

Child Protection (Offender Prohibition Order) Bill 2007

Explanatory Notes

General Outline

Objective of the Legislation

The *Child Protection (Offender Prohibition Order) Bill 2007* (the Bill) aims to provide protection to children by allowing the Magistrates Courts to make a Child Protection Offender Prohibition Order (prohibition order).

A prohibition order can be made against certain previously convicted child sex offenders to prohibit them from engaging in specified lawful conduct. The court must be satisfied the child sex offender has engaged in conduct which poses an unacceptable risk to the lives or sexual safety of children in the community. The conduct need not amount to a criminal offence.

On making a prohibition order, the respondent to the order is placed on the Child Protection Offender Reporting Register (CPOR Register) and must report certain personal details to police. This register is maintained by police to reduce the likelihood that child sex offenders will reoffend and to facilitate the investigation and prosecution of any future offences they may commit.

Means of Achieving Policy Objectives

The legislation will enable prohibition order applications to be heard and determined in a Magistrates Court or a Childrens Court constituted by a Childrens Court Magistrate.

Alternative Means of Achieving Policy Objectives

There are no alternative means of achieving the policy objectives.

Estimated Cost of Implementation for Government

The financial impact of the Bill will be comparatively low and can be met by existing budgets.

Consistency with Fundamental Legislative Principles

Consistency with the principles of natural justice

The Bill is not consistent with the fundamental legislative principle of natural justice in that provision exists for an application to be made to a magistrate for a temporary order without notifying the respondent. This is considered justified on the basis that an application can only be made in these circumstances where the commissioner believes it is necessary to prevent an immediate risk to a child. In addition, before granting such an order, the magistrate must be satisfied it is appropriate to make the order without notice to the respondent.

The Bill provides for an application for a prohibition order to be made in the respondent's absence. This is considered justified as this can only occur if the court is satisfied the respondent has been served with a copy of the application documentations and given notice of the date, time and place of the hearing.

Should the court decide to deal with an application in a respondent's absence, the court must consider all of the police evidence and can only make the order if it is satisfied on the balance of probabilities the respondent is a relevant sexual offender and having regard to the nature and pattern of the respondent's recent conduct, the respondent poses an unacceptable risk to the life or sexual safety of a child or children generally and the making of the order will reduce that risk.

These same provisions also allow for the court to direct the commissioner to give the respondent further notice of the hearing instead of making an order in the respondent's absence.

A temporary order made in the absence of a respondent does not have effect until it is brought to the notice of the respondent.

Retrospectivity

The Bill does not operate retrospectively as persons who have previously committed child sex offences and are not required to register under the CPOR Act, will only be required to register under the Bill if they

subsequently engage in concerning conduct and the court is satisfied sufficient grounds exist for the making of a prohibition order.

Consultation conducted in Development of the Bill

There has been no general community consultation on the contents of the Bill. Where there are potential implications on the roles of government departments, these departments were consulted with respect to the relevant portions of the Bill.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 specifies the short title of the Bill.

Commencement

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

Main purpose of Act

Clause 3 describes the main purpose of the Bill, which is to provide for the protection of the lives and sexual safety of children in the community. This is achieved by the provision of a scheme whereby conditions can be imposed upon particular sexual offenders, through a child protection offender prohibition order, to prevent them from engaging in specified conduct where there is reasonable cause to believe that the nature and pattern of the conduct of the offender poses a risk to the lives or sexual safety of children. The conduct in itself may not amount to the commission of an offence but is sufficient to raise concerns that the person may commit a future offence. An example of this is a known child sex offender who takes up residence in close proximity to a child care centre.

Once an offender prohibition order has been made, if the respondent is not already a reportable offender, then they are taken to be a reportable offender for the *Child Protection (Offender Reporting) Act 2004*.

Definitions

Clause 4 provides a dictionary in the schedule that gives definitions of terms used for the purposes of this legislation.

Explanation of references to offender prohibition orders

Clause 5 provides an explanation of the different terms used throughout the legislation in reference to offender prohibition orders. The term ‘order’ is generally used to refer to an offender prohibition order made under section 8, whereas the term ‘temporary order’ is generally used to a temporary order made under section 15 or 16.

The term ‘offender prohibition order’ is generally used to refer to both an order and a temporary order. However, in part 2, division 2, an order made under section 8 is referred to as a ‘final order’ to distinguish it from a ‘temporary order’ made under section 15 or 16.

Part 2 Offender prohibition orders

Division 1 Orders

Application

Clause 6 makes provision for the commissioner to apply to a court for an offender prohibition order (an order) to be made against a person whom the commissioner believes on reasonable grounds has met the two prerequisite criteria for such an application. These criteria are that the respondent is a child sexual offender who has, at any time in the past, been found guilty of a reportable offence as defined by section 5 of the *Child Protection (Offender Reporting) Act 2004* and who has recently been engaged in conduct that has given rise to concerns that the nature and pattern of the conduct of the offender poses an unacceptable risk to the lives or sexual safety of a child or children generally.

There is no time limitation on when the previous offences must have been committed by a respondent. One finding of guilt, at any time in the past, for an offence that would place the offender on the register if the commission of the offence and the completion of their sentence had not predated the commencement of the *Child Protection (Offender Reporting) Act 2004* together with recent concerning conduct, is sufficient to warrant an application for an offender prohibition order being made.

Concerning conduct may include one or more actions or behaviours which raise concerns that the respondent may be intending to re-offend. For example, a person who has a number of convictions for sexual offences against children decides to take up residence near a child-care centre, or begins loitering near a children's playground when children are playing there. Many of these behaviours will be recognised by police as being consistent with a respondent's *modus operandi*, which if left unchecked may result in further offences being committed.

