Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2014

Explanatory Notes

Short title

The short title of the Bill is the Child Protection and Other Legislation Amendment Bill 2014.

Policy objectives and the reasons for them

The objectives of the Child Protection and Other Legislation Amendment Bill 2014 (the Bill) are to amend the *Child Protection (Offender Reporting) Act 2004* (CPORA) and the *Police Powers and Responsibilities Act 2000* (PPRA) to give effect to the government's commitment to impose more stringent monitoring of sex offenders and tougher conditions for offenders on the Queensland component of the National Child Offender System (NCOS), formerly the Australian National Child Offender Register.

In this regard, the Bill increases the number of times sex offenders on the Queensland component of the NCOS will have to report to the police commissioner from once each year to every three months (periodic (quarterly) reporting). For the purposes of consistency and auditing, reportable offenders will be required to report in February, May, August and November of each year.

The Queensland Police Service also plans to enhance compliance management of the new quarterly reporting under the CPORA via the introduction of new technology based reporting. Online reporting from a personal computer or mobile telephone to a secure QPS website will coincide with the commencement of the legislation. A trial of a kiosk reporting system (KRS) is also planned and will be rolled out across the State, if successful.

In addition to the periodic quarterly reporting requirements, the Bill introduces additional periodic reporting, at the discretion of the police commissioner, as an additional layer of reporting for those offenders who represent a significant risk to the lives or sexual safety of children.

The Bill also gives effect to the requirements of the Regulatory Impact Systems Guidelines which requires regulation to be reviewed within 10 years of the regulation's commencement date. In this regard, the Bill makes the following amendments to CPORA and to the PPRA:

<u>Amendments to CPORA will:</u>

- require a reportable offender to report in a manner required by the police commissioner;
- extend the time in which an application for a reporting order can be made under section 13;
- impose uniform reporting periods for offenders on the NCOS;

- create one schedule of offences to support the new uniform reporting periods;
- remove section 210 of the Criminal Code as an exclusion offence for juvenile child sex offenders;
- allow an initial report to be made while an offender is in government detention;
- expand the personal details that must be reported under Schedule 2;
- impose more stringent time frames in which offenders must report changes to personal details and entries to and absences from Queensland;
- allow the police commissioner to suspend an offender's reporting obligations in certain circumstances;
- remove duplicated reporting processes by automatically suspending the reporting requirements under CPORA for the period of time that a reportable offender is simultaneously reporting under the *Dangerous Prisoners (Sex Offenders) Act 2003* (DPSOA).
- allow police to take DNA from a corresponding reportable offender if DNA has not previously been taken in Queensland;
- allow a police officer to convey a reportable offender, who has been detained under section 60, to the nearest police station for the purpose of giving a written notice unless it is not reasonably practicable to do so;
- require a reportable offender to make an initial report at the time of their receipt of a written notice;
- remove the obligation for police to produce an evidence certificate under section 77; and
- clarify that the Queensland child protection register is comprised of a number of core components used for the purpose of collecting and storing reportable offender information.

Amendments proposed for the PPRA include:
- allowing police to enter premises for the purposes of making reasonable inquiries to verify information required to be provided under CPORA; and
- removing the requirement to destroy reportable offender DNA under section 490A.

Achievement of policy objectives

Quarterly Reporting and More Frequent Periodic Reporting

The Bill gives effect to the government's commitment to impose more stringent reporting for offenders on the NCOS by introducing a periodic (quarterly) reporting regime and a more frequent periodic reporting option. All reportable offenders will be required to report their details to police in February, May, August and November of each year. In circumstances where an offender poses a significant risk of re-offending, he or she may be required by the police commissioner to report his or her details more frequently than the mandated reporting periods.

The manner in which an offender will be required to report his or her details under these new reporting regimes will be linked to the risk the offender poses to the lives and sexual safety of children. For example, an offender who poses a significant risk of re-offending may be required to report his or her details in person.

Accordingly, the Bill amends CPORA to allow the police commissioner to direct a reportable offender to report more frequently and section 26 of CPORA to allow the police commissioner to direct the manner in which a reportable offender will make a report other than an initial report and a report of a change in personal details.

An offender who is required to report more frequently than the mandated reporting periods will be issued with a written notice directing attendance at a stated police establishment in a similar manner to section 28 of the *Community Protection (Offender Reporting) Act 2004* (Western Australia (WA)). A notice of additional periodic reporting will override any other notice of reporting obligations that has previously been given to a reportable offender.

A two tiered appeal mechanism will allow an offender who is aggrieved by a direction to report more frequently to appeal that decision to the police commissioner in the first instance and then to a Magistrates Court.

The initial appeal mechanism is consistent with section 74 of CPORA which allows the police commissioner to review a decision to place an offender on the child protection register.

Offences that are reportable offences

There are a number of offences under the current schedules that have specifically stated that the offence applies if it was committed against or in relation to a child, where there is no specific child victim, for example, making, distributing and possession of child exploitation material. In the absence of a specific child victim, it is difficult to effectively prosecute these offences.

The Bill addresses this inconsistency by clarifying when an offence is specific to a child victim, or when the offence itself is a scheduled offence, for example section 26(3) of the *Classification of Computer Games and Images Act 1995*.

The Bill also extends who is considered to be a reportable offender under section 9 by allowing offences under schedule 1, paragraph 9 to apply in circumstances where the offender believed the victim was a child.

Uniform reporting periods

The Bill streamlines the current method of determining an offender's reporting period to reflect contemporary research showing reportable offenders pose the greatest risk within the first three years of their release into the community.

In this regard, the Bill amends section 36, reducing the length of an initial reporting period and subsequent reporting periods from eight years and 15 years respectively to five years and 10 years. The current lifetime reporting period will remain and be applied to reportable offenders who continue to commit sexual and other particular offences against children.

To streamline the method of determining which period of reporting will apply to which reportable offence, the Bill amalgamates the offences currently listed under schedules one (1) and two (2) of CPORA into one single schedule of offences. The amendment negates the need to differentiate between class 1 and class 2 offences.

Exclusionary offences for juvenile sex offenders

The Bill removes section 210 (Indecent dealing with a child under 16 years) as an exclusionary offence for a juvenile child sex offender under CPORA. Indecently dealing with a child, which generally involves direct contact with a child, differs from the other exclusionary provisions under section 5 CPORA as they relate to child exploitation material.

To safeguard the rights of children, the police commissioner will automatically suspend the reporting obligations of all child offenders who do not pose a risk to the lives or sexual safety of children.

Non-compliance with initial reporting requirements

The Bill reduces the capacity for a reportable offender to circumvent the initial reporting process by amending section 14 to require a reportable offender to make an initial report at the time of receiving a notice of reporting obligations. An offender will have up to seven days to make an initial report in circumstances where it is not reasonably practicable to make the report at the time of receiving a notice of reporting obligations, for example, attending a funeral, or a medical or hospital appointment that coincides with receiving the notice. A reportable offender who intends on leaving Queensland before the end of the seven day period, must make the initial report before leaving Queensland.

Timeframes associated with making an initial report when outside of Queensland

The Bill inserts a new section 16 in CPORA to reduce the period in which offenders who enter Queensland from other jurisdictions have to make an initial report from 14 consecutive days to seven consecutive days. The amendment reduces the time a corresponding reportable offender can stay in Queensland without being required to make a report. The amendment is consistent with reporting requirements in WA and Victoria.

