

Queensland



**SEXUAL OFFENCES  
(PROTECTION OF  
CHILDREN) AMENDMENT  
BILL 2002**



Queensland



**SEXUAL OFFENCES (PROTECTION OF CHILDREN) AMENDMENT BILL 2002**

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**2002**

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**A BILL**

**FOR**

**An Act to amend the criminal law, and for other purposes**

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**The Parliament of Queensland enacts—** 1

**PART 1—PRELIMINARY** 2

**Clause 1 Short title** 3

This Act may be cited as the *Sexual Offences (Protection of Children) Amendment Bill 2002*. 4  
5

**Clause 2 Commencement** 6

This Act commences on a day to be fixed by proclamation. 7

**PART 2—AMENDMENT OF CORRECTIVE SERVICES  
ACT 2000** 8  
9

**Clause 3 Act amended in pt 2** 10

This part amends the *Corrective Services Act 2000*. 11

**Clause 4 Insertion of new s 132A** 12

Chapter 5, part 1, before section 133— 13

*insert—* 14

**‘132A Definitions for pt 1** 15

‘In this part— 16

**“prescribed prisoner”** means a prisoner who is serving a sentence for an 17  
offence of a sexual nature in relation to a child under the age of 18  
16 years. 19

**“reporting period”**, for a prescribed prisoner, means a period not 20  
extending past the end of the prisoner’s period of imprisonment.’. 21

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|                 |  |    |
|-----------------|--|----|
| <b>Clause 5</b> | <b>Amendment of s 142 (Conditions for release to work orders)</b>  | 1  |
|                 | (1) Section 142(1), after ‘include’—   | 2  |
|                 | <i>insert—</i>   | 3  |
|                 | ‘any of the following conditions’.   | 4  |
|                 | (2) Section 142(1)(a)(iii), ‘or’—  | 5  |
|                 | <i>omit.</i>   | 6  |
|                 | (3) Section 142(2)—  | 7  |
|                 | <i>renumber</i> as section 142(5).   | 8  |
|                 | (4) Section 142—   | 9  |
|                 | <i>insert—</i>   | 10 |
|                 | ‘(2) Without limiting subsection (1), a release to work order for a prescribed prisoner, must include a condition requiring the prisoner to report the prisoner’s name, address and employment details—        | 11 |
|                 |  | 12 |
|                 |  | 13 |
|                 | (a) within 48 hours of the prisoner’s release, to the officer in charge of a police station decided by the corrective services officer supervising the prisoner; and   | 14 |
|                 |  | 15 |
|                 |  | 16 |
|                 | (b) at a frequency and for a reporting period, decided by the corrections board, to the officer in charge of a police station decided by the corrective services officer supervising the prisoner.             | 17 |
|                 |  | 18 |
|                 |  | 19 |
|                 |  | 20 |
|                 | ‘(3) For subsection (2), the prescribed prisoner must report to the officer in charge—   | 21 |
|                 |  | 22 |
|                 | (a) personally; or   | 23 |
|                 | (b) with the consent of the officer in charge given before the report is required to be made—by telephone or in another way.   | 24 |
|                 |  | 25 |
|                 | ‘(4) For subsection (3)(b), the officer in charge may consent to the prescribed prisoner reporting other than personally only if the prisoner is ill or has another good reason for not reporting personally.’ | 26 |
|                 |  | 27 |
|                 |  | 28 |
| <b>Clause 6</b> | <b>Amendment of s 143 (Conditions for home detention orders)</b>   | 29 |
|                 | (1) Section 143(1), after ‘include’—   | 30 |
|                 | <i>insert—</i>   | 31 |

