Court acknowledged that police methodology sometimes necessarily involves law enforcement officers in deception: *The effective investigation by police of some types of criminal activity may necessarily involve subterfuge, deceit and the intentional creation of the opportunity for the commission by a suspect of a criminal offence.*

While *Ridgeway* dealt with a drug importation case, the principle is the same – some criminal activity of its very nature demands different methods of investigation and different types of offences. The sexual abuse of children is an activity that has gone largely unreported in our society for many years. There are many reasons for this including the reluctance of society to believe children reporting abuse. The new section 218A will permit the police to be pro-active so that paedophiles can be stopped before a child is damaged. The law at present is more reactive, and there is a much

higher risk that a child will be hurt before action is taken. The offence will also have a strong deterrent and educative effect.

The advantage of investigators using the Internet is that there will be real time recordings of the interaction between the alleged offender and the child (or police officer pretending to be a child) to be examined by the court.

Section 218A has been drafted with a high onus of the proof. The jury must be satisfied beyond reasonable doubt that an adult used electronic communication with intent to procure a child under the age of 16 years to engage in a sexual act or with intent to expose a child (or a person the adult believes to be a child) to any indecent matter.

Section 229B of the Criminal Code (Maintaining a sexual relationship with a child) has been replaced by a redrafted section, which restores the intended focus of the offence on an unlawful sexual relationship or course of conduct. The existing offence, as interpreted by the High Court, has been criticised by the Queensland Court of Appeal, as failing to meet the purpose for which it was enacted, that is, to make the "relationship" an offence, rather than the separate acts comprising it.

The redrafted offence does not require the jury to be unanimously agreed as to the commission of particular unlawful sexual acts, so long as they are unanimously satisfied beyond a reasonable doubt, that the evidence establishes an unlawful sexual relationship. As well, the constituent unlawful sexual acts do not have to be particularised to the same extent as would be required to establish an individual offence. This is a departure from the usual requirement that an offence be identified with sufficient particularity so as to identify a unique event.

Persistent sexual abuse of children commonly results in the child being unable to distinguish between particular episodes of abuse, especially if the conduct is the same or similar on all occasions. The offence in section 229B was introduced to address this problem, and to make the unlawful course of conduct itself a criminal offence.

The existing section 229B(2) expressly provides that the prosecution need not specify or prove dates or exact circumstances of the acts involved in the relationship. However, at the same time it says that to demonstrate that the offence has been committed, the prosecution must prove that the accused did an act that would constitute an offence of a sexual nature in relation to the child on three or more occasions (for example, three separate acts of indecent dealing with a child under 16).

In *KBT v R* (1997) 72 ALJR 116 the High Court held that the *actus reus* of the offence in section 229B is the doing of an act which would be an offence of a sexual nature on three or more occasions, rather than the maintaining of a relationship. The jury must be agreed as to the commission of the same three or more acts. This by necessity requires three or more distinct occasions to be identified, despite the intention behind the provision that dates and exact circumstances need not be established.

The Queensland Court of Appeal criticised the interpretation of the section in this way and said in *R v S* [1999] 2 Qd R 89, at 94 –

> *If s229B(1) is to perform its function in most future prosecutions of this kind, legislative attention is needed to ensure that … s229B(2) operates only as an evidentiary aid or exclusion and is not expressed in a form capable of being regarded as serving to define the offence or its actus reus under s229B(1).*

Where the accused has engaged in persistent sexual abuse of a child, the child may be left with no means of identifying any particular occasion with a sufficient degree of particularity to enable a single charge to be laid, or to identify the three acts required to demonstrate the relationship. Even if the accused admits to the behaviour, there is no offence that can be charged.

The offence as redrafted removes the requirement to prove three acts of a sexual nature, and instead the offence is established by proof of the relationship (that is, a course of conduct). This reflects the original intent of the provision, and is similar to the other course of conduct offences, such as trafficking in a dangerous drug.