Initial reports from offenders in government detention

The Bill formalises a current arrangement between the QPS and Queensland Corrective Services (QCS) that allows some offender information to be provided to the QPS to commence a registration on the NCOS, while an offender is in government detention. The information provided to the QPS will be taken to be the offender's initial report.

The receipt of this information does not negate an offender's requirement to attend a police station within seven days of release to provide police with the remaining details that are required to be reported under CPORA as part of initial reporting process.

Reporting orders by the Court

The Bill extends the time available for police to make an application for a reporting order under section 13 to within six months after sentencing. The extended time period allows additional information obtained after sentencing which indicates an offender poses a risk to the lives or safety of children to be presented to the court.

Personal Particulars

The Bill relocates the personal particulars that are required to be reported under section 16 of CPORA to a new schedule 2 and extends the current list of details that must be reported to align with technological advances and identified gaps in the current legislation.

Accordingly, the Bill requires a reportable offender to report the cessation of a general residence and any locations in which the offender frequents. A report to cease a residence must be accompanied by a statement indicating that the residence at a certain place has ceased. The offender will be required to report the establishment of any new residence within seven days of that change occurring.

The Bill requires a reportable offender to report any contact (reportable contact) with a child that does not occur incidentally. An example of incidental contact includes being served by a child in a store. However, incidental contact that occurs with a regularity or frequency, or in a manner, that may reasonably be expected to result in a level of familiarity or trust between the offender and the child beyond what may reasonably be expected to result from incidental contact is not deemed to be incidental contact.

Reportable contact will operate on the first contact with a child. A reportable offender will have 24 hours to report that contact to police.

Reportable contact will occur where the offender:

- has physical contact with the child; or
- communicates with the child orally, whether in person, by telephone or over the internet; or
- communicates with the child in writing (including electronic communication);

In circumstances where the offender is:

- supervising or caring for any child; or
- exchanging contact details with any child; or
- attempting to befriend any child.

The amendment aligns with the Victorian Law Reform Commission's 2011 review of the *Sex Offender's Registration Act 2004* (Vic).

The Bill recognises the role of social media as a communication tool used by young people and the ease with which young people establish relationships via social mediums such as Twitter, Facebook, Tumblr and Instagram. Accordingly, the Bill requires reportable offenders to report the use or participation in any social networking sites, including the user name and passwords to the accounts linked to those sites.

Similarly, the Bill requires an offender to report any passwords associated with any internet site or email address that is used or intended to be used by the offender and any telephone numbers associated with a reported telephone service.

Clarifying affiliations and localities

The Bill clarifies the meaning of *affiliate* as it applies to a club or organisation with a child membership and *localities* as it applies to where an offender can be located.

For the purposes of schedule 2 a reportable offender is an affiliate if the reportable offender is an employee, member, official or subordinate of a club or organisation that has child members or organises, supports or undertakes activities in which children participate; or directly supports the function or operation of a club or organisation of the type.

Localities in which a reportable offender can generally be found, means a description of, or directions to, a place or area in which the offender can generally be found sufficiently described to allow a reasonable person to locate the place or area based on the description or directions.

Examples of details of localities in which a reportable offender can generally be found—

- *the name and location of a caravan park in which the offender can generally be found*
- *a description of, and directions to, the part of a camping area within a national park in which the offender can generally be found.*

Reporting time frames

The Bill inserts section 19A, introducing a consistent reporting regime for all changes to personal details. Any changes to an offender's details, with the exception of reportable contact with a child, will be required to be reported within seven days of the change occurring. Any contact with children must be reported within 24 hours of the reportable contact occurring.

Entries into and absences from Queensland

The Bill reduces the timeframes in which reportable offenders and corresponding reportable offenders must report an entry into or absence from Queensland under sections 16 and 20 – 24 of CPORA from 14 or more consecutive days to seven or more consecutive days. The seven day period is replicated across CPORA and streamlines the administration of the Act.

The Bill also reduces the capacity for reportable offenders to use a defence under section 16, that he or she was not advised of a requirement to report an entry into Queensland. Rather, a reportable offender will have to show that he or she could not have reasonably known that it was a requirement to report an entry into Queensland.

How reports must be made

The Bill amends section 26 to allow the police commissioner to direct a reportable offender to the most appropriate manner of reporting for the level of risk he or she poses to the lives and sexual safety of children. The amendment does not change the way in which an initial report must be made or remove the flexibility for offenders

to report changes in their personal details either by telephone, post, facsimile or email.

Suspension of reporting periods

The Bill amends CPORA to suspend the reporting obligations of a reportable offender where an offender:

- suffers from a significant physical or cognitive impairment; or
- committed a reportable offence as a child; and

no longer poses a threat to the lives or safety of children.

The police commissioner will have the authority to suspend an offender's reporting obligations automatically or upon application by the reportable offender or his or her legal guardian. Automatic suspensions will apply to all child reportable offenders in circumstances where the offender does not pose a risk to the lives or sexual safety of children.

A decision made by the police commissioner to suspend an offender's reporting obligations will remain in force for the reporting period.

During the suspension period, the reportable offender will not be required to make any mandated reports under CPORA, with the exception of an initial report.

At any time it becomes apparent that an offender, subject to a suspension, poses a risk to the lives or sexual safety of children, the Bill allows the police commissioner to revoke the suspension.

An unsuccessful application to suspend a reportable offender's reporting obligations or a decision by the police commissioner to revoke a suspension is reviewable. In this regard, the Bill allows a reportable offender who unsuccessfully applies for a suspension or who is aggrieved by a decision made by the police commissioner to revoke a suspension to, in the first instance, appeal that decision to the police commissioner within 28 days of receiving a notice of that decision. This appeal process is consistent with section 74 of CPORA.

The Bill introduces an additional appeal mechanism that allows an applicant who is aggrieved by an appeal decision made by the police commissioner to appeal that decision to a Magistrates Court.

The Bill automatically suspends any reporting obligations under CPORA where a reportable offender is simultaneously reporting under DPSOA. The suspension will remain in force until the reporting obligations under DPSOA have concluded, at which time the offender will be required to comply with his or her reporting obligations under CPORA until those obligations cease.

The amendment streamlines the administration of CPORA, by removing duplicated reporting processes and reduces the regulatory burden associated with offender management without compromising safety to the community.

Taking and retaining DNA from corresponding reportable offenders

The Bill amends section 40A of CPORA to allow the police commissioner to issue a notice requiring a reportable offender to provide a sample of his or her DNA if a sample is not held under the provisions of the PPRA. This requirement applies regardless of whether a corresponding reportable offender has previously provided a DNA sample under a corresponding Act.

The Bill also repeals section 490A of the PPRA which requires police to destroy any DNA taken from a reportable offender under CPORA as soon as practicable within 12 months of the conclusion of an offender's reporting period.

The amendments streamline the current provisions relating to the taking and retaining of DNA samples in Queensland.

Taking an offender to a police station for the purpose of giving a written notice

The Bill extends section 60 of CPORA to allow police to take a reportable offender to a police station for the purpose of giving a notice of reporting obligations. The amendment recognises that it is not always practical or appropriate to detain a reportable offender on the roadside or in a busy location to give him or her a notice of reporting obligations that may not be readily available.

Child protection register

The Bill amends section 68 to clarify that a child protection register may be comprised of a number of constituent parts, for example, a document or record maintained by a relative entity exclusively or predominantly for storing information relating to persons who have committed or attempted to commit an offence of a sexual nature.