The application must state each conviction recorded against the respondent for a reportable class 1 or class 2 offence committed against a child. Also the application must state the particulars of the concerning conduct, including the time or period during which the respondent is alleged to have engaged in the concerning conduct, as well as the conduct of the respondent that the order proposes to prohibit, including the actual conditions being sought.

It should be noted that the commissioner has the power to delegate under section 4.10 of the *Police Service Administration Act 1990*.

How a proceeding for an order is started

Clause 7 makes provision for the commissioner to start a proceeding for an order against a respondent issuing an appearance notice. This notice, together with a copy of the application must be served personally on the respondent by a police officer. When serving the documents, the officer must explain to the respondent the documents to the respondent in a way which the respondent is likely to understand having regard to the respondent's age, and cultural educational, and social background.

The appearance notice must clearly warn the respondent of the consequences of an order being made, including that the respondent can not hold a blue card. It must also clearly state the order can be made in the respondent's absence, if they fail to attend the court at the time and place stated in the notice.

If after reasonable attempts have been made to serve the documents on the respondent in person and it appears to the court that this is not reasonably practicable then the court may make an order substituting another way of serving the documents.

If the conditions being sought may cause a child respondent to move his or her place of residence, the chief executive (child safety) must be advised of the application. In all instances, reasonable attempts to advise the parents or guardian of a child must be made.

Making an order

Clause 8 provides that if, after giving consideration to the matters mentioned in section 9, the court is satisfied that the respondent meets the prerequisite circumstances for issuing such an order, the court may make an order.

The prerequisite circumstances are that the person is a relevant sexual offender and has engaged in recent concerning conduct that poses an unacceptable risk to the lives or sexual safety of a child or children generally. It is not necessary for the court to be able to identify a risk to a particular child, children or class of children. For example, the respondent may move into a residence that is in close proximity to a child care centre or, is observed attempting to befriend children at or near a children's playground.

Before making an order against a child respondent, the court must consider the report provided under s 10 and determine what, if any, conditions should be imposed. Also, the court must be satisfied that the making of the order is the last resort and the most effective way of reducing the risk that the child respondent poses to other children.

The court is empowered to make a final order even if the respondent is not present at the hearing of the application, providing the court is satisfied that the respondent has been given notice of the hearing. However, at any time before making a decision on the application, the court may direct the commissioner to give a further appearance notice to the respondent.

Matters a court must consider before making an order

Clause 9 makes provision for the matters that the court must take into account in deciding whether to make an order under section 8. These matters include the seriousness of the respondent's offences that have been committed against a child, including those which may have been

committed in another jurisdiction and the period of time that has elapsed since the offences were committed.

In respect to each reportable offence, matters to be considered include the age of the respondent and the age of the victim of the offence at the time when the offence was committed, as well as the differences in their ages. For example, if the respondent was a 17 year old male who had a consensual sexual encounter with a 15 year old girl, then this would not be perceived in the same way as that of a forty year old male who has groomed a 12 year old child for sexual purposes.

The court must also consider the respondent's present age and the seriousness of their criminal history. Moreover, the court must take into account the effect of the final order being sought will have on the respondent in comparison to the level of risk of the respondent committing a further reportable offence against a child.

To the extent the circumstances relate to the conduct to be prohibited, the court must also consider the respondent's circumstances in respect to his or her accommodation, employment, health, cultural and social needs, as well as the respondent's need to be reintegrated into the community. For example, in considering a prohibition against a person from frequenting shopping malls it can be argued that shopping for groceries, clothing, etc. is a legitimate activity for anyone to be involved in, including the respondent. Accordingly, the court may decide to prohibit the respondent from frequenting shopping malls during certain hours when children are likely to be present.

If an order is made against a child respondent, then the court must consider the impact that the making of such an order will have on the respondent's educational, accommodation, cultural, social and health needs.

The court may also consider any other matter that it deems to be relevant to the interests of justice.

With respect to a person's criminal history, despite the provisions of section 6 of the *Criminal Law (Rehabilitation of Offenders) Act 1986*, every conviction of the person for a reportable offence, either in Queensland or elsewhere, whether before or after the commencement of this Act, must be considered by the court. It also applies to every charge made against the person for a reportable offence committed against a child, either in Queensland or another jurisdiction that has been withdrawn or discontinued because the complainant died or was unable or unwilling to proceed with the matter.

The purpose in considering charges that have been brought against a person is because quite often a child sex offender will have a history of charges having been made against him or her, but for any one of a number of reasons, the matter has not proceeded to court and the charges have lapsed. An example of this is when the victim is a very young child and it is considered that the child would not be a reliable witness or that the stress of the court hearing would be detrimental to his or her wellbeing.

It will also allow the court to consider charges pending outside the jurisdiction, for example where a respondent has been charged in a foreign county with a child sex offence and has fled before the charge was dealt with.

Court must order a report before making an order for a child respondent

Clause 10 applies if the court finds there is sufficient evidence to make an order against a child. Before making the order, the court must order the chief executive (communities) to provide a report containing stated information, assessments and reports about the child respondent and/or his or her family or any other matter that the court considers to be relevant. The information provided can be relevant to the respondent's accommodation, educational, health, cultural and social needs.

In the report, the relevant entity may express an opinion on what the impact of a final order may be upon the child in relation to his or her health, housing, cultural and social or educational needs.

Moreover, the relevant reporting entity must prepare the report in documentary form and deliver it to the court and the parties to the proceeding.

The court can then consider the report in determining which conditions, if any, to impose on the respondent child. Alternatively, the court may decide not to make an order against the respondent.

Conduct that may be prohibited

Clause 11 provides an outline on the types of conduct which may be prohibited by an order. This may include associating with, or having contact with specified people or kinds of people. For example, networking with other relevant sexual offenders either in person or via the internet, could be prohibited.