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|   |                      |
|---|----------------------|
| ‘any of the following conditions’.  | 1                    |
| (2) Section 143(1)(a)(ii), ‘and’—   | 2                    |
| <i>omit.</i>  | 3                    |
| (3) Section 143(3)—   | 4                    |
| <i>renumber</i> as section 143(6).  | 5                    |
| (4) Section 143—  | 6                    |
| <i>insert—</i>  | 7                    |
| ‘(3) Without limiting subsection (1), a home detention order for a prescribed prisoner must include a condition requiring the prisoner to report the prisoner’s name, address and employment details—           | 8<br>9<br>10         |
| (a) within 48 hours of the prisoner’s release, to the officer in charge of a police station decided by the corrective services officer supervising the prisoner; and  | 11<br>12<br>13       |
| (b) at a frequency and for a reporting period, decided by the corrections board, to the officer in charge of a police station decided by the corrective services officer supervising the prisoner.              | 14<br>15<br>16<br>17 |
| ‘(4) For subsection (3), the prescribed prisoner must report to the officer in charge—  | 18<br>19             |
| (a) personally; or  | 20                   |
| (b) with the consent of the officer in charge given before the report is required to be made—by telephone or in another way.  | 21<br>22             |
| ‘(5) For subsection (4)(b), the officer in charge may consent to the prescribed prisoner reporting other than personally only if the prisoner is ill or has another good reason for not reporting personally.’. | 23<br>24<br>25       |
| <b>Clause 7 Amendment of s 144 (Conditions for parole orders)</b>   | 26                   |
| (1) Section 144(2) to (4)—  | 27                   |
| <i>renumber</i> as section 144(5) to (7).   | 28                   |
| (2) Section 144—  | 29                   |
| <i>insert—</i>  | 30                   |



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- ‘(2) Without limiting subsection (1), a parole order for a prescribed prisoner must include a condition requiring the prisoner to report the prisoner’s name, address and employment details—
- (a) within 48 hours of the prisoner’s release, to the officer in charge of a police station decided by the corrective services officer; and
  - (b) at a frequency and for a reporting period, decided by the corrections board, to the officer in charge of a police station decided by the corrective services officer.
- ‘(3) For subsection (2), the prescribed prisoner must report to the officer in charge—
- (a) personally; or
  - (b) with the consent of the officer in charge given before the report is required to be made—by telephone or in another way.
- ‘(4) For subsection (3)(b), the officer in charge may consent to the prescribed prisoner reporting other than personally only if the prisoner is ill or has another good reason for not reporting personally.’.

**Clause 8 Insertion of new ss 144A and 144B** 17

After section 144— 18

*insert—* 19

**‘144A Commissioner to be advised about release of prescribed prisoner** 20  
21

‘A corrections board must, as soon as practicable after a prescribed prisoner is released under a post-prison community based release order made after the commencement of this section, give the commissioner— 22  
23  
24

- (a) a copy of the order for the prisoner; and 25
- (b) information about the prisoner’s name and address. 26

**‘144B Officer in charge to advise if prescribed prisoner fails to report** 27

‘(1) This section applies if, without reasonable excuse, a prescribed prisoner released under a post-prison community based release order made after the commencement of section 144A fails to report to the officer in charge of a police station as required by the prisoner’s order. 28  
29  
30  
31

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‘(2) The officer in charge of the police station must, as soon as practicable after the officer becomes aware of the failure to report, advise the corrective services officer supervising the prisoner of the failure.’.

- Clause 9 Replacement of ch 7, pt 1 hdg (Continuation of Regional Boards)** 4  
 Chapter 7, part 1, heading— 5  
*omit, insert—* 6  
**‘PART 1—TRANSITIONAL PROVISIONS FOR ACT  
 NO. 63 OF 2000** 7  
*‘Division 1—Continuation of Regional Boards’.* 9
- Clause 10 Renumbering of ch 7, pts 2 and 3** 10  
 Chapter 7, parts 2 and 3— 11  
*renumber* as Chapter 7, part 1, divisions 2 and 3. 12
- Clause 11 Amendment of s 256 (Conditions of continuing appointments)** 13  
 Section 256, ‘part’— 14  
*omit, insert—* 15  
 ‘division’. 16
- Clause 12 Insertion of new ch 7, pt 2** 17  
 Chapter 7— 18  
*insert—* 19

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**‘PART 2—TRANSITIONAL PROVISION FOR SEXUAL  
OFFENCES (PROTECTION OF CHILDREN)  
AMENDMENT ACT 2002**

**‘274A Post-prison community based release orders**

‘(1) A condition that must be included in a relevant release order for a prescribed prisoner under section 142(2), 143(3) and 144(2) must be included for each order made after the commencement of this section.