Evidence certificates

The Bill removes the requirement for police to tender an evidence certificate in court and replaces it with an averment. The Bill modernises section 77 of CPORA to recognise that information stored in a variety of locations form a constituent part of the child protection register.

The Bill reduces regulatory burden on the QPS by removing the requirement to produce a certificate on each occasion an offender is charged for an offence under CPORA.

Entry for the purpose of verifying personal particulars

The Bill amends the PPRA to allow police to enter the residence of a reportable offender for the purposes of verifying information that is required to be reported under CPORA. The amendment strengthens the capacity of police to effectively manage offenders on the NCOS.

The entry provision in the Bill does not authorise police to engage in a search of the residence. Rather, police will be required to rely on the existing search and seizure

provisions under the PPRA if they suspect an offence under CPORA or another indictable offence has been committed.

Alternative ways of achieving policy objectives

The policy objectives cannot be achieved without legislative amendment.

Estimated cost for government implementation

The costs of implementing the proposed amendments will be met within existing QPS budgets.

Consistency with fundamental legislative principles

The Bill has been drafted with due regard to the fundamental legislative principles as outlined in section 4 of the *Legislative Standards Act 1992* (the LSA). Section 4(2) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

Whether the legislation has sufficient regard to the rights and liberties of individuals—s 4(2)(a) LSA

The Bill imposes obligations upon the rights and liberties of reportable offenders. The introduction of periodic (quarterly) reporting increases the number of times a reportable offender will be required to make a report confirming his or her details from annually to four times a year. In addition to periodic (quarterly) reporting the police commissioner will be able to direct a reportable offender to report more frequently than the mandated reporting periods in circumstances where the offender is considered to pose a significant risk to the lives and sexual safety of children.

Periodic (quarterly) reporting gives effect to the government's commitment to impose more stringent reporting for offenders on the NCOS. While there is no option for offenders to decrease their obligation to make a periodic (quarterly) report in a manner directed by the police commissioner, existing and new forms of technology based reporting will reduce the time it takes for an offender to make those reports.

In comparison, more frequent periodic reporting will only operate where an offender is considered to pose a significant risk to the lives or sexual safety of children. Risk is determined through a detailed assessment which includes the person's offending history, the age of the person at commencement of the risk, the relationship status of the person, aggravating factors such as severity of offences, sex offender associations, contact with children, employment and any additional intelligence. The frequency of reporting can be increased or decreased depending on the level of risk at any given time.

A two tiered appeal mechanism will act to safeguard the rights and liberties of reportable offenders. An offender who is aggrieved by a direction to report more frequently can appeal that decision to the police commissioner in the first instance and then to a Magistrates Court.

The initial appeal mechanism is consistent with section 74 of CPORA which allows the police commissioner to review a decision to place an offender on the child protection register.

The parameters of who will be a reportable offender under CPORA are extended to include circumstances where an offender believed his or her victim was a child when the offence was committed. The application will be limited to offences under Schedule 1, paragraph 9.

It is recognised that this amendment will increase the types of sex offenders who will be required to meet a period of reporting obligations under CPORA, however, the fact that certain offenders set out to specifically target children, regardless of whether the actual victim was a child, raises concerns about the safety of children in the community. A decision as to who will be included on the child protection register will be determined by the police commissioner.

Offenders, who are captured under the extended definition of who is a reportable offender, can appeal that decision under section 74 of CPORA.

The Bill increases the circumstances in which a child will become a reportable offender by removing section 210 of the Criminal Code (Indecently dealing with a child under 16 years) as an exclusionary offence. With the exception of section 210 of the Criminal Code, all exclusionary offences relate to child exploitation material.

While all sex offences relating to children are considered heinous, indecently dealing with a child differs from the possession or publication of child exploitation material in that it generally involves direct physical contact with a child.

To safeguard the rights of child offenders, the police commissioner will automatically suspend the reporting obligations (other than an initial report) of those children who do not pose a risk to the lives or sexual safety of children. A suspension offered by the police commissioner will remain in force until such time as the reporting obligations for the child end or the child poses a significant risk to the lives or sexual safety of children in the community. The amendment will not apply retrospectively.

Furthermore, the amendments to the reporting periods under section 36 will reduce the length of time a child will be required to report under CPORA to a minimum of 2 and a half years and a maximum of 7 and a half years.

The Bill also imposes an obligation on reportable offenders to make an initial report at the time of being given a notice of reporting obligations. Approximately 12% of reportable offenders do not make an initial report after receiving a written notice of reporting obligations. It is recognised that the process of making an initial report is time consuming, however if the requisite information is not provided, police have no way of knowing the whereabouts of reportable offenders in the community. The purpose of CPORA requires offenders to keep police informed of their whereabouts and their personal particulars for the duration of their reporting period and cannot be effected unless the initial report is made.

There will be circumstances where it is not reasonably practicable for an offender to make an initial report at the time of receiving a notice of his or her reporting

conditions. In this regard, an offender will be afforded seven days in which he or she can make the report.

Reporting timeframes for travel into and outside of Queensland are significantly reduced in the Bill from 14 or more consecutive days to seven or more consecutive days. Previously a reportable offender could enter Queensland from another jurisdiction or leave Queensland for a period of up to 14 consecutive days without being required to make a report of this travel. In essence an offender could enter Queensland or leave Queensland for 13 consecutive days, return to his or her home jurisdiction for one day and then leave his or her home jurisdiction for another 13 consecutive days and so on without being required to report that leave. This represents a significant and unacceptable window in which an offender can operate before police can act.

The Bill infringes on the rights and liberties of individuals by increasing the personal details that an offender is required to report under the new schedule 2. In this regard, an offender will be required to report the cessation of a general residence, any contact with a child that is not incidental contact, any social networking sites used by the offender (including the passwords), any internet accounts held by the offender (including the passwords) and telephone numbers that are held in the offender's name. These amendments reflect identified gaps in the legislation and recognise the increased ability for offenders to access to children through social media.

Reporting of a cessation of general residence addresses a gap in the legislation that was identified in *Tate v Landis 2012.* In this matter Judge Clare noted '*There is no express requirement to report when an offender leaves a place of general residence with no intention of returning, that is, when the offender moves out for good. There is no express requirement to report the moving out. The only express requirement in relation to a change in living arrangements is to report the acquisition of a new place of general residence. While the stated purpose of the Act is to require currency in the location details of the offender, there is a hole in the express provisions in regards to an offender who leaves stable accommodation and becomes homeless*'.

The purpose of CPORA is to require reportable offenders to keep police informed of their whereabouts until such time as their reporting obligations have ended. The current provisions regarding the reporting of a general residence do not meet the purpose of CPORA. The amendment remedies this gap and increases community safety by ensuring that police know the whereabouts of all reportable offenders at any given time.

The Bill imposes an obligation on an offender to report any communication he or she has with a child if that communication occurs as result of supervising or caring for a child, exchanging contact details with a child, or attempting to befriend a child. The amendment represents an increase in the number and types of contact that must be reported from 3 unsupervised contacts in any year to every contact that falls within the parameters of *reportable contact*.

The Victorian Law Reform Commission identified in its 2011 review of the *Sex Offenders Registration Act* 2004 (Vic) that the current manner of reporting *unsupervised contact* with a child did nothing to *assist in protecting children from potential harm and was unfair to an offender who may face serious penalties for*

either failing to comply with reporting obligations or providing false or misleading information to the police.