An order may prohibit a respondent from being in specified locations or types of locations, for example, prohibiting the respondent from being within 200 metres of a school between 7am and 7pm on a school day.

A condition may prevent residing at a particular residence or type of residence, such as in the vicinity of a child care centre or in a residence where children under the age of 16 reside.

A condition may preclude the respondent from engaging in specified behaviour such as taking photographs or images of children at the beach in the South Bank Parklands.

The conduct to be prohibited may involve being in specified employment, particularly that which might bring the respondent into contact with children, for example, being employed in a café in close proximity to a school.

A condition of an order may prohibit conduct absolutely or on the terms that the court considers appropriate, which must be stated in the order.

An order may prohibit a respondent from entering or remaining in a stated place even if the respondent has a legal or equitable right to enter or be in that place. For example, the respondent with a history of sexually abusing children may be a co-leaseholder of a residential property at which children under the age of 16 are known to be residing. The court may decide to prohibit the respondent from residing at that place because it considers the risk to the safety of the children is too great. Even though the respondent has a legal right to reside at that place, the prohibition order will prevent the respondent from doing so. However, in imposing such a prohibition, the court must, if it is satisfied it is necessary, ensure that the order makes provision for the respondent to enter the residence between stated times to recover personal property from that place but only while they are accompanied by a police officer.

Term of an order

Clause 12 provides that a final order takes effect on the day that it is brought to the notice of the respondent. It remains in force for a term of five years for an adult respondent and two years for a child respondent.

The commissioner may make an application for a further final order for the same respondent and should the application be made before the end of the term of an existing final order, the existing final order is extended until the further application is decided by the court.

In respect to an application for a further final order being made for the same respondent, it must be made before the end of the term of an existing final order, and should the new application not be decided before the existing order ends, then the existing order will continue to have effect until the application for the further order is decided. If the application for the further order is successful, then the further order will have effect from the day that the original order would have otherwise ceased.

Division 2 Temporary order

Definitions for div 2

Clause 13 provides the definitions for this division. A final order means an order made under clause 8(1) and a temporary order is an order made under clauses 15 or 16.

Applying for a temporary order

Clause 14 allows the commissioner to start a proceeding for a temporary order if the commissioner is satisfied a person poses an immediate and unacceptable risk to the life or sexual safety of one or more children, or children generally, and the making of a temporary order will reduce that risk.

Due to the urgency for the order, the application may be made in the respondent's absence. It must be accompanied by an application addressing the same matters as if the commissioner were applying for a final order. The application must state why an immediate risk exists.

To make an order, the magistrate must be satisfied that an order is necessary to reduce the risk the respondent poses to the lives or sexual safety of one or more children, or children generally. Also, if the application is made without notice to the respondent, the magistrate must be satisfied it is appropriate in the particular circumstances surrounding the application to make such an order without notifying the respondent. Clause 18 provides that an order does not have effect until notice of it is given to the respondent.

If an order is made, the magistrate must fix the return date, time and place for mentioning the application for the final order. The commissioner must apply for a final order to the court before the date, time and place fixed by the magistrate. Failure to do so causes the temporary order to lapse.

Sections 800 to 802 of the *Police Powers and Responsibilities Act 2000* apply to the application as if the temporary order were a prescribed authority within the meaning of that Act. This allows the commissioner to apply for a temporary order by phone, fax, radio, email or other similar facilities if the circumstances of the situation are considered to be either urgent or special.

Although it is a breach of the fundamental legislative principle requiring a person to be given notice of proceedings instigated against them, the commissioner needs the power to make an *ex parte* application for an order of a temporary nature to prevent immediate harm occurring to children. As this is a civil application, the common law duty requiring applicants in *ex parte* applications to fully inform the court of all matters, including those adverse to the applicant's own case would apply to the commissioner.

Temporary order made by a magistrate

Clause 15 provides for the magistrate to make a temporary order if satisfied the respondent is a relevant sexual offender, the respondent poses an immediate and unacceptable risk to the life or sexual safety of one or more children, or children generally, and the making of a temporary order will reduce that risk.

It is not necessary for the magistrate to identify a risk to a particular child, particular children or a particular class of children. An example is a person with a lengthy history of committing sexual offences against children choosing to move into accommodation where a number of young children are also known to reside.

Having regard to the temporary nature of the order, the application need only be supported by evidence that the magistrate considers to be sufficient and appropriate given the circumstances.

A temporary order has effect only when it is brought to the notice of the respondent.

When the magistrate makes the temporary order, a return date, time and place for the application for a final order must be fixed, because at the same time as the temporary order is made, the commissioner must immediately start a proceeding for the final order. The date, time and place stated in the appearance notice for the final order, must be the date, time and place fixed when the temporary order was made.

A temporary order made under this section is able to be varied or revoked on application to the court by the respondent. Due to the intrusive nature of

this type of order, the temporary order will be returned to the court as soon as possible.

Temporary order made by a court

Clause 16 allows a court to make a temporary order on its own initiative or on the application of a party to the proceeding for the final order. This can only be done if the court is adjourning the final application.

A temporary order can be made under this clause in the respondent's absence, but only if the court is satisfied the commissioner has served the respondent with the attendance notice and application.

In making a temporary order, the court must be satisfied the respondent is a relevant sexual offender, the respondent poses an immediate and unacceptable risk to the life or sexual safety of one or more children, or children generally, and the making of a temporary order will reduce that risk.

Having regard to the temporary nature of the order, the application need only be supported by evidence that the magistrate considers to be sufficient and appropriate given the circumstances.