‘(2) Subsection (1) applies for a relevant release order regardless of when the application for the order was made and despite any expectation a prisoner may have not to be subject to the condition.

‘(3) In this section—

“**relevant release order**” means a release to work order, a home detention order or a parole order.’.

**Clause 13 Amendment of sch 3 (Dictionary)**

Schedule 3—

*insert—*

‘**“prescribed prisoner”** for chapter 5, part 1,<sup>1</sup> see section 132A.

“**reporting period**” for chapter 5, part 1,<sup>2</sup> see section 132A.’.

**PART 3—AMENDMENT OF CRIMINAL CODE**

**Clause 14 Code amended in pt 3**

This part amends the Criminal Code.

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1 Chapter 5 (Post-prison community based release), part 1 (Orders)

2 Chapter 5 (Post-prison community based release), part 1 (Orders)

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|                  |  |    |
|------------------|--|----|
| <b>Clause 15</b> | <b>Amendment of s 210 (Indecent treatment of children under 16)</b>  | 1  |
|                  | (1) Section 210(2), ‘10’—  | 2  |
|                  | <i>omit, insert—</i>   | 3  |
|                  | ‘14’.  | 4  |
|                  | (2) Section 210(3) and (4), ‘14’—  | 5  |
|                  | <i>omit, insert—</i>   | 6  |
|                  | ‘20’.  | 7  |
| <br>             |  |    |
| <b>Clause 16</b> | <b>Amendment of s 218 (Procuring sexual acts by coercion etc.)</b>   | 8  |
|                  | Section 218(3)—  | 9  |
|                  | <i>omit, insert—</i>   | 10 |
|                  | ‘(3) Subsection (2) is not limited to sexual intercourse or acts involving physical contact.’.   | 11 |
|                  |  | 12 |
| <br>             |  |    |
| <b>Clause 17</b> | <b>Insertion of new s 218A</b>   | 13 |
|                  | After section 218—   | 14 |
|                  | <i>insert—</i>   | 15 |
|                  | <b>‘218A Using internet etc. to procure children under 16</b>  | 16 |
|                  | ‘(1) Any adult who uses electronic communication with intent to—   | 17 |
|                  | (a) procure a person under the age of 16 years, or a person the adult believes is under the age of 16 years, to engage in a sexual act, either in Queensland or elsewhere; or                      | 18 |
|                  |  | 19 |
|                  |  | 20 |
|                  | (b) expose, without legitimate reason, a person under the age of 16 years, or a person the adult believes is under the age of 16 years, to any indecent matter, either in Queensland or elsewhere; | 21 |
|                  |  | 22 |
|                  |  | 23 |
|                  |  | 24 |
|                  | commits a crime.   | 25 |
|                  | Maximum penalty—5 years imprisonment.  | 26 |
|                  | ‘(2) The adult is liable to 10 years imprisonment if the person is—  | 27 |
|                  | (a) a person under 12 years; or  | 28 |

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- (b) a person the adult believes is under 12 years. 1
- ‘(3) For subsection (1)(a), a person engages in a sexual act if the 2  
person— 3
- (a) allows a sexual act to be done to the person’s body; or 4
- (b) does a sexual act to the person’s own body or the body of another 5  
person; or 6
- (c) otherwise engages in an act of an indecent nature. 7
- ‘(4) Subsection (3) is not limited to sexual intercourse or acts involving 8  
physical contact. 9
- ‘(5) For subsection (1)(a), it is not necessary to prove that the adult 10  
intended to procure the person to engage in any particular sexual act. 11
- ‘(6) Also, for subsection (1)(a), it does not matter that, by reason of 12  
circumstances not known to the adult, it is impossible in fact for the person 13  
to engage in the sexual act. 14
- ‘(7) For subsection (1), it does not matter that the person is a fictitious 15  
person represented to the adult as a real person. 16
- ‘(8) Evidence that the person was represented to the adult as being under 17  
the age of 16 years, or 12 years, as the case may be, is, in the absence of 18  
evidence to the contrary, proof that the adult believed the person was under 19  
that age. 20
- ‘(9) It is a defence to a charge under this section to prove the adult 21  
believed on reasonable grounds that the person was at least 16 years, or 22  
12 years, as the case may be. 23
- ‘(10) In this section— 24
- “**electronic communication**” means email, Internet chat rooms, SMS 25  
messages, real time audio/video or other similar communication. 26
- “**indecent matter**” means indecent film, videotape, audiotape, picture, 27  
photograph or printed or written matter. 28
- “**procure**” means knowingly entice or recruit for the purposes of sexual 29  
exploitation.’. 30