Reportable offenders will not have to report incidental contact that occurs naturally through day to day living for example being served by a child in a café or store. However incidental contact that involves an attempt by the offender to befriend, or establish further contact with the child; or occurs with a regularity or frequency, or in a manner, that may reasonably be expected to result in a level of familiarity or trust between the offender and the child, beyond what may reasonably be expected to result from incidental contact, must be reported.

Offenders are currently required to report telephone carriers and internet service providers, however, they are not required to report any passwords or telephone numbers associated with those accounts, or the details of any social networking sites used or intended to use.

Internet and social networking sites such as Facebook, Twitter, Tumblr and Instagram are key communication tools for young people globally. It is not uncommon for young people to establish intense online relationships with people they have never met based on posts, pictures and emails. It is the very nature of young people that places them at risk.

Multiple accounts can be set up anonymously on social networking sites. While these sites are monitored ad hoc for inappropriate content and some do allow members to block other users or restrict access to users, determined offenders are able to use these sites to access young people without leaving their homes or revealing their identity.

In this regard, the imposition on the privacy of offenders who establish and maintain internet and social media accounts, to now have to provide passwords to police for those accounts, does not outweigh the rights of children to communicate safely.

The amendment to section 40A imposes an additional requirement for reportable offenders to provide a sample of DNA if a sample is not held under the PPRA. DNA samples can be taken and retained under the PPRA where a person has been convicted of an indictable offence such as a child sex offence.

The amendment predominately impacts on corresponding reportable offenders. Corresponding reportable offenders have only been required to provide a DNA sample if no sample has been taken in their home jurisdiction. Unfortunately information sharing restrictions across jurisdictions impede access to these samples for the purposes of cross matching.

The impact of this amendment is not far reaching. There are currently only 22 corresponding reportable offenders without a DNA profile in Queensland. However, in terms of child safety, this represents a significant deficiency in the information that is available on the child protection register.

Repealing section 490A of the PPRA infringes on the privacy of reportable offenders who have their DNA taken under section 40A of CPORA. Section 490A currently requires any DNA taken under CPORA to be destroyed within 12 months of an

offender completing a period of reporting. In this regard an offender who has had his or her DNA lawfully taken under CPORA and has had his or her DNA sample destroyed upon completion of a period of reporting, cannot be identified by DNA if he or she commits any further offences. Currently any other type of offender who is found guilty of an indictable offence in Queensland is required to provide a DNA sample to remain as a permanent record under the PPRA.

Finally the Bill allows police to enter the residence of a reportable offender without a warrant for the purposes of confirming any of the details that are required to be reported under CPORA. While there is no restriction on the number of times police can enter the residence, the power will only be effected by police officers who are responsible for the compliance management of reportable offenders.

In circumstances where the offender is renting a room or sharing a house with other people, police will only be authorised to enter the part of the residence where the offender usually resides, this includes the offender's bedroom, front door, entry way and any common area of the residence.

The new power does not authorise a search of an offender's residence based on that entry. Rather police will be required to use the existing provisions of the PPRA to authorise a search of the residence.

Whether the legislation has sufficient regard to rights and liberties of individuals 4(3) LSA

An amendment to section 36, acts in a positive retrospective manner by automatically re-aligning the reporting periods of all reportable offenders. The resultant effect will be that all offenders, other than those reporting for life, will have their reporting periods reduced from eight years and 12 years respectively to five years and 10 years respectively.

Consultation

The following stakeholders provided comment during consultation on the draft Bill:
Government:

- Department of the Premier and Cabinet;
- Department of Queensland Treasury and Trade;
- Department of Justice and Attorney-General;
- Department of Community Safety;
- Department of Health;
- Department of Communities;
- Department of Aboriginal and Torres Strait Island Multicultural Affairs;
- Queensland Police Service; and
- Child Safety and Disability Services.

Non Government:

- Queensland Law Society;
- Queensland Child Safety Legislation Action Network;
- Protect all Children Today;
- Bravehearts;

- Office of the Information Commissioner; and
- Commission for Children and Young People and Child Guardian.

Consistency with legislation of other jurisdictions

The Bill is generally consistent with other Australian jurisdictions. A number of the amendments proposed in the Bill deviate from the previously endorsed National Model Laws. However, in recent times, all Australian jurisdictions have in some way diverged from the original national framework to ensure that individual child sex offender registration schemes remain contemporary.

Divergence from the national framework was noted by the Australian New Zealand Policing Advisory Agencies (ANZPAA) in September 2012, ANZPAA recognised that, at a national level, the emphasis has remained on jurisdictional consistency. In this regard, the amendments proposed in the Bill align, where possible, with proposed or enacted legislation in other Australian jurisdictions and takes into account the 2011 review of the Victorian offender reporting legislation by the Victorian Law Reform Commission.

Notes on provisions

Part 1 Preliminary

1. Short title
Clause 1 states that when enacted the Bill will be cited as the *Child Protection (Offender Reporting) and other Legislation Amendment Act 2014*.

2. Commencement
Clause 2 states that the *Child Protection (Offender Reporting) and other Legislation Amendment Act 2014* commences on a day to be fixed by proclamation.

3. Acts amended
Clause 3 states that *the Child Protection (Offender Reporting) and Other Legislation Amendment Act 2014* amends the *CPORA 2004*.

4. Amendment of s 3 (Purpose of this Act)
Clause 4 amends section 3(2)(c) increasing the obligation on reportable offenders to report their details periodically, under sections 18 and 19 rather than annually.

Clause 4 amends section 3(2)(d) by clarifying the period of reporting under CPORA will be between two and a half years and life, depending on the severity of the offences that have been committed and the age of the reportable offender at the time the offence was committed.

Juvenile child sex offenders are only liable to half the reporting period of adult child sex offenders. Accordingly, the minimum period of two and a half years under section 3(2)(d) reflects the minimum reporting period for juveniles under the Act. The maximum period of life under section 3(2)(d) applies to the maximum reporting periods for adult offenders under the Act.

5. Insertion of new section 4
Clause 5 inserts a new section 4 which operates to suspend an offender's reporting obligations under this Act during a concurrent period of reporting under the DPSOA.

At the conclusion of any concurrent reporting period, a reportable offender will be required to complete the remainder of his or her reporting obligations under this Act.

6. Amendment of s 5 (*Reportable offender* defined)
Clause 6 amends section 5(1) to clarify who is a reportable offender under Act. For the purposes of the Act, a reportable offender is a person deemed to be an existing reportable offender under section 6 of the Act, or is required to meet reporting requirements under a corresponding Act in another jurisdiction under section 7, or is subject to a reporting order under section 13, or is a reportable offender under the provisions of the *Child Protection (Offender Prohibition Order) Act 2008.*

Clause 6 amends section 5(2)(a) and (b) by replacing the reference to class 1 or 2 offences with prescribed offence. A prescribed offence is an offence mentioned in schedule 1 or an offence mentioned in schedule 1, item 9, if the offender believed

that the victim was a child when the offence occurred, or an offence that results in the making of an offender reporting order under section 13.

Clause 6 removes Section 210 Criminal Code from section 5(2)(c)(i) as an exclusionary offence for juvenile child sex offenders.

Clause 6 relocates section 5(4) as it applies to when a person stops being a reportable offender to section 8.

Clause 6 removes the reference to *offences of the same kind* to remove the ambiguity that has previously resulted in the use of this terminology.

7. Replacement of ss 8 and 9

Clause 7 repeals the current section 8 as it applies to a New South Wales reportable offender. A New South Wales reportable offender will be captured within the definition of corresponding reportable offender under section 7 of CPORA.