A temporary order has effect only when it is brought to the notice of the respondent. The ability to make a temporary order will allow the court to impose interim conditions on a respondent in circumstances where the delay associated with deciding an application for a final order is likely to expose a child to danger.

Conduct that may be prohibited

Clause 17 provides for the conduct that may be prohibited by a temporary order. The same kind of conduct which can be prohibited by a final order in clause 11 can be prohibited by a temporary order.

Term of a temporary order

Clause 18 makes provision for a temporary order to take effect on the day notice of the temporary order is given to the respondent. The temporary order will remain in force until one of the following happens:

- if the temporary order is made under clause 15, and the commissioner fails to make an application for a final order by the time fixed by the magistrate;

- the application for the final order is next mentioned by a court, and the court does not extend the temporary order under section 19;
- the end of the prescribed period of 28 days is reached, unless the respondent has consented to a longer period under section 19;
- the court makes a decision on the application for a final order;
- the commissioner discontinues the application for a final order; or
- the temporary order is revoked under section 22 or on appeal.

Extending a temporary order if an application for a final order adjourned

Clause 19 allows a temporary order to be extended by the court, either upon application by a party to the proceedings or on its own initiative. It only applies if a temporary order is already in force and will expire before the application for the final order is decided because the court has adjourned the hearing of the application.

The temporary order can be extended for a further 28 days or such longer period consented to by the respondent. There is no limit on the number of extensions that can be made. However, it is desirable that the application for a final order be decided as soon as practicable.

Division 3 Other provisions about offender prohibition order

Who may be present at the hearing of an application

Clause 20 provides for who may be present at the hearing of an application for a prohibition order. Only the commissioner, respondent, witness, lawyers and court staff necessary for the conduct of the application can be present. A police officer representing the commissioner is also able to be present.

The court may allow additional people to be present if it thinks it is appropriate for the people to be present. This includes the parents or guardian of the child respondent, and a support person for a witness or the respondent.

The reason for limiting who may be present at the hearing is for the protection of the respondent, who has yet to commit an offence, from

possible vigilante retribution from the community should the information be made public. This will also prevent a victim of a child sex offence being identified and prevent any victims from being further traumatised by media attention surrounding the application.

Making an offender prohibition order for an adult respondent by consent.

Clause 20 allows the court to make a prohibition order with the consent of an adult respondent and the commissioner. A child respondent may not be a party to a consent order.

When making an order by consent, the court is not required to conduct a hearing or consider the matters in section 9 unless it considered that it is in the interests of justice to do so.

When deciding whether it is in the interest of justice to conduct a hearing, the court must have regard to whether the respondent: has obtained legal advice about the proposed prohibition order; has an intellectual disability; is a person for who an order has been made appointing a guardian under the *Guardianship and Administration Act 2000*; is illiterate, having few or no literacy skills in the English language; or is subject to some other condition that prevents the respondent from understanding the effect of giving his or her consent to the making of the proposed offender prohibition order.

Varying or revoking an offender prohibition order

Clause 22 allows the commissioner and a respondent to apply to the court for a prohibition order to be varied or revoked. A respondent may only make an application for a final order to be varied or revoked with the leave of the court. Leave is not required in relation to a temporary order.

The court may grant leave only if it is satisfied it is in the interests of justice, having regard to the changes in the respondent's circumstances, or circumstances affecting the respondent, since the order was either made or last varied.

The changes can include matters pertaining to the respondent's accommodation, cultural, educational, employment or social needs. They can also include changes which no longer make a condition of the order necessary.

The change can include compassionate or cultural grounds for which the court may make a temporary variation to the order. For example, the court

may vary the order by inserting a condition which allows the respondent to attend a previously prohibited place for a specified period of time and in specified circumstances to allow the respondent to visit a relative who is seriously ill or to attend the funeral of a relative or close friend. In considering the circumstances, the court should have regard to the specific cultural traditions of the respondent, if any, and their impact on the circumstances of the respondent. This could include making a temporary variation to accommodate an Aboriginal person's need to attend to sorry business.

A variation only takes effect when it is brought to the notice of the respondent. A revocation takes effect immediately and regardless of whether the respondent is present in court or not.

Explaining and giving notice of an offender prohibition order to respondent

Clause 23 requires the court to explain any order made to a respondent who is present in the court. The explanation must be given in a manner which the respondent is likely to understand. The court must also explain the respondent's obligations under the prohibition order as well as the consequence of failing to comply with the order.

The clause also requires the commissioner to inform the respondent of the obligations under the CPOR Act, if the respondent was not previously a reportable offender.

A failure by the court or commissioner to comply with the clause does not affect the making of the order.

Giving respondent a copy of an offender prohibition dealt with in the respondent's absence

Clause 24 applies if a court or magistrate makes, varies or revokes an offender prohibition order in the respondent's absence.

As soon as practicable after the order has been made, varied or revoked, the commissioner must serve or cause another police officer to serve the respondent with a copy of that order.

The order must be delivered personally to the respondent. If after reasonable attempts to serve the order has failed, the commissioner may apply to the court or magistrate who made the order for an alternative means of serving it on the respondent.

When serving the order, the police officer must explain it to the respondent using language and in a manner which the respondent is likely to understand having regard to the respondent's age, and cultural, educational and social background. Likewise the officer must provide the respondent with a notice explaining the reportable offender obligations under the CPOR Act, s54. This notice must be similarly explained to the respondent.

Where the respondent is a child, a copy of the order must be provided to the respondent's parents or guardian, unless it is not possible to do so after making reasonable attempts.

If the order may cause the child respondent to change his or her place of residence, the chief executive (child safety) must also be advised. This is done to ensure the child is protected and provided with appropriate care and shelter.

Failure to comply with these provisions does not affect the validity of the order.