The offence also requires the consent of the Director of Public Prosecutions or the Attorney-General before it can be charged. This will ensure that it is used appropriately.

The redrafted offence also retains the existing defence in relation to a mistaken belief in age, where the child is over 12. As with other sexual offences in Chapter 22 of the Criminal Code, this defence does not apply when the child is under 12.

The amendments to section 19 of the *Criminal Law Amendment Act 1945* put in place a new scheme to permit judges to order a person convicted of an offence of a sexual nature against a child under the age of 16 years to report to police at regular intervals.

Section 19 already permits orders requiring these types of offenders to inform police of any change of address. Orders made under section 19 can

extend beyond any sentence imposed. Such reports to the police will permit police to monitor that a person remains at their stated location.

There has also been a change to the test for imposition of an order - the court must be satisfied a risk (rather than a substantial risk) exists that the offender will thereafter commit any further offence of a sexual nature upon or in relation to a child under the age of 16 years.

Given that the purposes of section 19 is the protection of children, rather than the punishment of the offender, it is submitted that the lower threshold will give the court greater flexibility in determining on whom orders are imposed. The making of an order under section 19 is not mandatory, even if the court decides that there is a risk an offender may re-offend. However, the court, in a appropriate cases, should have the capacity to make an order despite not being satisfied that there is a substantial risk that the offender may commit another offence against a child under the age of 16 years.

Does the legislation reverse the onus of proof in criminal proceedings without adequate justification?

New section 218A of the Criminal Code (Using internet etc. to procure children under 16) creates a rebuttable presumption that if a person is represented to be under the age of 16 years (or 12 years) then in the absence of evidence to the contrary this is proof that the adult believed the person to be under that age.

This provision addresses the situation where a child (or a person represented to be a child) informs the alleged offender of their age. Should the alleged offender reasonably not believe this assertion such reasons would be peculiarly within the knowledge of the accused person, and the accused would be in a position to provide evidence to rebut the presumption. In these circumstances, it is submitted that this reversal of onus is justified.

Does the legislation adversely affect rights and liberties and impose obligations, retrospectively?

Section 11 of the Criminal Code applies when an existing offence is changed or a new offence created. For a new offence, a person cannot be punished for an act or omission unless the act was committed after the law making it an offence came into force. For a changed offence, a person cannot be punished unless the act constituted an offence both at the time the offence occurred and at the time the person was charged. If the penalty for the offence has changed, then the person is not liable for any greater penalty than applied at the time the offence was committed.

Consequently, neither the new section 218A nor the redrafted section 229B will have retrospective effect. For conduct occurring before commencement, the existing offence in section 229B can continue to be charged.

The increases in penalty for indecent treatment of a child under the age of 16 years will only apply to offences committed after the commencement of that section.

Changes to procedures (for example, the amendments to the *Penalties and Sentences Act 1992*) will have retrospective effect, in that they will apply regardless of when the offence was committed.

The amendments to section 9 of the *Penalties and Sentences Act 1992* effect changes to the sentencing of offenders. In particular, they will remove the principle that a sentence of imprisonment should be imposed as a sentence of last resort when sentencing offenders for offences of a sexual nature against children. Further provisions will be inserted specifying the primary matters to which the court must have regard to when sentencing offenders in such cases.

These sentencing principles will also have effect from the time of commencement upon the sentencing of all offenders and not just offences committed after the date of commencement. In effect, from the date of the commencement of these provisions, a tougher sentencing regime will apply for persons convicted of sexual offences against children, regardless of when the offence was committed.

The application of tougher sentencing provisions might be interpreted as offending the fundamental legislative principle that legislation have sufficient regard to the rights and liberties of individuals and not impose obligations retrospectively (section 4(3)(g) of the *Legislative Standards Act 1992*). However, the application of the new sentencing principles to all offences is consistent with the approach of the Queensland Court of Appeal and the High Court.

The Court of Appeal, in considering similar amendments to section 9 (imprisonment no longer a last resort for an offence of violence), found that the provisions were procedural (*R v Tony Dat Truong* [1999] QCA 21), and therefore could operate retrospectively.