Clause 7 inserts a new section 8 to define when a person stops being a reportable offender.

For the purposes of section 8 a person stops being a reportable offender when the following happens:

- a person's finding of guilt is quashed or set aside by a court, or
- the person's original sentence for the reportable offence has been reduced or altered so that no conviction was recorded under section 12 of the *Penalties or Sentences Act 1992* or section 183 of the *Youth Justice Act 1992* or a term of imprisonment or supervision order was not invoked; or
- a forensic order made with the reporting order is revoked.

Clause 7 inserts a new section 9 to define a reportable offence. For the purposes of CPORA a reportable offence is an offence mentioned in schedule 1 (a *prescribed offence*), item 9, if the offence is committed in respect to a child or a person the offender believed was a child, a prescribed offence mentioned in schedule 1, or an offence that results in the making of an offender reporting order under section 13.

Clause 7 inserts a new section 9A to clarify when contact with a child is considered to be *reportable contact* and must be reported. Subsection (1) provides that reportable contact occurs where a reportable offender has physical contact with the child, or communicates with the child orally, whether in person, by telephone or over the internet, or communicates with the child in writing (including electronic communication) in circumstances in which the offender is supervising or caring for any child, or exchanging contact details with any child; or attempting to befriend any child.

The new definition of reportable contact replaces the previously used term *unsupervised contact* which was not defined in the Act.

Section 9A(2) provides that incidental contact with a child in the course of the offender's daily life is not required to be reported unless that contact involves an attempt by the offender to befriend, or establish further contact with the child; or occurs with a regularity or frequency, or in a manner, that may reasonably be

expected to result in a level of familiarity or trust between the offender and the child beyond what may reasonably be expected to result from incidental contact.

For the purposes of subsection (2) incidental contact may include where the offender buys a newspaper from a shop where the shop attendant is a child, or where there offender buys takeaway food from a shop that has child employees.

8. Insertion of new s 10A

Clause 8 inserts section 10A to state that the personal details required to be reported by a reportable offender are provided in schedule 2 in schedule 2 of the Act.

9. Amendment of s 12 (Definitions)

Clause 9 relocates the definitions under the CPORA from schedule 3 to schedule 5.

10. Amendment of s 13 (Offender reporting orders)

Clause 10 replaces the reference to a class 1 or class 2 offence in section 13(1)(a) and replaces it with a prescribed offence. A prescribed offence for the purposes of section 13 is an offence that is not a reportable offence under schedule 1.

Section 13(2)(b) limits the application of prescribed offences that are child abduction offences to non-familial circumstances. A child abduction offence under section 13 is an offence against section 354 of the Criminal Code involving the kidnapping of a child or sections 363 or 363A of the Criminal Code.

Clause 10 amends section 13(4) to clarify that a court may only make a reporting order under section 13 if the court imposes a sentence for an offence that is not a prescribed offence under schedule 1 offence and records a conviction for that offence.

Clause 10 inserts a new subsection 5A to allow an application for a reporting order to be made within six months after the court imposes a sentence for an offence or within six months after a court makes a forensic order in relation to an offence.

Clause 10 amends section 13(10) to clarify that if a reporting order is made in relation to an offence, the offender is taken to have been found guilty of a prescribed offence under schedule 1.

Clause 10 amends section 13(11) by replacing the definition of *prescribed offence* with *child abduction offence. Child abduction offence* means an offence against section 354 of the Criminal Code involving the kidnapping of a child or sections 363 or 363A of the Criminal Code.

11. Replacement of ss 14-19

Clause 11 replaces sections 14 to 19

Clause 11 omits section 14 and inserts a new section 14 to state when an offender must make an initial report under CPORA. Section 14(1) states that section 14 applies to an offender mentioned in schedule 3. Under schedule 3 an offender must make an initial report within seven days after a prescribed event occurring, for example, when an offender is released from government detention.

Section 14(2) places an obligation on a reportable offender to make an initial report at the time of receiving a notice of his or her reporting obligations under section 54(5) of the Act.

Section 14(3) provides a period of up to seven days for an initial report to be made if it is not reasonably practicable for a reportable offender to make the initial report when a notice of reporting obligations is received. For example, the offender may have a pre-arranged doctor's appointment or job interview. The circumstances of each particular case will be taken into consideration at the time the notice is given.

Similarly, if an offender intends to leave Queensland before the end of the seven day period, he or she must make an initial report prior to leaving Queensland.

Section 14(4) requires a reportable offender to make an initial report within the period stated in schedule 3 where a written notice of reporting obligations has not been received by the offender. Where more than one circumstance mentioned in schedule 3 applies to the offender, the offender must make his or her initial report within the shortest of the times mentioned.

An offender who intends to leave Queensland prior to the conclusion of the period allowed under schedule must make the initial report before leaving Queensland.

Section 14(5) clarifies that the requirement to report within seven days does not apply to an offender who enters Queensland from another jurisdiction if the offender remains for less than seven consecutive days.

Section 14(6) states that offender who is due to commence a new period of reporting while outside of Queensland must make a new initial report within seven days of entering and remaining in Queensland for seven or more consecutive days.

Clause 11 omits section 15 and inserts a new section 15 which allows information, given to the police commissioner by the chief executive corrective services, about an offender in government detention is to be considered an initial report.

Section 15(2) allows the chief executive, corrective services to give the police commissioner the name, date of birth and residential address of an offender who is in government detention.

Section 15 (3) states that the personal information given to the police commissioner under subsection (2) is to be considered an initial report.

Clause 11 amends section 15(4) to clarify that the information given by the chief executive, corrective services to the police commissioner does not affect an offender's reporting obligations under section 14 which requires an offender to report his or her personal particulars to the police commissioner within seven days of release from government detention.

Clause 11 relocates the content of section 16, which provides a list of personal particulars that are required to be reported to schedule 2.

Clause 11 inserts a new section 16 which details the obligations of a person who is required to report under a corresponding Act.

Section 16(1) states that a person who is or has been required to report to a corresponding registrar (other than a protected witness) is required to make a report of their entry into Queensland if they have not previously complied with the reporting obligation imposed under section 16.

Section 16(2) requires offenders from other jurisdictions to contact a nominated person in Queensland within seven days of entering and remaining in Queensland. A nominated person is the Child Protection Offender Registrar. Contact may be made by telephone or in another way under the *Child Protection (Offender Reporting) Regulation 2004*. Another way in which a corresponding offender can report is by email or facsimile.

Section 16(3) requires the police commissioner to ensure that the details of the nominated person are available to a corresponding reportable offender by contacting any police station in Queensland.

Section 16(4) states that the nominated person must tell the person if he or she is a reportable offender in Queensland and any reporting obligations the person has under CPORA.

Section 16(5) creates a defence for failing to report under section 16. A person does not commit an offence under section 50 of CPORA if the person is not a reportable offender under the Act, or could not have reasonably have been expected to have known that he or she was required to report under this Act, or does not remain in Queensland for 7 or more consecutive days; or has made an initial report under section 14.

An offender is not considered to be a reportable offender under this Act if the offence was not committed against or in relation to a child.

Section 16(6) defines the term *nominate person* to mean a person who has been nominated by the police commissioner as a contact person for the purposes of making a report. A nominated person may include the Child Protection Registrar, or an officer attached to a Child Protection Investigation Unit.