Court may not award costs unless application is frivolous or vexatious or another abuse of process

Clause 25 provides no costs may be awarded for an application, including an appeal, under the Act, unless the application was frivolous, vexatious or another abuse of process.

Part 3 Corresponding order

Application for registration of corresponding order in Queensland

Clause 26 makes provision for the commissioner to apply in the approved form to the registrar of a Magistrates Court for the registration of a corresponding order.

Registration of corresponding prohibition order

Clause 27 allows the registration of a corresponding order if the registrar is satisfied it is in force and it was served, or taken to be served, on the person against whom it was made.

The clause also allows either the registrar or the commissioner to have the registration of the order referred to the court.

Where the corresponding order is referred to the court, the commissioner must serve, or cause another police officer to serve, a copy of the application and an appearance notice on the respondent. This must be done personally and fully explained to the respondent, unless the court orders an alternative way to serve the respondent. When explaining the documents to the respondent, the officer must do so in a way and use language which the respondent is reasonably likely to understand having regard to the respondent's age and cultural, educational and social background.

The court may hear the registration application in the absence of the respondent, if it is satisfied the respondent has been served with the application documents.

The clause allows the court to vary a corresponding order to adapt it so it is effective in Queensland. For example, a corresponding order from Victoria may prohibit the respondent from approaching all primary schools in Victoria. A Queensland court would need to adapt such an order to Queensland by changing the reference to Victoria to Queensland when registering the order for Queensland.

A registered corresponding order remains in force in Queensland only for the period for which it was originally made.

The clause allows a regulation to provide for the manner of registering corresponding orders and for keeping a register of such orders and providing access to the register.

Action by the registrar and commissioner after registration of a corresponding order

Clause 28 requires the registrar to give the commissioner a copy of the registered corresponding prohibition order no more than two business days after the registration occurs. The registrar may not ask the commissioner for any fee, or reimbursement for any expenses incurred in the registration of a corresponding prohibition order.

As soon as practicable after receiving the copy, the commissioner must serve, or cause another police officer to serve, the respondent with a copy of the order. If the respondent was not previously a reportable offender under the CPOR Act, the officer serving the order must also provide the respondent with a notice under section 54 of the CPOR Act.

The order must be personally served on the respondent and both the section 54 notice and the order must be fully explained to the respondent, unless the court orders an alternative way to serve the respondent. When explaining the documents to the respondent, the officer must do so in a way and use language which the respondent is reasonably likely to understand having regard to the respondent's age and cultural, educational and social background.

If the registered corresponding order is to be served on a child respondent, it should be done as discreetly as possible and not in the vicinity of the respondent's school or workplace unless there is no other alternative. A copy must also be given to the child's parents or guardian and if it may result in the child changing his or her place of residence, a copy must be given to the chief executive (child safety).

A failure to properly serve the registered corresponding order on the respondent does not affect the validity of the registration of the corresponding order.

Effect of registration of a corresponding order

Clause 29 provides a registered corresponding prohibition order has the same effect as an offender prohibition order made under this legislation. It may be enforced against the respondent as if it were an offender prohibition order made under this legislation. This provision has effect even if the registration of the corresponding order is ordered in the absence of the respondent.

However, if a corresponding prohibition order was varied in the absence of the respondent and the person has not been notified of the variation, then the registered corresponding prohibition order has no effect until the respondent has been given notice of it.

In the interim, the corresponding order as it existed prior to being varied by the court has effect in Queensland and may be enforced.

Varying a registered corresponding order

Clause 30 makes provision for either the commissioner or the respondent to apply to the court for a registered corresponding order to be varied, however, the latter may only do so with the leave of the court.

Cancelling the registration of a registered corresponding order

Clause 31 makes provision for the commissioner or the respondent to apply to the court for an order cancelling the registration of a registered corresponding order. However, the respondent can only make an application with the leave of the court.

If the court revokes the order, it stops having effect in Queensland.

Part 4 Reportable offender obligations

Offender reporting requirement after an offender prohibition order made

Clause 32 provides for respondents who are not reportable offenders before an offender prohibition order is made to immediately become reportable offenders under CPOR Act. The length of the respondent's reporting period for that Act is the period for which the offender prohibition order has effect.

Offender reporting requirement after the registration of a corresponding order

Clause 33 makes a respondent for a registered corresponding order who is not a reportable offender immediately before the registration of the order, to become a reportable offender upon its registration.

The respondent is taken to be a reportable offender and the registered corresponding order is taken to be an offender reporting order for the purposes of the CPOR Act.

The length of the reporting period for an adult is which ever is the shorter of either five years or the period for which the registered corresponding order has effect.

The length of the reporting period for a child is which ever is the shorter of either two years or the period for which the corresponding order has effect.

Part 5 Offences

Failure to comply with an offender prohibition order

Clause 34 creates an offence for failing to comply with a prohibition order. This offence applies to temporary and final orders as well as registered corresponding orders.

It is a defence to the charge for the respondent to show he or she had a reasonable excuse for not complying with the order in the circumstances. The maximum penalty for failing to comply with the conditions of the order is two years imprisonment.

It is important that the respondent knows of the existence of the order and its conditions. If a respondent lacks this knowledge, they can not be criminally responsible. This clause operates so that a respondent who was present in court when the order was made, or was personally served with a copy of the order, has knowledge of the existence and conditions of the order.

Also, if a police officer tells a respondent about the existence of an order, and the respondent breaches it, he or she commits the offence. Where the prosecution intends to rely on the fact a police officer has told a respondent about an order, rather than actually serving it, the court must be satisfied the officer told the respondent about the actual condition the respondent is alleged to have breached.