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|                  |   |                            |
|------------------|---|----------------------------|
| <b>Clause 18</b> | <b>Replacement of s 229B (Maintaining a sexual relationship with a child)</b>   | 1<br>2                     |
|                  | Section 229B—   | 3                          |
|                  | <i>omit, insert—</i>  | 4                          |
|                  | <b>‘229B Maintaining a sexual relationship with a child</b>   | 5                          |
|                  | ‘(1) Any adult who maintains an unlawful sexual relationship with a child under the prescribed age commits a crime.   | 6<br>7                     |
|                  | Maximum penalty—life imprisonment.  | 8                          |
|                  | ‘(2) An unlawful sexual relationship is a relationship that involves more than 1 unlawful sexual act over any period.   | 9<br>10                    |
|                  | ‘(3) For an adult to be convicted of the offence of maintaining an unlawful sexual relationship with a child, all the members of the jury must be satisfied beyond reasonable doubt that the evidence establishes that an unlawful sexual relationship with the child involving unlawful sexual acts existed. | 11<br>12<br>13<br>14<br>15 |
|                  | ‘(4) However, in relation to the unlawful sexual acts involved in an unlawful sexual relationship—  | 16<br>17                   |
|                  | (a) the prosecution is not required to allege the particulars of any unlawful sexual act that would be necessary if the act were charged as a separate offence; and   | 18<br>19<br>20             |
|                  | (b) the jury is not required to be satisfied of the particulars of any unlawful sexual act that it would have to be satisfied of if the act were charged as a separate offence; and   | 21<br>22<br>23             |
|                  | (c) all the members of the jury are not required to be satisfied about the same unlawful sexual acts.   | 24<br>25                   |
|                  | ‘(5) If the child was at least 12 years when the crime was alleged to have been committed, it is a defence to prove the adult believed on reasonable grounds the child was at least the prescribed age.   | 26<br>27<br>28             |
|                  | ‘(6) An adult can not be prosecuted for the crime without a Crown Law Officer’s consent.  | 29<br>30                   |
|                  | ‘(7) An adult may be charged in 1 indictment with—  | 31                         |
|                  | (a) the offence of maintaining an unlawful sexual relationship with a child (the “ <b>maintaining offence</b> ”); and   | 32<br>33                   |

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(b) 1 or more other offences of a sexual nature alleged to have been committed by the adult in relation to the child in the course of the alleged unlawful sexual relationship (the “**other offence or offences**”).

‘(8) The adult charged in 1 indictment as mentioned in subsection (7) may be convicted of and punished for any or all of the offences charged.

‘(9) However, if the adult is—

(a) charged in 1 indictment as mentioned in subsection (7); and

(b) sentenced to imprisonment for the maintaining offence and for the other offence or offences;

the court imposing imprisonment may not order that the sentence for the maintaining offence be served cumulatively with the sentence or sentences for the other offence or offences.<sup>3</sup>

‘(10) In this section—

“**offence of a sexual nature**” means an offence defined in section 208, 209, 210 (other than section 210(1)(e) or (f)), 215, 222, 349, 350 or 352.<sup>4</sup>

“**prescribed age**”, for a child, means—

(a) if the unlawful sexual relationship involves an act that constitutes, or would constitute (if it were sufficiently particularised), an offence defined in section 208 or 209—18 years; or

(b) in any other case—16 years.