Division 2 Ongoing reporting obligations

Subdivision 1 Preliminary

Clause 11 omits section 17 and inserts a new section 17.

The new section 17 states that division 2 applies to a reportable offender who has made an initial report under section 14.

Subdivision 2 Periodic reporting

Clause 11 omits section 18 and inserts a new section 18 which sets the parameters for periodic reporting.

Section 18(1) requires a reportable offender to make a *periodic report* to the police commissioner until his or her reporting period ends. A periodic report under section 18 is made in February, May, August and November of each year.

Section 18(2) clarifies that an offender has had his or her reporting obligations suspended under section 4 or divisions 4, 6 and 10 is not required to make a periodic report.

Section 18(3) states that a reportable offender can make a periodic report by simply confirming the correctness of the details that have previously been reported and that those details have not changed since the offender made the last report under schedule 2.

Clause 11 omits section 19 and inserts a new section 19 which provides when a reportable offender must make a periodic report under section 18.

Section 19(1) requires a reportable offender to make a periodic report in each reporting month, starting in the first reporting month after an initial report is made under section 14. For example, if an offender makes his or her initial report in January, the offender will be required to make a periodic report in February.

Section 19(2) states the police commissioner may require a reportable offender to report more frequently than the mandated reporting times, if the commissioner is reasonably satisfied it is necessary to protect the lives or sexual safety of children.

Section 19(3) requires the police commissioner to give an offender, subject to an increased period of reporting under subsection (2), a notice stating when the offender is required to make a report.

Section 19(4) states that the notice of periodic reporting replaces any notice of reporting obligations that has previously been given to a reportable offender by the police commissioner.

Section 19(5) declares that a notice of periodic reporting remains in place until such time as the offender's reporting period under section 36 ends or the police commissioner varies the offender's reporting obligations.

Subdivision 3 Reporting change in personal details

Clause 11 inserts section 19A to clarify when a reportable offender must report any change in personal details.

Section 19A(1)(a) requires a reportable offender to report any reportable contact with a child within 24 hours after the contact has occurred.

Section 19A(1)(b) requires a reportable offender who is in government detention for at least seven days to report that detention within seven days after release. If after

release the reportable offender intends to leave Queensland, he or she must report that stay in government detention prior to leaving Queensland.

Section 19A(1)(c) requires a reportable offender to report any other changes to his or her personal details within seven days of the change happening or if the reportable offender intends to leave Queensland, prior to leaving.

Changes that occur to an offender's personal details while he or she is outside of Queensland must be reported within seven days of returning to Queensland for seven or more consecutive days under section 19A(2).

Clause 11 states that section 19A(2) does not apply to a protected witness.

Section 19A(3) provides that a reportable offender who has made a statement to the police commissioner stating that he or she does not intend to return to Queensland is not required to report any changes unless the offender returns to Queensland or decides not to leave Queensland.

Section 19A(4) allows the obligations under section 19 to apply in addition to any other reporting obligations imposed on the offender under CPORA.

Subdivision 4 Other reports

12. Amendment of s 20 (Intended absence from Queensland to be reported)
Clause 12 reduces the timeframes in which an offender can report an intention to leave Queensland under section 20(1)(a) from 14 days to seven days.

13. Amendment of s 21 (Change of travel plans while out of Queensland to be given)
Clause 13 amends section 21(1)(a) by reducing the time in which an offender can extend a stay outside of Queensland without being required to report that change from beyond 13 days to beyond seven days.

14. Amendment of s 22 (Reportable offender to report return to Queensland or decision not to leave)
Clause 14 amends section 22(2) by reducing the time in which an offender is required to report a return to Queensland to within seven days after entering or remaining in Queensland for seven or more consecutive days.

Clause 14 amends section 22(4) by reducing the time in which a reportable offender must report a decision not to leave Queensland to the police commissioner to within seven days after making the decision.

15. Amendment of s 23 (Report of other absences from Queensland)
Clause 15 amends section 23 requiring a reportable offender to report an intention to travel within Australia on average of at least once a month irrespective of the length of the absence.

Clause 15 removes the words '*at the time of making a report under this division*' in section 23(1) which extends the obligation on a reportable offender to report regular

travel outside of Queensland at any time rather than when an offender makes a report under division 2.

Clause 15 replaces section 23(2) which requires a reportable offender to make a report of the expected frequency, destination and reasons of any regular travel outside of Queensland including whether the offender expects to have reportable contact with a child while travelling.

Clause 15 inserts section 23(3) requiring a reportable offender to make a report of his or her intended travel within seven days but not less than 24 hours before the offender first travels.

Clause 15 inserts section 23(4) requiring a reportable offender to report any change in the travel information provided to the police commissioner. If the change happens while the offender is outside of Queensland, the change must be reported within seven days after the offender returns to Queensland. Otherwise, any change must be reported within 7 days prior to leaving Queensland.

Where a change in travel details relates to reportable contact with a child, that change must be reported within 24 hours after the change happens regardless of whether the offender is outside of Queensland.

16. Amendment of s 26 (How reports must be made)

Clause 16 replaces section 26(1) requiring a reportable offender to make an initial report in person and each periodic report in the way stated by the police commissioner in a written notice given to an offender under section 54(5).

Clause 16 replaces section 26(3) and allows a police officer or a person authorised by the commissioner to receive a report made by a reportable offender.

17. Amendment of s 34 (Suspension and extension of reporting obligations)

Clause 17 inserts section 34(d) which suspends a reportable offender's reporting obligations for the period during which the offender is subject of a decision made by the police commissioner under division 10. Division 10 allows the police commissioner to suspend an offender's reporting obligations in circumstances where an offender is unable to report due a significant physical or cognitive impairment or where the offender was a child when the offence that makes him or her a reportable offender was committed.

Clause 17 inserts a note after section 34(d) which re-directs to section 67J(5) for the details of the effect of a decision of a Magistrates Court on an appeal of a decision by the police commissioner under division 10.

18. Amendment of s 35 (When reporting obligations begin)

Clause 18 inserts section 35(1A) clarifies that a period of reporting commences regardless of whether the offender is currently complying with a period of reporting in relation to another reportable offence.

19. Amendment of s 36 (Length of reporting period)
Clause 19 replaces sections 36(1) and (2) to realign the reporting periods of all reportable offenders.

Section 36(1)(a) requires a reportable offender, who has ever been found guilty of 1 or more reportable offences to comply with reporting obligations for five years.

Section 36(1)(b) requires a reportable offender to comply with reporting obligations for 10 years if the offender has ever been found guilty of a reportable offence and after being given a notice of reporting obligations under CPORA or a corresponding Act, commits and is found guilty of a single reportable offence. In circumstances where a reportable offender commits more than one reportable offence, the offender will bypass the 10 year reporting period and be required to meet reporting obligations for the remainder of his or her life.

Section 36(1)(c) requires a reportable offender to comply with reporting obligations for the remainder of the his or her life, if the offender has ever been found guilty of a reportable offence and after being given a notice of reporting obligations, commits and is found guilty of more than one single further reportable offence.

Subsections (2) and (2A) clarify that subsections (1)(b) and (c) apply if the offender's period of reporting has ended prior to committing and being found guilty of a further reportable offence.

Clause 19 replaces the words *the commencement of subsection (1)* under section 36(3) 1 January 2005 clarifying that the reporting periods under subsection 1 apply to an offence that occurred before the commencement of CPORA.