Clause 23 provides that when making an order the court must explain it to a respondent who is physically present in court. Clause 24 requires the police officer serving an order to explain it to the respondent in addition to providing him or her with a copy of the order.

Proof of knowledge of a particular condition in a particular circumstance

Clause 35 provides that if, during a proceeding for either an offender prohibition order or a registered corresponding order, an issue is raised as to whether the respondent knew about a particular condition of the order that is alleged to have been contravened, and there is evidence that the respondent knew of this because a police officer had told the respondent of its existence, then the respondent cannot be convicted unless it is proven that the police officer told the respondent about the particular condition.

Matters relevant to the reasonable excuse defence

Clause 36 provides that when a court is deciding whether a respondent has a reasonable excuse for contravening either an offender prohibition order or a registered corresponding order, it must have regard to: the respondent's age; whether or not the respondent has a disability that affects his or her ability to understand or comply with that order; whether the form of notice given to the respondent was adequate to inform him or her of their obligations under the order, having regard to the respondent's circumstances; and any other matter that is considered appropriate.

Prohibition on disclosing particular matter

Clause 37 provides that any person, who obtains protected information because of that person's involvement in the administration of this Act, including a proceeding under this Act, must not disclose the information to another person.

The maximum penalty for contravening this prohibition is two years imprisonment.

This prohibition does not apply to the disclosure of anything about the prohibition order in respect to:

- a disclosure authorised by a court of magistrate in a proceeding under this Act;
- a disclosure authorised under an offender prohibition order or a registered corresponding order;
- the disclosure by a person identifying himself or herself as a person mentioned in relation to any matter under this Act;
- a disclosure made in a proceeding before a court or tribunal;
- a disclosure to a respondent made for the purposes of the administration of this Act or the operation of the relevant offender prohibition order or registered corresponding order;
- a disclosure to a police officer, or someone else who is a member of a law enforcement agency of the State or of the Commonwealth or another State, for the purpose of the performance of the police officer's or other person's functions;
- a disclosure made for the purpose of an Act the operation of which requires the disclosure;

- a disclosure to a person involved in the respondent's assessment and management under the Act, e.g. a corrective services officer under the *Corrective Services Act 2006*;
- a disclosure to a lawyer representing a person who is or was a party to a proceeding under this Act;
- a disclosure to anyone else to whom the disclosure is required or permitted to be made under an Act, e.g. a person to whom the disclosure may be made under part 6.

Moreover, a person must not disclose protected information to another person with the intention of inciting anyone to intimidate or harass a respondent.

Part 6 Obtaining and disclosing particular information

Commissioner to be given information about a relevant sexual offender

Clause 38 provides for the purpose of deciding whether to make an application for an offender prohibition order, the commission may direct a government entity to provide any information held by the government entity that is relevant to an assessment of whether the respondent poses a risk to the lives or sexual safety of one or more children or children generally.

A government entity is defined as being one within the meaning of the *Public Service Act 1996*. The information is to be used for the purpose of deciding an application for an offender prohibition order.

The direction given by the commissioner is to be given in writing and must state the day on or before which the information must be given. Despite any other legislation to the contrary, the government entity is authorised and required to give the police commissioner the information being sought by the direction. This requirement does not extend to information that is subject to legal professional privilege.

Moreover, this requirement does not extend to information held by Queensland Health.

Commissioner may give information about an offender prohibition order to prescribed entities

Clause 39 makes provision for the commissioner to give the chief executive (child safety), the chief executive (communities), the chief executive (education) or the Children's Commissioner, information about an offender prohibition order that includes: the respondent's name and date of birth; the term of the order; and the conduct of the respondent that is prohibited by the offender prohibition order.

The commissioner may provide anything else that is considered to be reasonably necessary to allow the prescribed entity to identify the respondent to ensure the safety of a child or children in that entity's care or the safety of the respondent.

These departments have a duty of care towards the children and it may be necessary to inform one or more of these departments about a respondent who has been placed on an offender prohibition order and who could potentially pose a threat to one or more children.

Should the offender prohibition order be varied or revoked at a later date, then the commission must give the relevant chief executive written notice of the variation or revocation of the order. For the purposes of this provision, an offender prohibition order also includes a registered corresponding offender prohibition order.

Disclosure of information by particular officials

Clause 40 provides that if a prescribed entity is given information under clause 39 about an offender prohibition order, then that information may be given to a person performing a function under a relevant Act if the prescribed entity reasonably believes the giving of the information is necessary for the purpose of performing that function.

Also, the chief executive (education) may provide the information to principals and certain teachers to enable them to ensure the safety of students for which they are responsible.

If the prescribed entity has given information about an offender reporting order to a person performing a function under a relevant Act and notice of a variation or revocation of that order is subsequently given, then written notice of the variation or revocation must be given to the person performing the function of the relevant Act.

For the purposes of this provision, an offender prohibition order includes a registered corresponding order.

For the purposes of this provision a relevant Act means: the *Child Protection Act 1999* for the chief executive of child safety; the *Juvenile Justice Act 1992* for the chief executive of communities; the *Education (General Provisions) Act 2006* for the chief executive of education; and the *Commission for Children and Young People and Child Guardian 2000* for the children's commissioner.

Chief executive (communities) to be given information about a child respondent

Clause 41 provides that if the court requires the chief executive (communities) to provide a report about a child respondent, then for the purpose of providing the report to the court, the chief executive (communities) may ask another government entity to provide any information that is held by that entity which is relevant to the report. The request must be made in writing and state the day on which or before which the information is to be provided. Despite any other Act, the government entity is authorised to provide the chief executive (communities) with the information requested.

Duty of officials obtaining information

Clause 42 provides that it is the duty of any person who obtains information under sections 38 to 41 of this Act to take all reasonable steps to ensure the information is used or disclosed only for the purpose for which it was obtained.