In the absence of any indication to the contrary, a "procedural" statute is to be construed as retrospective; that is, it can apply to past events. The High Court considered the issue of "procedural" statutes in *Rodway v The Queen* (1990) 169 CLR 515, where it held that—

> *… ordinarily an amendment to the practice or procedure of a court, including the admissibility of evidence and the effect to be given to evidence, will not operate retrospectively so as to impair any existing right. It may govern the way in which the right is to be enforced or vindicated, but that does not bring it within the presumption against retrospectivity. A person who commits a crime does not have a right to be tried in any particular way; merely a right to be tried according to the practice and procedure prevailing at the time of trial. The principle is sometimes succinctly, if somewhat sweepingly, expressed by saying, as did Mellish LJ in the passage cited by Dixon CJ in Maxwell v Murphy, that no one has a vested right in any form of procedure. It is a principle which has been well established for many years…*

In *Rodway* the High Court was considering the abolition of the corroboration warning, and held that the abolition applied regardless of the fact that the rule was in place at the time the offence was committed. In other words, despite the fact that the warning was required to be given at the time the offence was committed, it did not have to be given at the trial and the accused had not been deprived of a substantive right.

New section 24 of the *Criminal Law Amendment Act 1945* make it plain that a court may make a reporting order under section 19 whether or not the conviction happened before or after the commencement of the section. Such a provision will permit a court to make an order that an offender report to a police station for a stated period after they are released even if the offence was committed before the commencement of this provision. New section 24 provides statutory recognition of the recent Court of Appeal decision of *R v C* [2002] QCA 156 where Her Honour Justice Philippides said:

> *I do not consider that the purpose of s 19 of the Act is to punish or penalise an offender. Rather, the purpose of the provision is protective. That is, its purpose is to protect a vulnerable part of the community, being children under 16 years of age, from circumstances where they are at risk of being the subject of sexual offences. So much is made clear by s 19(2) of the Act, which specifies the only circumstances in which an order may be made, as being where a court is satisfied that a substantial risk exists that the offender in question will commit a further sexual offence on a child under the age of 16. This view of s 19 of the Act is supported by the fact that, pursuant to s 19(2) of the Act, an order may be made under s 19(1) of the Act, not only when*

sentence is imposed by the trial judge upon conviction, but also at some other time after conviction, by an authorised person.

The protective purpose of s 19 of the Act is also highlighted by the carefully circumscribed conditions surrounding the release of any information that a person is subject to an order made under s 19, the details of any sexual offence of which such person has been convicted and, indeed, any other relevant information about that person.

Nor can the effect of s 19 of the Act be said to be punitive in the sense that it imposes any restriction on the offender's movements or personal liberty. Furthermore, if an order under s 19 of the Act were to be viewed as punishment, an order made other than by the court of trial upon an application pursuant to s 19(1)(b) of the Act would offend s 16 of the Criminal Code, which provides that a person cannot be punished twice for the same act or omission. It follows that such an order would be irreconcilable with 16 of the Code, unless that provision of the Code is considerably modified by s 19 of the Act.

As section 19 of the *Criminal Law Amendment Act 1945* did not impose punishment the majority considered that the provisions would have a retrospective effect without offending section 11 of the Criminal Code.

CONSULTATION

The Queensland Police Service and the Department of Corrective Services have been consulted about the amendments to section 19 of the *Criminal Law Amendment Act 1945* and the *Corrective Services Act 2000.*

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 provides that the Act commences on a date fixed by proclamation.

PART 2—AMENDMENT OF CORRECTIVE SERVICES ACT 2000

Clause 3 provides that this part amends the *Corrective Services Act 2000.*

Clause 4 inserts a new section 132A in the Act defining the terms 'prescribed prisoner' and 'reporting period' for the purposes of Part 1 (Orders) of chapter 5 (Post-prison community based release) of the Act. These new reporting requirements imposed by corrections boards will apply only to prescribed persons.