20. Amendment of s 37 (Reduced period applies for juvenile reportable offenders)
Clause 20 amends the heading of section 37 by replacing the word 'juvenile' with the word 'child' to reflect contemporary drafting practices.

21. Omission of s 40 (Reporting period for New South Wales reportable offender)
Clause 21 omits section 40 in relation to reporting periods for New South Wales reportable offenders. A reference to a New South Wales reportable offender is a reference to a corresponding reportable offender under section 5.

22. Replacement of s 40A (Allowing DNA sample to be taken)
Clause 22 replaces section 40A and clarifies when a reportable offender is required to provide a sample of DNA under the Act.

Section 40A allows a DNA sample to be taken from any reportable offender, if a sample is not currently held under the PPRA. A reportable offender must comply with a written notice requiring the offender to attend at a stated time and place for a DNA sampler to be taken for analysis.

Subsection (3) provides the part of the PPRA that applies to section 40A, that is Chapter 17, Part 5.

Subsection (4) states that the terms *DNA sample* and *DNA sampler* to have the meaning provided under schedule 6 of the PPRA.

23. Amendment of s 54 (Notice to be given to reportable offender)
Clause 23 amends section 54(4)(b) by replacing the reference to '*section 59'* with subsection (5), to recognise the amalgamation of section 54 with section 59.

Clause 23 replaces subsection (5) allowing the police commissioner to give a reportable offender a written notice of his or her reporting obligations and the consequences for failing to comply with those reporting obligations at any time. The amendment allows section 54 to apply to any notice given to a reportable offender under the Act.

Clause 23 amends subsection (6) by removing the words *'the notice'* as it applies to a reportable offender's notice of reporting obligations and replaces it '*a notice given under this section'*. The amendment differentiates between a notice given under section 54 and a notice of periodic reporting given under section 18.

24. Omission of s 59 (Notices may be given by police commissioner)
Clause 24 omits section 59 as a result of its amalgamation with section 54.

25. Amendment of s 60 (Power of detention to enable notice to be given)
Clause 25 replaces section 60(4) to allow police, who have detained an offender under section 60(2) to transport that offender to the nearest police station for the purpose of establishing whether or not a person is a reportable offender and/or is aware of his or her reporting obligations, or to enable the person to be given a notice of reporting obligations.

A person who has been detained under subsection (4) must not be held for longer than is reasonably necessary and not because the person has refused to sign an acknowledgment that the person has been given notice of the person's reporting obligations.

Subsection (4) requires that a person who has been detained under section 60(2) must be released immediately after the purpose of the detention has been satisfied.

26. Amendment of s 67 (Modification of reporting obligations)
Clause 26 amends which sections of CPORA apply to a protected witness under section 67. In this regard a reference to Queensland under sections 20 to 23, 53 and schedule 2 of CPORA is to be taken to be a reference to the jurisdiction where a reportable offender, who is a protected witness under division 9, generally resides.

Division 10 Police commissioner may suspend reporting

27. Insertion of new pt 4, div 10 and pt 4A
Clause 27 inserts new part 4, division 10 and sections 67A – 67 F to allow the police commissioner to suspend reporting obligations for particular reportable offenders.

Section 67A allows division 10 to apply to a reportable offender who was a child at the time he or she committed an offence or a reportable offender who has a cognitive or physical impairment.

Clause 27 inserts section 67B which places an obligation on the police commissioner to give a copy of a notice of suspension issued under division 10 to the parent or legal guardian, if a reportable offender is a child, or if a reportable offender person has a legal guardian appointed, the offender's legal guardian.

Clause 27 inserts section 67C(1) which allows the police commissioner to suspend the reporting obligations of a relevant reportable offender if reasonably satisfied that the offender does not pose a risk to the lives or safety of children. If the reportable offender has a cognitive or physical impairment, the police commissioner may only suspend that offender's reporting obligations if the impairment is a significant impairment.

A decision to suspend a reportable offender's reporting obligations under section 67 may be made on the police commissioner's own initiative

Subsection (2) requires the police commissioner to give the reportable offender a written notice of the suspension as soon as reasonably practicable.

Subsection (3) states the suspension is to take effect when the police commissioner has given the notice to the reportable offender.

Clause 27 inserts section 67D(1) to allow a reportable offender whose reporting obligations have not been suspended under section 67C to apply to the police commissioner in writing to have his or her reporting obligations suspended.

Subsection (2) provides that if the reportable offender is a child or an adult for whom a legal guardian has been appointed, the offender's parent or guardian may apply for the offender.

Subsection (3) clarifies that the reportable offender's reporting obligations are not suspended only because an application is made under subsection (2).

Subsection (4) requires the police commissioner to decide whether to grant or refuse the application as soon as reasonably practicable after receiving it.

Subsection (5) allows the police commissioner to grant an application under subsection (2) only if satisfied on reasonable grounds that the reportable offender does not pose a risk to the lives or sexual safety of children and if the offender has a cognitive or physical impairment – the impairment is significant impairment.

Subsection (6) requires the police commissioner to give the reportable offender a written notice of a decision to grant or refuse an application for suspension as soon as reasonably practicable.

Subsection (7) states that a suspension of reporting obligations takes effect when the police commissioner gives the notice to the reportable offender.

Clause 27 inserts section 67E - Effect of suspension. This section provides that while a suspension granted under this division is in force, the reportable offender is not required to make any report under CPORA with the exception of an initial report.

Clause 27 inserts section 67F which allows the police commissioner to revoke a suspension made under section 67C.

Subsection (1) allows a suspension to be revoked by the police commissioner if the police commissioner believes on reasonable grounds that the offender poses of may pose a risk to the lives or safety of children or if the offender has a cognitive or physical impairment - the impairment is not, or is no longer, a significant impairment.

Subsection (2) places a requirement on the police commissioner to give a written notice of the revocation of suspension to the reportable offender as soon as reasonably practicable.

Subsection (3) states that the revocation of suspension takes effect when police commissioner gives the notice to the reportable offender.

Part 4A Reviews and appeals

Clause 28 inserts part 4A to allow decisions made under division 10 to be reviewed and appealed. Review and appeal provisions for decisions made under sections 64 and 74 of CPORA are provided under those sections.

Division 1 Preliminary

Clause 28 inserts section 67G which states that Part 4A applies if a reportable offender is dissatisfied with a decision mentioned in schedule 4.

Division 2 Internal review

Clause 28 inserts section 67H allowing a reportable offender who is affected by a decision mentioned in schedule 4 to make an application to the police commissioner for an internal review of that decision.

Subsection (1) allows a reportable offender to make an application to the police commissioner for a review of a decision mentioned in schedule 4.

Subsection (2) states that an application for an internal review of a decision mentioned in schedule 4 must be in writing stating the grounds on which the offender seeks the review and must be made within 28 days after the offender received written notice of the decision. The time period for making an application under subsection (2) may be extended by the police commissioner at any time.

Clause 28 inserts section 67I which places a requirement on the police commissioner to review a decision made under sections 19, 67C, 67D or 67F as soon as reasonably practicable after receiving an application for internal review. The

police commissioner must review the decision and decide to confirm the decision or amend the decision or substitute another decision for the decision.

Subsection (2) states that the application must not be decided by a person who made the original decision, or a person less senior than the person who made the original decision.

Subsection (3) provides that a decision made under subsection (2) applies, despite section 27A of the *Acts Interpretation Act 1954* and does not apply to a decision made by the police commissioner.