“**unlawful sexual act**” means an act that constitutes, or would constitute (if it were sufficiently particularised), an offence of a sexual nature.’.

**Clause 19 Insertion of new ch 76**

After chapter 75—

---

3 See the *Penalties and Sentences Act 1992*, section 155 (Imprisonment to be served concurrently unless otherwise ordered).

4 Section 208 (Unlawful sodomy), 209 (Attempted sodomy), 210 (Indecent treatment of children under 16), 215 (Carnal knowledge with or of children under 16), 222 (Incest), 349 (Rape), 350 (Attempt to commit rape) or 352 (Sexual assaults)

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*insert—*

**‘CHAPTER 76—TRANSITIONAL PROVISION FOR  
SEXUAL OFFENCES (PROTECTION OF  
CHILDREN) AMENDMENT ACT 2002**

**‘713 Transitional provision for Sexual Offences (Protection of  
Children) Amendment Act 2002—unlawful sexual relationship**

‘On a charge of an offence as defined in section 229B, evidence of an unlawful sexual act or acts done before the commencement of this section may be admitted for the purpose of deciding whether unlawful sexual acts done after the commencement of this section establish the existence of an unlawful sexual relationship.’.

**PART 4—AMENDMENT OF THE CRIMINAL LAW  
AMENDMENT ACT 1945**

**Clause 20 Act amended in pt 4**

This part amends the *Criminal Law Amendment Act 1945*.

**Clause 21 Amendment of s 19 (Sexual offender to report name and address)**

(1) Section 19(1) from ‘may order’—

*omit, insert—*

‘may make a reporting order against the offender.’.

(2) Section 19(2), ‘substantial’—

*omit.*

(3) Section 19(6) and (7)—

*omit.*

(4) Section 19(8), after ‘subsection (1)’—

*insert—*



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|                  |  |                      |
|------------------|--|----------------------|
|                  | ‘without reasonable excuse’.   | 1                    |
|                  | (5) Section 19(8) and (9)—   | 2                    |
|                  | <i>renumber</i> as subsection (6) and (7).   | 3                    |
| <b>Clause 22</b> | <b>Renumbering of s 19A (Application for revocation of order)</b>  | 4                    |
|                  | Section 19A—   | 5                    |
|                  | <i>renumber</i> as section 19B.  | 6                    |
| <b>Clause 23</b> | <b>Insertion of new s 19A</b>  | 7                    |
|                  | After section 19—  | 8                    |
|                  | <i>insert</i> —  | 9                    |
|                  | <b>‘19A Requirements under reporting order</b>   | 10                   |
|                  | ‘(1) A reporting order may impose requirements under subsection (2) or (5) or both subsections.  | 11<br>12             |
|                  | ‘(2) A reporting order may require the offender—   | 13                   |
|                  | (a) to report the offender’s current name and address to the officer in charge of police at a stated place within 48 hours after being released from custody; and  | 14<br>15<br>16       |
|                  | (b) afterwards, for the stated period, to report any change of name or address, within 48 hours of the change taking place, to the officer in charge of police at that place or at another place approved by the commissioner. | 17<br>18<br>19<br>20 |
|                  | ‘(3) For subsection (2)(a), the offender must report to the report officer personally.   | 21<br>22             |
|                  | ‘(4) For subsection (2)(b), the offender must report to the report officer—  | 23<br>24             |
|                  | (a) personally; or   | 25                   |
|                  | (b) by letter signed by the offender and sent by registered post addressed to the report officer.  | 26<br>27             |
|                  | ‘(5) A reporting order may require the offender—   | 28                   |
|                  | (a) to report to the officer in charge of police at a stated place within 48 hours after being released from custody; and  | 29<br>30             |

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(b) afterwards, at the stated frequency for the stated period, to report to the officer in charge of police at that place or at another place approved in writing by the commissioner. 1  
2  
3

‘(6) For subsection (5), the offender must report to the report officer— 4

(a) personally; or 5

(b) with the consent of the report officer given before the report is required to be made—by telephone or in another way. 6  
7

‘(7) For subsection (6)(b), the report officer may consent to the offender reporting other than personally only if the offender is ill or has another good reason for not reporting personally. 8  
9  
10