A 'prescribed person' is a person serving a sentence for an offence of a sexual nature against a child under the age of 16 years of age who is, or is about to be, released upon a post-prison community based release order made after the commencement of section 141A. Post-prison community based release orders are set out in section 141 of the Act and include release to work orders, home detention orders and parole orders.

'Reporting period' is a period not extending past the end of a prisoner's period of imprisonment.

Clause 5 amends section 142 (Conditions for release to work orders) by inserting a new sub-section (2) and consequently renumbering the provision.

The amendment to section 142, that is replicated for prisoners on home detention orders and parole orders, provides that if a prescribed prisoner is given a release to work order that work order must include conditions requiring the prisoner to report within 48 hours of their release to a police station and continue reporting at a frequency nominated by the corrections board until the end of the prisoners sentence.

Reporting is to be personal reporting. The only exception is when the officer in charge permits the reporting to be done in an alternative way (for example, telephone). However, the change in reporting procedures may only be done if the offender is ill or has another good reason for not reporting personally.

Clause 6 amends section 143 (Conditions for home detention orders) by inserting a similar reporting requirement in respect to home detention orders.

Clause 7 amends section 144 (Conditions for parole orders) by again inserting a similar reporting requirement in respect to parole orders.

Clause 8 inserts a new section 144A and 144B.

Section 144A requires a corrections board to give to the commissioner of police, as soon as practicable after a prescribed person is released, a copy of the post-prison community based release order and information about the prisoner's name and current address.

Section 144B puts an obligation on an officer in charge of a police station to notify a corrective services officer if a prescribed person, without a reasonable excuse, fails to report.

Clause 9 inserts a new Part into chapter 7 of the Act – Transitional Provisions for Act No. 63 of 2000.

Clause 10 re-numbers chapter 7 to accommodate the new transitional provisions for the reporting conditions.

Clause 11 changes the reference in section 256 from part to division.

Clause 12 inserts a new transitional provision in part 2 of chapter 7 of the Act providing that reporting conditions on release orders made under sections 142(2), 143(3) and 144(2) must be included for each order made after the commencement of the section.

Clause 13 amends the dictionary in schedule 3 by inserting a reference to the definition of 'prescribed prisoner' and 'reporting period'.

PART 3—AMENDMENT OF CRIMINAL CODE

Clause 14 provides that this part amends the Criminal Code.

Clause 15 amends section 210 (Indecent treatment of children under 16) by increasing the maximum penalty for the offence of indecent treatment of a child under the age of 16 years from 10 to 14 years. Where the child is under the age of 12 years (or there other aggravating circumstances are present) the penalty is increased from 14 to 20 years imprisonment.

Clause 16 amends section 218 (Procuring sexual acts by coercion etc) by omitting section 218(3)(a) which states that section 218(2) applies equally

to males and females. The *Acts Interpretation Act 1954,* section 32B (Gender) makes such a reference unnecessary.

Clause 17 inserts a new section 218A that creates an offence of using internet etc. to procure children under 16.

Section 218A provides that an adult who uses electronic communication with intent to procure a person under the age of 16 years, or a person the adult believes is under the age of 16 to engage in a sexual act or who exposes a child under the age of 16 years of age, or a person the adult believes is under the age of 16 years, to any indecent matter, either in Queensland or elsewhere, commits an offence.

The terms 'electronic communication', 'sexual act' and 'indecent matter' are defined in section 218A. 'Electronic communication' means email, Internet chat rooms, SMS messages, real time audio/video or other similar communication. 'Indecent matter' means indecent film, videotape, audiotape, picture, photograph or printed or written matter.

In the case of films, section 64 *Classification of Films Act 1991* (Qld), provides that a classified film, *except for those classified X or RC*, is not an indecent or obscene publication for the purposes of the Criminal Code or *Vagrants, Gaming and Other Offences Act 1931* (Qld). Mirror provisions for computer games (section 58(4) of the *Classification of Computer Games Act 1995)* and publications (section 36 of the *Classification of Publications Act 1991*) also provide that certain categories of publications and images are statutorily deemed not to be obscene or indecent.