Subsection (4) states that a decision by the police commissioner to confirm or amend the decision, that decision, or amended decision, is taken to be the police commissioner's decision for the purpose of an appeal to a Magistrates Court under division 3.

Subsection (5) requires the police commissioner to give a written notice of a review decision made under subsection (1) to the reportable offender. A written notice must state the decision on the review, the reason for the decision and the reportable offender's right to appeal that decision to a Magistrates Court within 28 days after the day written notice of the police commissioner's decision is given to the offender.

Subsection (6) states that if the police commissioner does not give a written notice of the review decision to the reportable offender within 10 business days after making the decision, the police commissioner is taken to have confirmed the review decision.

Division 3 Appeals to Magistrates Court

Clause 27 inserts section 67J to allow a reportable offender to appeal a decision made under section 67I.

Section 67J(1) states that a reportable offender must file a notice of appeal with a Magistrates Court within 28 days after day the offender receives or ought to have received a notice of a decision under section 67I, or, if the Court extends the time for filing the notice of appeal, the time allowed by the court.

Subsection (2) requires the offender to serve a copy of the notice of appeal on the police commissioner

Subsection (3) states that the procedure for an appeal under this part must be in accordance with the rules of court applicable to the appeal.

Subsection (4) allows a Magistrates Court to decide an appeal of a decision made under section 67I by, confirming, amending, or setting aside the review decision and substituting another decision.

Subsection (5) provides that the decision of the Magistrates Court is taken to be the decision of the police commissioner for the purpose of this CPORA, other than Part 4A.

Subsection (6) states that a Magistrates Court must not award costs in relation to an appeal under this part.

28. Amendment of s 68 (Child protection register)
Clause 28 replaces the reference to *class 1 or 2* offence under subsection (2)(b) with *prescribed offence.* Class 1 and class 2 offences have been replaced under CPORA with a single schedule of offences.
A prescribed offence is an offence that makes a person a reportable offender under CPORA.

Clause 28 inserts subsection (3) to clarify that the child protection register established under section 68(1) may comprise of a number of constituent parts, including, for example, a part held by any of the following entities, the Queensland Police Service, the police service of another state, the Australian Federal Police, the CrimTrac Agency established under the *Public Service Act 1999* (Cwlth) section 65, another entity or agency of the Commonwealth or a State prescribed by a regulation.

28A. Amendment of s 74 (Review about entry on register)
Clause 28A replaces section 74(1) and extends the parameters of when a decision about an entry on the register can be reviewed. A decision about an entry on the register can be reviewed if a person on the register believes he or she has been entered onto the register in error, or if the person has been placed on the register as a consequence of a decision made under section 9(a)(ii) or an error has been made calculating the length of a person's reporting period.

29. Replacement of s 77 (Evidentiary provisions)
Clause 29 replaces section 77(1) and (2) to remove an obligation for police to tender an evidence certificate for a proceeding under CPORA. Rather, information presented to a Court that on a particular date, the child protection register contained particular information or the child protection register indicated that during a particular period a specified person failed to notify information required to be reported under CPORA, will be taken as evidence of the stated matters.

Clause 29 renumbers subsection (3) as subsection (2).

30. Insertion of new pt 7, div 3
Clause 30 inserts a new part 7, division 3.

Division 3 Transitional provisions for Child Protection (Offender Reporting) and Other Legislation Amendment Act 2014

Clause 30 inserts section 83 which provides definitions for division 3.

amending Act means the *Child Protection (Offender Reporting) and Other Legislation Amendment Act 2014.*

commencement means the time of commencement of the provision in which the term *commencement* appears.

pre-amended Act means the *Child Protection (Offender Reporting) Act 2004* as in force immediately before its amendment by the amending Act.

Clause 30 inserts section 84 to clarify that the removal of section 210 of the Criminal Code under section 5 of CPORA does not act retrospectively.

Clause 30 inserts section 85 to clarify that a New South Wales reportable offender is taken to be a corresponding reportable offender upon the commencement of the *Child Protection (Offender Reporting) and Other Legislation Amendment Act 2004* until the remaining reporting period ends or the person otherwise stops being a reportable offender.

Clause 30 inserts section 86 which clarifies when periodic reporting will commence.

Subsection (1) states that section 86 applies to a reportable offender who has made an annual report for 2014 before the commencement of the *Child Protection (Offender Reporting) and Other Legislation Amendment Act 2014*.

Subsection (2) requires a reportable offender to commence making periodic reports under section 19 at the time stated in a notice given to the reportable offender by the police commissioner under section 19(3). If the commissioner does not give the reportable offender a notice under section 19(3), the offender must commence making a period report on the anniversary date an initial report was made under section 14, if the anniversary date is a reporting month, or the next reporting month if the anniversary date an initial report was made under section 14 does not fall in a reporting month.

An example in section 87 to provide clarity as to when periodic reporting will commence – A reportable offender makes an annual report in March 2014. If the *Child Protection (Offender Reporting) and Other Legislation Amendment Act 2004* commences in April 2014, the offender must commence making periodic reports in May 2015.

Clause 30 inserts section 87 to allow section 77, as it applies to the tendering of evidence certificates, to continue to apply to a proceeding that commenced prior to the commencement of the *Child Protection (Offender Reporting) and Other Legislation Amendment Act 2004*.

31. Replacement of schedules 1 and 2

Clause 31 replaces schedules 1 and 2.

Clause 31 amalgamates the offences listed in schedules 1 and 2 into one schedule of offences - prescribed offences. Schedule 1 is a list of offences that are considered to be reportable offences under CPORA.

Clause 31 replaces the class 2 offences listed in schedule 2 with the personal details a reportable offender must report under the CPORA.

Clause 31 relocates the table of when a reportable offender must make an initial report from section 14 to schedule 2A. The table sets out the periods within which an initial report must be made for the prescribed circumstance.

Clause 31 inserts schedule 2B which provides a list of reviewable decisions for Part 4A.

32. Amendment of sch 3 (Dictionary)
Clause 32 amends schedule 3 (Dictionary) to include new terms as a consequence of the *Child Protection (Offender Reporting) Act 2014*.

33. Renumbering of schedules 2A-3
Clause 33 is a machinery provision and renumbers schedules 2A to 3 as schedules 3 to 5.

Part 3 Minor and consequential amendments

34. Minor and consequential amendments

Schedule 1 Minor and consequential amendments
Clause 34 inserts a schedule of amendments to other Act as a result of the *Child Protection (Offender Reporting) and Other Legislation Amendment Act 2014*.

Commission for Children and Young People and Child Guardian Act 2000
1. Section 167(1)(f) 'class 1 offence or a class 2 offence is removed and replaced with 'reportable offence'.

Disability Services Act 2006
1. Section 79(1)(f) 'class 1 offence or a class 2 offence is removed and replaced with the term 'reportable offence'.

Police Powers and Responsibilities Act 2000

1. Insert new section 21A

21A Power to enter for Child Protection (Offender Reporting) Act 2004
New section 21A(1) allows a police officer to enter the premises, where a reportable offender generally resides for the purpose of verifying the personal details a reportable offender is required to report under the CPORA.

Subsection (2) defines the following terms used in section 21A:
generally reside, for a reportable offender, is defined under schedule 5 of the CPORA,
personal details, for a reportable offender, are defined under schedule 5 of the CPORA.
premises does not include a part of the premises used exclusively by a person other than the reportable offender.
2. Section 490A
Section 490(A) which requires the destruction of a DNA sample taken under CPORA to be destroyed after a period of reporting ends, is repealed.