‘(8) In this section— 11

“**commissioner**” means the commissioner of the police service. 12

“**report officer**” means the police officer to whom an offender must report under the requirements of a reporting order. 13  
14

“**stated**” means stated in the reporting order.’. 15

**Clause 24 Amendment of s 20 (Disclosure of offences of sexual nature and other relevant information)** 16  
17

Section 20(6), after ‘subsection (4)’— 18

*insert—* 19

‘without reasonable excuse’. 20

**Clause 25 Insertion of new pt 5, div 1 heading** 21

Before section 23— 22

*insert—* 23

**‘Division 1—Criminal Law Amendment Act 1999’.** 24

**Clause 26 Insertion of new pt 5, div 2** 25

Part 5— 26

*insert—* 27

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|   |                |
|---|----------------|
| <b>‘Division 2—Sexual Offences (Protection of Children) Amendment Act 2002</b>  | 1<br>2         |
| <b>‘24 Definitions for pt 5, div 2</b>  | 3              |
| ‘In this part—  | 4              |
| <b>“amending Act”</b> means the <i>Sexual Offences (Protection of Children) Amendment Act 2002</i> .  | 5<br>6         |
| <b>“commencement”</b> means the commencement of section 21 of the amending Act. <sup>5</sup>  | 7<br>8         |
| <b>‘25 Transitional provision for order under section 19</b>  | 9              |
| ‘A reporting order may be made under section 19 as amended by the amending Act whether the conviction for which the reporting order is made happened before or after the commencement.’ | 10<br>11<br>12 |
| <b>PART 5—AMENDMENT OF PENALTIES AND SENTENCES ACT 1992</b>   | 13<br>14       |
| <b>Clause 27 Act amended in pt 5</b>  | 15             |
| This part amends the <i>Penalties and Sentences Act 1992</i> .  | 16             |
| <b>Clause 28 Amendment of s 9 (Sentencing guidelines)</b>   | 17             |
| (1) Section 9(5) and (6)—   | 18             |
| <i>renumber</i> as subsections (7) and (8).   | 19             |
| (2) Section 9—  | 20             |
| <i>insert—</i>  | 21             |

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<sup>5</sup> *Sexual Offences (Protection of Children) Amendment Act 2002*, section 21 (Amendment of s 19 (Sexual offender to report name and address))

*Sexual Offences (Protection of Children) Amendment  
Bill 2002*

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- ‘(5) Also, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender for any offence of a sexual nature committed in relation to a child under 16 years. 1  
2  
3
- ‘(6) In sentencing an offender to whom subsection (5) applies, the court must have regard primarily to the following— 4  
5
- (a) the effect of the offence on the child; 6
  - (b) the age of the child; 7
  - (c) the nature of the offence, including, for example, any physical harm or the threat of physical harm to the child or another; 8  
9
  - (d) the need to protect the child, or other children, from the risk of the offender reoffending; 10  
11
  - (e) the need to deter similar behaviour by other offenders to protect children; 12  
13
  - (f) the prospects of rehabilitation including the availability of any medical or psychiatric treatment to cause the offender to behave in a way acceptable to the community; 14  
15  
16
  - (g) the offender’s antecedents, age and character; 17
  - (h) any remorse or lack of remorse of the offender; 18
  - (i) any medical, psychiatric, prison or other relevant report relating to the offender; 19  
20
  - (j) anything else about the safety of children under 16 the sentencing court considers relevant.’. 21  
22

**Clause 29 Insertion of new s 211** 23

Part 14— 24

*insert—* 25

**‘211 Transitional provision for the Sexual Offences (Protection of Children) Amendment Act 2002** 26  
27

‘Section 9 as amended by the *Sexual Offences (Protection of Children) Amendment Act 2002*, section 28,<sup>6</sup> applies to the sentencing of an offender 28  
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<sup>6</sup> *Sexual Offences (Protection of Children) Amendment Act 2002*, section 28 (Amendment of s 9 (Sentencing guidelines))

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whether the offence or conviction happened before or after the commencement of that section.’ 1  
2  
3