The term 'without legitimate reason' in section 218A(1)(b) is taken from section 210(1)(f) of the Criminal Code. Carter's Criminal Code [210.35] notes:

> *The phrase 'legitimate reason' reason has been taken from the Protection of Children Act 1978 (UK). As Lord Scarman said during the debate on that Act in the House of Lords:* "This phrase really embraces a question of fact on which courts and juries are well able to reach a sensible decision in determining the meaning".
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> *Accordingly, it is a question of fact in each case for the jury to determine whether in all the circumstances what was done was without legitimate reason.*

Section 218A(8) provides that in the absence of evidence to the contrary, an assertion that a person was under the age of 16 years (or 12 years) is sufficient proof that the adult believed the person was under that age. Section 218A(9) provides a defence if the adult proves he or she believed

on reasonable grounds that the person was at least 16 years or 12 years, as the case may be.

Section 218A will permit prosecution of offenders where the alleged victim of the offence is not in fact a child under the age of 16 years but is another adult, for example a police officer conducting an operation to detect paedophiles attempting to procure children to perform sexual acts.

Section 218A(7) specifically provides that for the purposes of the offence it does not matter that the person is a fictitious person represented to the adult as a real person. An offence of a similar type has been recently passed by the Canadian Parliament (see section 172.1 of the Canadian Criminal Code).

If a child is in fact procured to perform an indecent act or exposed to an indecent image the appropriate charge is under section 210 of the Criminal Code. The purpose of section 218A is to provide for proactive policing and the detection of child sexual offenders before a particular child is injured or abused. The offence will also have a strong educative effect so that paedophiles may be discouraged from attempting to use the supposed anonymity of Internet chat rooms to corrupt children.

Clause 18 inserts a new section 229B (Maintaining a sexual relationship with a child), replacing the present provision.

The redrafted section restores the intended focus of the offence on an unlawful sexual relationship or course of conduct. The existing offence, as interpreted by the High Court, was criticised by the Queensland Court of Appeal in R v S [1999] 2 Qd R 89, as failing to meet the purpose for which it was enacted, that is, to make the "relationship" an offence, rather than the separate acts comprising it.

The requirement to prove three acts of a sexual nature has been removed, and instead the offence is established by proof of the relationship (that is, a course of conduct). The jury are not required to be agreed as to the commission of any particular act of which evidence might be given, but rather, be satisfied on the totality of the evidence that the accused maintained a relationship (that is, engaged in a course of conduct) of a sexual nature with the child over the relevant period.

An unlawful sexual relationship comprises one or more unlawful sexual acts, that would, if sufficiently particularised, constitute a sexual offence, for example, indecent dealing with a child under 16 (subsection (2) and the definitions of "offence of a sexual nature" and "unlawful sexual act" in subsection (10)).

Subsection (3) provides that for an adult to be convicted of the offence, the jury must be satisfied beyond a reasonable doubt that the evidence establishes that an unlawful sexual relationship existed. This ensures that the offence is defined in terms of a relationship, not in terms of the separate acts comprising it.

As well, subsection (4) expressly provides that the prosecution need not particularise nor must the jury be satisfied of any individual unlawful sexual act; and that the members of the jury do not have to agree about the same unlawful sexual acts. Subsection (4) ensures that the relationship does not have to be established by proof of individual acts capable of amounting to individual offences.

Subsection (5) retains the existing defence where the child is over 12, for the adult to prove that he or she believed on reasonable grounds that the child was at least the prescribed age (16 or 18).

The offence also retains in subsection (6) the requirement for the consent of the Director of Public Prosecutions or the Attorney-General before it can be prosecuted.

Subsections (7), (8) and (9) reflect existing section 229B(6) and (7), relating to the charging of particular offences as well as the relationship offence. Where the adult is charged in this way, the adult may be convicted of any or all of the offences charged, but the punishment for the maintaining offence cannot be made cumulative on the punishment for the particular offences.