Commissioner may give information about an offender prohibition order to other particular persons

Clause 43 empowers the commissioner to give information about an offender prohibition order to either the parent or guardian of a respondent (including an adult respondent), or the parent or guardian of any victim, or potential victim of a reportable offence committed by the respondent, providing it is reasonably considered to be necessary and appropriate to reduce the risk to the lives or sexual safety of one or more children or children generally.

Protection from liability for giving information

Clause 44 provides that if a person, acting honestly and in compliance with this part, provides information for the purposes of this legislation, then the person is not liable, civilly or criminally or under an administrative process.

If a defamation proceeding should ensue, the person has a defence of absolute privilege for publishing the information. Should the person be required by another Act to maintain confidentiality in respect to the information protected by that Act, the person does not contravene the provisions of that legislation by giving the information required by this Act.

Part 7 Legal proceedings

Application of pt 7

Clause 45 provides that this part applies to a proceeding under this Act.

Application of *Evidence Act 1977*

Clause 46 provides that the applied provision applies for the purpose of proving an offender prohibition order or another order made under this Act, a corresponding order, or the registration of a corresponding order under this Act.

For the purposes of this provision, an applied provision means section 53 of the *Evidence Act 1977*. For proof of corresponding orders, see sections 5, 157 and 158 of the *Evidence Act 1995* (Cwlth).

Evidentiary provisions

Clause 47 makes provision for an averment in a complaint that a stated person was personally served with a stated offender prohibition order by a process server on a stated date is evidence of the stated matters. Also an averment that the respondent was present in court when a stated order was made is evidence of that matter.

An affidavit by a process server stating the date, time and manner the process server served a stated offender prohibition order on a stated person is evidence of the stated matters.

If a defendant intends to challenge a matter stated in the aforementioned averment or affidavit, the defendant must give the prosecution written notice of the challenge at least three business days before the day fixed for the hearing. A failure to give this notice will prevent the defendant challenging the matters.

This recognises that some process servers are only involved in a prosecution because they served an order on a defendant. This clause is designed to save the expense and time involved in having officers give evidence in court relating to service of orders, unless the manner of serving a particular defendant is an issue for the hearing.

In this section a process service includes a Queensland police officer and for a corresponding prohibition order an interstate police officer or other person authorised to serve the corresponding order.

Part 8 Appeals

Who may appeal

Clause 48 makes provision for the commissioner and a respondent for an offender prohibition order or a registered corresponding order, to appeal against a court's order. The court's order subject to the appeal can be an order making, varying, or revoking a prohibition order, or an order registering, varying or cancelling a corresponding order.

If the respondent is a child the appeal lies to the Childrens Court constituted by a Childrens Court Judge. Otherwise, the appeal lies to the District Court.

Starting an appeal

Clause 49 provides that the appeal must be started within 28 days of the relevant decision being made. However, if the relevant decision was made in the absence of the respondent, then the appeal must be started within 28 days of the copy of the order being served on the respondent. The court may extend the appeal period upon application.

The appeal must be started by lodging a notice of appeal in writing with the registrar of the appeal court. The appeal must be heard only in the presence of the appellant, the respondent, their lawyers and any witness or other person the court allows to be present.

Nature of an appeal

Clause 50 provides that an appeal is by way of a rehearing and subject to clause 49, under the *Uniform Civil Procedures Rules 1999* or, in so far as those rules can not be applied to such appeals, in accordance with directions given by a judge.

Fresh or further evidence is not admissible on appeal.

It should be noted that an appeal against a decision to make or vary an offender prohibition order, or to register a corresponding offender prohibition order, does not stay the operation of that order, unless the appeal Court orders otherwise.

Powers on an appeal

Clause 51 provides that on an appeal against a relevant decision in regard to an offender prohibition order, the Court may, either vary or revoke the order as it considers appropriate, or make another order or decision that it considers should have been made. Similarly, in respect to an appeal against a relevant decision made regarding a registered corresponding order, the Court may vary or revoke the order, or make another order or decision that it considers to be appropriate.

Court may not award costs unless an application is frivolous or vexatious or another abuse of process

Clause 52 provides that the appeal entity must not award costs on an appeal under this part unless it dismisses the application as being frivolous or vexatious or another abuse of process.

Part 9 Miscellaneous

Service of documents

Clause 53 provides for the service of documents on a respondent. All documents must be served personally on the respondent unless after reasonable attempts it has not been possible. Where this occurs the Commissioner may apply to the court for an order substituting service.

If notice of the proceedings is to be served on a respondent who is a child then it should be done as discreetly as possible and not in the vicinity of the child respondent's school or place of employment, unless there is no other place where service can be affected.

When serving the documents, the police officer must explain it to the respondent using language and in a manner which the respondent is likely to understand having regard to the respondent's age, and cultural, educational and social background. Likewise the officer must provide the respondent with a notice explaining the reportable offender obligations under the CPOR Act, s 54. This notice must be similarly explained to the respondent.

No filing fee payable

Clause 54 makes the provision that no fees are payable for making an application or filing another document under this Act.

Approval of forms

Clause 55 provides that the commissioner may approve forms for use under this Act.

Review of Act

Clause 56 provides for the Crime and Misconduct Commission to review the operation of this Act and prepare a report on the review. The conduct of the review and the preparation of the report is a function of the Crime and Misconduct *Commission for the Crime and Misconduct Act 2001*. The review must be started as soon as practicable after the end of three years after the commencement of this section. A copy of the report must be given to the Speaker for tabling in the Legislative Assembly.

Regulation-making power

Clause 57 provides for the Governor in Council to make regulations under this Act.