The definition of "prescribed age" in subsection (10) reflects the existing definition.

Clause 19 inserts a new transitional provision for section 229B recognising that evidence of unlawful sexual acts done before the commencement of the provision may be admitted for the purpose of deciding whether unlawful sexual acts done after the commencement establish the existence of an unlawful sexual relationship. Conduct occurring before the commencement can still be charged under the old section.

PART 4—AMENDMENT OF THE CRIMINAL LAW AMENDMENT ACT 1945

Clause 20 provides that this part amends the Criminal Law Amendment Act 1945.

Clause 21 amends section 19 (Sexual offender to report name and address) to create a new category of 'reporting order' that includes the present orders in section 19(1) that require an offender, within 48 hours of their release from custody, to report their current name and address to the officer in charge of a nominated police station. The new reporting order, now in section 19A will, in addition, permit a court to require an offender to personally report to a police station within 48 hours of release and then, for the stated period, to report at stated times or intervals to the officer in charge of the police station.

The test for making an order under section 19(2) has also been changed. Presently a judge can make an order where an offender has been convicted upon indictment of an offence of a sexual nature against a child under the age of 16 years. The test for making an order is in section 19(2):

> *An order shall not be made under subsection (1) unless the court is satisfied a* ***substantial risk e****xists that the offender will thereafter commit any further offence of a sexual nature upon or in relation to a child under the age of 16 years.*

The requirement that the court find the risk is 'substantial' has now been removed.

Clause 22 renumbers section 19B to accommodate the new section 19A.

Clause 23 inserts a new section 19A that states the requirements of a reporting order.

The requirements of a reporting order are either, upon release from custody, reporting name and address and a subsequent change and/or personally reporting to police at stated intervals for a stated period of time. The requirements and the length of the reporting period will depend on the order of the court.

In respect to a requirement for personal reporting the police commissioner may change the place of reporting. However, a police officer can only substitute a mode of reporting (eg telephone) where an offender is ill or has other good reason for not personally reporting.

Clause 24 amends section 20 (Disclosure of offences of sexual nature and other relevant information). Section 20(6) creates the offence of failing to comply with a reporting order made under section 20(1). The offence as drafted appears to be absolute without allowing for circumstances where an offender has a reasonable excuse (eg hit by a car). Such reasonable excuse has now been inserted in the provision.

Clause 25 inserts a new division heading.

Clause 26 inserts a new division heading and a transitional provision with respect to the new amendments to section 19 that provides that a reporting order can be made for an offence that occurred before or after the commencement of the provision.

PART 5—AMENDMENT OF PENALTIES AND SENTENCES ACT 1992

Clause 27 provides this part amends the *Penalties and Sentences Act 1992.*

Clause 28 amends section 9 (Sentencing guidelines) of the Act.

Section 9(2) provides that a sentence of imprisonment is a sentence of last resort and that a sentence that allows an offender to stay in the community is preferable. Where an offender is a violent offender section 9(2) does not apply. New section 9(5) will now remove these principles when the offence is an offence of a sexual nature committed against a child under the age of 16 years.

The new provision will provide that when sentencing an offender, the court is to have primary regard to the effect of the offence on the child, the age of the child, the nature of the offence, the need to protect the child (or other children) from the risk of the offender re-offending, the need to deter similar behavior by other offenders, the prospects of rehabilitation for the offender including the availability of any medical or psychiatric treatment to cause the offender to behave in a way acceptable to the community, the antecedents of the offender, any remorse or lack of remorse of the offender, any relevant medical, psychiatric or prison report or anything else about the safety of children under the age of 16 years that the court considers relevant.

The provision does not to remove the court's ability to consider the other principles set out in section 9(2)(b)-(q).

Clause 29 inserts a new section 211, a transitional provision, that provides the principles now set out in section 9(5) – (6) apply to offences whether committed before or after the commencement of the Act.