Part 10 Amendment of Child Protection Amendment Act 2000

Act amended in pt 10

Clause 58 makes provision for this part to amend the *Child Protection Amendment Act 2000*.

Amendment of schedule (Amendments for omission of Chapter 7, part 7)

Clause 59 makes provision for ‘Schedule, item 4’ to be omitted and the insertion of a saving provision for the *Child Protection Amendment Act 2000*.

Part 11 Amendment of Child Protection (Offender Reporting) Act 2004

Act amended in pt 11

Clause 60 makes provision for this part to amend the *Child Protection (Offender Reporting) Act 2004*.

Amendment of s 5 (*Reportable offender defined*)

Clause 61 makes provision for an amendment to section 5(1) to include a person who, under the *Child Protection (Offender Prohibition Order) Act 2007*, as being taken to be a reportable offender.

Amendment of s 13 (Offender reporting orders)

Clause 62 makes provision for section 13(5) to be amended to empower the court to impose an offender reporting order on its own initiative or upon an application by the prosecution.

Insertion of new s50A

Clause 63 creates a new offence for a reportable offender to apply, during the offender's reporting period, for a positive notice under the *Commission for Children Young People and Child Guardian Act 2000*. It also creates an offence for the reportable offender to sign a consent for employment screening under that Act.

The maximum penalty is 150 penalty units or 2 years imprisonment.

Part 12 Amendment of Commission for Children Young People and Child Guardian Act 2000

Act amended in pt 12

Clause 64 identifies the part amends the *Commission for Children Young People and Child Guardian Act 2000*.

Amendment of s95 (Main purpose of pt 6)

Clause 65 changes the title of s95 of the Act to reflect that the part has multiple purposes. It also provides an additional purpose of the part is to prevent reportable offenders holding positive notices, being employed in regulated employment or engaging in regulated business.

Insertion of new s99EA

Clause 66 inserts a definition for reportable offender as being someone who is a reportable offender under the *Child Protection (Offender Reporting) Act 2004*. A 'relevant reportable offender' is defined as a reportable offender whose reporting period has not ended or a respondent for an offender prohibition order or registered corresponding order under the *Child Protection (Offender Prohibition Order) Act 2007*. A respondent

for an offender prohibition order is defined under the *Child Protection (Offender Prohibition Order) Act 2007* as a person against whom an offender prohibition order is made (including both a temporary or final order).

Amendment of s101A (Notice of change of employment or name and contact details in application under s100 or 101)

Clause 67 amends the heading of s 101 A. In addition it requires a person in relation to whom there is an outstanding application under s 100 or 101 to notify the children's commissioner if the person becomes a relevant reportable offender after the application is made and before it is decided. A failure to notify of this change in circumstance is an offence.

Insertion of new 101AA

Clause 68 provides that a relevant reportable offender can not apply for a positive notice under s 101 or sign an application as a relevant person under section 100, providing consent to employment screening.

A contravention of this provision is an offence under s 50A of the *Child Protection (Offender Reporting) Act 2004*.

Amendment of s 102 (Decision on application)

Clause 69 amends s 102 to the effect that the children's commissioner must issue a negative notice to a person where the police commissioner provides a notification of an outstanding charge under s 50A of the *Child Protection (Offender Reporting) Act 2004*. This section operates to the exclusion of s 102 (6)(a) or (b).

Insertion of new pt 6, div 4A

Clause 70 creates a new division 4A in part 6 of the Act.

The new section 120B suspends a positive notice held by a person while the person is to the subject of a temporary prohibition order. It also prevents the person making an application to cancel the suspension while the temporary order is in force.

Unless a final order is issued the children's commissioner must consider issuing a positive notice to a person when a temporary order ceases to have effect.

The children's commissioner must also make the appropriate notifications under s119C.

Section 120C applies to a relevant reportable offender who has a positive notice, whether before or after the commencement of the section. The children's commissioner must cancel the positive notice and issue a negative notice.

This section also applies where a temporary order had resulted in the suspension of the positive notice under s 120B and the temporary order has ceased to have effect because a final order has been made.

Section 119A applies to the person, to the exclusion of s 119B and 119D. The person is taken to have committed an excluding offence and been convicted and sentenced to a period of imprisonment for that offence after the commencement of section 119A. As there is no discretionary decision made there is no right of review in relation to the issue of the negative notice, other than on the basis of a claim of mistaken identity.

The children's commissioner must also make the appropriate notifications under s119A.

If the person stops being a relevant reportable offender, section 119 applies to the person as if the excluding offence he or she was taken to be sentenced for had been overturned on appeal. This allows the children's commissioner to re-issue a positive notice to the person subject to the exercise of discretion.

Section 120D provides that any current appeal is withdrawn if a person is or becomes a relevant reportable offender.

Section 120E provides for the commissioner to provide information to the children's commissioner to enable the children's commissioner to identify a respondent to a final or temporary order. This is necessary as respondents are considered relevant reportable offenders and become ineligible to hold or obtain positive notices or blue cards. The commissioner must inform the children's commissioner if a person stops being a respondent.

Amendment of s 121 (Person may apply for review of decision)

Clause 71 makes provision for a person to appeal to the Children Services Tribunal where the person's positive notice has been cancelled or suspended on the basis of mistaken identity.

Omission of s 121B (Police commissioner not to delegate power under s 121A)

Clause 72 omits section 121B, allowing the commissioner to delegate his or her powers under the Act by virtue of the *Police Service Administration Act 1990*.

Amendment of sch 4 (Dictionary)

Clause 73 inserts a definition for ‘reportable offender’ and ‘relevant reportable offender’ into the dictionary.

Schedule

Dictionary

This schedule provides the Dictionary meanings of terms used for the purposes of this Act.